

Mens Rea

Excerpted and adapted from a *shiur* by Dayan Yitzhak Grossman

October 12, 2023

<https://baishavaad.org/wp-content/uploads/2023/10/bereishis-involuntary-manslaughter-20230928-bhv.flac>

And Lemech said to his wives, "Adah and Tzilah, hear my voice; wives of Lemech, give ear to my speech: Have I slain a man by my wound and a child by my bruise?"

Bereishis 4:23

Rashi, citing the Midrash, says that Lemech was blind. When he went hunting with bow and arrow, his son Tuval Kayin would indicate to him where to shoot. Tuval Kayin mistook Kayin for an animal and directed Lemech to shoot him. In this *pasuk*, Lemech insists that he was not responsible for Kayin's death.

The Rama, discussing the case of a wagon passenger who unintentionally shot and killed the driver, writes that it was *karov le'oness* (nearly accidental), but the perpetrator should still observe certain *teshuvah* practices: He should wander in exile for a year, fast each day until Yom Kippur, fast every year on the *yahrtzeit*, and recite *vidui* daily.

The Panim Me'iros addresses the case of friends that were playing with a gun they believed wasn't loaded and one of them fatally shot someone. He rules that the perpetrator is not subject to the *galus* obligation of an unintentional (as opposed to accidental) murderer. He says this case is less severe than the Rama's, because they had tested the gun a few times without result before it went off. He therefore requires only minor *teshuvah*, consisting of twice-daily *vidui* and observing the *yahrtzeit* as a day of mourning.

The Mas'as Binyamin treats a mother who intentionally slept alongside her infant and then inadvertently smothered him in her sleep as an unintentional murderer. He imposes a strict *teshuvah* regimen, including fasting for 40 days, not eating meat or drinking wine even at night, not sleeping with blankets, and not wearing jewelry. Others are lenient if she did not intend to fall asleep.