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Makkos Daf 4

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May the studying of the Daf Notes be a zechus for their neshamot and may their souls find peace in Gan Eden and be bound up in the Bond of life

Invalidating a Mikvah

Rav Yehudah says in the name of Rav: Three *log* of (drawn) water that have a *kortov* of wine fall into it, and the mixture appears like wine, would not cause a *mikvah* (which does not yet have the required forty *se’ah*) to become invalid. [The only thing that would make a *mikvah* invalid is drawn water, not wine. Since the stringency of three *log* of drawn water being added to a deficient *mikvah* is only Rabbinic in nature, we are lenient and rule that this mixture is regarded as wine, and it therefore does not disqualify the *mikvah*.]

Rav Kahana asked: Why is this different than colored water (that does cause a *mikvah* to become invalid)? This is as the *Mishna* stated: Rabbi Yosi says that three *log* of colored drawn water cause a *mikvah* to become invalid.

Rava answered: The colored water is still called water. The wine is called diluted wine, and is not called any type of water anymore.

The *Gemora* asks: But it was taught in a *braisa*: Rabbi Chiya said that they have downgraded the *mikvah* (in the case of the wine)!?

Rava answers: Rav is following the opinion of Rabbi Yochanan ben Nuri, and the *braisa* is in accordance with the Rabbis, for it was taught in a *Mishna*: Three *log* of (drawn) water less a *kortov*, that have a *kortov* of wine fall into it, and the mixture appears like wine, and this mixture falls into a deficient *mikvah* (which does not yet have the required forty *se’ah*), it does not cause the *mikvah* to

become invalid (for it is less than three *log* of drawn water). Similarly, if three *log* of (drawn) water less a *kortov*, that have a *kortov* of milk fall into it, and the mixture appears like water, and this mixture falls into a deficient *mikvah* (which does not yet have the required forty *se’ah*), it does not cause the *mikvah* to become invalid (even though it appears like water, for it is less than three *log* of drawn water). [If, however, there was a complete three *log* of drawn water and an additional *kortov* of milk fell into it, and even if it was wine, the *mikvah* would be ruled invalid, for three *log* of drawn water invalidates a *mikvah*.] Rabbi Yochanan ben Nuri disagrees and maintains that we always follow its appearance (and in the second case of the *Mishna* with respect of the milk, the *mikvah* would be disqualified, for it has the color of water; also, in a case where there were three *log* of drawn water and a *kortov* of wine falls into it and it appears like wine, it will not disqualify the *mikvah*).

The *Gemora* notes that while Rava maintains that Rav was consistent only with Rabbi Yochanan ben Nuri, Rav Pappa actually inquired about this (that perhaps the Rabbis and Rabbi Yochanan ben Nuri both hold that if the mixture does not have an appearance of water, even if there are three *log* of drawn water, it will not disqualify the *mikvah*).

Rav Yosef said: I never heard this ruling that Rav Yehudah said in the name of Rav.

Abaye (who needed to remind Rav Yosef of things that he said, for Rav Yosef suffered a memory loss due to sickness)



told him: you taught us this statement, and you told us that Rav is following both opinions.

Rav Yehudah says in the name of Rav: If a barrel filled with water falls into the Great Sea, the immersion of a *tamei* person there is not effective, for we are concerned that there were three *log* of drawn water floating in one place. [It seems from Rashi that Biblically, he is regarded as *tahor*; however, there is a Rabbinical decree that if a *tamei* person, later on the day of his immersion, immerses his head and most of his body into three *log* of drawn water, he becomes *tamei*. As he was emerging, he may have passed through the spot of the drawn water.] The *Gemora* notes that this is only a concern in the Great Sea, where the water is stationary; however, in an ordinary river (*which flows*), we would not be concerned for this.

The *Gemora* cites a supporting *braisa*: If a barrel filled with wine falls into the Great Sea, the immersion of a *tamei* person there is not effective, for we are concerned that he did not completely immerse in the water (*for part of his body might have been in the wine*). And similarly, if a loaf of *terumah* would fall there (*after the tamei person immersed there*), it would become *tamei* (*for tamei person contaminated the wine, and consequently, the terumah became tamei by becoming in contact with the wine*).

The *Gemora* asks: Is that not obvious?

The *Gemora* answers: I would have thought that the person is ruled to be *tamei*, for his previous status was that he was *tamei* as well (*and out of doubt, he remains tamei*); however, the loaf of *terumah* was previously *tahor*, so perhaps it should remain *tahor*. The *braisa* teaches us otherwise. (3b – 4a)

Mishna

“We testify that this particular person owes his fellow two hundred *zuz*,” and they are found to be *zomemin*, they

receive lashes and must pay, for the Scriptural verse that makes him liable for the lashes is not the same as that which makes him liable for compensation; these are the words of Rabbi Meir. But the *Chachamim* say: Whoever is liable to pay does not receive lashes.

“We testify that this particular person is liable to incur forty lashes,” and they are found to be *zomemin*, they receive eighty lashes (*two sets of forty*), (*one set*) because of “*You shall not bear false witness against your fellow*,” and (*one set*) because of “*You shall do to him as he intended to do to his brother*.” These are the words of Rabbi Meir. But the *Chachamim* say: They receive only forty lashes. (4a)

Money and Lashes

The *Gemora* asks: It is understandable according to the *Chachamim* (*why the zomemin witnesses do not incur lashes and pay*) because it is written: *According to his wickedness*. From this, we can infer that you may punish him because of one wickedness, but not because of two wickednesses. However, what is Rabbi Meir’s reasoning?

Ulla said: It is derived from the law of the slanderer. [The husband comes to *Beis Din* and says to his wife’s father, “*I did not find your daughter to be a virgin*.” *If there are witnesses that she committed adultery, she is subject to stoning. If his accusation is found to be a false one, he incurs lashes and he is required to pay one hundred selaim*.] Just as the slanderer incurs lashes and is obligated to pay, so too anyone who sins in a manner which carries these two punishments (*like this case of zomemin witnesses*) must incur lashes and pay.

The *Gemora* asks: How can he derive it from there? The slanderer is different because the payment is a fine (*which is a novelty in itself, and no further halachos may be derived from there*).



The *Gemora* answers: Ulla holds in accordance with Rabbi Akiva that the punishment for *zomemin* witnesses is also a fine (*and therefore we can learn from the slanderer to this case*).

There are those that learn Ulla's statement (*that we derive from the slanderer*) with respect to the following *braisa*: *And you shall let nothing of it (korban pesach) remain until the morning; and that which remains from it until the morning you shall burn with fire*. Now, the Scripture follows up a negative prohibition (*of leaving over*) with a positive one (*of burning that which is leftover*), thereby teaching us that one does not incur lashes for it. This is Rabbi Yehudah's view. Rabbi Akiva (Yaakov) said: This is not the real reason (*that he does not incur lashes*), but it is because it is a negative prohibition that involves no action, and one does not incur lashes for violating any negative prohibition that involves no action.

We may infer from this that in Rabbi Yehudah's opinion, one does receive lashes for such transgressions. From where is this derived? Ulla said: It is derived from the law of the slanderer. Just as the slanderer incurs lashes even though he has violated a negative prohibition that involves no action, so too anyone who transgresses a negative prohibition that involves no action must incur lashes.

The *Gemora* asks: How can he derive it from there? The slanderer is different because he receives lashes and he is required to pay as well!?

Rather, Rish Lakish said: It is derived from the *zomemin* witnesses. Just as the *zomemin* incur lashes even though they have violated a negative prohibition that involves no action, so too anyone who transgresses a negative prohibition that involves no action must incur lashes.

The *Gemora* asks: How can he derive it from there? The *zomemin* are different because they receive lashes without any warning beforehand!?

The *Gemora* answers: The law of the slanderer will prove that one will incur lashes for violating such a prohibition even with a warning beforehand. And the argument repeats itself (*where we will derive from the slanderer, but you will ask that the slanderer is different, and we will answer that the zomemin will prove that etc.*). The nature of each one of them is not like the other. We therefore can derive from the common denominator amongst them: They are both negative prohibitions that involve no action, and one who violates them incurs lashes, so too all other negative prohibitions that involve no action, one who violates them should incur lashes.

The *Gemora* asks: How can we derive from the both of them together, when both of those prohibitions involve monetary payments that are a fine?

The *Gemora* answers: Rabbi Yehudah does not agree with Rabbi Akiva (*that the payment of the zomemin witnesses are a fine*).

The *Gemora* asks: But they both have a certain stringency to them (*the slanderer - receives lashes and he is required to pay as well; zomemin witnesses - they receive lashes without any warning beforehand*)!?

The *Gemora* answers: Rabbi Yehudah himself was not concerned about this question, for he maintains that as long as they don't share the same stringency, we cannot refute the analogy.

The *Gemora* asks: What do the *Chachamim* do with the verse: *You shall not bear false witness against your fellow*?

The *Gemora* answers: This is used as the basic warning in the Torah against becoming *zomemin*.

Rabbi Yirmiyah says that Rabbi Meir derives the basic warning in the Torah against becoming *zomemin* from the



verse: *And all who remain shall hear and fear and they shall not continue to do further like this.*

The *Chachamim* use this verse to teach us that the court publicly proclaims why the *zomemin* witnesses were executed.

Rabbi Meir derives the proclamation principle from the words: *shall hear and fear*. (4a – 5a)

INSIGHTS TO THE DAF

Paying and Piercing

The *Mishna* stated: “We testify that this particular person owes his fellow two hundred zuz,” and they are found to be *zomemin*, they receive lashes and must pay, for the Scriptural verse that makes him liable for the lashes is not the same as that which makes him liable for compensation; these are the words of Rabbi Meir. But the *Chachamim* say: Whoever is liable to pay does not receive lashes.

Based upon this, the Panim Yafos answers the following question: The *Gemora* in *Kiddushin* states: Why was an ear chosen (*to be pierced - when a Jewish servant wishes to stay by his master even after the six years*) more than other limbs of a person’s body? Hashem says that the ear that heard on Mount Sinai, “*For to Me Bnei Yisroel are servants,*” and not servants to servants, and he went anyway and chose a master for himself, his ear should be pierced. The question begs to be asked: If the piercing is because of his stealing, why don’t we pierce his ear immediately? Why do we wait until he wants to stay longer?

Our *Gemora* states that whoever is liable to pay does not receive lashes. If one is liable a punishment of lashes and money for one action, he does not receive lashes and pay, but rather, he pays and he does not incur the lashes.

Accordingly, we can say that the thief was deserving of getting his ear pierced immediately – except, since he is required to pay for that which he stole, and selling him as a servant is instead of his payment, he is therefore exempt from the piercing, for he cannot pay and receive “lashes.” However, after he served his six years, and he says, “I love my master, my wife and my children; I do not want to go free,” he is revealing to us that his serving as a servant was not a punishment for him. Retroactively, he reverts to the *halachah* that he should be punished for selling himself as a servant through piercing.

DAILY MASHAL

Service is in the Heart

Our *Gemara* cites an opinion that speech is not regarded as an action.

The *Gemora* (Taanis 2a) states: To love Hashem and to serve him with all your heart” (Devarim 11:13). What service is done with the heart? You must say this is Tefillah.

The Tur cites it differently: And it is written: To serve Him with all your heart. Now, is there a service in the heart? Rather, what service is in the heart? It must be this is prayer.

According to the Tur, it seems, the *Gemara* is asking what service is in the *heart*, as service implies *doing* something, not just thinking about it. Thus, the verse must be referring to prayer, which is the only thing you can actually *do* without performing an action.