

10 Kislev 5778
Nov. 28, 2017



Makkos Daf 23

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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

Administering Lashes

[The Mishna had stated: The caretaker of the court grabs his clothes, ripping or shredding them until his heart is revealed, and then he administers the lashes.]

The Gemora cites the reason for this humiliation. It is because it is written: *and your brother will be demeaned in your eyes.*

Rav Sheishes said in the name of Rabbi Elozar ben Azaryah: How is it known that the whip is made of calf hide? It is because it is written: *He strikes him with forty lashes*, and it is written next to it: *You shall not muzzle an ox while it is threshing.*

Rav Sheishes said in the name of Rabbi Elozar ben Azaryah: How is it known that if a yevamah fell to marry a yavam (in yibum - levirate marriage – when a brother-in-law marries his widowed sister-in-law, when the brother died without children) smitten with boils, she should not be ‘muzzled’ (to voice her protest from this marriage)? It is written: *You shall not muzzle an ox while it is threshing*, and it is written next to it: *If brothers dwell together etc.*

Rav Sheishes said in the name of Rabbi Elozar ben Azaryah: Whoever disgraces the festivals is as if he worshipped idols.

Rav Sheishes said in the name of Rabbi Elozar ben Azaryah: whoever speaks derogatory of someone else, or whoever believes derogatory speech about another is fitting to be thrown to the dogs.

The Mishna had stated: The caretaker stands on the stone behind the person, holding a whip, made of calf hide doubled over twice, and interleaved with two straps.

The Gemora cites a braisa that those two straps were made from the hide of a donkey. This is as a certain Galilean once expounded in the presence of Rav Chisda: The ox knows its owner and the donkey his master’s trough; but Israel does not know etc. The Holy One, Blessed be He, said: Let there come one that recognizes his master’s trough (*the donkey’s hide*) and exact punishment from the one (*the sinner*) who does not recognize his master’s trough.

The Mishna had stated: The whip’s handle was a tefach, and it was a tefach wide, and the strap reached the person’s stomach.

Abaye said: That seems to imply that each person (*receiving lashes*) should have a lash corresponding to (*the width of*) his back. Rava said to him: That would mean that *Beis Din* would have to keep many different whips!?! Rather, Rava said, the lash had an adjustable knot, by means of which it could be tightened or loosened as required.

The Mishna had stated: He strikes him one third in front, and two thirds in back. The Gemora cites the Scriptural source for this.

The Mishna had stated: They lashed him while he is bent over, as the verse says *v’hipilo hashofet – and the judge makes him go down*. Rav Chisda said in the name of Rabbi Yochanan that it is also derived from this verse that the strap is doubled over.

The Mishna had stated: When striking, he uses one hand, and strikes with full strength.

The Gemora cites a braisa: Only men lacking in physical



strength and thriving in intelligence are appointed as attendants (*to strike the lashes*). Rabbi Yehudah says: Even men lacking in intelligence and abounding in physical strength may be appointed.

Rava said: Rabbi Yehudah's view seems the more logical, because it is written: *he shall not exceed (the prescribed number of lashes); lest he exceed*. Now, if you say that the attendants are men lacking in intelligence, then it is understandable that such a warning is necessary; but if you say that only men thriving in intelligence may be appointed, is such a warning necessary?

And the Rabbis say that we caution only those who are cautious of themselves.

A *Tanna* taught: When he raises the lash, he raises it with both hands, and when he strikes, he strikes with one hand so that it comes down with his full strength.

The *Mishna* had stated: Someone reads the verse which states that if you do not guard the *mitzvos*, Hashem will apply extreme strikes, referring to lashes.

The *Gemora* cites a *braisa*: The most prominent judge recites the prescribed verses, the second to him counts the lashes, and the third directs the agent to administer the lashes. When they administer many lashes, he lengthens the recital (*by saying it slowly, so that the recital and the lashes will be finished simultaneously*); and when the lashes are few, he shortens the recital.

The *Gemora* asks: But did we not learn in our *Mishna*: *they go back to the beginning of the verses (if all the lashes were not dealt yet)*?

The *Gemora* answers: It is preferable that the (*finishing of the*) recital of the verses should correspond precisely with the (*conclusion of the*) lashes, but if it was not so precise, he goes back again to the beginning of the verse.

The *Gemora* cites a *braisa* which teaches us that they are not allowed to strike him with even one or two extra blows. When they do strike him (*the prescribed amount*), they should do so with all their strength.

The *Mishna* had stated: 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.

The *Gemora* cites a *braisa*: The offender, whether a man or a woman, is exempted from lashes by defecating, but not by urinating; these are the words of Rabbi Meir. Rabbi Yehudah says: A man is exempted from lashes by defecating and a woman by urinating; but the Sages say that a man and woman are alike that they are exempted from lashes by defecating and by urinating.

The *Gemora* asks: But it was taught in a *braisa*: Rabbi Yehudah says: The offender, whether a man or a woman, is exempted from lashes by defecating?

Rav Nachman bar Yitzchak answers: There is no contradiction, as the latter *braisa* merely states that in regard to defecating, it is the same in the case of a man or a woman (*but it does not say anything regarding urinating*).

Shmuel said: If they had tied him to the post and he escaped and ran from *Beis Din*, he is exempted from lashes.

The *Gemora* asks from a *braisa*: If he soiled himself either at the first time that the whip was raised to strike him, or at the second time, they let him go. If the strap broke at the second time it was raised, they let him go, but at the first time, they do not let him go. Now, according to Shmuel, he should be exempted even at the first time, for it should be like he had escaped!?

The *Gemora* answers: It is because there he ran away (*which is demeaning*), whereas here, he has not run away.



The *Gemora* cites a *braisa*: If they estimate him that he will soil himself as soon as he is lashed, they let him go; if, however, they estimate that he will soil himself on leaving *Beis Din*, they give him lashes. And not only this, but even if he soiled himself at the beginning (*before receiving any lashes*) they lash him, because it is written: *And he shall strike him ...and your brother will be demeaned* – implying that being “demeaned” may exempt him *after* receiving lashes, but not if he had been demeaned before receiving lashes. (23a)

Mishna

All those liable for *kares* who have been lashed are exempted from *kares*, as it is written: *then your brother shall be demeaned before your eyes* - once he has been lashed, he is as your brother; these are the words of Rabbi Chananiah ben Gamliel.

Rabbi Chananiah ben Gamliel also said: If he who commits one transgression forfeits his life because of it, then all the more so one who performs a *mitzvah* shall his life be restored to him (*since the reward for a good deed is greater than the Divine standard of punishment*). Rabbi Shimon says: We may learn this principle from the same place (*where the Torah mentions kares*), for it is written: *the people that perform them shall be cut off*, and it says: *which if a man does, he shall live by them*. Therefore, one who sits and commits no transgression is rewarded as is one who performs a *mitzvah*.

Rabbi Shimon son of Rebbe says: Behold, it says: *Only be steadfast in not eating the blood; for blood is the life*. Now, if a man who abstains from blood, from which one is averse, receives a reward, how much more so will a man who abstains from robbery and incest - which a person lusts after and covets - gain merit for himself and his generations and the generations of his generations, to the end of all generations.

Rabbi Chananiah ben Akashya says: The Holy One, Blessed be He, desired to grant merit to Israel; therefore, He gave them Torah and commandments in abundance, as it is written: Hashem was pleased, for the sake of Israel’s righteousness, to

make the Torah expanded and strengthened. (23a – 23b)

Lashes Exempting Kares

Rabbi Yochanan said: Rabbi Chananiah ben Gamliel’s colleagues disagree with him (*and hold that lashes do not absolve one from kares*).

Rav Adda bar Ahavah said: A *Mishna* was taught in the academy of Rav (*that others disagree with him*): There is no difference between *Shabbos* and *Yom Kippur* except that an intentional sin committed on *Shabbos* is punishable by the hands of man, and the punishment for one’s intentional sin on *Yom Kippur* is with *kares* (*premature death*). Now, according to Rabbi Chananiah ben Gamliel, even *Yom Kippur* are punishable by the hands of man (*for if he receives lashes, he will not be punished with kares*)!

Rav Nachman answers: That *Mishna* is in accordance with Rabbi Yitzchak, who maintains that a transgression punishable by *kares* is not subject to lashes at all, for it was taught in a *braisa*: 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.

Rav Ashi answers: Even if you hold like the Rabbis (*that there are lashes*), the *Mishna* means that the main punishment for violating *Shabbos* is by the hands of man, while the main punishment for violating *Yom Kippur* is *kares*. (23b)

Heavenly Beis Din

Rav Adda bar Ahavah said: The *halachah* follows Rabbi Chananiah ben Gamliel.

Rav Yosef asked: Who went up to heaven, and returned and told us this?

Abaye answered: And regarding that which Rabbi Yehoshua ben Levi said that there were three things enacted by the



earthly *Beis Din*, and the Heavenly *Beis Din* have confirmed their actions - we might also ask: who has went up to Heaven and returned with this information? Rather, we obtain these points by expounding certain texts, and here too, we expound the texts.

It was stated: Rabbi Yehoshua ben Levi said that there were three things enacted by the earthly *Beis Din*, and the Heavenly *Beis Din* have confirmed their actions. They are: the reading of the Megillah on Purim; greeting each other using God's Name; and the bringing of *ma'aser*. [Rivan explains that Ezra that deprived the Levites of their tithe due solely to them, and gave it also to the Kohanim, because the Levites had not responded to his call for the return to Eretz Yisroel. He may also be referring to the view that Scripturally, tithes were due to be given only of corn, wine and oil, and Chizkiyah enacted that it should be given from fruits and vegetables as well.]

The *Gemora* elaborates: The reading of the Megillah on Purim, as it is written: *The Jews confirmed it as a duty, and took it upon themselves*. This means that they confirmed in Heaven what they accepted upon themselves below. The greeting of each other using God's Name is derived from the verses discussing Boaz greeting other men. The verse also indicates that the Heavenly *Beis Din* agreed with this. The *Gemora* cites the verses dealing with the bringing of *ma'aser*.

What is meant by the verse "and to pour out blessings without any limits"? Rami bar Rav explains that people's lips will wear out from saying, "Enough!" (23b)

Divine Spirit

Rabbi Elozar said: The Divine Spirit manifested itself in three places; at the *Beis Din* of Shem; at the *Beis Din* of Shmuel of Ramah; and at the *Beis Din* of King Solomon.

The *Gemora* elaborates: In the *Beis Din* of Shem – Yehudah said, "She (Tamar) is more righteous than me." The *Gemora* asks: How did he know (*that these children were indeed his*)? The *Gemora* answers: A Heavenly voice came out and said,

"From Me (*My plans that this is how things should happen*) did these hidden ones come."

At the *Beis Din* of Shmuel of Ramah - A Heavenly voice came out and said, "I am a witness to the matter" (*that Shmuel had taken nothing from them*).

At the *Beis Din* of King Solomon - A Heavenly voice came out and said, "She is his mother" (*proving that Shlomo was correct*).

Rava said: Although in each one of these places, it is not known from the verses that a Heavenly Voice called out, nevertheless, it is through a tradition that we know it. (23b)

INSIGHTS TO THE DAF

Shlomo's judgment as reviewed by Choshen Mishpat

Our *Gemara* discusses Shlomo's judgment. A woman whose baby died took her companion's baby and both women came to Shlomo with an identical claim: "Your son is dead and mine is alive." In his great wisdom he discovered the mother of the living infant when he commanded for the child to be cut in half and divided between them. The true mother then cried that she relinquished her claim: "Just don't kill him!"

Why did the mother of the dead child want another's baby? Shlomo's judgment serves as a basis for several rudiments of halachah, as we shall explain. Before we examine the details, let's focus on the facts. What happened? Why did the mother of the dead child want another's baby?

According to the Midrash (Yalkut, Melachim, 175), they were widows without any other children. The mother of the dead child therefore wanted another infant that would exempt her from yibum or chalitzah. According to the Meiri (Beis HaBechirah on Yevamos 17b), the women were a daughter-in-law and a mother-in-law and the daughter-in-law lost her child. She did not want to wait for the other child – her brother-in-law – to grow up and grant her yibum or chalitzah

and therefore claimed him as her own. The is also why she consented to his being cut in half as all her problems would be solved with his death (see similar interpretations in Chida's Tzavarei Shalal, haftaras Miketz, and in the commentaries on the midrashim).

According to Rabbi Yehudah HeChasid, the women were the widows of a rich man. In that era it was the custom to appoint the widow as the guardian of the orphans' holdings till they reached maturity and she would also have earnings from those holdings. The mother of the dead child wanted to steal the other child to get control of a considerable income (Peirush Rabbi Yehudah HeChasid on the Torah).

Shlomo's judgment as a source for general rules: Shlomo's judgment teaches us a number of halachic rudiments: a dayan must repeat each litigant's statements, as Shlomo said: "This one says my son is alive..." so that the claims can be utterly clear (Yerushalmi, Sanhedrin 3:8) and the halachah was ruled accordingly in Shulchan 'Aruch, C.M. 17:7.

Issuing a verdict without testimony: The Rosh proved another halachah from Shlomo's judgment. Every din Torah is ruled according to a testimony pronounced before the dayanim. Still, when the truth is obvious that a certain person is in the right, a dayan may pass judgment without testimony, like Shlomo who issued his judgment in his great wisdom. The Rosh repeats this rule three times (Responsa Rosh, Kelal 68:23, Kelal 78:3 and Kelal 107:6; see ibid as to his proofs from the Gemara), which was fixed as halachah (Tur, C.M. 65, and see Beir HaGera on Shulchan 'Aruch, C.M. 15:5, and Nesivos HaMishpat, ibid, S.K. 2).

The Torah on the custody of children: The poskim and commentators thus treated Shlomo's judgment as a din Torah for all purposes and this has a meaningful halachic implication. Sometimes a beis din must decide as to which divorced parent may bring up his or her children. The Gemara (Kesubos 102b) and halachic authorities (Shulchan 'Aruch, E.H. 82:7) explain rules for bringing up children, determined for one purpose – the child's welfare – with no concern for a parent's wishes

(see Remo and Pischei Teshuvah, ibid, in the name of Responsa Radbaz).

Signing a declaration to obey rulings: Batei din are accustomed to make litigants sign a declaration that they will obey the rulings. Apparently, since the only consideration is the child's welfare, the parents are not regarded as litigants but as mere bystanders. In other words, we do not consider a parent as someone who claims "his" child but as a good person who desires the welfare of the person dearest to him. As a result, his declaration to obey the ruling has no validity as he is like an outsider who signs a declaration concerning a din Torah that has nothing to do with him.

If this assumption is correct, Shlomo's judgment was not a din Torah at all as there were no litigants since the parents were not contenders. Still, since the poskim and commentators regard Shlomo's judgment as a din Torah, in which the women were litigants and in which each woman claimed that the child was "hers", we must say that each parent has the right to bring up his child. Our sages' regulations serve to arrange these rights but we should not conclude therefrom that a parent has no right to his child (HaGaon Rav Ts. Gertner in Yeshurun, Vol. VII, p. 505 and onwards).

ONE WHO GIVES MAASER WILL BE WEALTHY

Rabbi Yochanan teaches that fulfilling the *mitzvah* of *ma'aser* - tithes - guarantees wealth. He derives this from the passage (Devarim 14:22) *asser ta-asser* - surely you shall tithe - which he understands to mean *asser bishvil she-titasher* - separate tithes so that you should become wealthy.

A person once approached Reb Pinchos Koritzer and complained to him that he has given *ma'aser* his entire life and he never merited to become wealthy. Why not?

Reb Pinchos responded with a story that occurred in his neighborhood. There lived a wagon driver who possessed many strong horses that would pull his wagon. He provided



these horses with all their needs and the horses performed their job admirably.

One day, after he fed and gave his animals to drink, he tied the horses to the wagon and ordered the horses to begin the journey. The horses rebelled against him and refused to budge. The wagon driver began whipping the animals but to no avail. He became furious with the horses until he was beating them senselessly.

A passerby observed the scene and called out to the wagon driver that he is being ruthless and cruel. "Don't you see what you are doing? Don't you realize why the wagon is not moving? You have chained the wheels of the wagon to a tree and that is why your faithful horses are not listening to you."

Reb Pinchos Koritzer explained that the *mitzvah* of *ma'aser* - tithes – which guarantees wealth is akin to the strong horses. If one chains the wagon to a tree, the most powerful horses in the world would not move an inch. So too, if one prevents the wheels of the '*ma'aser*' from turning by committing other sins and acting immorally, the *segulah* of the *ma'aser* cannot take effect and he will never become wealthy.

This explanation is not consistent with the opinion of the Chinuch (424) who explicitly states that the blessing of riches is guaranteed and no sins committed will prevent the blessing from taking effect. The Meiri does state that one can lose out on this guarantee by committing sins.

There are other answers to this question. The Meor Einayim cites the *Gemora* in Shabbos (25b) that states "Who is a rich person? One who is pleased with his riches." The Mishna in Avos states that a wealthy person is someone who is happy with his lot. One who fulfills the *mitzvah* of *ma'aser* will merit that he will be satisfied with what he has and be happy with it. Chazal say that a person dies without satisfying even half of his desires. Through the *mitzvah* of *ma'aser*, one will learn to be satisfied and content with whatever he has. This is the test that Hashem allows the Jewish people to test Him with regard to the *mitzvah* of *ma'aser*.

This is the explanation in the statement of the Maharil, cited by the Rama (Y"D 265:11) that the *sandek* by a *bris* is akin to the *Kohen* who burned the incense. There is a special *segulah* that he will become wealthy and that is why it has become the custom to have a different *sandek* for every *bris*. Wealthy does not mean that he will become rich; rather he will become content and satisfied with whatever he has.

DAILY MASHAL

And He is merciful and atones sin

In the far past people would undergo malkos (whipping) every day before ma'ariv to atone for the sins of that day. Some say (in the Tur, O.C. 237) that this custom left its imprint on the siddur by saying vehu rachum... "And He is merciful..." before ma'ariv. The verse contains 13 words, which the whipper says three times, as explained in our sugya, corresponding to the 39 lashes (Tur, ibid). The malkos were discontinued with the passage of time but the verse remained.

The Tur (ibid) explains, however, that "And He is merciful..." was instituted before ma'ariv as shacharis and minchah prayers were instituted corresponding to the daily morning and afternoon sacrifices and the sacrifices atone for sins. Ma'ariv does not correspond to any sacrifice and the sages therefore instituted the verse asking for mercy and forgiveness.

HaGaon Rav Shmuel Huminer zt"l wrote in his 'Olas Tamid (Ch. 33), in the name of the Zohar (Shemos 130a), that the souls in Gehinom get punished by night twice as much as by day. We therefore say "And He is merciful" for their souls. He adds that one should say the verse with heartfelt concentration to save those souls from the punishment of Gehinom. On Shabbos, when there is no fire in Gehinom, there is no need to say vehu rachum before ma'ariv.