

And you shall do to him as he planned to do to his brother. (19:19)

In the beginning of *Meseches Makkos*, the *Mishnah* asks the question: “In what manner do witnesses become *zomeimim*?” *Hazamah* is the process by which witnesses are proven false by testimony that places them elsewhere at the time that the alleged incident took place. The penalty for *hazamah* is reciprocal punishment, meaning the punishment the false witnesses sought to impose on the dependent by their testimony is meted out to them, be it monetary payment or corporal punishment. This is the meaning of, *V'asisem lo kaasher zomam laasos l'achiv*, which is the Scriptural reference to the reciprocal penalty incurred by those witnesses. The laws of *hazamah* play a significant role in establishing the criteria for all. If one's testimony is not susceptible to refutation by *hazamah* or *eidus shei atah yachol l'haazimah*, it is not admissible. Likewise, if the very nature of their testimony is such that they could not be reciprocally punished for testifying falsely, if they are found to be *zomeimim*, such testimony is not admissible.

Returning to the *Mishnah*'s opening question, it replies, “If they said, we testify concerning this person, who until now had been considered a *Kohen* who is qualified to perform the Temple service, that he is actually the son of a divorced woman, which would render him a *Kohen challal*, disqualified *Kohen*, we do not say that the witnesses themselves become *challalim* (in the event that they are *Kohanim*). Rather, the witnesses receive *malkos*, lashes. The *Talmud* explains that this *halachah* is derived from the above *pasuk*, “And you shall do to him as he planned,” which implies, *lo* – to him, *v'lo l'zaro* - but not to his offspring. If we were to disqualify the witness from service by considering him a *challal*, it would affect his children who would also become *challalim*. The *Talmud* then wonders why we cannot simply disqualify the witness and not his children. Thus, there would not be an impediment to applying the law of reciprocal punishment. They reply that, in order for the punishment to be reciprocal, it is necessary for *bais din*, the court, to do to the witness exactly as he had planned to do to the defendant. This is lacking, since his testimony would have inevitably disqualified the victim's children – something which we could not reciprocate.

Tosfos question this, since we do find cases in which a false witness intends to disqualify an individual, and this disqualification will not pass down to his children. For instance, if the witnesses were to testify that a certain person was actually the son of an Egyptian, his children who are the third generation would be permitted to convert and marry a Jewish girl. (An Egyptian is prohibited from entering the Jewish congregation until the third generation.) Therefore, the false witness will become a *Mitzri*, an Egyptian, and will not be permitted to marry a Jewess. His children, however, will not become disqualified, since only the subject of his testimony himself was affected by his words – not the subject's children. *Tosfos* reply that while his children are not disqualified, his wife will not be permitted to remain with him, since he is considered an Egyptian. Thus, the reciprocal punishment cannot be carried out.

In addressing the question raised by *Tosfos*, **Horav Yechiel Yaakov Weinberg, zl**, explains that

the laws concerning *hazamah* do not fully apply to a *pesul ha'guf*, disqualification of the body of the person, such as legitimacy of birth and Egyptian pedigree. *Bais Din* can only issue monetary or corporal punishment. They are not able to alter the status of a person if such status is birth-related. One who is not himself disqualified through birth cannot have his status altered by judicial punishment.

The *Rosh Yeshivah* explains the reason for this as relating to the core understanding of the punishment meted out to a false witness. Through its punishment of the witness, the Torah seeks to bring the witness into a state of *kaparah*, atonement. Veritably, this cannot occur concerning a sin against one's fellowman unless the victim wholeheartedly forgives his assailant/the witness. Regarding sins between man and his fellowman, there must be *ritzui*, appeasement, and *mechilah*, forgiveness. Otherwise, Hashem will not atone for the man's sin.

Therefore, the Torah established reciprocal punishment, in which the witness becomes like the intended victim, creating circumstances whereby the victim is appeased and the false witness can achieve atonement. When witnesses testify that a *Kohen* is the product of a prohibited marriage, they engender within the *Kohen* a feeling of doubt, of inadequacy concerning his Priestly status. "Maybe it is true," the *Kohen* begins to wonder. "Perhaps I am *pasul*." This sense of doubt, this feeling of ambiguity, is something that only the victim can feel. Even if we were to reciprocate and declare the witness *pasul*, it would not engender doubt within his mind, because he knows the truth. Thus, he will not achieve atonement. So, why bother if the desired consequences will not be realized?

Since a *bais din* does not have the ability to find an appropriate punishment for the false witnesses, and to stigmatize him as disqualified will not be effective because he knows that it is not true, the Torah instead gives the witness *makkos*, lashes, in place of what they would have liked to give him. A balance must be struck between the crime and its punishment. Therefore, to label the witness an Egyptian is not realistic, since the witness knows it is not true. Thus, we revert to a punishment which is just and represents integrity: *makkos*.