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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

Assessment for Damages

They raised the following question: Is an assessment (*of the instrument used to inflict the damage*) essential also in the case of mere damage (*to determine if it was capable of damaging*), or is an assessment not necessary in the case of mere damage? Shall we say that it is only regarding murder that we must assess the instrument, as by means of one instrument life could be taken, while by means of another life cannot be taken, whereas regarding damage, any size instrument would be sufficient, or is there perhaps no difference? The *Gemora* attempts to resolve this inquiry from the following *Mishna*: [*The Torah mentions “pit” to each us the following:*] Just as a pit can cause death because it is usually ten *tefachim* (*handbreadths*) deep, so too, any other similar excavations should be such that can cause death, i.e., ten *tefachim* deep. If, however, they were less than ten *tefachim* deep and an ox or a donkey fell into them and died, the digger would be exempt, but if the animal was only injured there, the digger would be liable. Is the *Tanna* here reckoning upwards, so that what he is saying is that any pit from a depth of one *tefach* until ten *tefachim* could not cause death though it could cause damage? This would imply that a pit of any depth would cause liability in the case of mere damage and we can learn from this that no assessment is necessary regarding mere damage!

The *Gemora* deflects the proof: No! The *Tanna* is reckoning downwards, and he is saying the following:

Only a pit of ten *tefachim* could cause death, whereas a pit a little less than ten *tefachim* could cause only damage and not death. It may therefore still be said that assessment might be essential even regarding mere damage and that in each case it may be necessary that the instrument be strong enough to cause the particular damage done.

The *Gemora* attempts to resolve this inquiry from the following *braisa*: If the master hit him on his eye and blinded him or on his ear and made him deaf, he goes free. If he hit something else (*i.e. a wall*) opposite his eye or ear and this caused him not to see or hear, he does not go free. Is not the reason for this because consideration of the instrument is required (*for the master to be liable, and we assess that the hitting of the wall should not have caused the injury*), which proves that the assessment of the instrument is essential also in the case of mere damage!?

The *Gemora* deflects this proof as well: No! The reason (*that the master is not liable*) is because we say (*in a case where the damage was done indirectly*) that it was the slave who frightened himself, as it was taught in a *braisa*: If someone frightened his friend (*causing deafness*), he is exempt from paying under the laws of *Beis Din* (*for the damage is indirect*), but is obligated to pay under the laws of Heaven. What is the case? If he screamed into his ear and deafened him, he would be exempt, but if he actually took hold of him and blew



into it and thus deafened him he would be liable (*for then, it is regarded as a direct damage*).

The *Gemora* attempts to resolve this inquiry from the following *braisa*: Regarding the five things, an assessment will be made and the payment made immediately. Healing and loss of work will be evaluated now based upon a projection of his needs for the whole period until he completely recovers. If after the assessment was made, his health continued to deteriorate, the damager is not required to pay more than in accordance with the previous estimation. So also if after the assessment was made, he recovered rapidly, the damager is required to pay the whole sum estimated. Does this not show that assessment is essential also in the case of mere damage!?

The *Gemora* answers: That an evaluation has to be made of the length of the illness likely to result from the injury has never been questioned by us; for it is certain that we would be required to make such an assessment. The point which was uncertain to us was whether we assess the instrument if it was likely to do that damage or not. What is indeed the *halachah*?

The *Gemora* resolves the inquiry from the following *braisa*: Shimon HaTimni says that the Torah teaches us that a murder case can be only adjudicated if the murder weapon can be evaluated by the court and to the witnesses – similar to a fist (*since only wounding with a weapon capable of damaging is punishable in court*). Does this not show that the inspection of the instrument is essential even in the case of mere damage!? It does indeed.

It was stated above: If after the assessment was made, he recovered rapidly, the damager is required to pay the whole sum estimated.

This would support the following ruling of Rava: An injured person whose illness was estimated to last the whole day, but who, as it happened recovered by midday and performed his usual work, would still be paid for the entire day, as the unexpected recovery was an act of mercy especially bestowed upon him from Heaven. (91a)

The Mishna's Rulings

The *Mishna* had stated: If someone spat at his fellow and the spittle reached him, he is required to pay four hundred *zuz* (*for the embarrassment*).

Rav Pappa said: This is only if the spittle reached his friend, but if it only hit his clothes, he is exempt from paying this fine.

The *Gemora* asks: Shouldn't the perpetrator be liable similar to one who humiliates his fellow with words?

The *Gemora* answers: In *Eretz Yisroel* they said in the name of Rabbi Yosi bar Avin: It is evident from here that one who embarrasses his fellow with words is exempt from any liability.

The *Mishna* related a story: A man uncovered a woman's hair in public. The woman brought the man to Rabbi Akiva's court, and Rabbi Akiva obligated him to pay four hundred *zuz*. The man asked for time to pay. During that time, the man waited for a moment when the woman was in front of her house, and then broke a jug of oil in front of her. She proceeded to remove her head covering, and rub the oil into her hair. The man summoned witnesses to this woman's actions, and brought them to Rabbi Akiva's court to prove that he didn't cause her any embarrassment that she wouldn't

cause to herself. Rabbi Akiva refused to exempt the man, since just as a person who harms himself or his property has not forfeited damages from someone else who does the same harm to him, so does embarrassing oneself not give others license to embarrass him.

The *Gemora* asks: Is the *halachah* that we give the perpetrator time to pay? Didn't Rabbi Chanina say that we do not give time for injuries?

The *Gemora* answers: We do not give time for injuries when there is a loss of money; however, for embarrassment, where there is no loss of money, we do give time. (91a)

Wounding Oneself

The *Gemora* asks from a *braisa* where Rabbi Akiva states that a person is allowed to wound himself. [*This is contrary to that which is stated in the Mishna in his name that one may not wound himself!?*]

Rava answers that the *Mishna* is referring to wounding (*where one is forbidden to wound himself*), however the *braisa* is referring to embarrassment.

The *Gemora* asks: But the *Mishna* is explicitly dealing with embarrassment!?

The *Gemora* answers that the following is the meaning of the *Mishna*: It is unnecessary to teach the *halachah* regarding embarrassment where a person is permitted to embarrass himself (*and therefore one would be liable for embarrassing another even though the victim embarrasses himself*). But even with regard to wounding, where a person is forbidden to wound himself, if others wound him, they would still be liable.

The *Gemora* asks: Is that indeed the *halachah* that a person may not wound himself? But we learned in a *braisa*: You might perhaps think that if a man takes an oath to do harm to himself and did not do so, he should be exempt. It is therefore stated: *To do bad or to do good*. This implies that just as "to do good" is referring to something which is optional, so also "to do bad" is referring to something which is optional. This includes the case where a man had sworn to do harm to himself and did not do harm!?!? [*Evidently, it is permitted to wound oneself!?*]

Shmuel answers: The oath referred to was to keep a fast.

The *Gemora* asks: It would accordingly follow that regarding doing harm to others, it would similarly mean to make them keep a fast. But how can one make others keep a fast?

The *Gemora* answers: By keeping them locked up in a room without food.

The *Gemora* asks: But was the following not taught in a *braisa*: What is meant by doing harm to others? If one says, "I will strike a certain person and will split his skull"!??

The *Gemora* answers: It must therefore be said that *Tannaim* differed on this point, for there is one view maintaining that a man may not wound himself and there is another maintaining that a man may wound himself.

The *Gemora* asks: Who is the *Tanna* who holds that a man may not wound himself?

The *Gemora* answers: It is the *Tanna* of the following teaching: We may rend garments for a dead person and this does not violate the prohibition of following the ways of the Amorites. Rabbi Elozar said: I heard that if one rends his garments too much (*more than required*) for a dead person he receives lashes for violating the commandment of “*You shall not destroy.*” It would seem that this should be the more so in the case of injuring his own body.

The *Gemora* disagrees: Perhaps garments might be different, as the loss is irretrievable, for Rabbi Yochanan used to call garments “those things that honor me” and Rav Chisda, whenever he had to walk between thorns and thistles, he used to lift up his garments saying that whereas for the body, if injured, it will eventually heal, but for garments, if torn, cannot heal itself.

The *Gemora* therefore concludes: He must be the *Tanna* of the following teaching: Rabbi Elozar HaKappar asks: What does the verse mean when it says, “*and he shall atone for him for having sinned on his soul?*” What “soul” did he “sin” against? It must be referring to the fact that he pained himself by abstaining from wine. This additionally teaches us that if this person who merely abstained from wine is called a sinner, someone who abstains from many things is certainly a sinner. [*He obviously holds that one is forbidden to wound himself.*] (91a – 91b)

Cutting Trees

The *Mishna* had stated: If one cuts down his own trees, he is exempt. If others cut it down, they are liable.

Rabbah bar bar Chanah taught in the presence of Rav the following *braisa*: If a person claims, “You killed my

ox,” or, “You cut my plants,” and the defendant responds, “You told me to kill it,” or, “You told me to cut it down,” he would be exempt.

Rav asked him: If so, you almost make it impossible for anyone to live, for how can you believe him that he was told to do so?

Rabbah bar bar Chanah therefore said to him: Should this teaching be deleted?

Rav replied: No! Your teaching could be interpreted to be referring to a case where the ox was destined to be slaughtered (*for killing a person*) and to a tree which had to be cut down (*if it was planted for idolatrous purposes or it constituted a danger to the public*).

The *Gemora* asks: If so, what was the claim against him?

The *Gemora* answers: He says to him: I wanted to perform the *mitzvah* myself in the way taught: It is written: *He shall spill its blood (slaughter it) and cover it.* This implies that he who slaughtered the animal should be the one to cover it. And it once happened that a certain person slaughtered the animal and another preceded him and covered the blood, and Rabban Gamliel obligated the latter to pay ten gold coins (*for stealing the mitzvah*).

Rav said: A palm tree producing even one *kav* of fruit may not be cut down.

An objection was raised from the following *Mishna*: What quantity should be on an olive tree so that it should not be permitted to cut it down? A quarter of a *kav*.



The *Gemora* answers: Olives are different, as they are more valuable.

Rabbi Chanina said: Shivchas, my son, died at a young age for cutting down a fig tree before its time.

Ravina, however, said: If its value (*to be used for wood*) exceeds that of the fruit, it is permitted to cut it down.

INSIGHTS TO THE DAF

Humiliation through Words

The *Gemora* stated: If someone spat at his friend and the spittle hit him, or he removed the hair covering of a woman or his friend's cloak, he is required to pay him/her four hundred *zuz*. Rav Papa taught: This is only if the spittle reached his friend, but if it only hit his clothes, he is exempt from paying this fine.

The *Gemora* asks: Shouldn't the perpetrator be liable similar to one who humiliates his fellow with words? The *Gemora* answers: It is evident from here that one who embarrasses his fellow with words is exempt from any liability.

The Rosh cites Rav Shriria Gaon: Although it seems from the Scriptural verses that one is not liable for humiliating his fellow with words, nevertheless, the Sages would excommunicate him until he appeases his fellow properly according to his honor. He notes that it is logical to assume that there is a higher degree of embarrassment for one who is humiliated with words more than one, who was embarrassed through a wound, for there is nothing worse than slandering one's fellow.

The Rambam (Hilchos Chovel 5:7) rules that one who admits in *Beis Din* that he wounded his fellow privately, he will be liable to pay for the embarrassment, for even though the victim was not humiliated at the time of the wounding, he was humiliated at the time of the admission in *Beis Din*.

The Minchas Chinuch (49:7) asks: Isn't this a classical case of embarrassing one's fellow with words, and one is not liable for such humiliation?

Afflictions Purge a Person's Sins

The *Gemora* states that if a master knocks out the tooth of his slave, or if he blinds his eye, he must release the slave.

It is noteworthy that Rabbi Yochanan in the *Gemora* in Brochos (5a) derives from here that a person is considered fortunate if Hashem inflicts him. It is taught through a *kal vachomer* as follows: If the loss of a tooth or an eye, which is only one of the limbs in a person's body, nevertheless, a slave gains his freedom because of it, then afflictions, which cleanse the person's entire body, should certainly free a person from sin because of them!

Rish Lakish derives this same lesson from a different source. He says: The word *covenant* is written with respect to salt and the word *covenant* is written with respect to afflictions. Just as salt sweetens the meat, so too, afflictions will cleanse a person from his sins.

The Bobover Rebbe in Kedushas Tziyon notes that there is a distinction between the two expositions. According to Rabbi Yochanan, the afflictions will only cleans a person if they emanate from Heaven, similar to the *halachos* of a slave, where he will only be set free



if his master knocks out his tooth or eye. He will not gain his freedom if someone else injures him. However, according to Rish Lakish, any type of afflictions will cleanse him, in the same manner as the salt sweetening the meat. It makes no difference as to who applies the salt.

Based upon this, Rav Tzvi Pesach Frank explains the following. It is written [Shmos 6:5]: *And also, I heard the moans of the children of Israel, whom the Egyptians are holding in bondage, and I remembered My covenant.* The Jewish people thought that the Egyptians were their masters and they were those who were afflicting them. They did not realize that their suffering was decreed from Heaven. Because they didn't know who was causing them their hardships, they did not gain their freedom. It was only because Hashem remembered His covenant, that all afflictions cleanse a person from his sins, that was the reason they were released from the bondage.

Reb Meir Shapiro adds to this: If a slave does not come to court and testify that his master knocked out his tooth or eye, he will not gain his freedom. If he says that it happened by happenstance, he will not go free. So too, it is with afflictions. If a person does not believe with complete faith that the afflictions are affecting him because of Divine Providence, the afflictions will not purge him of his sins. However, if this principle was derived through the *gezeirah shavah* from salt, it would not make any difference.

The Rashba was asked the following question: If a slave initiates a fight with his master and strikes the first blow, and the master counters with some strikes of his own and knocks out the slave's tooth, will the slave gain his freedom?

He replied that the slave goes free. The proof is from the aforementioned *Gemora*, where Rabbi Yochanan derived that afflictions will cleanse a person from his sins through a *kal vachomer* from the laws of the slave. How can the two be compared? Afflictions come to a person because he has sinned! It was his own fault! Perhaps, then, those afflictions will not purge him from his sins!? Evidently, we see that a slave also gains his freedom, even if he was the one who initiated the fight!

DAILY MASHAL

Abstaining from Wine

Rabbi Elozar HaKappar asks: What does the verse mean when it says, *"and he shall atone for him for having sinned on his soul?"* What "soul" did he "sin" against? It must be referring to the fact that he pained himself by abstaining from wine. This additionally teaches us that if this person who merely abstained from wine is called a sinner, someone who abstains from many things is certainly a sinner.

Ben Yehoyadah explains why one who deprives himself from wine or any food is regarded as a sinner. Portions of one's soul are contained within foods and drinks. When one recites a blessing before eating these foods, he can cause a remedy for those parts of the soul, and through his blessing, they will be able to go to their rightful place. It emerges that one who declares himself to be a *nazir* and therefore refrains from eating grapes or drinking wine, is sinning regarding his soul, for now his soul will remain deficient.

Furthermore, there are many *mitzvos* where wine is required, such as *kiddush* on *Shabbos* and *Yom Tov*, *havdalah*, *birkas hamazon*, *bris milah* and *sheva brochos*. Chazal established the *mitzvos* in this manner in order to rectify the sin of Adam Harishon, which was with wine. One who vows to be a *nazir* and therefore abstains from drinking wine causes anguish to his soul.