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Commandment before Prohibition

Rabbah bar bar Chana quoted Rabbi Yochanan saying that one who violated a prohibition that was preceded by a positive commandment is punished by lashes. Although one who violates a *lav hanitak l’aseh* – a prohibition shifted to a positive commandment is not liable for lashes, that is only when the commandment is in effect only *after* the transgression. If the positive commandment was also relevant before violating the prohibition, it does not remove the punishment of lashes. They asked him whether he said this, and he denied it. Rabbah swore that he *did* say it, and says that there is a proof to this statement from a case in the *Mishna*. The verse says that the Jews should send the impure out of the camp (a positive commandment), and then that they should not make the camp impure (a prohibition), and the *Mishna* lists someone impure who enters the Bais Hamikdash as one who gets lashes, indicating that such a prohibition is liable for lashes. (14b – 15a)

The Difficulty

The *Gemora* explains that he retracted since he discovered a *braisa*, which was inconsistent with his statement. If someone violates a single woman, the Torah mandates that he marry her (a positive commandment), and not divorce her (a prohibition). The *braisa* says that if a rapist divorced his victim, he must remarry her to avoid lashes. If he is a *Kohen*, who may not marry a divorcee, he receives lashes. Although this is a case of a positive commandment preceding a prohibition, the *braisa* states that the rapist may avoid lashes by fulfilling the positive commandment, indicating that this follows the paradigm of a *lav hanitak l’aseh*. (15a)

The Resolution

Ulla says that the case of rape is different, since the verse which mandates that he marry his victim is extraneous, and therefore is a new commandment that is effective once he divorces her. Ulla first states that it is extraneous since we would already know that he must marry his victim from the similar commandment for a *motzi shem ra* - one who maligns his wife’s fidelity. If the Torah mandates that a maligner must remain married to his wife, although he only spoke, then surely a rapist, who committed a physical act, must marry his victim. Therefore, the verse mandating that he marry his victim is applied to the case where he divorced her, making it a positive commandment following a prohibition.

The *Gemora* objects, since a maligner is more severe, in that his punishment includes both lashes and payment.

The *Gemora* then states that the verse mandating that the maligner marry his wife is extraneous, since we would have learned it from the case of a rapist. Since a rapist, who is not punished with both lashes and payment, must marry his wife, surely a maligner, who is punished with both lashes and payment, must marry his wife. Therefore, we apply the verse to the case of a rapist, and since there is already a verse mandating that he marry his victim, we apply this extra verse to the case where he divorced her.

The *Gemora* objects, since we could not have learned a maligner from a rapist, since a rapist is more severe, in that he committed a physical act, and not just speech.

Rather, the *Gemora* says that we would not need a verse mandating marriage in the case of a maligner, since he is



already married. Therefore, we apply it to the case of rapist, and then to the case where he divorced her, since the verse already mandates that he initially marry her.

The *Gemora* asks why we don't apply it to a maligner, mandating he remarry her if he divorced her.

The *Gemora* says that in fact we do, but we then learn the case of a rapist from the case of a maligner.

The *Gemora* objects that, as we have seen, we cannot learn a rapist from a maligner, since the maligner is more severe.

The chart below summarizes the debate surrounding Ulla's statement that an extra verse mandating marriage applies to a rapist *after* he divorced, since the verse already states that a rapist must initially marry his victim:

Extra?	Know from	Because	Challenge
Rapist	Maligner	Maligner did no physical act	Maligner gets lashes and payment
Maligner	Rapist	Rapist doesn't get lashes and payment	Rapist did physical act
Maligner	N/A	Maligner already married	Should apply to maligner after divorce

Rather, Rava states that the verse mandating marriage has the clause *kol yamav – all his days*. This extra clause indicates that he is eternally mandated to remarry her, replacing lashes for the prohibition of divorce. (15a)

The Rationale

Rav Pappa asks Rava why a prohibition which was preceded by a positive commandment receives lashes, as it does not fit the canonical prohibition for lashes, muzzling an ox, which is not preceded by any commandment.

Rava asked why a preceding commandment would make a prohibition any less severe, removing lashes.

Rav Pappa responded by asking why the case of a standard *nitak l'aseh* should be any less severe, thereby removing lashes.

Rava answered that in those prohibitions, the commandment is mandated to shift from the prohibition, replacing the punishment of lashes. (15a)

How does it Work?

There is a dispute about the mechanism for a *lav hanitak l'aseh*. One position is that the person does not receive lashes as long as he has not voided the positive commandment, i.e., made it impossible to fulfill. The other is that the person must fulfill the commandment to avoid lashes. If he does not immediately fulfill the commandment, he receives lashes.

The *Gemora* says that Rava's statement that the commandment of a rapist marrying his victim is eternal, thus removing the punishment of lashes, resolves the question according to the first position, since it follows the same pattern as a *lav hanitak l'aseh*. However, according to the second position, this does not follow the same pattern, and it does not resolve the question.

The *Gemora* notes that we only need this resolution to explain a statement of Rabbi Yochanan, who holds the first position.

The *Gemora* proves this from the case of the *Tanna*, who was in front of Rabbi Yochanan, and taught that in any prohibition that has a subsequent positive commandment, if he fulfilled the commandment, he is exempt from lashes, while if he voided the commandment, he is liable.

Rabbi Yochanan pointed out that the two clauses are incompatible – if he is exempt only by fulfilling the commandment, he should be liable once he has not fulfilled,



it, while if he liable only by voiding the commandment, he should be exempt as long as he has not voided it. Rather, Rabbi Yochanan told him that he should teach that it depends on voiding the commandment. Rish Lakish says that it depends on his fulfilling the commandment.

The *Gemora* explains that this dispute is based on their dispute about the status of a doubtful warning. Rabbi Yochanan considers such a warning a valid warning, so one who violates a *lav hanitak l'aseh* will receive lashes when he voids the commandment, even though at the time that he received the warning about the prohibition, it was doubtful if he would follow through with voiding the commandment. Rish Lakish does not consider such a warning valid, so the warning for such a prohibition must be a certain one. The only way for this to happen is if he is liable for lashes immediately upon transgressing the prohibition, with the positive commandment only being an option to avoid lashes.

The *Gemora* cites a case where Rabbi Yochanan and Rish Lakish dispute the validity of such a warning. If one swore to eat a loaf of bread today, and the day passed, Rabbi Yochanan and Rish Lakish agree that he does not receive lashes for the prohibition of a false oath, but for different reasons. Rabbi Yochanan says that he is exempt because he only passively transgressed the prohibition, while Rish Lakish says that he is exempt because the warning administered was doubtful, since there was always more time that the person could have eaten it. Rabbi Yochanan considers such a warning valid, and therefore only exempts him because the transgression was passive. (15a – 16a)

INSIGHTS TO THE DAF

Preceded by?

Rabbi Yochanan says that a prohibition that is preceded by a positive commandment is liable for lashes, and does not fall under the category of *nitak l'aseh*.

Rashi and Tosfos (14b Kol) explain that the definition of “preceding” is conceptually preceding the prohibition, i.e., it is

possible to fulfill the commandment before having violated the prohibition, even if it textually follows the prohibition. Therefore, although the commandment to return a stolen item textually precedes the prohibition on stealing, since one can only return a stolen item after violating the prohibition of stealing, it is considered a *nitak l'aseh*.

The Ritva says that if the commandment precedes the prohibition either textually or conceptually, it is not considered a *nitak l'aseh*. Therefore, the commandment to “send out the impure from the Mishkan,” which conceptually can only be done after someone impure entered, is still considered a preceding commandment.

The Ritva notes that the commandment for the rapist to marry his victim precedes the prohibition to divorce both textually and conceptually.

According to the Ritva, one can ask why stealing is considered *nitak l'aseh*, as the commandment to return the stolen item appears before the prohibition of stealing.

The Aruch l'nair points out that although the commandment is earlier than the prohibition, it is in a totally separate section of the Torah. The *Gemora* (Pesachim 6b) says that there isn't necessarily any sequential order to separate sections of the Torah. Therefore, the prohibition may actually be earlier than the commandment, although it appears first in the Torah. We therefore may not impose lashes on someone who steals, since it may be *nitak l'aseh*.

Who Denied?

The *Gemora* records that after Rabbah quoted Rabbi Yochanan saying that a prohibition preceded by a commandment is liable for lashes, he denied the statement.

Rashi and Tosfos explain that Rabbi Yochanan denied it, but Rabbah maintained that he did make the statement, and the *Gemora* proceeds to explain the difficulty that led Rabbi Yochanan to deny his initial statement.

The Ritva questions how this can be, if later the *Gemora* quotes Ravin in the name of Rabbi Yochanan giving the ultimate answer of the *kol yamav* clause.

He suggests that Rabbi Yochanan ultimately resolved the question himself, and then returned to his original statement.

The Ritva says that Rabbah denied the statement, due to the difficulty, but Rabbi Yochanan himself had a resolution based on the *kol yamav* clause, so he never denied his statement.

The Aruh l'nair offers a proof to the Ritva's position, since it is difficult to say that Rabbi Yochanan would falsely deny a statement he made, simply due to a question. However, Rabbah may have said an untruth, to protect Rabbi Yochanan's honor.

What about Tamei b'Mikdash?

Rabbah notes that Rabbi Yochanan's statement that a prohibition preceded by a commandment is liable for lashes is supported by the *Mishna*, which says that someone impure who enters the Bais Hamikdash receives lashes. Due to the problem from the case of a rapist, Rabbi Yochanan subsequently denied his statement.

The Rishonim discuss how he would then explain the case of an impure person in the Bais Hamikdash.

1. The Baal haMaor says that the prohibition for an impure person to enter the Bais Hamikdash is more severe, since it is punishable by *kares* – *cutting off his life*. For such a prohibition, lashes are explicitly mandated (as the *Gemora* discusses on 13b), and the Baal Hamaor says this is true even if there is a positive commandment associated with it. Only prohibitions which must follow the paradigm of the prohibition of muzzling an ox, i.e., those not punishable by *kares*, must follow the same paradigm by not having any associated commandment.

2. Tosfos (as cited by the Ritva, but compare with Tosfos 15a tanina) says that there are two prohibitions for an impure person to enter the Bais Hamikdash, but only one commandment. Therefore, the commandment can only address one of the prohibitions, leaving the other one intact, to incur lashes. In a similar vein, the Meiri quotes an opinion that answers that one of the prohibitions is in the case of a woman who gave birth, and is not adjacent to any positive commandment. Therefore, this prohibition stands on its own, and is punishable by lashes.

3. The Ramban answers that the only time a positive commandment removes lashes is when it addresses and fixes the damage done by the prohibition. Returning a stolen item, and remarrying a rape victim that one divorced, fixes the damage done by the prohibition. However, when someone impure enters the Bais Hamikdash, the damage of the transgression is done. Leaving the Bais Hamikdash is simply limiting the damage from continuing further, but not addressing or fixing the damage that was already done.

Kol Yamav

Rava says that when the verse says *kol yamav* – *all his days*, this indicates that he must always remarry his victim.

The Rishonim offer various explanations of this statement.

1. Rashi says that this clause is modifying the *prohibition*, stating that the prohibition is to divorce her forever. However, any act short of that (e.g., divorcing and remarrying) is not included in the prohibition.
2. Tosfos says that this clause is modifying the *commandment* to marry his victim, extending it forever. Thus, any time he divorces her, the positive commandment takes effect again, making it akin to a *nitak l'aseh*.
3. The Ritva says that this clause is a separate positive commandment. The *Gemora* (R"H 6a) similarly learns an extra facet of the commandment to fulfill one's pledge to holy causes from the phrase *v'asisa* – *and you shall do*.

Voiding vs. Fulfilling

The *Gemora* concludes with the dispute between Rabbi Yochanan and Rish Lakish about whether lashes for a prohibition that is *nitak l'aseh* depends on not fulfilling or voiding the commandment.

The Rishonim have differing versions of the flow and text of the *Gemora*.

Rashi and Tosfos say that Rabbi Yochanan holds that it depends on voiding the commandment. Their reading of the *Gemora* is that after Rava introduced the clause of *kol yamav* – *all his days*, extending the commandment forever, the *Gemora* then says that this answer is acceptable only if one holds that a *nitak l'aseh* depends on voiding the commandment, since the case of rape then fits the general paradigm. The *Gemora* then answers that Rabbi Yochanan himself indeed holds that it depends on voiding the commandment, so the answer is acceptable. The *Gemora* then records the dispute between Rabbi Yochanan and Rish Lakish, and explains that their positions on this issue depend on their positions on the validity of a doubtful warning. Rashi and Tosfos explain that Rish Lakish, who holds that a doubtful warning is invalid, cannot hold that one must void the commandment, because then the initial warning for the prohibition is doubtful, as it depends on a further action done *after* the prohibition.

The Ritva points out that according to this reading, the default position would be that it depends on voiding the commandment, but Rish Lakish is forced into saying that it depends on not fulfilling, since he does not accept a doubtful warning.

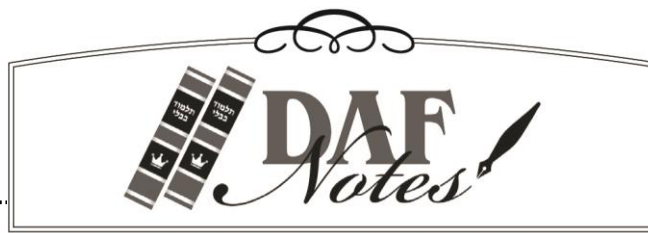
The Ritva asks a number of questions on this version:

1. It differs from the more prevalent text, which switches the positions of Rabbi Yochanan and Rish Lakish on voiding vs. not fulfilling.
2. Even if the lashes depend on not fulfilling the commandment, why is the warning not doubtful? Even if he

violates the prohibition, he can claim that he is planning on fulfilling the commandment, so it is only clear that he is liable for lashes after he does not fulfill the commandment. (Tosfos answers that we place him in status quo. Therefore, we do not assume that he will do anything active after the violation, i.e., not voiding and not fulfilling the commandment).

3. The clause of *kol yamav* does not mean that the violation is only when he divorces her forever, but rather is a mechanism to have the commandment take effect after each divorce. It therefore does not necessarily follow the paradigm of not voiding.

The Ritva follows the text of the Rif and Rosh, that records Rabbi Yochanan saying that the lashes for a prohibition is incurred if he does not fulfill the commandment, while Rish Lakish says that it is incurred by voiding the commandment. According to this text, the *Gemora* says that the dialogue is valid only if we hold that it depends on not fulfilling the commandment. The Ritva explains that the *Gemora's* statement is not in reaction to the introduction of the *kol yamav* clause, but rather follows the immediately preceding dialogue between Rava and Rav Pappa about why a commandment, either preceding or following a prohibition, should remove lashes. Rav Pappa challenged Rabbi Yochanan's original statement, objecting that such a prohibition is not like the paradigmatic prohibition on muzzling an animal. Rava asked why an adjacent commandment should make it any less severe, and Rav Pappa then asked why a *nitak l'aseh* should be less severe. Rava answered that in that case, the commandment addresses the prohibition, but when it precedes the prohibition, it does not. The *Gemora* then says that Rava's answer is logical if the commandment must be fulfilled to avoid lashes, indicating that it takes the place of lashes, but if it must be not voided, it does not seem to replace lashes. The *Gemora* then answers that Rabbi Yochanan indeed holds that one must fulfill the commandment to avoid lashes. The Ritva explains that if he must fulfill the commandment, it is a doubtful warning, since his violation of the prohibition will not necessarily incur lashes, as he may subsequently fulfill the commandment. However, if he only receives lashes if he voids



the commandment, we can administer a warning with no doubt at the point at which he voids the commandment, and then apply lashes.

Rashi and Tosfos reject this option, as they consider such a warning to not be at the point of transgression, similar to warning someone when he does an action which triggers an oath.

The Ritva distinguishes between these cases, arguing that voiding the commandment is tightly related to the prohibition, therefore considered the point of transgression. According to this reading, the default position is that lashes is incurred unless he fulfills the commandment, and Rish Lakish is forced into the other position since he does not consider a doubtful warning valid.

The Aruch l'nair says that according to Tosfos, Rava's answer was that the commandment comes *l'natukai* – to move aside the prohibition, while according to the Ritva, Rava's answer was that the commandment comes *l'takunai* – to fix the prohibition. This variation in the text fits into their reading of the flow of the *Gemora* as well, as the Ritva stresses the aspect of fixing a prohibition, in order to replace lashes.

DAILY MASHAL

The Vilna Gaon explains that a divorce document is called a get because these two letters aren't found next to each other in any other word in the Hebrew language and aren't pronounced with the same part of the mouth. This name therefore symbolizes separation.

Based on this concept, the Margalios HaTorah – a student of the Vilna Gaon – notes that in the section in the Torah (Bereishis 49:29-32) which details the final instructions of Yaakov to his sons immediately prior to his death, every letter in the Hebrew alphabet is used except for gimmel and tes.

As long as Yaakov remained alive, unity reigned between his children, as symbolized by the fact that the letters which

connote separation aren't used to describe his final moments with his sons. However, the following verse (49:33), which relates the death of Yaakov, contains both the letter gimmel and the letter tes, to hint that upon the death of the unifying figure who inspired peace, the brothers immediately began to have (50:15) feelings of distrust and hatred.

Similarly, the section in the Torah (Bamidbar 28:1-8) which discusses the Korban Tamid, the continual offering which was brought twice daily on the Altar, contains every letter in the Hebrew alphabet except for gimmel and tes. This hints to the Gemora in Gittin (90b), which teaches that when a man divorces his first wife, the Altar sheds tears. As a result, the portion which describes the sacrifice which was brought on the Altar most regularly omits the two letters which are used to describe a Jewish document of divorce.