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Sanhedrin Daf 85

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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

- **Striking or Cursing a Father,**
- **by Order of the Court**

They asked Rav Sheishes whether a son can be appointed an agent of the court to impose punishments of striking or cursing his father.

Rav Sheishes asked why anyone else would be permitted to strike or curse another Jew, unless for the fact that the honor of Hashem is greater. By the same logic, Hashem’s honor overrides a parent’s honor, so a son could also be appointed.

The *Gemora* challenges this from a *braisa*. The *braisa* says that if one who is commanded to strike is commanded not to strike, of course one who is not commanded to strike is commanded not to strike.

The *Gemora* suggests that the whole *braisa* is discussing striking one as an agent of the court, and should read: “If one [an agent, who is not a son] who is commanded to strike [40 lashes], is commanded not to strike [more than 40], of course [a son] who is not commanded to strike [40 lashes], is commanded not to strike [out of the framework of lashes].”

This reading would mean that a son is not to be appointed an agent of the court to administer lashes to his father.

The *Gemora* deflects this by saying the *braisa* is applicable to all people, sons or not, and should be read: “If one [an agent of the court] who is commanded to strike [40 lashes],

is commanded not to strike [more than 40], of course [one who is not an agent of the court], who is not commanded to strike [40 lashes], may not strike [at all].”

The *Gemora* tries to disprove Rav Sheishes from another *braisa*. The *braisa* says that if someone is being taken out for execution by the court, only his son is liable for striking or cursing him. Rav Chisda explained that this *braisa* is a case where the condemned is resisting the execution, and the purpose of the strike and curse is to administer the court penalty. The *braisa* thus proves that a son may not strike or curse his father, even as an agent of the court.

The *Gemora* deflects by saying that Rav Sheishes differs with Rav Chisda, and says the *braisa* is a case where the condemned is not resisting the punishment, and the striking and cursing are therefore not a function of the court.

The *Gemora* attempts to explain why someone else is not liable for striking or cursing the condemned.

The *Gemora* offers the following answers, rejecting all but the last:

1. The condemned is considered dead. The *Gemora* rejects this, because Rav Sheishes says that even if someone embarrassed someone sleeping, and the victim died in his sleep, he is liable to pay the victim’s relative. Here, also, the person should be liable to the condemned person’s relatives.

2. The strike was not worth a *perutah*, and the *braisa* is exempting him from payment. The *Gemora* rejects this,

because the obligation of the son is relative to what he would be obligated (*i.e.*, execution), so the exemption of other people is relative to what he would be obligated (*i.e.*, lashes, if there is no monetary payment).

3. The verse only obligates one who curses (*and strikes*) someone who is *be'amcha* – in your nation, excluding one who has dissociated himself from the nation by his crime. The *Gemora* objects, since the son would also be exempt by this clause. Rather, the *braisa* must be a case where the condemned has repented, and is considered part of the nation.

4. The phrase *be'amcha* – in your nation mandates that the victim be a viable life within that nation, excluding one who is condemned to death. However, just as a son may not curse a parent after death, he may not curse or strike the parent who is condemned.

The *Gemora* resolves the question with a statement of Rabba bar Rav Huna and a *Tanna* from the Academy of Rabbi Yishmael that a son may not be appointed an agent of the court to strike or curse his father, unless the father is convicted as an inciter, since the verse mandates that we may show any mercy towards him. (85a – 85b)

- **Only if Wounded**

The *Mishna* says that a child is not liable for striking a parent unless he inflicts a wound. Therefore, the prohibition of cursing a parent is more severe, since it applies after a parent's death, while striking does not, since one cannot inflict a wound on a corpse.

The *Gemora* cites a *braisa* that teaches that one is liable for cursing a parent after their death. The verse states that:

ki ish ish – because any man

asher yekalel es aviv v'es imo mos yumas – that curses his father and mother will be killed

aviv v'imo kilel damav bo – his father and mother he cursed, he is liable for his blood

The *braisa* says that the last clause, which repeats his crime, is including cursing after death. The *braisa* explains that we may have thought that one is not liable for cursing after death, since one is not liable for striking a parent after death. Striking is more severe than cursing, since striking is prohibited even if the parent has dissociated from the nation, while cursing is not. If the more severe prohibition of striking does not apply after death, we would have thought that cursing definitely does not apply, so the verse had to explicitly include it. (85b)

- **Both or Either?**

The *Gemora* explains that Rabbi Yonasan and Rabbi Yoshiah differ on their reading of the verse above. Rabbi Yonasan says that whenever the verse connects two items with a *vav* – and, it means and/or, unless it specifies otherwise. Therefore, the verse's first clause is punishing one who curses a father and/or mother, and the second clause is extra, to include punishment for cursing after death. However, Rabbi Yoshiah says that the *vav* – and, means and - unless the verse explicitly separates the items. Therefore, both clauses are necessary to teach that one is liable for cursing either parent – the first clause places the father next to the curse, while the second one places the mother next to the curse.

The *Gemora* explains that Rabbi Yoshiah learns that cursing is prohibited after death from another verse that states *umekalel aviv v'imo mos yumas* – one who curses his father and mother shall be killed. Rabbi Yonasan uses that verse to learn that even a daughter, *tumtum*, or androgynous child (*whose gender is unclear*) are included in the prohibition. Although Rabbi Yoshiah learns that from the introductory clause *ish ish* – any man, Rabbi Yonasan says that is not extra, since the Torah uses colloquial language. (85b)

- **Striking vs. Cursing**

Based on the *braisa's* distinction between striking and cursing, the *Gemora* asks why the *Mishna* did not list a parent who has dissociated from the nation as a case where striking is more severe than cursing.

The *Gemora* answers that this is a matter of dispute.

The *Mishna* equates striking with cursing, excluding a dissociated parent from both, while the *braisa* does not equate them, only excluding this parent from the prohibition of cursing, which is stated only for a parent *beamcha – in your nation*.

The *Gemora* suggests that two other *braisas* which discuss a Cuthean parent differ on the same point. The first *braisa* says that a child is liable for striking a Cuthean parent, but not cursing one, while the second *braisa* exempts the child from both striking and cursing.

The *Gemora* suggests that both *braisas* agree that Cutheans are valid converts, but not observant, and therefore dissociated from the nation. The first *braisa* does not equate striking to cursing, while the second one does.

The *Gemora* attempts to deflect this by saying that both agree that striking is not equated to cursing, but differ on whether Cutheans are valid converts. The first *braisa* says they are, but cursing is not prohibited, since they are not observant, while the second *braisa* says they are not valid converts, so nothing is prohibited.

The *Gemora* rejects this, since the second *braisa* concludes that the parents' ox has all the rules of a Jewish owned ox, indicating that the *braisa* says that Cutheans are valid converts. Therefore, the two *braisas* do agree that the Cutheans are converts, albeit not observant, and differ whether striking is equivalent to cursing. (85b)

- **Kidnapping**

The *Mishna* discusses one who kidnaps another Jew. The *Mishna* says that he is only liable if he brings him into his property, while Rabbi Yehudah says he must also use his service. If one kidnaps his son, Rabbi Yishmael, the son of Rabbi Yochana ben Berokah says he is liable, while the Sages say he is not. If one stole someone who is half slave and half free, Rabbi Yehudah says he is liable, while the Sages say he is not. (85b)

- **Service – how much?**

The *Gemora* explains that all agree that the kidnapper must use the victim's service, since the verse stipulates that he used him, but they differ on whether that service must be worth a *perutah*. The first opinion says it need not be, while Rabbi Yehudah says it must be. (85b)

- **Passive Service?**

Rabbi Yirmiyah asks whether service performed passively is included. For example, if one kidnapped someone asleep, and used them as a pillow, and then sold him, or if he kidnapped a pregnant woman, and used her whole torso to block a passageway, and then sold the fetus, is he liable? The *Gemora* leaves this question unresolved. (85b)

- **Who Kidnapped whom?**

The *braisa* cites the verses that teach that the kidnapper is liable whether it is a man or woman, and whether the victim was a man or woman. The verse that says *ki yimatza ish gonev nefesh – when a man is found to have stolen a soul* includes any victim kidnapped by a man. The verse that says *v'gonev ish – one who kidnaps a man* includes any kidnapper of a man. The concluding phrase of the first verse – *umais haganav hahu – and that kidnapper will be killed* includes even a woman who kidnaps a woman.

The *braisa* says that the phrase describing the victim –



nefesh mai'echav mibnai yisrael – a soul from his brethren [the Jews] – includes any victim: male, female, convert, freed slave, and minor. However, if one kidnapped but did not sell, or sold but did not transfer the victim to the buyer, he is not liable. He is liable even if he sold the victim to the victim's relatives. If one kidnaps a slave, he is exempt. Rav Sheishes heard this *braisa* recited, and objected to the clause about selling to relatives. He noted that Rabbi Shimon excludes a kidnapper who sold his victim to the victim's relatives, since the verse stipulates that he kidnapped someone *mai'echav – [away] from his brethren*, but not where the victim has returned to his brethren.

The *Gemora* explains that although the Sages differ, this *braisa* must follow Rabbi Shimon's opinion, since it is an anonymous *braisa* that explicates verses to teach *halachah*. Rabbi Yochanan explained that an anonymous *Mishna* is authored by Rabbi Meir, an anonymous *Sifra* is authored by Rabbi Yehudah, and an anonymous *Sifri* – which learns *halachos* from verses – is authored by Rabbi Shimon, all students of Rabbi Akiva. Therefore, Rav Sheishes corrected this clause to rule that such a kidnapper is exempt. (85b – 86a)

INSIGHTS TO THE DAF

By: Rabbi Yechezkel Khayat

- **Unresolved Question?**

The *Gemora* discusses whether a son may be appointed by the court to carry out its cursing or hitting of his father. In the course of the debate, the *Gemora* mentions Rav Sheishes's statement that if one embarrasses someone who is sleeping, and he dies in his sleep, he is still liable to pay the family for their embarrassment.

The Rishonim note that this case is an unresolved issue elsewhere (BK 86b), and therefore question why the *Gemora* did not cite Rav Sheishes in that discussion.

Tosfos cites some who change the text of Rav Sheishes's statement to say that one who embarrasses someone who is sleeping is liable, not specifically a case where the victim died.

Tosfos rejects that option, since such a statement is irrelevant to the give and take here, and there is an explicit *Mishna* stating the same thing, making Rav Sheishes's statement unnecessary.

Rabbeinu Tam says that Rav Sheishes's statement makes no reference to a sleeping victim, but to one who has been condemned to death.

Tosfos and the Ran point out that there are other instances of an unresolved question which may be resolved by a statement in another *Gemora*.

The Ran (Nedarim 35b Ibya) suggests that when the *Gemora* raises a question and leaves it unresolved, the *Gemora* was searching for a *Tannaic* source to resolve the question. A statement by an *Amora* is not relevant to such a discussion, although it does ultimately decide the *halachah*.

- **Hitting vs. Cursing?**

The *Gemora* introduces a dispute among *Tannaim* whether we equate the prohibition of hitting a parent to the prohibition of cursing one, but does not explain what would be the rationale to make such an equation. Rashi offers two options:

Bameh Matzinu – since the two prohibitions are similar, since they are both specific to a child-parent relationship, we assume the rules of one apply to the other

Hekesh (juxtaposition) – the Torah contains the following verses (Shmos 21:15-17):

1. One who hits his father or mother is killed.
2. One who kidnaps a person and sells him is killed.

3. One who curses his father or mother is killed.

With the exception of the middle verse, the Torah is juxtaposing the prohibition of cursing and hitting a parent. The opinion that equates the two considers this to be a valid *hekesh*, while the differing opinion does not. (See also Rashi Shmos 21:16)

Rabbi Akiva Eiger (Chidushim 85b) discusses the opinion of Rabbi Yoshiah, who uses the repetition of the act of cursing a parent to learn that cursing either parent is a capital offense. He notes that there is no such repetition in the exposition of the prohibition of hitting a parent, so how would Rabbi Yoshiah learn that it applies to either one? If he equates hitting and cursing, that could be the source for applying the prohibition of hitting to either parent. Rabbi Akiva Eiger further questions the opinion of equating the two prohibitions. According to this position, why is the execution for hitting not stoning, just as it is for cursing?

Sleeping Victim

Rabbi Yirmiyah questions whether one who kidnaps someone sleeping is liable, and the *Gemora* leaves this unresolved.

The Rambam (Geneivah 9:3) therefore is lenient and states that one who kidnapped and sold someone who is sleeping is not liable.

The Even Ha'ezel notes that the Rambam only exempts a kidnapper whose victim was sleeping for the whole process – kidnapping, usage, and sale. In fact, this is evident from the *Gemora*, since the only instance of usage the *Gemora* could offer in this case is using the victim as a pillow, indicating that he was sleeping for the whole duration.

The Even Ha'ezel explains that the principle underlying the leniency is that kidnapping someone depends on the victim being aware of the kidnapping. If he was not aware, we do

not know whether he would have resisted had he been awake, and the kidnapping is not bona fide. Therefore, once he was sleeping at the point of kidnapping, the kidnapper should be exempt. However, if he wakes up at any point in the process, he is now aware, and the original act of seizure is now retroactively considered kidnapping, making the kidnapper liable.

DAILY MASHAL

The Poor *Dayan*

HaGaon Rav B.S. Shneerson zt"l, *rosh yeshivah* of Kochav MiYaakov-Tchebin, related the following: "I noticed an unusual *chiddush* in a certain work. If a person is being forced to either strike or curse a *dayan*, he should choose the lesser transgression. One who curses a *dayan* transgresses two prohibitions (Rambam, *Hilchos Sanhedrin*, 26:2) whereas striking a *dayan* involves only one, so that the person being forced should choose to hit the *dayan*. The same applies even if the *dayan* asks him to curse him and not hit him, since the *dayan* cannot forego his being cursed, as Rambam explains (ibid, 26:6). "I believe the calculation is correct but as for the halachah, I think it should be otherwise. A forced curse does not involve so much disgrace and should be preferred to striking the poor *dayan* (*Zera' Beirach*, p. 228).