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Daf Notes is currently being dedicated to the neshamot of

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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

Rav Chisda says: All (*Shimon Hatimni, who maintains that the violator only pays a fine if he violates a woman where there is a possibility where she can become his wife, and Rabbi Shimon ben Menasya, who holds that the violator only pays a fine if he violates a woman where she would be qualified for him to keep her as a wife*) agree that one who violates a girl who is a *niddah* that he still would pay the fine.

The *Gemora* explains: For according to the one who holds that there must be the possibility of her ‘becoming’ his wife, there is with regard to her the possibility of her becoming his wife, and according to the one who holds that there must be the possibility of her remaining his wife, there is with regard to her the possibility of her remaining his wife.¹ (30a2)

The *Gemora* states that our *Mishnah* is also excluding the opinion of Rabbi Nechunya ben Hakanah, for we learned in the following *Baraisa*: Rabbi Nechunya ben Hakanah maintains that just as one who violates Shabbos and at the same time commits an act in which there would be a monetary obligation, he is exempt from paying because he receives the death penalty (*by a human court*), so too one who violates Yom Kippur and at the same time commits an act in which there would be a monetary obligation, he would be exempt from paying because he receives the death penalty (*kares*). (*This is based on the*

principle that a person incurs the greater punishment from the two.)

The *Gemora* asks: What is Rabbi Nechunya ben Hakanah’s source for this?

Abaye answers: It is said *ason* (*fatality*) in the case of death by the hand of man, and *ason* is said in the case of death by the hand of heaven (*the reference here is to the reason that Yaakov refuses to allow Binyomin to go down to Egypt; he was concerned that harm may befall Binyomin, which may result in death*) So I say: As in the case of the *ason* done by the hand of man one is free from payment, so also in the case of *ason* done by the hand of heaven, one is free from payment.

Rav Adda bar Ahavah asks: How is it known that Yaakov was referring to an accident that will befall Binyomin by the hand of Heaven, such as the exposure to cold and heat; perhaps he was referring to an accident by the hand of man, such as death by a lion or bandits?

The *Gemora* answers: Was Yaakov warning the brothers only about one type of death? He was warning them about all kinds; accidents by the hand of man as well as accidents by the hand of Heaven.

The *Gemora* asks: Are deaths that occur because of exposure to heat and cold regarded as death by the hand

¹ *Kiddushin* does take effect with a *niddah* and a *niddah* may remain his wife.

of Heaven? There is a *Baraisa* that explicitly states that all misfortune that befalls a person is from the hand of Heaven except a sickness which was caused by exposure to the cold or the heat (*it is because of man's carelessness*)!

Furthermore, the *Gemora* asks: Are fatalities caused by lions and bandits regarded as being caused by the hand of man? But Rav Yosef and other say Rabbi Chiya said: Since the day of the destruction of the Beis Hamikdosh, although the Sanhedrin ceased (*and they no longer could administer capital punishments*), the judgment of the four forms of capital punishment have not ceased.

They have not ceased, [you say]? Surely they have ceased! The *Baraisa* explains: Rather, the judgment of the four forms of capital punishment has not ceased: One, who would have been sentenced to stoning, would either fall off a roof or a wild beast will throw him down (*similar to stoning, which would involve being pushed off a cliff and then stones were thrown at him*). One, who would have been sentenced to burning, would either fall into a fire or a snake would bite him (*and the snake venom would burn his insides*). One, who would have been sentenced to beheading, would either be delivered to the government or bandits would attack him (*in which case, he will be killed by a sword*). One, who would have been sentenced to strangulation, would either drown in the river or die from suffocation. (*It emerges from this Baraisa that death by a lion or bandits is a result of Heavenly retribution, and not by the hand of man.*)

The *Gemora* answers: Reverse it: Lions and bandits are by the hand of Heaven, and cold and heat are by the hand of man. (30a2 – 30b1)

Rava provides a different source for Rabbi Nechunya ben Hakanah: It is written [Vayikra 20; 4-5]: And if the people of the land avert their eyes from that man, when he gives from his offspring unto Molech, and do not put him to

death (*via stoning*); then I will set my face against that man, and against his family, and I will cut him off (*kares*). With these words, the Torah is saying: My *kares* is like your death penalty; just as in the case of your death penalty, one is exempt from payment, so too, in the case of my *kares*, one is free from payment.

The *Gemora* asks: What is the practical difference between Rava and Abaye (the two sources)?

The *Gemora* answers: A *Yisroel* eating *terumah* (*where the penalty is death by the hand of Heaven, and not kares*) is the difference between them. According to Abaye, Rabbi Nechunya ben Hakanah would rule that he is exempt from paying for the *terumah* (*since the ason spoken by Yaakov was referring to any type of death*). According to Rava, Rabbi Nechunya ben Hakanah would rule that he is obligated to pay for the *terumah* (*since only kares is compared to a court-imposed death penalty, and not the lesser form of death administered by the hand of Heaven*). (30b1)

The *Gemora* asks: Does Abaye actually hold that Rabbi Nechunya ben Hakanah would rule that he is exempt from paying for the *terumah*? But Rav Chisda stated the following: Rabbi Nechunya ben Hakanah would admit that one would be liable to pay if he stole his fellow's *cheilev* (*forbidden fats*) and subsequently ate it. He is liable to pay since he has acquired the object as stolen property first (*at the moment he lifted it*), and he is not liable for death until he actually eats it (*kim leih b'dirabbah mineih only exempts the lesser punishment when he becomes liable for the two punishments simultaneously*). So too, in the case of the *Yisroel* eating *terumah*, he should be liable to pay for the *terumah* since he stole it before he ate it?

The *Gemora* answers: We are discussing a case where his fellow stuck the *terumah* into his mouth (*he did not steal it, but he would have been liable to pay for the worth of*

the pleasure that he derived from swallowing the food if not for the fact that he is liable for death at that precise moment).

The *Gemora* asks: Even so, he has acquired it when he chewed it, and he is not liable for death until he swallows it [why should he be exempt from paying for the *terumah*]?

The *Gemora* answers: We are discussing a case where his fellow stuck the *terumah* directly into his throat.

The *Gemora* asks: What are the circumstances? If he can bring it back up, let him bring it back up,² and if he cannot bring it back up, why should he be guilty?³ —The *Gemora* explains: It is referring to a case where the eater could have returned the food out of his mouth with some degree of difficulty (*since at that stage, the food would be repulsive, he is not obligated to pay for stealing the food; he is only liable for the pleasure derived by his throat and digestive system; this occurred simultaneous to his liability to death for eating the terumah and he is therefore exempt from paying*).

Rav Pappa answers: We are discussing a case where his fellow stuck liquids of *terumah* into his mouth.

Rav Ashi says: We are discussing a case where he ate his own *terumah* and simultaneously ripped the silk garments of his fellow. (30b2 – 31a1)

HALACHOS FROM THE DAF

Bundle Up

The *Gemora* states that catching a cold or heat related illness is considered a negligent illness. The *Gemora*

teaches us that “everything is in the hands of heaven except for heat and cold.”

Tosfos explain that all mishaps and occurrences that happen (*in contrast to misfortunes that we actively bring to ourselves, for example jumping into a raging ocean*) in our life, are not a random act attributed to queer and meaningless fate. Rather, everything that occurs in our lives, whether big or small, is directly caused by G-d. There is one exception to this Law of Occurrences - illnesses that are caused by heat or cold. This is exclusively in “man’s department.”

There is an interesting difference between the two. The Shulchan Aruch (Orach Chaim Siman 276 Seif 5) rules that in cold places, it is permitted to tell a non-Jew on Shabbos to make a fire (*or in today’s vernacular - turn on the heater*) for the little children (*because for them, it’s cold, even in weather where the adults are comfortable*). Once there is a fire, everyone is allowed to benefit from it. However, the Taz and others add that one may not sit close to the fire out of concern that one might momentarily forget and make the fire larger. In a place where it’s extremely cold, one may tell a non-Jew to light a fire (*even for adults*). The reason for this is, as the Shulchan Aruch puts it, “Everyone is considered ill in regard to the cold.” The “ill” here refers to the category of “an ill person that is not in danger,” and therefore, we are not allowed to make a fire, but a non-Jew can, because a non-Jew may be specifically asked to perform forbidden labor when there is an ill person, without the hints that usually must accompany an “*Amirah Li’akum*” (*telling a non-Jew to do a melachah on Shabbos*).

Similarly, in a case where the air conditioner is on, and it is very cold, one may ask a non-Jew to turn it off. However, if it is very hot, there is no such concept of

² And by failing to do so he becomes liable from that very moment for stealing it.

³ Of the transgression of eating *terumah*, seeing it was a case where he was forced.



“Everyone is considered ill in regard to heat.” Although some (Minchas Yitzchak and others) permit to ask a non-Jew to turn on an air conditioner for different reasons, Reb Moishe Feinstein forbade it (Igros Moshe Yoreh De'ah Chelek 3 Shailla 47 Ois 2).

DAILY MASHAL

The Judgment of the Four Death Punishments has not been Abrogated

Our *Gemora* says that though there is no longer a *Sanhedrin*, the four death punishments still exist: A person who commits a transgression punishable by death gets killed by Hashem Himself. According to our *sugya*, some believe that preference should be given for saying *kaddish* to the son of someone killed over the son of someone who died a natural death (see *Misgeres HaZahav* on *Kitzur Shulchan Aruch*, 26, and *Match Efrayim*, *Dinei Kaddish* in the footnotes to *Halachah* 5). A person who died unnaturally apparently needs atonement and therefore his son should be given preference in saying *kaddish* for him. Still, all the *halachic* authorities reject this opinion, just as the Chasam Sofer opposed the wish of the *chevra kadisha* to bury those dying of unnatural causes separately, claiming they should be regarded as having been killed by the *Sanhedrin* (Responsa, Y.D. 333). He explained that though anyone committing a transgression punishable by the death penalty is eventually killed by Hashem Himself, we cannot say that anyone dying from an unnatural cause was a sinner (in accordance with the opinion of the *Perishah*, Y.D. 345, and *Sedei Chemed*, *Ma'areches Aveilus*, 169).

Reinterring a sinner: A Jew married a gentile and transgressed many other prohibitions. He was killed in a plane crash in South Africa and buried in a gentile cemetery. His relatives referred to HaGaon Rav Yitzchak Weiss zt”l as to if they were allowed to move his body to a Jewish cemetery and in his Responsa *Minchas Yitzchak* (VI, 137) he asserted that they may reinter him since, as

the Chasam Sofer declared, he is not regarded as having been killed by the *Sanhedrin*. Still, no one is obligated to take such action since reinterring the dead to a more honorable place is done to honor the deceased and “as he did not care about his own honor while alive, others are not responsible for his honor in his death.”

The boy who killed but was hanged for theft: HaGaon Rav Yair Bachrach, author of *Chavos Yair*, was required to judge a similar instance from another viewpoint. About 300 years ago a quarrel between boys became violent and one of them killed another with a knife. Shortly after, he became the leader of a gang of thieves and when caught by the Russian police, was condemned to death for theft. Rabbi Bachrach was asked if efforts should be made to save him, but meanwhile he was hanged. Nonetheless, he addressed the topic, stressing that his statements should not be construed as *halachah*. In his long responsum (§146) he relates to our *sugya*, that Hashem visits the death penalty on intentional sinners. Therefore, he asserts, if a **forewarned** murderer is in danger of his life, we should make no effort to save him. This boy, however, killed another in a fit of anger, without being warned, and is not in the same category. Had he been condemned for the murder, a doubt could arise if we should try to free him as it would be more apparent that he is being punished for such but in our case he was condemned for theft and should be rescued as we cannot determine if the punishment is regarded as an actual death penalty as judged by the *Sanhedrin*.