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Kesuvos Daf 38

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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

[Rami bar Chama had taught that the Scriptural verse (and condemned one, etc.) is necessary, since I might have thought that this applied only where murder had been committed in the course of an upward movement, because no atonement (of exile) is allowed when such an act was committed unintentionally (as derived from the Scriptural verses), but that where murder was committed in the course of a downward movement, which is an act committed unintentionally that may be atoned (through exile), a monetary fine may be received from him and thereby he would be pardoned from execution. Therefore, we were taught that in no circumstances may the death penalty be commuted for a monetary fine.]

Rava asked (*on Rami bar Chama’s teaching*) that this is already known from the teaching of the school of Chizkiyah. The school of Chizkiyah taught that there is an analogy between a person who kills another person (*where he gets killed, but is not required to pay*) and a person who hits an animal (*that he is obligated to pay*). There is no difference - if when the person hit the animal, he did so inadvertently or deliberately, with intention or without intention, whether his blow was downwards or upwards. In all cases, he is obligated to pay (*for a person is always liable for his actions*). Similarly (*regarding a person killing a person, where the Torah says that the penalty is death and not payment*), there is no difference if the person hits his fellow inadvertently or deliberately, with intention or without intention, whether his blow was downwards or upwards. In all cases, he is not required to pay. [*In both cases, the law is absolute, which implies that a person would never incur a monetary obligation when killing someone (only death). This teaches us that there is no difference whether the blow was upwards or*

downwards, making the teaching of Rami bar Chama redundant.]

Rami bar Chama therefore revised his statement, and said there is a different reason why we need these two verses (*mentioned on 37b*). One might have thought that if a person kills another person with a blow that blinds his eye and also kills him, only in such a case do we say that he is exempt from paying monetary damages for the blinding as well; however, in a case where he blinded him and immediately killed him with a different blow, one might think that he is obligated to pay for the blinding as well. [*The extra verse teaches us that this is not the case.*]

Rava asked: This is already known from a different teaching of the school of Chizkiyah, for the school of Chizkiyah taught: “an eye for an eye,” but not an eye and a life for an eye (*meaning that whenever one kills he does not pay for causing injury whether it was from the killing blow or not*).

Rav Ashi therefore gave a different reason. One might have thought that because the Torah taught novel rules when it instituted monetary penalties (*as opposed to regular payments or obligations that are always in direct relation to what was damaged*) that even if one would be killed, he still must pay a fine that was incurred at the same time. The extra verse (*either “kol cheirem” or lo sikchu kofer*) therefore teaches us that the same rule (“kim ley”) that applies to payments applies to fines.

The Gemora asks: What do we learn from the extra verse according to Rabbah, who indeed holds that being that

monetary penalties are a novel teaching, we do not apply the rule that if he will be killed he does not pay?

The Gemora answers: He must hold like the Tanna Kamma of Rabbi Chananya ben Akavya (*who says that the extra verse teaches that someone who pledges the value of a person who is being taken to be killed by Beis Din does not have to give any money*). (38a1 – 38a2)

Mishnah

A girl was betrothed and divorced (*and then seduced*). Rabbi Yosi Hagelili says: She does not receive a fine. Rabbi Akiva says: She does, and she receives it (*instead of her father*). (38a2 – 38a3)

The Reasoning for their Argument

The Gemora asks: What is the reasoning of Rabbi Yosi Hagelili?

The Gemora answers: The Torah states: *that she was not betrothed*. This clearly implies that if she was betrothed, she does not receive the fine.

The Gemora asks: What does Rabbi Akiva do with this verse?

The Gemora answers: He understands "*that she was not betrothed*" refers to the fact that if she was betrothed, her father does not receive the fine. However, if she was betrothed, she received the fine for herself.

The Gemora asks: This would imply that we should understand that when the Torah states the word "*na'arah*" and it specifically excludes a "*bogeres*" – "girl over twelve and a half," it means that if the girl was a *bogeres* she should receive the fine for herself (*and no one suggests that this is the case*)! Similarly, when the Torah states that the girl was a "*besulah*" – "virgin" and not a "*be'ulah*," Rabbi Akiva's line of reasoning would imply that in such a case she herself should receive the fine! We know that the verse in these matters is saying that in the case of the Torah the fine applies, and when it does not one is totally exempt! Here,

too, the fact that she is "betrothed" should decide whether the person pays or is totally exempt!

The Gemora answers: Rabbi Akiva can answer that "*that she was not betrothed*" is needed, as stated in (*his opinion in*) the following *Baraisa*. The *Baraisa* states: "*that she was not betrothed*" excludes a girl who was betrothed and divorced - that she does not receive a fine. Rabbi Akiva says: She does receive a fine and her father keeps it. This is something that can be derived logically, as we can compare the fact that her father has the rights to her *kiddushin* money (when she is a *na'arah*) and any fine, if she is seduced. Just as her father receives her *kiddushin* money if she was betrothed and then divorced (*and then became betrothed a second time*), so too he receives money from her fine in such a situation.

(*Rabbi Akiva continues.*) Why, then, does the verse state "*that she was not betrothed*"? It is an extra verse that is supposed to be compared to and used to derive from it a *gezeirah shavah*. It says here (*regarding violation*) "*that she was not betrothed*" and it says (*regarding seduction*) "*that she was not betrothed*." Just as regarding violation the Torah mandates a fine of fifty coins, so too regarding seduction (*where the amount is not specified*) the amount is fifty coins. Additionally, just as the coins regarding seduction are clearly shekalim, so too the coins regarding violation are shekalim.

The Gemora asks: Why does Rabbi Akiva understand that "*that she was not betrothed*" is to be used for a *gezeirah shavah*, whereas "*besulah*" must be totally excluding a "*be'ulah*?" Why don't we say that "*besulah*" should be used for a *gezeirah shavah* and "*that she was not betrothed*" should be used to exclude a fine for a girl who was betrothed and divorced (*as per the opinion of Rabbi Yosi Hagelili*)?

The Gemora answers that it makes sense that "*that she was not betrothed*" should be used for a *gezeirah shavah*, as she is still deemed to fit the description of a "*na'arah besulah*." On the contrary, the Gemora asks, use "*besulah*" for a *gezeirah shavah* as she is described as "*that she was not betrothed*."



The Gemora answers: The former choice makes sense, as the body of a *besulah* has clearly changed, whereas the body of the one who was betrothed and divorced didn't change (*and the damage done to her is therefore more severe and deserving of a fine*).

The Gemora asks: How does Rabbi Yosi Hagelili know this logic (*that the amount of coins regarding seduction is fifty and the denomination of coins regarding violation is shekalim*)?

The Gemora answers: He derives this from that which was taught in a *Baraisa*: The verse states: *he will give coins like the money given in exchange for virginity*. This teaches us that the amount regarding seduction should be like that given in exchange for virginity (*said regarding violation which is fifty*), and the exchange for virginity should be like this (*the fine should be paid in shekalim*). (38a3 – 38b1)

Two Opinions According to Rabbi Akiva

The Gemora asks: Rabbi Akiva contradicts himself (*as in the Baraisa he stated the fine goes to the father, whereas in our Mishnah he said the fine goes to the girl herself*)!

The Gemora answers: The *Baraisa* and Mishnah must be authored by two separate Tannaim who argue regarding the opinion of Rabbi Akiva.

The Gemora asks: It is reasonable that according to the opinion of Rabbi Akiva discussed in our Mishnah - when the verse is used for a *gezeirah shavah*, it is not totally uprooted from its simple explanation. However, according to his opinion as stated in the *Baraisa*, is it possible that the fact that a verse is open to be used for a *gezeirah shavah* a reason that it should go against the simple meaning of the verse (*as being betrothed is not a factor*)?

Rav Nachman bar Yitzchak answers: The verse should be read as if it is saying that she is not currently betrothed.

The Gemora asks: If she was currently betrothed she would be stoned! [*Therefore, how could this be the meaning of a verse which merely discusses a fine?*]

The Gemora answers: This comes to teach us that one might think that because the fine paid is a novel teaching of the Torah, even though he is killed (*if he seduced her while she was betrothed*) he still must pay the fine. The verse "*that she was not betrothed*" therefore comes to teach that if she was betrothed he would not pay the fine.

The Gemora asks: According to Rabbah who says that as a fine is a novel teaching of the Torah even though one is killed he still pays a fine, what does the verse teach us?

The Gemora answers: It must be that he is of the opinion of Rabbi Akiva as stated in the Mishnah.

The Gemora cites a *Baraisa*: The *Baraisa* asks: Who receives the fine? [Some say] her father. Some say she receives the fine.

The Gemora asks: Why does (*this opinion state that*) she receive the fine (*doesn't the Torah state that the father receives the fine*)?

Rav Chisda answers: The *Baraisa* is discussing the case where she was betrothed and divorced. The argument in this *Baraisa* is the same argument between the opinion of Rabbi Akiva as stated in the Mishnah, and that of Rabbi Akiva stated in the *Baraisa* (*above*). (38b1 – 38b2)

INSIGHTS TO THE DAF

CIRCUMCISION BEFORE EXECUTION

Tosfos states that if a person would destroy his fellow's eye while he was killing him, it would not be regarded as if he blinded him and murdered him (*in which case, you might think that we should punish him for both actions, by executing him and exacting payment for the eye*); but rather,

it is considered as if he killed him in a more painful manner. Chashukei Chemed derives from this Tosfos that there is no prohibition to wound a fellow at a time that he is being executed anyway.

Using this principle, it is possible to answer the following question posed by Reb Yosef Engel in Gilyonei HaShas to Avoda Zara (10b). The *Gemora* states: The Caesar decreed that Ketiah (*a gentile*) should be put to death. As they were escorting him to the death chamber, a certain matron called out and said, “Woe is to the ship that leaves without paying its taxes first.” Rashi explains: Ketiah was being executed for supporting the Jews; if he would not circumcise himself before his death, he will not merit a portion in the World to Come together with them. Ketiah thereby, fell on top of his foreskin and cut it off. He said, “I now have paid my tax. I will leave this world and enter into the World to Come.”

Reb Yosef Engel asks: It appears that Ketiah did not satisfy all the requirements of conversion, for he didn’t immerse in a *mikvah* and he didn’t accept the yoke of fulfilling all the *mitzvos*; if so, shouldn’t there have been a prohibition to cut his foreskin? Isn’t he violating the prohibition of wounding oneself?

In the sefer Shabbos Shaboson, the following novel ruling is brought in the name of Rav Yosef Tzikonovsky: If one is being brought to be executed, he is allowed to circumcise himself even though his brothers had died on account of circumcision (*normally, that would preclude a third brother from circumcision*). Since he is going to die anyway, he would be permitted to circumcise himself, although the procedure itself can lead to his death. He provides a fascinating source from the Abudraham: It is our custom, when saying the words: “*V’omer lach b’damayich chayi*,” that we place some of the wine on the lips of the child. This is based upon the Medrash which states that after the sin of the Golden Calf, as some of the Jewish people were being killed, Moshe would circumcise them, Aharon would uncover the foreskin and Yehoshua would give them to drink (*from the ashes of the Golden Calf causing them to die*). All forty years in the

Desert, there was no circumcision because of the burdens of traveling and because the Northern Wind did not blow (*which was necessary to heal them*). Moshe and Aharon did not want them to die without a circumcision and without accepting the yoke of *mitzvos*. Yehoshua gave them to drink, leading to their death. We give the circumcised child to drink and say: This circumcision and drinking should lead to life, not death.

Accordingly, Ketiah, could circumcise himself prior to his death, and he needn’t be concerned with the prohibition of wounding himself unnecessarily.

DAILY MASHAL

Ayin Tachas Ayin

The *Gemora* explains how we know this verse is not literal. The Rambam (Chovel umazik 1:6) states that even though the straight reading of the verse is at odds with the *halachah*, the *halachah* comes from Moshe Rabbeinu himself, and has been always accepted. The commentators discuss why the Torah used this phrase, if the real meaning is not literal. The Ibn Ezra states that the Torah is telling us that if the damager would not pay money, it would be fitting for him to lose his eye. The Seforno similarly states that in a pure legal sense, the appropriate punishment would be physical, but the Torah was kind to allow monetary punishment instead. See the Ibn Ezra (Shmos 21:24) for a discussion of logical proofs to the monetary punishment.

The Gr”a states that the verse itself hints to the monetary punishment. The word *Ayin* is three letters – ayin, yud, nun. If we take the letters after each of those letters, we have the letters pei, kaf, samech. Rearranging those letters spells kesef – money. The verse tells us that for the eye, the damager pays tachas ayin – the letters below (*after*) ayin.