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Makkos Daf 22

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**Yom Tov Prohibitions**

The Mishna had stated: One who plows a single furrow can be liable for violating eight prohibitions.

Ulla asked Rav Nachman: Can he not be transgressing the prohibition of planting on Yom Tov as well?

Rav Nachman answered him: the Tanna counted eight, but in truth, there can be more.

Ulla retorted: If the Tanna said “eight,” you cannot say that there could have been more.

Rava answers that on Yom Tov, violating different categories of work does not incur separate lashes.

Abaye challenged him from a braisa which stated that if one cooked a gid hanasheh – the sciatic vein in milk on Yom Tov and then ate it, he is liable for five sets of lashes.

The Gemora assumed these five are:

1. Eating the gid hanasheh
2. Cooking on Yom Tov for no use
3. Cooking meat and milk
4. Eating meat and milk
5. Burning a fire on Yom Tov for no use

This list proves that one incurs separate lashes for separate categories of work on Yom Tov, since the cooking and burning a fire each incurs its own set of lashes.

Rava answered that the case is a gid hanasheh of an animal which was not slaughtered, and the prohibition of eating such an animal replaces the lashes for burning a fire on Yom Tov.

The Gemora challenges this from the braisa of Rabbi Chiya, who says that there are two lashes for the eating and three for the cooking.

Rava then says that the case is one who used wood of an idolatrous ashera tree, and the lashes is for the prohibition of lo yidbak beyadcha me’uma min hacherem – none of the assets of idolatry should remain in your hands.

Rav Acha the son of Rava challenged Rav Ashi and said that this act should also incur lashes for the prohibition of lo savi soeiva el beisacha – do not bring an abomination to your home. Rather, the case is one who used consecrated wood, and the prohibition is the verse which specifies that the destruction we must perform on idolatry may not be done to items consecrated for Hashem. (21b – 22a)

**Eight or more?**

The Gemora then asks about various other prohibitions that the Mishna could have added to the case of one who plows:

1. The field was the hard field used for an eglarufa – a calf killed [in atonement of an unsolved murder], which violates the prohibition of lo yai’avaid bo v’lo yizarea – it should not be worked or sowed. (Rav Hashoya)
2. By moving the plow, the person erased a name of Hashem, which violates the prohibition of treating Hashem’s name like idolatry, which must be destroyed. (Rav Chanania)
3. By moving the plow, the person detached skin with tzara’as on it, which violates the prohibition of guarding the tzara’as plague. (Rabbi Avahu)
4. By moving the plow, he removed the choshen breastplate of the Kohen Gadol from the eiphod apron,



violating the prohibition of lo yizach hachoshen – the choshen should not move [from the eiphod], or he removed the poles from the Ark, violating the prohibition of lo yasuru – [the poles] should not leave [the Ark]. (Abaye)

5. He used wood from an idolatrous ashera tree, violating the prohibition of lo yidbak beyadcha – your hands should not keep [idolatrous property]. (Rav Ashi)

6. By moving the plow, he cut down a fruit tree, violating the prohibition of wantonly destroying such trees. (Ravina)

Finally, Rabbi Zeira asks Rabbi Mani why the Mishna did not include a case where the person swore not to plow on Yom Tov, and then his plowing would violate the prohibition of violating an oath.

Rabbi Mani says that such an oath does not take effect, since he is already bound by the oath of the Torah to not work on Yom Tov.

Rabbi Zeira answered that the oath could be that he will not plow on any day, in which case the oath is in effect on Yom Tov, since it takes effect for the rest of the days.

Rabbi Mani answered the Mishna does not include any prohibitions which may be reversed by request from the court, and an oath may be reversed this way.

Rabbi Zeira challenged Rabbi Mani from the Mishna's inclusion of using a consecrated animal, since consecration can be reversed by request from the court, but Rabbi Mani explained the Mishna is a case of a bechor – first born animal, whose consecration is inherent and irreversible.

Rabbi Zeira challenged Rabbi Mani from the Mishna's inclusion of the prohibition of a nazir becoming impure, since a nazir's status can be reversed by asking a court.

Rabbi Mani answered that the Mishna is referring to a nazir Shimshon – one who was made a nazir by an angel [similar to Shimshon], but Rabbi Zeira rejected this, since such a nazir is allowed to become impure.

Rabbi Mani instead answered that the Mishna's author does not accept the principle that if a prohibition takes effect on one area, that allows it to take effect on an area already prohibited. Therefore, although such an oath takes effect for regular days, it still does not take effect on Yom Tov, which is already prohibited. (22a)

### **Holy and/or Mundane?**

Rabbi Hoshaya says that one who breeds a consecrated animal which has a blemish with another animal receives two sets of lashes for the prohibition of crossbreeding. Since such an animal's halachic status is a hybrid between regular and consecrated, it is considered a different species relative to other regular animals. Similarly, Rabbi Yitzchak says that if one leads such an animal, he receives lashes for the prohibition of plowing with two separate species, since it is considered two separate halachic species. (22a)

### **How many Lashes?**

The Mishna says that one who receives lashes is hit thirty-nine times, as the verse says *bmispar; arbaim ... – in a number; forty ...*, which we read as in a number leading to forty, i.e. thirty-nine. Rabbi Yehudah says he receives forty full lashes, with the extra strike between his shoulders.

When estimating how many lashes he can receive without dying, the estimate must be a multiple of three. If one was estimated to be able to receive forty, but in the middle of his lashes, they re-estimated that he cannot handle all forty, he is not liable for any more. If he was estimated to only receive eighteen, but after he received them, they estimated he can receive all forty, he is not liable for any more.

The Gemora explains that if the verse had said *arbaim bmispar – forty, in a number*, this would mean a full forty, but the current verse means a number which leads into forty, i.e., thirty-nine.



Rava says that some people are stupid, in that they rise for a Torah scroll, but not for a Torah scholar - the Torah scroll states forty lashes, but the Sages ruled that it is one less.

Rabbi Yitzchak explains that Rabbi Yehudah learns one more strike between the shoulders from the verse that states that the strikes between my hand are the strikes I received from the one who loves me, i.e., from the court as agents of Hashem, who disciplines us from love, indicating that there is a solitary extra strike. The Sages learn that this verse refers to school children, who are disciplined by their teacher. (22a – 22b)

### Re-estimation

The Mishna stated that if one began to receive lashes based on an initial estimate, and then he was re-estimated to receive more, he is not liable for any more. The implication is that if the re-estimation was done before he received any lashes, he would be liable for the new estimation.

The braisa states that if one was estimated once, and then re-estimated differently, he is not liable for more than the lower estimate, even if he has not received any.

Rav Sheishes answers that the Mishna is a case where the re-estimation was the same day, and we therefore would consider the first estimation to be an error. However, if he received some lashes, he was already disgraced, and is not liable any more. The braisa is a case where the re-estimation was done later, so we can assume that the original estimation was valid, but conditions changed. Since the original estimation was valid, if it was higher, it serves as the disgrace which releases him from any further punishment, and if it was lower, we follow that estimate.

The Mishna says that if one committed an act which violated two prohibitions, if they estimated one estimation for both, he receives those lashes, and is not liable any more. If they did not, he receives lashes for one, recovers, and then receives lashes for the second.

The Gemora cites a braisa, which states that two prohibitions cannot be estimated at once.

Rav Sheishes answers that if the estimate was at least forty-two, leaving the standard thirty-nine for one, and the minimum of three for the second, it is valid for both prohibitions. However, below this amount, it can only apply to one prohibition. (22b)

### Administering Lashes

The Mishna describes how the court administers lashes. The person places his hands on two sides of a pillar, and the caretaker of the court grabs his clothes, ripping or shredding them until his heart is revealed. The caretaker stands on the stone behind the person, holding a whip, made of calf hide doubled over twice, and interleaved with two straps of donkey hide. The whip's handle was a tefach, and it was a tefach wide, and the strap reached the person's stomach. He strikes him one third in front, and two thirds in back, while he is bent over, as the verse says v'hipilo hashofet – and the judge makes him go down. When striking, he uses one hand, and strikes with full strength. Someone reads the verse which states that if you do not guard the mitzvos, Hashem will apply extreme strikes, referring to lashes. If he dies while receiving lashes, the agent striking is not liable. If he administered even one extra strike and the person died, he must go into exile. If the person was disgraced by urinating or defecating, he does not receive any lashes. Rabbi Yehudah says that a man is only released from lashes by defecating, but a woman even by urinating. (22b)

### INSIGHTS TO THE DAF

#### How many left out?

The Gemora suggested a number of additional prohibitions the Mishna could have included for someone who was plowing. The Gemora only discusses the first and last ones – two prohibitions for Yom Tov, and one who swore not to plow.

The Rishonim discuss why the Gemora does not answer the rest of the questions. Tosfos (22a Maskif) suggests that the Gemora felt that all of these suggested prohibitions are not intrinsic to the act of plowing, and therefore the Mishna could omit them. However, when the Gemora raised the issue of another prohibition on Yom Tov, that is just as intrinsic as the prohibition of plowing that is listed. The Gemora did have an answer for the last question, and therefore addressed it.

The Aruch l'Nair points out that the Gemora, after asking about the extra prohibition of Yom Tov, suggests seven prohibitions:

1. Working the field of an eglah arufah
2. Erasing a name of Hashem
3. Detaching tzara'as skin
4. Removing the choshen from the eiphod
5. Removing the poles from the Ark
6. Using asheirah wood
7. Cutting down a fruit tree

For all of these questions, the Gemora could answer that the Mishna left out some potential prohibitions. However, that could be true only if the Mishna's list is a majority of all potential prohibitions. Once the Gemora reached an eighth prohibition, the Mishna would have been omitting more than a minority of all the potential prohibitions, and the Gemora therefore needed to address this question. Although the Gemora generally lists statements in chronological order of the people speaking, the Gemora placed the question of an oath, suggested by Rabbi Zeira, after the question of the later Ravina, since it only had an answer for this question.

#### Hybrid – how?

The Gemora says that a consecrated animal with a blemish is considered two species, with respect to crossbreeding and leading the animal. The Rishonim discuss what two species they are and why.

The Rambam (Kilaim 9:7,10) and Rivon say that the two species are chulin (mundane) and hekdesh (consecrated). On the one hand, it can be eaten by anyone, even someone impure, like chulin, but they may not be sheared or worked, like hekdesh. The Rambam also notes that the verse refers to such an animal as a behaima temai'a – non kosher species, consistent with the Rambam's position that the prohibition on leading two animals is only when one is kosher and one non kosher (temai'a).

The Ritva questions this position, since we do not find any restriction of crossbreeding between chulin and hekdesh. The Ritva and Rabbeinu Tam (22a Sheharai) therefore say that the two species is tzvi and ayal – deer and gazelle, as the verse says that such an animal is just as mundane as these two species. The verse therefore explicitly defines such an animal as a hybrid. The Ritva further explains that it is both a domesticated animal, by dint of its physical species, and a non-domesticated animal, by its comparison to a deer and gazelle. The Ritva says that the Mishna did not simply pick a case of such an animal since it wanted the simpler case of an ox and donkey explicitly stated by the Torah. See Avi Ezri (Kilaim 9:10) for further discussion of the Rambam and Ra'avad's position.

#### How much is Forty?

The Mishna says that although the verse mentions forty lashes, only thirty-nine are administered, and provides a textual reason for the difference. The Rishonim debate what the rationale for this change from forty to thirty-nine is.

The Ritva and Rosh (Pesachim 10:40) say that the Torah sometimes rounds up, using a round number to represent a smaller one. For example, the verse says seventy people came down to Egypt with Yaakov, although the count is only sixty-nine, and the verse says that we must count fifty days to Shavuot, although it is only forty-nine. Similarly, the Torah referred to the thirty-nine lashes as forty, rounding up.



The Rivan says that since the verse says in a number of forty, instead of forty, in a number, it is implying that the actual number is one that leads up to forty, i.e., thirty-nine.

These explanations hold that the number thirty-nine is mandated by the Torah itself.

The Rambam (Sanhedrin 17:10) seems to say that the Sages decreased the lashes by one, to safeguard the agent of the court from violating the prohibition on administering extra lashes.

The Sefer Chinuch (595) assumes the Rambam therefore considers the decrease of one lash to be Rabbinic, and disagrees. Rava's statement that people should show honor to Torah scholars, since they decreased lashes, seems to support the position that the thirty-nine lashes is Rabbinic. See Kesef Mishneh and Lechem Mishneh for further discussion of the Rambam's position.

### Preparation for Lashes

The Mishna says that in preparation for lashes, the caretaker of the court rips or tears the person's shirt, until his heart is revealed. The Mishna and Gemora do not discuss why this is done.

The Rambam (Sanhedrin 16:8) says that this is due to the verse, which says v'hikahu – and he will strike him, indicating that nothing should separate between the straps and the person's body. The Tosfos Yom Tov notes that the Sifri also says that the verse indicates that the person's body must directly receive the lashes. Tosfos (Sotah 8a v'hakohen) says that it is due to the verse which mandates v'nikla – and he will be disgraced.

The Aruch l'Nair says that the Rambam's source teaches that they must reveal the body, while Tosfos's source teaches that the method of revealing the body must be disgraceful.

### DAILY MASHAL

#### 40x39 or 39x40

In our sugya Rabbi Yehudah and the Chachamim disagree as to whether the Torah commands 40 or 39 lashes.

It is related that the Chiddushei HaRim was learning our sugya when he was about to be examined by his future father-in-law. The latter asked him how a person could undergo an identical number of lashes (malkos) according to Rabbi Yehudah and the Chachamim. It could very well be, replied the Chiddushei HaRim. Let us suppose that a person transgressed 39 prohibitions punishable by malkos. He is also an agent of a beis din and it happened that he punished a person with 40 malkos. According to the Chachamim, he transgressed the prohibition of lo yosif - adding to the required number of lashes - and he therefore transgressed 40 prohibitions, for each of which he must be punished with 39 malkos. According to Rabbi Yehudah, the number of malkos is always 40 and therefore the agent did not transgress that prohibition, leaving him with 39 sins, each one obligating him to suffer 40 lashes. The number of malkos is therefore agreed upon by all and amounts to  $39 \times 40 = 1,560$  (Pardes Yosef).

Some have offered another possibility. According to Rabbi Meir (Makos 4a), false witnesses also undergo malkos because of their false testimony, aside from the punishment incurred because of the commandment of "you will do to him as he schemed". According to the Chachamim, they do not undergo malkos because of false testimony. As Rabbi Meir's opponent is usually Rabbi Yehudah, we may assume that the Chachamim are Rabbi Yehudah while the Chachamim in our mishnah are Rabbi Meir. Now, if a person transgressed 38 prohibitions and also gave false testimony that someone is liable to malkos, according to Rabbi Meir he undergoes malkos twice because of the false testimony, resulting in 40 sets of 39 lashes. According to Rabbi Yehudah, he must undergo malkos only once and the number of malkos amounts to  $39 \times 40$ . The result is also identical: 1,560 (Zikaron Basefer).