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Makkos Daf 16

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Lashes for Transgressions

The Gemora cites a case where Rabbi Yochanan and Rish Lakish dispute the validity of a doubtful 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.

The Gemora notes that they both derive their respective reasons from the manner in which they explain the opinion of Rabbi Yehudah, for it was taught in a braisa: And you shall let nothing of it (korban pesach) remain until the morning; and that which remains from it until the morning you shall burn with fire. Now, the Torah follows up a negative prohibition (of leaving over) with a positive one (of burning that which is leftover), thereby teaching us that one does not incur lashes for it. This is Rabbi Yehudah’s view.

Rabbi Yochanan inferred as follows: The reason why there is no lashes is because the Torah follows up a negative prohibition with a positive one; but if not for that, there would have been lashes. This proves that a doubtful

warning (for it is not known if will leave it over until the morning) is a valid one.

Rish Lakish inferred as follows: The reason why there is no lashes is because the Torah follows up a negative prohibition with a positive one; but if not for that, there would have been lashes. This proves that one, who only passively transgressed a prohibition (such as leaving over the korban), will nevertheless incur lashes.

The Gemora asks: But according to Rish Lakish, is this not a case of a doubtful warning (so why would he have received lashes)?

The Gemora answers: He holds like a different Tanna who teaches the opinion of Rabbi Yehudah, for it was taught in a braisa (regarding intermingled children): If one of the sons struck one of the possible fathers and then he struck the other, or if he cursed one of the possible fathers and then he cursed the other, or cursed them both simultaneously or struck them both simultaneously, he will be liable (since one of the two is certainly his father). Rabbi Yehudah said: If he struck or cursed them simultaneously, he will be liable (the specific warning (hasra’ah) that must precede any forbidden act that is punishable by a court is here effected when the witnesses warned the offender by one statement against the striking or the cursing of the two, e.g., ‘do not strike them’), but if he struck or cursed one and then he struck or cursed the other, he is exonerated (though he may have been duly warned in each particular case, no penalty can be imposed upon him by any court, since each warning was of a doubtful character



since it was unknown in each case whether the particular man he was about to strike or curse was his father or not; a warning of a doubtful character is, in the opinion of Rabbi Yehudah, of no validity, while in the opinion of the first Tanna, it is valid).

The Gemora asks: But according to Rabbi Yochanan, is this (when he leaves over the korban) not a case where the transgression was passive (so why would he have received lashes)?

The Gemora answers: He holds like that which Rav Idi bar Avin said in the name of Rav Amram in the name of Rabbi Yitzchak in the name of Rabbi Yochanan: Rabbi Yehudah said in the name of Rabbi Yosi HaGelili: The rule for negative prohibition in the Torah is as follows: If it involves an action, one would incur lashes for violating it; if it does not involve an action, he would not incur lashes, except for one who swears falsely, makes a temurah (the owner attempts to exchange a different animal with the original korban; the halachah is that the temurah animal gets the same sanctity as the original one, and both animals must be brought as a korban), or curses another fellow using God's Name.

The Gemora asks: But Rabbi Yehudah is contradicting himself (regarding a prohibition that does not involve an action, and regarding a doubtful warning)!

The Gemora answers: According to Rish Lakish, we must say that two Tannaim are arguing as to what Rabbi Yehudah's opinion really is (regarding incurring lashes for a doubtful warning), and according to Rabbi Yochanan, we can answer that one braisa is reflecting his own opinion (that one incurs lashes for a prohibition committed passively) and the other braisa reflects that which his teacher (Rabbi Yosi HaGelili) holds.

The Gemora cites a Mishna: If one took the mother bird while she was on her young, Rabbi Yehudah says: He

receives lashes, and does not send away (for he has violated the prohibition against taking the mother, and he also transgressed the positive commandment of sending away the mother bird; this is a positive commandment which preceded the prohibition – it is not there to remedy the violation). But the Chachamim say: He must send the mother bird away and he does not incur lashes (for through this, he has remedied his transgression). This is the rule: For any prohibition which can be remedied through a positive commandment, one is not liable.

Rabbi Yochanan commented: The Chachamim's rule (that the lashes for a lav hanitak l'aseh – a prohibition shifted to a positive commandment will be dependent upon the violator performing a remedy for the transgression) applies only in this case (where if he would kill the mother bird, he is actively nullifying the possibility of performing the positive commandment) and one more (however, in all other cases of a lav hanitak l'aseh, he will never be subject to lashes).

Rabbi Elozar asked him: Where is this other case?

Rabbi Yochanan told him: Go out and search for it.

Rabbi Elozar went out, searched and found it, for it was taught in a braisa: 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. [Seemingly, by a Yisroel, if he does not remarry her, he will receive lashes.] Now, if you would hold that the person must fulfill the commandment to avoid lashes (and if he does not immediately fulfill the commandment, he receives lashes), it is understandable (for the Yisroel can receive lashes if he doesn't listen to Beis Din when they instruct him to marry her); however, if you hold that the person does not receive lashes as long as he has not voided the positive commandment (i.e., made it impossible to fulfill), let us consider the cases: By the case of sending the mother bird away from the nest, it is possible to nullify the possibility of

the remedy (in a case where he kills the mother bird), but what would be the case by the rapist? If he would kill her, he would not receive lashes because of the principle of *kim leih bid'rabbah minei* (whenever someone is deserving of two punishments, he receives the one which is more severe)!!?

Rav Shimi of Mechoznaah answers that the case is where he accepted *kiddushin* from another man on her behalf (and therefore he cannot marry her).

Rav asked: If she made him his agent to accept the *kiddushin*, it is she that has nullified the possibility of him marrying her, and if she did not make him an agent, is he allowed to accept *kiddushin* for her – it is nothing (and he can still marry her)!!?

Rav Shimi of Nehardea answers: He makes the vow in public (before ten people and such a *neder* cannot be revoked).

The Gemora asks: But how will it be explained according to the one who holds that such a *neder* can be annulled?

The Gemora answers: He must make the *neder* according to our understanding. For Ameimar said: Even according to the one who holds that a *neder* made in public can be annulled, but a *neder* made according to the understanding of the public cannot be annulled.

The Gemora asks: And are there no other examples? [Mnemonic: Robbery, Pledge, Pe'ah] There is the case of robbery, where it is written in the Torah: You shall not steal, and then it says: and he shall return that which he has stolen! Then again, there is the case of the pledge, where it is written in the Torah: You shall not enter his house to fetch his pledge, and then it says: You shall surely return to him the pledge when the sun goes down! And do not these cases fit equally well if we hold that the person must fulfill the commandment to avoid lashes, or whether you hold

that the person does not receive lashes as long as he has not voided the positive commandment (for he can destroy the pledge or stolen item)!!?

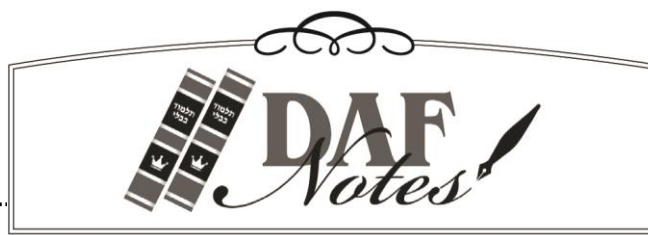
The Gemora answers: Here, since he is obligated to compensate the owner (even if the item has been destroyed), he is not liable to both lashes and compensation.

Rabbi Zeira asked: What if the pledge belonged to a convert, who has since died (and has no relatives; there is no compensation to be made)?

The Gemora answers: He is still liable (and therefore there is no lashes) – it is merely the convert's claim that ceases upon his death.

The Gemora asks: And is there not the case of *pe'ah* (a corner of the field is left over for the poor), where it is written in the Torah: You shall not finish off the corner of your field, and it then says: You shall leave them for the poor person and for the convert! (for he can grind the wheat kernels without leaving it for the poor)!!? For it was taught in a braisa: The mitzvah of *pe'ah* requires that it should be set aside from standing crops. If, however, the owner did not set it aside from standing crops, he should set it aside from the sheaves. If he did not set it aside from the sheaves, he should set it aside from the pile of kernels so long as he has not evened the pile. But if he had already evened the pile, he must first take *ma'aser* from it (for although *pe'ah* and all gifts to the poor are exempt from *ma'aser*, once the pile has been evened and *pe'ah* has not been removed from it, the *ma'aser* obligation takes effect) and then set aside the *pe'ah* for the poor.

The Gemora answers: Rabbi Yochanan is following the opinion of Rabbi Yishmael, for in the name of Rabbi Yishmael it was stated that the owner would even have to set it aside from the dough and give it to the poor (for even



after it was baked into bread, it is still the same item and there is still an obligation to give pe'ah from it).

The Gemora asks: Even according to Rabbi Yishmael, the positive commandment can be nullified completely in a case where he ate the dough.

The Gemora answers: in truth, Rabbi Yochanan was referring to the case of sending the mother bird from the nest and the case of pe'ah. The case of the rapist would not be applicable, for we say that a neder made according to the understanding of the public cannot be annulled only if he wants the neder annulled for an optional purpose; however, if he needs it annulled for an obligatory purpose (such as in this case, where there is a commandment to marry this woman), the neder can be annulled. A case in point is that of the schoolteacher whom Rav Acha bound by a vow on the understanding of the public (not to teach any more) because he mistreated the children (by hitting them excessively), but Ravina reinstated him (after annulling his neder) because no other teacher could be found as precise as he was. (15b – 16b)

Multiple Lashes

The Mishna had stated: The following incur 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.

Rav Yehudah said: If one eats a cabbage worm, he receives lashes because of the verse: a creeping thing that creeps upon the ground. A certain fellow once ate a cabbage worm and Rav Yehudah gave him lashes.

Abaye said that if one ate a putisa (which is a non-kosher creature found in water), he receives four sets of lashes. [The reason for this is because he has violated two

prohibitions against eating any type of sheretz, and two violations against eating sheratzim found in the water.] If one eats an ant, he receives five sets of lashes, because he has violated two prohibitions against eating any type of sheretz, and three violations for eating any type of sheretz that reside on land. If one eats a hornet, he receives six sets of lashes, two for violating the prohibition against eating sheratzim, three violations against eating sheratzim that reside on the land, and one violation for eating a flying insect.

Rav Achai said: One who holds back from performing his bodily functions transgresses the following prohibition: Do not make yourself abominable.

Rav Bibi son of Abaye said that anyone drinking water out of a bloodletter's tube transgresses the following prohibition: Do not make yourself abominable.

Rabbah the son of Rav Huna said: If one crushed nine ants (which together, did not equal the size of an olive) and he added to it another live one, thus bringing the quantity up to the size of an olive, and ate them, he is liable on six counts; five for the live ant as an entire creature, and one for the entire mixture amounting to an olive's size of neveilah.

Rabbah said in the name of Rabbi Yochanan: It would be the same, even with only two that were crushed and one which was whole.

Rav Yosef said: It would be the same, even with one that was crushed and one which was whole.

The Gemora notes: These Amoraim are not arguing; they are merely discussing different size ants. (16b)

Ma'aser Ani



The Mishna had stated: The following incur lashes: 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).

Rav said: One who eats of tevel produce from which ma'aser ani (tithes for the poor) has not been taken receives lashes.

The Gemora notes: This is in accordance with the following Tanna, for it was taught in a braisa that Rabbi Yosi holds that one is liable for eating tevel that no tithes were taken from it, or even if terumah was taken but not ma'aser rishon, or even if ma'aser rishon was taken but not ma'aser sheini, or even if ma'aser sheini was taken but not ma'aser ani. This, he proves from a Scriptural verse.

Rav Yosef said: This is actually a Tannaic dispute. Rabbi Eliezer said: One is not required to designate by name ma'aser ani of demai (produce purchased from an am ha'aretz; since we are uncertain if ma'aser was separated, one is obligated to separate ma'aser rishon from it, but he is not required to give it to the Levi because that would be a monetary question (since there are no prohibitions regarding its consumption), and those issues are decided by using the principle of "the one attempting to extract payment from the other bears the burden of proof"; ma'aser sheini (in the first, second, fourth and fifth years of the Shemitah cycle) must be separated and eaten in Yerushalayim). The Chachamim, however, say: One is required to designate by name ma'aser ani of demai, but he is not required to separate it.

The Gemora assumes that the argument is dependent upon this issue: Does the obligation to separate ma'aser ani render the produce prohibited on account of tevel?

Abaye challenges this explanation, for why do they argue only by a case where there is a possible obligation; they should argue even in a case of a definite obligation?

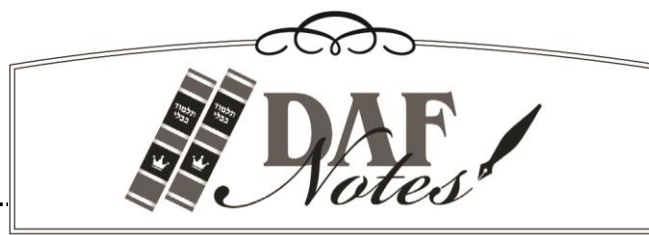
Rather, the explanation of the dispute is as follows: Rabbi Eliezer holds that an am ha'aretz was not suspect about withholding ma'aser ani from demai, for since it is merely a money matter (for there are no prohibitions against anyone eating from it), and he may retain possession of it, they will certainly separate the ma'aser ani. The Chachamim, however, maintain that since it is a bother, they refrain from separating it. (16b – 17a)

INSIGHTS TO THE DAF

The Prohibitions of "Do not make yourself Disgusting"

In the past bloodletting, a widespread medical practice, was implemented using a special horn whose sharp end entered a vein and drew blood. Our sugya explains that a person must not drink from such a horn and that someone who does so transgresses the prohibition of "do not make yourself disgusting" (Vayikra 11:43). Indeed, the halachah is that "it is forbidden to consume food that people find disgusting, or to eat or drink from...such as glass utensils used for bloodletting and the like. He should also not eat with dirty hands or on dirty utensils, as all these are included in the prohibition of "do not make yourself disgusting" (Shulchan 'Aruch, Y.D. 116:6).

The Rishonim disagree as to if the Torah prohibition includes any manner of eating in a disgusting fashion (Yereiim Hashalem, 73 – see ibid the remarks of To'afos Re'em; Semak, 80; Ritva on Makos 16b in the name of Ramah; see Beis Yosef, Y.D. 116) or if the prohibition only



applies to eating the insects mentioned vis-a-vis “do not make yourself disgusting” whereas it was Chazal who added restrictions to this prohibition (Ritva on Makos, ibid; Levush and Peri Chadash, Y.D. 116).

Peri Chadash (ibid and 84) clarifies the rules pertaining to this prohibition. Food regarded as disgusting by everyone is forbidden even to an individual who is not disgusted thereby, but food mostly regarded as disgusting is allowed for those who are not fussy. A fastidious person (istenis) must not consume anything he considers disgusting, even if others accept such food.

How could Rabbi Yishmael’s mother drink the water from his feet? Many ask about the story told in the Yerushalmi (Peiah, Ch. 1, cited by Tosfos in Kiddushin 31b, s.v. Rabbi Tarfon) about Rabbi Yishmael’s mother, who revered her exalted son. On his return from the beis midrash she would wash his feet and drink the water. Apparently, such water is disgusting and must not be consumed. Zera’ Chayim (in the addition at the end of §7) solves this question by saying that she drank the water as a good omen (segulah; see ‘Aleï Tamar on the Yerushalmi, ibid). Just as we may consume revolting food for medicinal purposes (Kelalim, Ma’areches Beis, 8), she could drink that water.

According to HaGaon Rav Y.S. Elyashiv, it could be that after washing his feet thoroughly, she rinsed them in fresh water and drank it. According to HaGaon Rav Y. Silberstein, the water from Rabbi Yishmael’s feet was not considered disgusting as any mother with such a son would be eager to drink it! (Shabas Shabason, 91). We can learn a basic rule concerning this prohibition from the following case, which occurred in the United States about 60 years ago.

An original idea for a healthy complexion: In our era some marketers of meat products add various substances – such as phosphates, colorants, water and the like – to lend a fresh appearance to the meat and increase their revenues. Butchers in former times would use subtler tricks to sell

more. About 60 years ago butchers in New York would soak liver in blood to give it a fresh appearance. A certain rabbi claimed that they should immediately desist – among other reasons, because of the prohibition of “do not make yourself disgusting”. One must not, after all, drink from a utensil used for bloodletting even if it was rinsed and the livers are equally disgusting, having been soaked in blood. Still, HaGaon Rav Moshe Feinstein zt”l explained that there was no prohibition involved. After all, a person who eats something without knowing it is disgusting transgresses no prohibition. As consumers could not imagine that the liver had been soaked in blood, there is no prohibition to sell them such products (Responsa Igros Moshe, Y.D., I, 31, and see his reason for not worrying that people would eat the liver without washing off the blood).

DAILY MASHAL

The Torah strongly exhorts us to have mercy and compassion upon our poor brethren. The Gemora (Bava Basra 10a) records that a wicked Roman nobleman named Turnus Rufus asked Rebbi Akiva, “If your G-d loves poor people so much, why doesn’t He provide for them?” Rebbi Akiva answered that Hashem allows them to remain poor in order to give us the merit of giving them charity, which will protect us from punishment.

The Alter of Kelm, questions Rebbi Akiva’s explanation. Although the mitzvah of giving tzedakah is certainly a great one, aren’t there enough other commandments that we can do to save us from punishment? What is so unique and special about giving charity, and why must the poor suffer in order to enable us to specifically perform this mitzvah?

The Alter explains that the mitzvah of tzedakah indeed serves an irreplaceable function. Although one fulfills the technical letter of the law by distributing charity to those in need, in order to perform this mitzvah at its highest level a person must do more than this. It isn’t



sufficient to give charity simply because Hashem commanded us to do so and we want to perform His will.

A person dispersing tzedakah should feel the pain and plight of the poor beggar as if it were his very own. Just as a person who feels his own hunger naturally responds by feeding himself, so too should we strive to identify with the pauper's hunger and anguish to the point that we would be moved to assist him even if we weren't obligated to do so. Although this is a noble goal to strive toward, on a practical level, how can a person blessed with ample means and resources work on attaining it?

Rav Eliyahu Chaim Meisels, the Rav of Lodz, Poland, was renowned for his concern for the poor and downtrodden. On one ferociously fierce winter day, he knocked on the door of a wealthy, but stingy, man in his town to solicit a donation.

After exchanging greetings, the man gestured that the Rabbi should enter, but Rav Meisels remained outside and began his appeal. The rich man was puzzled by the Rabbi's behavior, but he attempted to listen out of respect. However, after a few minutes he grew so cold that he was unable to continue. He interrupted the Rav and begged him to come inside.

The sagacious Rabbi explained, "I am here to collect money for a family which can't even afford to build a fire on a day like today. If we enter your warm home, you won't be able to relate to their suffering. Only by discussing their plight here at your door are you able to understand the magnitude of their pain." Appreciating both the Rabbi's wisdom as well as the extent of the family's anguish, the miser gave Rav Meisels a generous donation.

It is difficult for most of us to relate to the daily suffering that many of our brethren unfortunately know. Now that we understand that empathizing with their plights is an integral part of giving tzedakah, and is the irreplaceable

component which protects us from punishment like no other mitzvah, we should try our utmost, whether by volunteering at a soup kitchen or by walking through the park on a fierce winter night, to work on personally experiencing and feeling their pain. Our desire to generously assist them will naturally follow, and in so doing, we will be helping not only the poor but also ourselves.