

Parshas Shoftim – David Levy (reprint)

ז אלול תשע"ו – 9th September 2016 – שבת פי' שופטים

Among the plethora of Mitzvos in Parashas Shof'tim are several relating to court procedures. As is well known, the court needs evidence from two valid witnesses to pass judgment in any kind of case. False witnesses are dealt with generally in Chapter 19 verses 15 to 19 of Devorim and verses 18 and 19 deal with a special kind of false witness called Eidim Zomemim, (best translated as "conspiring (or plotting) witnesses"). The precise details of who are Eidim Zomemim and how to apply the rules relating to them are contained in the Gemara in the first 6 Dapim (pages) of Tractate Makkos, the only explicit reference in the written Torah itself being the words in verse 19: Va'asisem Lo Ca'asher Zomam La'asos L'Ochiv ("You shall do to him as he conspired (or plotted) to do to his fellow").

Two witnesses (A and B) came to court and accused X either of a crime against Y (say murder) or a civil wrong against him, in a particular place (say in London), but other witnesses (C and D) come along to the court and testify that A and B could not have witnessed the crime or civil wrong in London because they (A and B) were in (say) Manchester with C and D at the time of the alleged offence. All things being equal, the court must automatically accept the testimony of C and D against that of A and B. If (and only if) discredited in this way are A and B Eidim Zomemim.

A and B, the Eidim Zomemim, are then given the punishment that the falsely accused X would have got if he had actually committed such crime or civil wrong (e.g. execution in the case of murder or lashes or a monetary fine where one of those is the prescribed punishment for the relevant offence). However A and B, the Eidim Zomemim, only get this punishment if (1) the court has already heard the case against X and pronounced him guilty but (2) has not yet carried out the punishment. If either the court had not yet heard the case or pronounced the verdict or, if they have done so, and have also (in error as it turns out) carried out the punishment on X, then A and B do not get that or any punishment (at the hands of a civil court - but Divine punishment may be another matter!). There is no human logic for this or indeed why the testimony of C and D should be believed in preference to that of A and B.

Of course if the court receives in good time indisputable evidence that it is C and D who are lying then A and B would not be declared Eidim Zomemim. Likewise if A and B were found to be false witnesses (but not because they were elsewhere at the time) they are not Eidim Zomemim and would just get the standard punishment for giving false testimony, namely Malkos (lashes).

There are complicated situations (which would take up too much space here to explain) where it is not feasible to give to the Eidim Zomemim the same punishment that the falsely accused X would have got if he were guilty. In such event they may be punished instead with lashes or with a differently assessed monetary fine than that which the falsely accused would have suffered if he were guilty.

Our Parasha in two places uses the expression "Al Pi Sh'nayim Eidim O Al Pi Sh'losho Eidim" ("By the testimony of two or the testimony of three witnesses..."). This is interpreted by Rashi and others to mean that just as three witnesses can discredit the testimony of two so two can discredit the testimony of three. If numerous witnesses are falsely accusing X it only needs two (truthful) witnesses to prove that the larger number are false. All the witnesses who come to testify together are treated as a group, so if two, three or one hundred all falsely accuse X of committing an offence, unless the whole group are technically found to be Eidim Zomemim none of the members of the group get punished as Eidim Zomemim.

The Sadducees, who did not accept the oral law, had a problem with these rules, especially the fact that Eidim Zomemim would not be executed if the person they falsely accused of a capital crime had actually been executed by the court (in error). On the contrary they held that the Eidim Zomemim should only be executed if the falsely accused person had been executed. This may seem logical but it is not what the Torah, as interpreted by the oral law prescribes. The Rabbis refuted the Saduceean view by interpreting the words in the Torah Ca'asher Zomam ("as he plotted to do"), as implying that the plot had not succeeded and the intended victim had not yet been executed.

These rules of Eidim Zomemim classically illustrate how (1) even civil (as well as ritual) laws given in the Torah sometimes defy human logic (2) we must sometimes leave Heaven to mete out justice (3) statements in the written Torah sometimes cannot be taken at face value and (4) above all, the written Torah cannot be understood or applied without reference to the oral Torah.