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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

Direct Cause

Rav Pappa says that if one threw a clump of dirt at a palm tree, causing dates to fall and kill someone, his liability for exile depends on the dispute of Rebbe and the Sages about one who kills by chopping wood. Rebbe, who says that he is liable if a piece of wood flew out and killed someone, although he did not touch the wood, would also obligate one who killed by throwing a piece of dirt, since it is also a death caused as a result of his action. The Sages only obligate someone who directly kills, and therefore would not obligate him.

The *Gemora* explains that Rav Pappa is teaching that this case is considered a result of his action, and not an indirect cause, even though there were two events that led to the death – throwing the dirt, and the dates falling. The *Gemora* explains that if the dirt hit a branch, and the branch then hit a cluster of dates, which killed someone, Rebbe would also agree that this is indirect, and he would not be liable. (8a)

Exile – Where, Who?

The *Mishna* says that if someone threw a stone into the public domain and killed someone, he is exiled. Rabbi Eliezer ben Yaakov says that if the victim entered the public domain after the stone was thrown, he is not exiled. If one threw a stone into his own field, he is only liable if it killed someone who had permission to be there. The *Mishna* explains that the verse gives the example of one who enters a forest and chops wood. From that example we learn that one is only exiled when the victim was in a locale where he was

permitted to enter, like a forest. Abba Shaul says that this example is also a case of an optional activity, excluding one who kills in the context of performing a *mitzvah*, e.g., a father disciplining a child, a teacher disciplining a student, or an agent of the court administering lashes. (8a)

Public Domain

The *Gemora* asks why one should be exiled for throwing a stone into the public domain, as such an action is intentional murder, since people are definitely there. Rav Shmuel bar Yitzchak says the case is one who demolished his wall into the public domain. The *Gemora* clarifies that he did this in the daytime into an area used as a bathroom. Rav Pappa explains that this area was a bathroom frequented by people at night, and only on occasion during the day. Since people don't regularly use it during the day, it is not considered grossly negligence, but since people use it on occasion, it is considered an avoidable death, and he is exiled. (8a)

Pre-existing vs. Newly Found

The *Gemora* cites a *braisa*, which explains that Rabbi Eliezer's qualification is learned from the verse, which states that the killer *matza* – found the victim. This word excludes a victim who appeared *after* the act which killed him.

The *Gemora* challenges this understanding of the word *matza* from another *braisa*. The *braisa* states that one has the right to forcibly redeem land that he sold only when he is using money he didn't have at the time of his sale, since

the verse says *umatza* – and he found enough money to redeem with. The word *matza* indicates that he found it later, excluding a case where he had it all along, preventing one from converting between real estate and liquid assets to facilitate investment.

Rava says that each *braisa* is based on the context of the word matza. In the case of redemption of the land, the verse says that *hisiga yado* – he acquired and *matza* – he found. Just as acquiring implies something he did not previously own, so *matza* implies money he did not previously have. However, *matza* in the case of killing is in the context of a forest, which is present before the killer enters, and therefore implies that the victim was also present before. (8a)

Who did a Mitzvah?

A Torah scholar asked Rava why we assume that the case of one chopping wood is optional. – perhaps he is chopping wood for a *sukkah* covering?

Rava said that even chopping wood for a *sukkah* covering is not considered obligatory, since he would not need to chop the wood if he already had wood. Since the chopping is only a means to the end of having wood for the *sukkah*, but not an obligation per se, it is not considered a *mitzvah*.

Ravina challenged Rava from the continuation of the *Mishna*, which excludes a father who accidentally kills his son in the course of disciplining him. We can similarly say that physically punishing a child is not a *mitzvah* per se, but only a necessary means to the end of the child learning Torah, and should be included in the case of one chopping wood.

Rava said that even if a child is learning Torah, the father still is obligated to physically discipline him, as the verse says “punish your child and he will be pleasant to you.”

Rava then said that his initial answer was incorrect, and even chopping wood for a *sukkah* is not included. The verse itself indicates that the chopping is a case of voluntary activity, since it states *asher* – that [a person enters the forest], indicating that it is a case where the one chopping had the option of entering or not entering, excluding one who needed wood for his *sukkah*.

Rav Ada bar Ahava challenged Rava’s assumption of the implication of *asher* from the verse by impurity due to contact with a corpse. The verse says *ish asher yitma* – one who becomes impure will be cut off if he enters the mishkan. According to Rava, one who is impure as a result of burying a *mais mitzvah* - an abandoned corpse, should not be included in the punishment, since he had no choice to not bury him.

Rava says that there is another clause including such a case. The verse concludes:

Verse	Includes
<i>tamai yihye – he will be impure</i>	<i>Tvul yom</i> - one who immersed in the <i>mikvah</i> , but did not wait until nightfall
<i>od – still</i>	One who became impure by burying a <i>mais mitzvah</i>
<i>tumaso bo – his impurity is in him</i>	<i>Mechusar kippurim</i> - one still missing his required sacrifices (at the conclusion of his impurity)

Some learn this dialogue in a different context. The *braisa* records a dispute between Rabbi Akiva and Rabbi Yishmael on the verse that mandates *becharish uvakatzir tishbos* – in the plowing and harvesting you should rest. Rabbi Akiva says this verse is not referring to *Shabbos*, since not only plowing and harvesting are prohibited. Rather, it is referring to the *Shemittah* year. Further, it is not referring to the *Shemittah* itself, since the verse already prohibited these activities on



the *Shemittah*, but it is extending the prohibition to plowing before *Shemittah* to prepare for *Shemittah* and harvesting the crops of *Shemittah* after *Shemittah*. Rabbi Yishmael says that the verse is referring to *Shabbos*, but only these activities are mentioned to teach us that just as the plowing that is prohibited is voluntary, as there is no obligation to ever plow, so harvesting is only prohibited when voluntary. This excludes harvesting the barley for the *omer* offering, which may be done on *Shabbos*.

A Torah scholar asked Rava why we assume the plowing is voluntary, since one may need to plow the field for the *omer* offering itself. Rava answered that if the field was already plowed, there is no *mitzvah* to plow it. Since such plowing is only a means to an end, and not a mandated activity per se, it is not considered a *mitzvah*.

Ravina challenged Rava from the *Mishna*, which includes a father disciplining his child as a *mitzvah*, even though the discipline is only necessary if the child is not learning Torah.

Rava first answered that discipline is mandated even if the child is learning Torah, but then answered that plowing the *omer* field may be classified as a *mitzvah*, but that still excludes harvesting of the *omer*, since that is an activity which must be performed, regardless of whether barley is already harvested, as opposed to plowing, which need not be performed, if the field is already plowed. (8a – 8b)

Exile – Who?

The *Mishna* says that a father is exiled for killing his son, and a son is exiled for killing his father. All are exiled for killing a Jew, and a Jew is exiled for killing anyone, except for a *gair toshav* – non Jew who has renounced idolatry. A *gair toshav* is exiled for killing a *gair toshav*. (8b)

Father for Son

The *Gemora* challenges the *Mishna's* statement that a

father is exiled from the previous *Mishna*, which excludes a father from exile when he kills as a result of disciplining his son.

The *Gemora* answers that this *Mishna* is a case where the father was only teaching his son a second profession. Since he was not teaching Torah, and the son already has a profession, the father was not fulfilling any obligation at the time, and therefore is exiled. (8b)

Son for Father

The *Gemora* cites a *braisa* which contradicts the *Mishna*, which mandates exile for a son who kills his father. The *braisa* says that the verse which mandates exile for a *makeh nefesh* – one who strikes a soul [i.e., kills], excludes one who kills his father, since one is obligated for even striking his father, even without killing him..

Rav Kahana answers that the *Mishna* is the Sages, while the *braisa* is Rabbi Shimon. Rav Kahana explains that one who kills his father intentionally is liable for two capital offenses – murder, which is punishable by decapitation, and striking a parent, which is punishable by strangulation. The Sages, who consider sword more severe than strangulation would obligate such a person decapitation, while Rabbi Shimon, who considers strangulation more severe, would obligate such a person strangulation. Therefore, when he does it accidentally, the Sages consider him like any other accidental killer, allowing him to be exiled instead, while Rabbi Shimon considers him more severe than any other accidental killer, not allowing him to be absolved by exile.

Rava says that the *braisa* also follows the Sages opinion, and is only excluding one who accidentally strikes his father from exile. One may have thought that since intentionally striking a father is a capital offense, doing it accidentally obligates exile, so the verse had to exclude this case. (8b)



Slaves and Cutheans

The *Gemora* explains that when the *Mishna* states that all are exiled for killing a Jew, this includes a slave and a Cuthean, as the *braisa* says that a slave and a Cuthean are exiled and receive lashes for a crime against a Jew, and a Jew is exiled and receives lashes for a crime against a slave and a Cuthean.

The *Gemora* says that three cases of the *braisa* are clear:

1. A slave or a Cuthean is exiled if he accidentally kills a Jew.
2. A slave or a Cuthean is given lashes if he curse a Jew.
3. A Jew is exiled if he kills a Cuthean.

However, for what crime against a Cuthean is a Jew given lashes? He is not liable for cursing a Cuthean, since the prohibition of cursing is limited to those who are *beamcha* – *part of the community*, i.e., those who act as part of the Torah community, while the Cutheans do not.

Rav Acha bar Yaakov suggests a Jew is given lashes as a result of conspiring to falsely testify that a Cuthean is obligated to receive lashes.

The *Gemora* rejects this, since to make the *braisa* symmetric, the case of “all” receiving lashes would also be a case of conspiring witnesses, but the *braisa* includes a slave, who is not a valid witness.

Rav Acha the son of Rav Ikka says the case is a Jew who struck a Cuthean a blow whose damage was not enough to mandate payment (i.e., a *perutah*).

Rabbi Yochanan says that since he does not pay damages, he is punished by lashes. We do not equate the prohibition of striking someone with the prohibition of cursing them, so this prohibition includes all, irrespective of their level of Torah observance. (8b – 9a)

INSIGHTS TO THE DAF

Removed vs. Direct Result

The *Gemora* states that even Rebbe only obligates one to exile when one was killed as a direct result of his action. However, if it was two steps removed, e.g., throwing dirt, which broke a branch, which felled fruit, which killed, Rebbe agrees that he is not exiled.

The Rashash notes that the Rosh in Baba Kama (2:2) states that in regard to general damages, one is liable for multiple steps of indirection, as this limitation is only for purposes of exile.

An Agent vs. a Parent and Teacher

The *Gemora* discusses the status of a father’s discipline at length, debating whether it is a *mitzvah*, or simply a *hechsher mitzvah* – a means to the *mitzvah* of teaching. The discussion hinges on the question of whether a father must discipline a child who is learning well. The *Gemora* does not discuss whether an agent of the court is performing a *mitzvah*.

Tosfos (8a Af) explains that one cannot challenge that if the person being hit by the agent had already received his punishment, the agent would not be obligated, since currently he has not received his punishment, and there is thus an obligation on the agent. Further, although the agent would not be administering punishment if the person hadn’t transgressed the law, he only is considered an agent once he has transgressed the law, and at that point, there is a direct *mitzvah* to administer the punishment. A father and teacher retain their status regardless of whether the child or student is learning well, leading the *Gemora* to debate whether their discipline is an absolute *mitzvah* or not.

Throwing Stones

The *Mishna* discusses one who throws a stone into the public domain, accidentally killing someone. The *Mishna* states that the one throwing is exiled, and Rabbi Eliezer ben Yaakov limits this to a case where the victim was present before the stone being thrown. The *Gemora* debates what the parameters of the case are to classify it as accidental but not grossly negligent. The *Gemora* suggests that the “throwing” is actually demolishing a wall, and finally concludes that the public domain is an area which people use as a bathroom at night, and occasionally during the day.

Tosfos (8a b’ashpa) explains that if it was rare for anyone to ever use this area as a bathroom, the killer had no reason to assume someone was there, and therefore is not even considered to be accidental. Further, once the *Gemora* concludes with the case of the bathroom, which addresses the negligence, there is no more need to restrict the *Mishna* to a case of demolishing a wall, as this was suggested only to find a case which was not grossly negligent.

The Rambam (Rotzeach 6:7) disagrees, and still limits the *Mishna* to a case of demolishing a wall.

The Aruch l’nair explains that the Rambam holds that the *Gemora* still maintains that if one threw a stone into a public area, whether someone should have been there or not, that is gross negligence. Therefore, one is only exiled if he caused stones to fall as a result of a demolition, and only in a public domain where people only occasionally are present.

The Ritva discusses whether Rabbi Eliezer ben Yaakov’s limitation is disputed by the first Tanna of the *Mishna*. The Ritva says that the fact that the *Gemora* discusses his opinion at length, and never mentions a disputing opinion, seems to indicate that there is no dispute. The Ritva concludes that even if there is a dispute, we rule like Rabbi Eliezer ben Yaakov, because *Mishnaso kav v’naki* – *his learning is terse and clear*.

The Rambam, in his explanation on this *Mishna*, says that

we rule like Rabbi Eliezer ben Yaakov, implying that there is a dispute.

The Aruch l’nair feels that there is no dispute. He proves this from the discussion in the *Gemora* about Rabbi Eliezer ben Yaakov’s textual proof from the word *matza*. The *Gemora* challenges his proof by citing another *braisa* which interprets *matza* differently. The Aruch l’nair says that if the Sages disputed Rabbi Eliezer ben Yaakov, the *Gemora* could have simply deflected this challenge by stating that the conflicting *braisa* follows the opinion of the Sages.

DAILY MASHAL

Impossible to Divide Lashes

The Mishnah explains that if false witnesses wanted to obligate the accused to pay a certain amount, they divide the compensation between them. If, for example, they wanted to obligate him to pay 100 *zehubim*, each witness pays 50. If, however, they schemed to obligate him to be punished with the 39 lashes, each witness is punished with 39 lashes.

According to the Ragotchover Gaon, author of *Tzafnas Pa’neiach*, lashes are not divided as the 39 lashes are one unit, whereas HaGaon Rav Yosef Dov of Brisk explains that if we would divide the lashes, each witness would not suffer half the pain he wanted to impose on the accused. 39 consecutive lashes is far more painful than the combined pain of two people each receiving half (*Beis HaLevi* on the Torah, end of *parashas Beshalach*).