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Nedarim Daf 39

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Daf Notes is currently being dedicated to the neshamot of

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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

Mishna

The *Mishna* states: One who is forbidden by a vow to benefit from his fellow, and he (the one who is subject to the vow) goes to visit him (when he is sick), he is permitted to stand, but he may not sit. He may heal him a healing of the *nefesh*, but not a monetary healing. [The Gemora later will explain this ruling.] (38b3)

Explaining the Mishna

The *Gemora* asks: What is the case (of the *Mishna* where one who cannot benefit from his fellow may visit him when he is sick, but he may only stand but not sit)? If it is that the possessions of the visitor are prohibited to the sick person, he should be able to sit as well! [The benefit of visiting the sick person is regarded as indirect, and the law is that one who is intending to perform a mitzvah is permitted to provide indirect benefit to the person who is the subject of his vow.] If the possessions of the sick person are prohibited to the visitor, he should not even be able to stand there (as he is deriving benefit from the sick person’s house)!

Shmuel answers: The case is when the possessions of the visitor are prohibited to the sick person. The *Mishna* is dealing with a case where the custom was to take payment for sitting while visiting the sick (and therefore, if the visitor gives the sick person his company without accepting payment, he (the visitor) is directly benefiting him), but they do not take payment for standing while visiting the sick.

The *Gemora* asks: Why such a conclusion (i.e., why would the *Mishna* state unequivocally that ‘standing’ is permitted, for truthfully, in a different locale, where the custom was to take payment even for standing, it would be forbidden)?

The *Gemora* answers: The *Mishna* is teaching us that even in a place where payment is taken (for visiting the sick), it is for sitting alone that it is permitted to accept payment, but for standing, one is not permitted to accept payment (and therefore, there is never a reason to prohibit one from standing with a sick person – even when benefit is forbidden). [It is forbidden to accept compensation for the performance of a mitzvah. As visiting the sick is a mitzvah, it is impermissible to accept compensation for it. The mitzvah, however, may be accomplished with mere standing; therefore, if one does more than the minimum – he spends time with the sick person and sits with him, it is permissible for him to accept payment for that. In some areas, they acted stringently upon themselves and did not accept compensation even for sitting, for they were concerned that people would accept payment for standing as well – something that is forbidden to do.]

Alternatively, this teaches us a teaching similar to that of Rabbi Shimon ben Elyakim, who said: There (during a Shemittah year) is a Rabbinic decree (to enter someone’s field which is forbidden to him by a vow), lest one delay (there for a while) while standing (to pick the fruit). Similarly, here as well [our *Mishna* is teaching us that even in a place where people visit sick people and sit down

without taking compensation, in our case the visitor may not do so] lest he delay while sitting (*which would be considered a forbidden benefit*).

Ulla says: Our Mishna is actually referring to a case where the possessions of the sick person are prohibited to the visitor, but (the visitor is still permitted to stand with the sick person because) he did not place the vow upon things which are necessary for his own well-being (*such as visiting him when he is sick*).

The Gemora asks: If so, he should be permitted to sit as well!

The Gemora answers: For he is able to visit him while standing (therefore, he is not able to sit, *as he only did not exclude him from necessary things, but letting him sit would be giving him benefit*).

The Gemora asks a question from a braisa: If he himself (the one who is party to the vow) fell sick, he (the visitor) comes to visit him. If his son fell sick, he (the visitor) can inquire about him (the son) in the street (for although, on account of the vow, he cannot fulfill the mitzvah of visiting the sick in a complete manner, he should at least do this much, which is also fulfilling the mitzvah to a certain degree). Now, this is understandable according to Ulla who explains the Mishna to be referring to a case where the possessions of the sick person are prohibited to the visitor, but (the visitor is still permitted to stand with the sick person because) he did not place the vow upon things which are necessary for his own well-being (*such as visiting him when he is sick*). [Accordingly, the braisa can be referring to such a case as well, and the reason why there is a distinction between the person himself and his son (where the visitor can only inquire about him in the street, but he cannot visit him directly) is because we can assume that the vower excluded things which are necessary for his own well-being, but he did not exclude those things with regard to his son.] However, according

to Shmuel who explains the Mishna to be referring to a case where the possessions of the visitor are prohibited to the sick person, what is the explanation as to the difference in law between (visiting) him and his son? [If the neder was not stated regarding the son, then the visitor should be permitted to visit him directly, and if the vow pertained to the son as well, why is the law of the father different than that of the son?]

The Gemora answers: Shmuel can say that while it is true that the Mishna is referring to a case where the possessions of the visitor are prohibited to the sick person, the braisa, however, is referring to a case where the possessions of the sick person are prohibited to the visitor. [The distinction then would be like the Gemora explained in Ulla that because we can assume that the vower excluded things which are necessary for his own well-being, but he did not exclude those things with regard to his son.]

The Gemora asks: Why such a conclusion (to assume that the Mishna is referring to one case and the braisa is referring to another one)?

Rava answers: Shmuel had difficulty with the Mishna. Why did it say that he can stand, but not sit? It must be that the case is referring to a case where the possessions of the visitor are prohibited to the sick person. (38b3 – 39b1)

The Creation of Gehinnom

Rish Lakish asks: How do we see a hint to (the mitzvah of) visiting the sick in the Torah? It is stated: [Moshe said] *If these (people) will die like the death of all men and the 'visitation' of all men* etc.

The Gemora asks: Where is the implication (that there is a mitzvah to visit the sick from this verse)?

Rava said: *If these (people) will die like the death of all men* means that they (Korach and his followers) will take ill and become bedridden (in their old age) and people will visit them.

The Gemora explains the continuation of that verse: (Moshe asked:) What would people say (if Korach and his followers would not die in miraculous fashion)? (He answered: They would say) Hashem did not send me (to make these appointments that Korach and his followers opposed).

Rava expounded: What is meant by the verse: *If God will create a new thing, and the earth will open her mouth?* Moshe said to the Holy One, Blessed be He: If Gehinnom has already been created, it is well; if not, let God create it.

The Gemora asks: Is that so? [Now, how can it mean that He should actually create it?] But it was taught in a braisa: Seven things were created before the world was created. They are: Torah, repentance, Gan Eden, Gehinnom, the Throne of Glory, the Holy Temple, and the name of the Messiah. Torah, as it is written: *Hashem made me at the beginning of His way.* Repentance, as it is written: *Before the mountains were born and you had not yet fashioned the earth, and You say, "Repent O sons of man!"* Gan Eden, as it is written: *And Hashem God planted a garden in Eden from afore.* Gehinnom, as it is written: *For Tafteh (another name for Gehinnom) was set up since yesterday.* The Throne of Glory, as it is written: *Your Throne has been established from old.* The Holy Temple, as it is written: *Like the Throne of Glory, exalted from the beginning, is the place of our Holy Temple.* The name of the Messiah, as it is written: *May His Name stand forever!*

The Gemora answers: This is what Moshe was saying: If the opening to Gehinnom has been created, that is fine. But if not, Hashem should create one (now).

The Gemora asks: But it is written: *There is nothing new under the sun?*

The Gemora answers: This is what Moshe was saying: [If the opening to Gehinnom is nearby, that is fine.] But if the opening is not near here, Hashem should bring it closer.

Rava expounded, and some say that it was Rabbi Yitzchak who said: What does the verse mean when it says: *The sun and moon stood towards zevul [an area of heaven higher than rakia (a lower part of heaven)]?* What are the sun and moon doing in *zevul*, when they were established in the *rakia*!? This teaches us that the sun and moon went up from the *rakia* to *zevul* and said: "Master of the Universe, if you will do justice for the son of Amram (*Moshe Rabeinu against Korach*), we will give light. If not, we will not. At that time, He shot arrows and spears at them. He said to them: Every day they (*idolaters*) bow to you and yet you give light and you do not protest My honor, but for the honor of flesh and blood you protest! Every day arrows and spears are shot into them and only then do they give light. (39b1 – 39b4)

Visiting the Sick

The Gemora cites a braisa: Visiting the sick has no limit.

The Gemora asks: What does 'no limit' mean?

Rav Yosef thought to say: There is no limit to its reward.

Abaye asked him: Is there a limit to the reward of any mitzvah? But it was taught in a Mishna: Be as meticulous regarding a "minor" mitzvah like you would be regarding a "major" mitzvah, for you do not know the reward of mitzvos!

Rather, Abaye said: It means that it is even appropriate for a great person to visit a person of lesser stature.



Rava said: It means that one must visit the sick even one hundred times a day. (39b4 – 39b5)

Visitors Take Away a Sixtieth

Rabbi Acha bar Chanina said: Whoever visits the sick takes away one sixtieth of his sickness.

They said to him: If so, let sixty people go and restore him (to health)!

He said to him: I meant like the “tenth” of the academy of Rebbe (*which means that each time a person visits, one-sixtieth of whatever was left is taken away*). Additionally, it is only thru a “ben gilo” (a person born under the same constellation).

For it was taught in a braisa: Rebbe said: A daughter who is maintained by her brothers is entitled to receive a tenth of her father’s estate (*and we do not make presumptions regarding the father’s character*).

They said to Rebbe: According to you, if one has ten daughters and one son, the son will receive nothing because of the daughters!

Rebbe replied: The following is what I am saying: The first daughter is awarded a tenth of the father’s estate. The second daughter is awarded a tenth of the remainder. The third daughter is awarded a tenth of what is now remaining. Then, they pool all their shares together and divide them equally. (*There will be approximately thirty-five percent of the estate remaining for the son.*) (39b5)

INSIGHTS TO THE DAF

Taking Away a Sixtieth

The *Gemora* asks: What is the case (*of the Mishna that a person who cannot benefit someone can visit him when he is sick but only stand not sit*)? If it is that the possessions of the visitor are forbidden to the sick person, he should be able to sit as well!

The Nidrei Zrizin asks: Why should it be permitted to sit while he is visiting the sick? The *Gemora* below says that whoever visits the sick, takes away one sixtieth of his sickness. It emerges that he is providing him with a direct benefit, and this should be forbidden? And even according to the *Gemora’s* conclusion that it is only by a person born under the same constellation, perhaps this is the case and by a Biblical uncertainty, we should rule stringently!

He answers that it is apparent from the *Mishna* that we needn’t concern ourselves that they were born under the same constellation, and furthermore, the *Mishna* rules that a doctor may heal him a healing of the *nefesh*, so certainly, a visit which takes away a sixtieth of his suffering, would be permitted.

The Ra”n Elucidated

Neder on the Sick - As for the *halacha*, we accept the opinion of Shmuel, for since Rava explains his words and says that that is the implication of the *Mishna*, if it accepted as *halacha*. So where the property of the sick person is forbidden to the visitor, he may come in to visit him and even sit, because sitting also involves the life of the sick person, so he did not forbid him, because this is

agreeable to him. But if his son became sick, he may not enter his house at all, but rather ask in the marketplace.

However, that is only where the sick person forbade the visitor, because we surmise that his intention was not to forbid him that which involves his own life. But where the visitor forbade himself the property of the sick person, he may not enter his house at all, because in such a case there is no such assumption.

This is the law where the property of the sick person is forbidden to the visitor. And where the property of the visitor is forbidden to the sick person, he can come in to visit him standing, because he is required to do it free. It is his own *mitzvah* that he is doing, and the other benefits automatically. But he may not sit, even in places where they conduct themselves strictly and do not take payment even for sitting, because of a decree lest he remain sitting.

And when we say that where the property of the visitor is forbidden to the sick person he may come in to visit him standing, because it is his own *mitzvah* that he is doing and the other one benefits automatically, that is talking about a case like this, where the benefit comes by itself. But in a case where he gives him something, since he is actually giving him benefit from the hand of one to the hand of the other, and it is not just indirect, it is forbidden. That is what the *Mishna* means later in this chapter (43a), that if one is forbidden benefit from another and he doesn't have anything to eat, he goes to a shopkeeper with whom he deals regularly and says to him etc. So too, if they were going on the road and he didn't have anything to eat, he puts it on a rock. Only in this way is it permitted, but from the hand of one to the hand of the other it is not, even though he is doing a *mitzvah*. The reason is as we said, that only benefit that comes by itself is permitted where it is a *mitzvah*, but to actively give him benefit is not.

DAILY MASHAL

Torah before the World and the World for Torah

The Gemara states that HaShem created Torah before He created the physical world, as it is said: *HaShem made me (the Torah) as the beginning of His way, before His deeds of yore*. The Medrash states that the word *Breishis*, in the beginning, is expounded to mean that for *reishis*, a reference to the Torah that is called elsewhere *reishis*, the world was created. This Medrash would seem to indicate that the creation of the world preceded the Torah. The obvious resolution to this question is that Torah is spiritual, so the Gemara means that HaShem created the Torah before the creation of the physical world, and the Medrash is stating that the only purpose of creating a physical world is so the Jewish people can study the Torah. Although this may seem elementary, there is a profound message that lies within this answer. One must be certain that all his actions to be within the realm of Torah, because otherwise there is no purpose for a physical existence. When Haman decreed that the Jewish people should be annihilated, the Jewish People repented and reaccepted the Torah. When faced with physical extinction, a Jew must accept the yoke of Torah upon himself, as Torah is the sole purpose of creation.