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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

1)WHAT IS BEST FOR RESHA'IM AND TZADIKIM (cont.)

(a)(Gemara - Beraisa - R. Yosi ha'Galili): Surely, he is not stoned for (stealing and) eating a Tartimar of meat and drinking half a log of Italki wine!

1. Rather, the Torah sees the future of a Ben Sorer u'Moreh. After he finishes his parents' money, and cannot eat like he is accustomed to, he will become a robber;

2. It is better for him to die before he sins even more.

(b)Death of Resha'im is good for them (for this reason), and this is good for the world;

1. It (death) is bad for Tzadikim, and this is bad for the world.

(c)Resha'im enjoy sleep and wine, and this is good for the world;

1. These are bad for Tzadikim, and this is bad for the world.

(d)Serenity of Resha'im is bad for them, and this is bad for the world;

1. It is good for Tzadikim, and this is good for the world.

(e)When Resha'im are scattered this is good for them, and this is good for the world;

1. It is bad for Tzadikim, and this is bad for the world.

2)BA B'MACHTERES DOES NOT PAY

(a)(Mishnah): A Ba b'Machteres (a thief tunneling into a house) is judged (i.e. one may kill him) due to what he plans to do (this will be explained).

(b)If a Ba b'Machteres broke a barrel:

1. If he has blood (he may not be killed), he is liable;

2. If he has no blood (he may be killed), he is exempt.

(c)(Gemara - Rava) Question: Why may one kill a Ba b'Machteres?

(d)Answer (Rava): There is a Chazakah (of human nature) that one does not restrain himself when someone takes his money;

1.The thief anticipates that the Ba'al ha'Bayis will oppose him (Rashi; Ramah - and try to kill him), therefore the thief plans to kill the Ba'al ha'Bayis;

2.The Torah says, if someone seeks to kill you, you should kill him.

(e)(Rav): If a Ba b'Machteres took Kelim and left, he keeps them.

(f)Question: What is the reason?

(g)Answer: He acquired them with his blood. (A thief gets a Kinyan in what he steals, but he is (normally) obligated to return it. Since the life of a Ba b'Machteres is Hefker, the Torah does not impose any monetary obligations on him at the time, i.e. he need not return the theft.)

(h)(Rava): We understand why Rav exempts the thief for breaking Kelim, for they are not here to be returned;

1. However, if he took, surely, they should be returned!

2. However, I swear, Rav said that even if he took them, he keeps them!

3.Rav reasons, if he has blood and took Kelim, he is liable if they broke, even through Ones. This shows that they are his (just he must return them. Similarly, if he has no blood they are his, and he need not return them.)

4.This is wrong. he merely has responsibility to pay for Onesim, like a borrower, but the Ba'al ha'Bayis owns them!

(i)Question (against Rav - Mishnah): If a Ba b'Machteres broke a barrel, if he has blood, he is liable. If not, he is exempt.

1.Inference: When he has no blood he is exempt because he broke it. If he took it, he would be liable to return it!

(j)Answer: No, the same applies if he took it. The Mishnah discusses breaking to teach that when he has blood he is liable even for breaking.

(k)Objection: This is obvious. He damaged it!

(l)Answer: The Mishnah obligates even if he broke it accidentally.

(m)Question: We already learn from another Mishnah that man is always Mu'ad (prone to damage, and therefore, liable for all damage he does)!

1.(Mishnah): Man is always Mu'ad, whether he damaged unintentionally or intentionally, willingly or unwillingly.

(n)This is left difficult.

(o)Question (against Rava - Rav Bivi bar Abaye - Beraisa): If one stole a wallet on Shabbos, he must pay. He is liable for stealing (from the moment he picked it up) before he is liable for Chilul Shabbos (when he brings it to the Reshus ha'Rabim);

1.If he was dragging it out he need not pay, for the liabilities come at the same time (when he gets to Reshus ha'Rabim. Even though it is intact, he keeps it!)

(p)Answer: The Halachah is, (this is true only if) he threw it in the river.

(q)Thieves tunneled into Rava's property and stole rams. They wanted to return them. Rava would not accept them, in deference to Rav's opinion that they are exempt. (They wanted to return them only because they thought that Beis Din would force them to do so.)

3)WHEN MAY ONE KILL A BA B'MACHERES?

(a)(Beraisa #1) Question: "Ein Lo Damim Im Zorchah ha'Shemesh Alav" - does the sun shine only on the thief?!

(b)Answer: Rather, this teaches that if it is as clear to you as the sun that he is ready to kill you, kill him. If not, do not.

(c)Contradiction (Beraisa #2) Question: "Im Zorchah ha'Shemesh Alav Damim Lo" - does the sun shine only on the thief?!

(d)Answer: Rather, this teaches that if it is as clear to you as the sun that he will not kill you, do not kill him. If not, kill him.

1.According to Beraisa #1, if it is unclear, one does not kill. Beraisa #2 says that one should kill in this case!

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(e)Answer: In Beraisa #1, a father tunneled into his son's house (a man loves his son so much, that we assume that

he would never kill him). In Beraisa #2, a man steals from his father (and all the more so, from a different relative or a stranger. The love is not so strong, so we assume that he is ready to kill him).

(f)(Rav): I would kill anyone tunneling in against me, except for Rav Chanina bar Shila.

(g)Question: What is the reason?

1.Suggestion: He is a great Tzadik. (He would never kill.)

2.Rejection: If he is tunneling, he is no longer a Tzadik!

(h)Answer: He loves Rav as much as a father loves his son.

(i)(Beraisa): "Damim Lo" - both on a weekday and on Shabbos. "Ein Lo Damim" - both on a weekday and on Shabbos.

(j)Question: We understand the Seifa. One might have thought that killing the thief is like Misas Beis Din, and we do not kill on Shabbos. The Beraisa teaches that this is not so;

1.However, what does the Reisha teach? If one may not kill on a weekday, and all the more so on Shabbos!

(k)Answer (Rav Sheshes): It teaches that if the ground caved in on him we unearth him to save him, even on Shabbos.

(l)(Beraisa): "V'Hukah" - anyone may kill him. "Va'Mes" - he may be killed in any way.

(m)Question: We understand the Reisha. One might have thought that only the Ba'al ha'Bayis may kill him, for he knows himself, that he will fight to keep his property (and the thief will try to kill him), but anyone else may not (perhaps the Ba'al ha'Bayis will not confront him, and the thief will not seek to kill him);

1.The verse teaches that the thief is a Rodef (he is prepared to kill), so anyone may kill him.

2.However, why must the Seifa permit killing him in any way? We already know this from Rotze'ach!

i.(Beraisa) Question: "Mos Yumas ha'Makeh Rotze'ach Hu" - perhaps we can give only the Misah he deserves. What is the source to kill him any other way, if we cannot give the proper Misah?

ii.Answer: "Mos Yumas ha'Makeh" (the verb is doubled to teach this).

(n)Answer: Rotze'ach is an exception. It was expounded from the verse.

(o)Question: We should learn from it (that if we cannot give the proper Misah, we kill any way we can)!

(p)Answer: Rotze'ach and Go'el ha'Dam (the relative of one who was killed. He may kill the murderer in any way. He may not kill him in a refuge city if he murderer killed b'Shogeg) are two verses teaching this principle. One of them could have been learned from the other, therefore they do not teach about other cases.

4)MUST A RODEF BE WARNED?

(a)(Beraisa #1) Question: Perhaps "Machteres" teaches that he may be killed only if he tunnels in;

1.What is the source to kill him if he enters through the roof, Chatzer or Karfef (enclosed field)?

(b)Answer: "Yimatzei ha'Ganav" - in any case.

(c)Question: If so, why does the Torah mention Machteres?

(d)Answer: The Beraisa discusses the usual case. Most thieves come through the Machteres.

(e)(Beraisa #2) Question: Perhaps "Machteres" teaches that he may be killed only if he tunnels in;

1.What is the source to kill him if he enters through the roof, Chatzer or Karfef.

(f)Answer: "Yimatzei ha'Ganav" - in any case.

(g)Question: If so, why does the Torah mention Machteres?

(h)Answer: When he comes through the Machteres, he need not be warned.

(i)(Rav Huna): We kill a minor who is Rodef (even though a minor cannot accept warning).

(j)Inference: He holds that a Rodef need not be warned, whether he is an adult or minor.

(k)Question (Rav Chisda - Mishnah): (If a baby being born is likely to kill the mother, we kill it.) Once the head (some texts - majority) leaves the womb (he is like any other person), and we do not kill him. We do not kill one person to save another.

(l)Answer: That is different. The baby has no choice. Hash-m is threatening to kill the mother.

(m)Support (Beraisa): If Reuven was Rodef Shimon, we tell him 'you are chasing a Yisrael. He is a Ben Bris (not an

idolater, who may be killed). It says "Shofech Dam ha'Adam ba'Adam Damo Yishafech" - we save him by killing you!' (The Beraisa does not mention that Reuven must accept the warning!)

(n)Rejection: The Beraisa is R. Yosi b'Rebbi Yehudah, who says that a Chaver (Chacham) need not be warned, for warning is only to distinguish whether one is Shogeg or Mezid (i.e. the transgressor need not accept the warning).

(o)Question (Beraisa): If Reuven was Rodef Shimon, we tell him 'you are chasing a Yisrael. He is a Ben Bris. It says "Shofech Dam ha'Adam ba'Adam Damo Yishafech.'" If Reuven said 'I know that', he may not be killed;

1.If he said 'I will kill him, knowing that (I may be killed for this)', he may be killed.

(p)Answer #1: The case is, Levi is on the other side of the river, and he cannot save Shimon;

1.The warning is needed to enable a Sanhedrin to kill Reuven afterwards.

(q)Answer #2: Rav Huna holds like the Tana of Beraisa #2. A thief who digs a Machteres need not be warned.

POINT BY POINT OUTLINE OF THE DAF

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