

Talmud Matters – Study Notes – with Rabbi Eliezer Breitowitz

A Case that Could Have Been in the Talmud...

“On March 23, 1994, a medical examiner viewed the body of Ronald Opus and concluded that he died from a gunshot wound of the head caused by a shotgun. Investigation to that point had revealed that the decedent had jumped from the top of a ten-story building with the intent to commit suicide. (He left a note indicating his despondency.) As he passed the 9th floor on the way down, his life was interrupted by a shotgun blast through a window, killing him instantly. Neither the shooter nor the decedent was aware that a safety net had been erected at the 8th floor level to protect some window washers, and that the decedent would most likely not have been able to complete his intent to commit suicide because of this.

“Ordinarily, a person who sets out to commit suicide and ultimately succeeds, even if the mechanism might not be what they intended, is defined as having committed suicide. That he was shot on the way to certain death nine stories below probably would not change his mode of death from suicide to homicide, but the fact that his suicide intent would not have been achieved under any circumstance caused the medical examiner to feel that he had homicide on his hands.

“Further investigation led to the discovery that the room on the 9th floor whence the shotgun blast emanated was occupied by an elderly man and his wife. He was threatening her with the shotgun because of an interspousal spat and became so upset that he could not hold the shotgun straight. Therefore, when he pulled the trigger, he completely missed his wife, and the pellets went through the window, striking the decedent.

“When one intends to kill subject A but kills subject B in the attempt, one is guilty of the murder of subject B. The old man was confronted with this conclusion, but both he and his wife were adamant in stating that neither knew that the shotgun was loaded. It was the long time habit of the old man to threaten his wife with an unloaded shotgun. He had no intent to murder her; therefore, the killing of the decedent appeared then to be accident. That is, the gun had been accidentally loaded.

“But further investigation turned up a witness that their son was seen loading the shotgun approximately six weeks prior to the fatal accident. That investigation showed that the mother (the old lady) had cut off her son's financial support, and her son, knowing the propensity of his father to use the shotgun threateningly, loaded the gun with the expectation that the father would shoot his mother. The case now becomes one of murder on the part of the son for the death of Ronald Opus.

“Now comes the exquisite twist. Further investigation revealed that the son, Ronald Opus himself, had become increasingly despondent over the failure of his attempt to get his mother murdered. This led him to jump off the ten-story building on March 23, only to be killed by a shotgun blast through a 9th story window.

“The medical examiner closed the case as a suicide.”

Don Harper Mills, President of American Academy of Forensic Sciences, 1987

1) Talmud Bavli, Bava Kamma 26b

And Rabba says: If one threw a vessel, such as an earthenware jug, from a roof and another came along and broke it with a stick during its descent, the latter is exempt from liability. What is the reason? It is because he broke a broken vessel...

And Rabba says: If one threw a vessel from a roof and there were cushions or blankets below so that if the vessel would land on them it would not break, and then another came and removed the cushions or blankets the one who threw the vessel is exempt from liability. What is the reason? At the time that he threw the vessel, his arrows were stopped...

And Rabba says: If one threw a child from a roof and another came along and impaled him on his sword and the child died, the question of who is liable to receive the death penalty for killing the child is dependent upon the dispute between Rabbi Yehuda ben Beteira and the Rabbis...

2) Talmud Bavli, Sanhedrin 78b-79a

MISHNA: If one intended to kill an animal, and he killed a person standing adjacent to it...or if he intended to kill non-viable newborns, for whose murder one is not liable, and he killed a viable person, the assailant is exempt from execution, since his intent was to kill one for whose murder he is not liable.

GEMARA: from this it may be inferred: But if one intended to kill this one and he killed that one, the assailant is liable. Rabbi Shimon disagrees and says: Even if one intended to kill this one and he killed that one, he is exempt.

3) Derech Hashem 4:2:1

Behold that Torah study is an obligatory matter. As without it, it is impossible to arrive at [proper] action. For if one does not know what he is commanded to do, how will he do it?

4) Rambam, Introduction to the Commentary on the Mishnah

Know that every commandment given by the Holy One Blessed be He was given with its commentary; G-d first gave the commandment and then taught Moshe the unwritten commentary...

5) Talmud Bavli Gittin 60b

Rabbi Yoḥanan says: The Holy One, Blessed be He, made a covenant with the Jewish people only for the sake of the matters that were transmitted orally [be'al peh], as it is stated: "For on the basis of [al pi] these matters I have made a covenant with you and with Israel" (Exodus 34:27).

6) Talmud Bavli Sukkah 28a

The Gemara relates: The Sages said about Rabban Yoḥanan ben Zakkai that he did not neglect Bible; Mishna; Gemara; halakhot and aggadot; minutiae of the Torah and minutiae of the scribes; the hermeneutical principles of the Torah with regard to a fortiori inferences and verbal analogies; the calculation of the calendrical seasons; and numerology [gimmatreyaot]. In addition, he did not neglect esoteric matters, including the conversation of ministering angels; the conversation of demons, and the conversation of palm trees; parables of launderers, which are folk tales that can be used to explain the Torah; parables of foxes; and more generally, a great matter and a small matter.

The Gemara elaborates: A great matter is referring to the secrets of the Design of the Divine Chariot, the conduct of the transcendent universe. A small matter is, for example, *halakhot* that were ultimately formulated in the framework of the disputes of Abaye and Rava. He did not neglect any of these disciplines so as to fulfill that which is stated: "That I may cause those that love me to inherit substance and that I may fill their treasuries" (Proverbs 8:21)...

7) Rambam, Laws of the Fundamentals of Torah 4:13

The subjects in these four chapters of these five commandments, are the same which the early sages speak of as Vineyard, saying: "Four entered the vineyard" (Haggigah 14), who, though

great men in Israel and great scholars, not all of them had the intellectual power to know and grasp all these matters clearly; and I say that no one is deserving to promenade in the Vineyard unless he be filled with intellectual bread and meat, that is to say: one must know what is forbidden and what is permitted and similar to these of the rest of the commandments. And, although these matters were pronounced by the sages as of lesser importance, for they said: "A great matter is the Works of the Chariot, and a small matter is the controversies of Abyia and Raba,³ Nevertheless, they have precedence as a study because they commence to compose man's mind; moreover, they are the store of great good which the Holy One, blessed is He, hath provided for the social existence of this world, so that the life of the world to Come may also be inherited, and be accessible to all, little and great, men and women, to one of broad understanding as well as to one of lesser understanding.

8) Derech Hashem 4:2:2-3

Among the influences that are brought from Him, may He be blessed, for the needs of His creatures, it is the most precious and sublime of all that can be found in existence. That means that it is the goal of all that it is the greatest entity of that which can be found that is similar to His true existence, may He be blessed, and the preciousness and sublimity similar to His true sublimity, may He be blessed. And it is that which the Master, blessed be His name, of His glory and preciousness, shares with his servants. However, the Creator, may His name be blessed, bound this influence to something that which was created by Him, may He be blessed, for this purpose. And that is the Torah. And this matter is accomplished in two ways – by reading and by understanding...

9) Tanya, Chapter 4

And although the Holy One, blessed be He, is called En Sof ("Infinite)... and so are also His will and His wisdom... Nevertheless, it is in this connection that it has been said: "Where you find the greatness of the Holy One, blessed be He, there you also find His humility." For the Holy One, blessed be He, has compressed His will and wisdom within the 613 commandments of the Torah, and in their laws...All this in order that each neshamah, or ruach and nefesh in the human body should be able to comprehend them through its faculty of understanding, and to fulfil them, as far as they can be fulfilled...

Therefore has the Torah has been compared to water, for just as water descends from a higher to a lower level, so has the Torah descended from its place of glory, which is His blessed will and wisdom...All this in order that every thought should be able to apprehend them...

10) Tanya, Chapter 5

For example, when a person understands and comprehends, fully and clearly, any halachah (law) in the Mishnah or Gemara, his intellect grasps and encompasses it... Consequently, as the particular halachah is the wisdom and will of G-d (for it was His will that when, for example, Reuben pleads in one way and Simeon in another, the verdict as between them shall be thus and thus; and even should such a litigation never have occurred, nor would it ever present itself for judgment in connection with such disputes and claims, nevertheless, since it has been the will and wisdom of the Holy One, blessed be He, that in the event of a person pleading this way and the other [litigant] pleading that way, the verdict shall be such and such) when a person knows and comprehends with his intellect such a verdict in accordance with the law as it is set out in the Mishnah, Gemara, or Posekim (Codes), he has thus comprehended, grasped and encompassed with his intellect the will and wisdom of the Holy One, blessed be He, Whom no thought can grasp, nor His will and wisdom, except when they are clothed in the laws that have been set out for us...