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Makkos Daf 13

Produced by Rabbi Avrohom Adler, Kollel Boker Beachwood

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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

Similarly, if a killer was exiled to his city of refuge, and the men of the city wanted to honor him, he shall say to them: I am a killer (and therefore, unworthy of this honor). If they said to him, “Nevertheless,” he may accept from them, as it is written: This is the word of the killer. [“The word” indicates that he should protest just once.] They would pay rent (for the houses in the cities of refuge) to the Levites; these are the words of Rabbi Yehudah. Rabbi Meir says: They would not pay rent. He returns to his position that he had after he leaves the city of refuge. Rabbi Yehudah says: He does not return to his original position. (12b – 13a)

Free Rent

Rav Kahana says: Their argument is regarding the six cities of refuge. One holds that when the verse says: for you, it means that the cities will save their lives (not that they receive free rent). The other opinion holds that for you means for all of their needs (including a place to live for free). However, regarding the forty-two cities, everyone agrees that they would have to pay rent.

Rava says: For you definitely means for all of your needs! Rather, Rava says: The argument is regarding the forty-two cities. One holds and in addition to them you should place (forty-two cities) refers to them being the same as the six in that they provide refuge (but not that they have free housing). The other holds this verse means that the forty-two cities should be like the six cities. Just as the six include all of their needs, so too the forty-two include all of their

needs. However, everyone agrees that in the six cities, there was free housing.

The Mishna states: He returns to his position that he had after he leaves the city of refuge. Rabbi Yehudah says: He does not return to his original position.

The braisa states (regarding a Hebrew servant): And he will return to his family, and to the holdings of his ancestors he will return. This means that he returns to his family, but does not return to the position held by his family; these are the words of Rabbi Yehudah. Rabbi Meir says: He returns to the position of his father, as and to the holdings of his ancestors he will return means that he returns to his position. The same is true regarding an accidental killer. When the verse says: he will return, it includes a murderer (accidental killer).

The Gemora asks: Where do they argue regarding an accidental killer?

The Gemora answers that they argue in the following braisa. The braisa states: The killer (after the Kohen Gadol dies) will return to the land of his inheritance. This implies he returns to the land of his inheritance, and does not return to his position; these are the words of Rabbi Yehudah. Rabbi Meir says: He returns to the position of his father. He derives this from a gezeirah shavah (one of the thirteen principles of Biblical hermeneutics; it links two similar words from dissimilar verses in the Torah) of shivah-shivah from a Hebrew servant. (13a)



WE SHALL RETURN TO YOU, EILU HEIN HAGOLIN

Mishna

If one violates the following prohibitions, he will receive lashes: If one cohabits with his sister, or with his father's sister, with his mother's sister, with his wife's sister, with his brother's wife, with his father's brother's wife, or with a niddah (a menstruating woman). The same applies to a Kohen Gadol who cohabits with a widow, or a Kohen who cohabits with a divorcee, or a chalutzah (a woman who submitted to chalitzah; she is Rabbinically forbidden to a Kohen), an ordinary Jew who cohabits with a mamzeres (product of forbidden relations upon punishment of death or kares) or Nesinah (descendants of the Gibeonites; people who fooled Yehoshua into allowing them to convert; Dovid HaMelech prohibited them from marrying into the congregation), or if a mamzer or Nasin cohabits with the daughter of an ordinary Jew. One (a Kohen Gadol) is liable twice for a woman who is both a widow and a divorcee. One (a Kohen) is only liable once for a woman who is both a divorcee and a chalutzah.

(Similarly), a tamei person who eats sacrificial foods, someone who enters the Temple while tamei, someone who eats either forbidden fats, blood, nossar (sacrificial meat that has been leftover beyond the time that the Torah designated for its consumption), piggul (a korban whose avodah was done with the intention that it would be eaten after its designated time), or sacrificial food that has become tamei (receives lashes). Someone who slaughters a korban or offers it outside the Temple, eats chametz on Pesach, eats or does work on Yom Kippur, makes a replica of the anointing oil or incense used in the Temple, or anoints himself with this oil (receives lashes). [All of the aforementioned cases are kares-bearing prohibitions. The Mishna is teaching us that although the violator incurs kares, he may receive lashes as well. The next cases are only punishable with lashes.]

Someone who eats neveilah (carcass of an animal that was not slaughtered properly), tereifah (an animal with a physical defect that will cause its death; it is forbidden to be eaten even if it was slaughtered properly), abominable or crawling creatures, if one eats tevel (untithed produce), ma'aser rishon (a tenth of one's produce that is given to the Levite) that did not have terumas ma'aser taken from it (the Levite takes one tenth of his ma'aser received, and gives it to the Kohen; it has the sanctity of terumah), and ma'aser sheini (a tenth of one's produce that he brings to Yerushalayim and eats there in the first, second, fourth and fifth years of the Shemitah cycle; it can also be redeemed with money and the money is brought up to Yerushalayim, where he purchases animals for korbanos) and hekdesch that were not redeemed (receive lashes).

How much tevel does one have to eat in order to be liable to receive lashes? Rabbi Shimon says: Even a small amount. The Chachamim say: He must eat an amount the size of an olive. Rabbi Shimon asked them: Don't you agree that if someone eats an ant of any size that he is liable? They answered: This is because it is an entire being as it was created. He replied: One grain of wheat is also as it was created. (13a)

Death Penalty and Lashes

The Gemora asks: The Mishna states those who are liable to receive kares (that they receive lashes if given warning), but not those who are liable to be punished with death. (This implies they would not receive lashes, even if erroneously warned that they will be punished with lashes.) Who is the author of our Mishna?

The Gemora answers: It must be Rabbi Akiva. This is as the braisa states: Both people liable to receive kares and people liable to be killed are included in lashes; these are the words of Rabbi Yishmael. Rabbi Akiva says: Only people who receive kares are included to receive lashes. This is because



their repentance saves them from kares, as the Heavenly Court will forgive them. However, people liable to be put to death are not included to receive lashes, as if they repent, Beis Din still must kill them and cannot waive their punishment. Rabbi Yitzchak says: All sins of illicit relations punishable by kares have the same rule. The Torah stated kares specifically regarding one's sister in order to teach that they are only punished with kares and not with lashes.

The Gemora asks: What is the reasoning of Rabbi Yishmael?

The Gemora answers: This is as the verse states: If you will not guard to do all the words of this Torah. The verse also states: And Hashem will make extraordinary "hifli" your blows. What does hifli mean? When the verse says: And the judge will cast him down (v'hee'peelu) and he will have him lashed before him, I would say that this refers to lashes. The verse also says: if you will not guard to do "all" of the commandments etc. (This implies that one is subject to lashes even if there is already a punishment of kares or death.)

The Gemora asks: If so, why aren't lashes applicable to positive commandments (for they should be included in "all")?

The Gemora answers: This is because the verse says: if you will not guard etc. This is as stated by Rabbi Avin in the name of Rabbi Ilai. He says: Whenever the Torah states guard, lest, or do not, it is referring to a negative commandment.

The Gemora asks: If so, this should also apply to a negative prohibition that does not involve an action! (Why doesn't this mandate lashes?)

The Gemora answers: The verse says: to do. [This implies one must do an action to be included in this verse.]

The Gemora asks: If so, this should also apply to a negative prohibition that is removed to the remedy of a positive prohibition! (Why doesn't this mandate lashes?)

The Gemora answers: It must be similar to the negative prohibition against muzzling (that is not remedied by a positive prohibition, and is known as the typical negative prohibition).

The Gemora asks: What is Rabbi Akiva's reasoning?

The Gemora answers: The verse states: according to his wickedness. This teaches that one can only be punished once, and not twice.

The Gemora asks: What does Rabbi Yishmael do with this verse?

The Gemora answers: This refers to the death penalty and a monetary payment, or lashes and a monetary payment. However, receiving death and lashes is like one long punishment of death.

The Gemora asks: How does Rabbi Akiva respond to this?

The Gemora answers: If so, this should also be true of lashes and kares? Why isn't this so? This is because if he repents (as stated above), he does not receive kares. However, he currently has not repented! [In other words, if he has currently not repented for his sin punishable by kares, why should he receive lashes?]

Rabbi Avahu says: The Torah specifically included people liable to receive kares as being candidates to receive lashes. This is as derived from a gezairah shavah of "l'ei'nei" -- "before the eyes" (stated by kares) and "l'einecha" -- "before your eyes."



Rabbi Abba bar Mamal asked: If so, why don't we derive a similar gezeirah shavah from the word "mei'einei" -- "from your eyes" stated by a punishment of death?

The Gemora answers: It is more understandable to derive "lei'einei" -- "l'einecha" than "mei'einei" -- "l'einecha."

The Gemora asks: What is the difference? Wasn't it taught by the Academy of Rabbi Yishmael that one can derive a gezeirah shavah from "v'shav ha'Kohen" and "u'va ha'Kohen" as they are both terms meaning "and he will come/return?" Additionally, why not derive "lei'einei" -- "l'einecha" and then derive "mei'einei" -- "l'einei?"

Rabbi Shmuel the son of Rav Yitzchak accepted an answer for this from Rabbi Abba bar Mamal. The answer is that the verse states: according to his wickedness. This teaches that one can only be punished once, and not twice. However, this only refers to punishments administered by Beis Din (not including kares).

Rava says: If a sinner was warned that he will be killed for this offense, everyone agrees that he does not receive both death and lashes. Their argument is regarding a person who committed a sin punishable by death, but he was only warned that he would receive lashes. Rabbi Yishmael holds that one receives lashes for a negative prohibition that is supposed to be punished with death. Rabbi Akiva holds that one does not receive lashes for such a prohibition.

The Gemora asks: According to Rabbi Akiva who holds one does not receive lashes for a negative prohibition that is supposed to be punished with death, why would he hold he does receive lashes for a sin punished with kares?

Rav Mordechai said to Rav Ashi: Avimi from HaGronia said in the name of Rava that people who are liable to receive kares do not need warning. This is apparent from the fact that people who fail to perform their obligation of bringing

a korban pesach or milah (circumcision) receive kares, even though there is no negative prohibition against it.

The Gemora asks: Perhaps the Scriptural warning is to make them liable to bring a korban chatas, as pesach and milah which do not have this warning do not bring a korban chatas?

The Gemora answers: The reason that failing to perform their obligation of bringing a pesach and performing a milah do not make one liable to bring a korban is because all prohibitions are compared to idolatry. Just like that is something which requires a person to sit and not act, so too any sin where there is an obligation to sit and not act make one liable to bring a korban (if it also meets other qualifications). This excludes pesach and milah which are mitzvos that one is required to arise and perform. (13a – 14a)

DAILY MASHAL

What is Repentance?

A person who was guilty of committing severe sins over a long period wanted to repent and turned to the chief rabbi of Prague, HaGaon Rav Yechezkel Landau zt"l, author of Noda' BiYehudah, to request an order of repentance befitting him. From his reply we can learn the essence of true Teshuvah.

The main point of repentance is what is in the heart: In his long reply the Gaon mentions that neither the Tanach nor the Talmud indicates the number of fasts required to atone for each sin, though the mussar works mention such. If that person wants to fast accordingly, even all the years of Mesushelach would not suffice to fulfill his obligations. He therefore took the trouble to explain to him that the main point of teshuvah depends on the heart and not in punishing the body by fasting or other afflictions, proving it from our sugya.

In our Gemora Rabbi Akiva says that the Torah decrees that a beis din does not forgive those condemned to death who repent. Apparently, why shouldn't they be forgiven, as Yechezkel (18:24) says that one who repents has his sins erased? The Noda' BiYehudah explains that the main point of teshuvah depends on a person's heart. If the main point were the affliction of the body, this could be verified, as orders of repentance include rolling in snow, being exposed to stinging bees and other afflictions and the beis din could see if the person condemned to death undergoes them. "It must surely be, then," writes the Noda' BiYehudah, "that there is no basis for afflictions and fasts in the Torah but that the essence of teshuvah is utter remorse, which can take but one moment. If you say that repentance saves a person from the death penalty, there can never be a death penalty." The threat of the death penalty would lose its deterring effect, as every condemned person would claim that he repented. The Torah therefore decrees that a beis din does not forgive those condemned to death who repent. He therefore mentions that "the main point of teshuvah is quitting to sin, confession with a broken heart...drawing near with fervor to love the Creator..." He emphasizes that "for a person who can slaughter his (evil) inclination by learning Torah... the Torah also weakens his toughness – I rule very leniently concerning fasts and afflictions."

Nonetheless, the Noda' BiYehudah asserts that one cannot forego afflictions altogether, especially since the Rokeach instituted fasts. He therefore instructed the penitent to fast three days a week during the winter for three years and on the eve of each new month during the summer (Responsa Noda' BiYeudah, 1st ed., O.C. 35; see *ibid* as to redeeming fasts by giving charity).

We conclude with the statement of Yismach Moshe (parashas Naso), who supports the opinion of the Noda' BiYehudah by explaining why we do not find any commandment to repent in the Torah except for

confession. It is obvious, then, that the essence of repentance is remorse. If a person truly regrets his sin, he needs no command to repent; if he feels no remorse, a command would not help.