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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

Another braisa taught: Rabbi Shimon ben Yochai says: ‘Eye for eye’ means a payment with money. You say it means a payment with money, but perhaps it is not so, but actual retaliation [by putting out an eye] is meant? What then will you say where a blind man put out the eye of another man, or where a cripple cut off the hand of another, or where a lame person broke the leg of another? How can I carry out in this case [the principle of retaliation of] ‘eye for eye’, seeing that the Torah says: *You shall have one manner of law*, implying that the manner of law should be the same in all cases?

They said: What is the difficulty even in this case? Why not perhaps say that it is only where it is possible [to carry out the principle of retaliation that] it is to be carried out, whereas where it is impossible, it is impossible, and the offender will have to be released altogether? For if you will not say this, what could be done in the case of a person afflicted with a fatal organic disease killing a healthy person? You must therefore admit that it is only where it is possible [to resort to the law of retaliation] that it is resorted to, whereas where it is impossible, it is impossible, and the offender will have to be released.

The academy of Rabbi Yishmael taught: The verse states: *So shall it be given upon him*. The word ‘giving’ can apply only to payment with money.

The Gemora asks: But if so, would the words: *As one shall “give” a wound on a person*, similarly refer to money?

They said that at the academy of Rabbi Yishmael, this text was expounded as a superfluous verse; since it has already been written: *And if a man gives a wound to his fellow, as he has done so shall it be done to him*. Why after this do we require the words: *so shall it be given to him again*? It must, therefore refer to payment with money.

The Gemora asks: Why the words: *As one shall give a wound on a person*?

The Gemora answers: Since it was necessary to write: *so shall it be given to him again*, the text also writes: *as one shall give a wound on a person*.

The academy of Rabbi Chiya taught: The verse states: *Hand in hand*, meaning an article which is given from hand to hand, which is of course money.

The Gemora asks: But could you also say the same regarding the [next] words: *foot in foot*?

They said that at the academy of Rabbi Chiya, this text was expounded as a superfluous verse, for it has already been written: *Then you shall do unto him as he had conspired to do unto his brother*. If then you assume actual retaliation [for injury], why do I require the words: *hand in hand*? This shows that it means payment with money.

The Gemora asks: But still, why the words: *foot in foot*?

The Gemora answers: Having written ‘*hand in hand*,’ the text also wrote ‘*foot in foot*’.



Abaye said: [The principle of payment with money] could be derived from the teaching of the academy of Chzkiyah, for the academy of Chzkiyah taught: Eye for eye, life for life, but not 'life and eye for eye'. Now if you assume that actual retaliation is meant, it could sometimes happen that eye and life would be taken for eye, as while the offender is being blinded, his soul might depart from him.

The Gemora asks: But what difficulty is this? Perhaps what it means is that we have to form an estimate, and only if the offender will be able to stand it will retaliation be adopted, but if he will not be able to stand it, retaliation will not be adopted? And if after we estimate that he would be able to stand it and execute retaliation it so happens that his spirit departs from him, [there is nobody to blame,] as if he dies, let him die. For have we not learned regarding lashes: Where according to estimation he should be able to stand them, but it happened that he died under the hand of the officer of the court, there is exemption [from any blame of manslaughter].

Rav Zevid said in the name of Rabbah: The verse states: *Wound for a wound*. This means that compensation is to be made for pain even where depreciation [is separately compensated]. Now, if you assume that actual retaliation is meant, would it not be that just as the plaintiff suffered pain [through the wound], the offender too would suffer pain through the mere act of retaliation?

The Gemora asks: But what difficulty is this? Why, perhaps, not say that a person who is delicate suffers more pain, whereas a person who is not delicate does not suffer [so much] pain, so that the practical result [of the Scriptural inference] would be to pay for the difference [in the pain sustained]!

Rav Pappa in the name of Rava said: The verse states: *To heal, shall he heal*; this means that compensation is to be

made for healing even where depreciation [is compensated separately]. Now, if you assume that retaliation is meant, would it not be that just as the plaintiff needed medical attention, the defendant also would surely need medical attention [through the act of retaliation]?

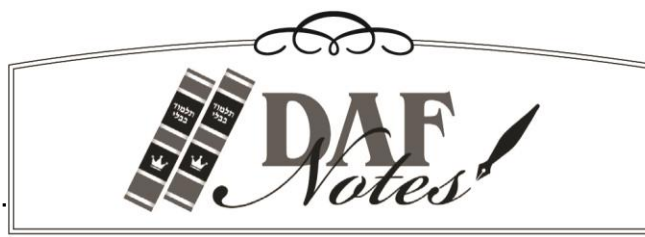
The Gemora asks: But what difficulty is this? Why perhaps not say that there are people whose flesh heals speedily while there are others whose flesh does not heal speedily, so that the practical result [of the Scriptural inference] would be to require payment for the difference in the medical expenses!

Rav Ashi said: [The principle of payment with money] could be derived from [the analogy of the term] 'for' [occurring in connection with man] with the term 'for' occurring in connection with cattle. It is written here: *'Eye for eye,'* and it is also written there: *he shall surely pay ox for ox*. [This indicates that] just as in the latter case it is payment with money that is meant, so also in the former case it means payment with money.

The Gemora asks: But what do you see that causes you to compare the term 'for' with 'for' [mentioned in connection] with cattle, rather than with the 'for' [mentioned in connection] with [the killing of] man, as it is written: *you shall give life for life*, so that, just as in the case of murder it is actual retaliation, so also here it means actual retaliation?

They said that it is more logical to infer [the law governing] injury from [the law governing another case of] injury than to derive [the law of] injury from [the law applicable in the case of] murder.

The Gemora asks: But why not say on the contrary, that it is more logical to derive [the law applying to] man from [a law which similarly applies to] man than to derive [the law applying to] man from [that applying to] cattle?



Rav Ashi therefore said: It is from the words: *for he had afflicted her*, that [the legal implication of 'eye for eye'] could be derived by analogy, as [the law in the case of] man is thus derived from [a law which is similarly applicable to] man, and the case of injury from [a similar case of] injury.

It was taught in a braisa: Rabbi Eliezer said: Eye for eye literally refers to the eye [of the offender].

The Gemora interjects: Literally, you say? Could Rabbi Eliezer be against all those Tannaim [enumerated above]?

Rava said: It only means to say that the injured person would not be valued as if he were a slave.

Abaye said to him: How else could he be valued? As a free man? Could the bodily value of a free man be ascertained by itself?

Rav Ashi therefore said: It means to say that the valuation will be made not of [the eye of] the injured person, but of [that of] the offender.

The Gemora relates an incident: A donkey once bit off the hand of a child. When the case was brought before Rav Pappa bar Shmuel he said [to the sheriffs of the court], "Go forth and ascertain the value of the four items." Rava said to him: Have we not learned five [items]? He replied: I did not include depreciation. Abaye said to him: Wasn't the damage in this case done by a donkey, and in the case of a donkey [injuring even man] there is no payment except for depreciation? He therefore ordered [the sheriffs], "Go forth and make valuation of the depreciation." But hasn't the injured person to be valued as if he were a slave? He therefore said to them, "Go forth and value the child as if it were a slave." But the father of the child thereupon said, "I do not want [this method of valuation], as this procedure is degrading." They,

however, said to him, "What right do you have to deprive the child of the payment which would belong to him?" He replied, "When he comes of age I will reimburse him from my own [property]."

An ox once chewed the hand of a child. When the case was brought before Rava, he said [to the sheriffs of the court], "Go forth and value the child as if he were a slave." They, however, said to him, "Didn't the master [himself] say that payment for which the injured party would have to be valued as if he were a slave, cannot be collected in Babylon?" He replied, "My order would surely have no application except in case of the plaintiff becoming possessed of property belonging to the defendant."

The Gemora notes: Rava thus follows his own principle, for Rava said: Payment for damage done to an ox by an ox or for damage done to an ox by man can be collected even in Babylon, whereas payment for injuries done to man by man or for injuries done to man by an ox cannot be collected in Babylon.

The Gemora asks: Now, what special reason is there why payment for injuries done to man by an ox cannot [be collected in Babylon] if not because we require expert judges, [a designation] which is lacking [in Babylon]? Why then should the same not be also regarding payment for [damage done] to an ox by an ox or to an ox by man, where there is similarly a requirement of expert judges, which is lacking [in Babylon]? But, if on the other hand, the difference in the case of an ox [damaged] by an ox or an ox [damaged] by man is because we [in Babylon] are acting merely as the agents [of the expert judges in Eretz Yisrael] as is the practice with matters of admittances and loans, why then in the case of man [injured] by man or man [injured] by an ox should we similarly not act as their agents, as is indeed the practice with matters of admittances and loans?

They said that we act as their agents only in regard to a



matter of payment which we can fix definitely, whereas in a matter of payment which we are not able to fix definitely [but which requires valuation] we do not act as their agents.

The Gemora asks: They said that [payment for damage done] to an ox by an ox or to an ox by man we are similarly not able to fix definitely, but we have to say, "Go out and see at what price an ox is sold on the market place." Why then in the case of man [injured] by man, or man [injured] by an ox should you not similarly say, "Go out and see at what price slaves are sold on the market place"? Moreover, why in the case of double payment and four-fold or five-fold payment which can be fixed precisely should we not act as their agents?

They said that we may act as their agents only in matters of compensatory payment, whereas in matters of a penalty payment we cannot act as their agents.

The Gemora asks: But why then regarding payment [for an injury done] to man by man which is a compensatory payment should we not act as their agents?

The Gemora answers: We can act as their agents only in a matter of frequent occurrence, whereas in the case of man injured by man, which is not of frequent occurrence we cannot act as their agents.

The Gemora asks: But why regarding degradation, which is of frequent occurrence, should we not act as their agents?

The Gemora answers: They said that this is really the case, for Rav Pappa collected four hundred zuz to be paid for degradation.

The Gemora disagrees: But this opinion of Rav Pappa is not correct, for when Rav Chisda sent to consult Rav Nachman [in a certain case regarding degradation], and

the latter sent back word, "Chisda, Chisda, are you really prepared to collect payments of fines in Babylon?"

It must therefore be said that we can act as their agents only in a matter which is of frequent occurrence and where actual monetary loss is involved, whereas in a matter of frequent occurrence but where no actual monetary loss is involved, or again in a matter not of frequent occurrence though where monetary loss is involved, we cannot act as their agents. It thus follows that in the case of man [injured] by man, though there is there actual monetary loss, yet since it is not of frequent occurrence we cannot act as their agents, and similarly in respect of degradation, though it is of frequent occurrence, since it involves no actual monetary loss, we cannot act as their agents.

The Gemora asks: Is payment for damage done to an ox by an ox really recoverable in Babylon? Hasn't Rava said: If an ox does damage, no payment will be collected in Babylon? Now, to whom was damage done [in this case stated by Rava]? If we say to man, why then only in the case of an ox injuring man? Is it not the fact that even in the case of man injuring man payment will not be collected in Babylon? It must therefore surely refer to a case where damage was done to an ox and it was nevertheless taught that no payment would be collected in Babylon!

They said that there, Rava referred to a case of tam, whereas this statement deals with mu'ad.

The Gemora asks: But didn't Rava say that there could be no case of mu'ad in Babylon?

The Gemora answers: They said that where an ox was declared mu'ad there [in Eretz Yisrael] and brought over here [in Babylon, there could be a case of mu'ad even in Babylon]

The Gemora asks: But surely this is a matter of no frequent occurrence, and have you not stated that in a matter not of frequent occurrence we cannot act as their agents?

The Gemora answers: [A case of mu'ad could arise even in Babylon] where the Rabbis of Eretz Yisrael came to Babylon and declared the ox mu'ad here.

The Gemora asks: But still, this also is surely a matter of no frequent occurrence, and have you not stated that in a matter that is not a frequent occurrence we cannot act as their agents?

The Gemora answers: Rava must therefore have made his statement [that payment will be collected even in Babylon where an ox was damaged by an ox] with reference to shein (tooth) and regel (foot) which are mu'ad from the beginning.

The Mishna had stated: Pain: if he burned him either with a spit or with a nail, etc. (even on his [finger] nail, which is a place where no bruise could be made etc.).

The Gemora asks: Who is the Tanna who maintains that pain would be compensated even in a case where no depreciation was thereby caused?

Rava replied: It is Ben Azzai, as taught in a braisa: Rebbe said that burning without bruising is mentioned at the outset, whereas Ben Azzai said that [it is with] bruising [that it] is mentioned at the outset. What is the point at issue between them? Rebbe holds that as 'burning' implies even without a bruise, the Merciful One had to insert 'bruise,' to indicate that it is only where the burning caused a bruise that there would be liability, but if otherwise, this would not be so, whereas Ben Azzai maintained that as 'burning' [by itself] implied a bruise, the Merciful One had to insert 'bruise' to indicate that 'burning' meant even without a bruise.

Rav Pappa asked: On the contrary, it is surely the reverse that stands to reason: Rebbe, who said that 'burning', [without bruising] is mentioned at the outset holds that as 'burning' implies also a bruise, the Merciful One inserted 'bruise' to indicate that 'burning,' meant even without a bruise, whereas Ben Azzai who said that [it was] with bruising [that it] was mentioned at the outset maintains that as 'burning' implies even without a bruise, the Merciful One purposely inserted 'bruise' to indicate that it was only where the 'burning' has caused a bruise that there will be liability, but if otherwise, this would not be so; for in this way they would have referred in their statements to the law as it stands now in its final form. Or, alternatively, it may be said that both held that 'burning' implies both with a bruise and without a bruise, and here they were differing on the question of a generalization and a specification placed at a distance from each other, where Rebbe maintained that in such a case the principle of a generalization followed by a specification does not apply, whereas Ben Azzai maintained that the principle of a generalization followed by a specification does apply. And should you ask why, according to Rebbe, was it necessary to insert 'bruise', [the answer would be that it was necessary to impose the payment of] additional money.