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Mishnah

[The Mishnah teaches us that all of the payments that are incurred by one who violates or seduces a young girl are given to the father.] A *na'arah* who was seduced, her embarrassment, depreciation and her fine goes to her father; and the pain, for the one who was violated.

[The Mishnah now begins to deal with various situations in which the father died. The issue at hand is: Does the money belong to the girl herself, or does it belong to her brothers, who inherit their father?] If she stood in judgment before her father died, the payments belong to the father. If the father died, then they belong to the brothers. If she did not manage to stand in judgment before the father died, then they belong to her. If she stood in judgment before she became a *bogeres*, then they belong to the father. If the father died, then they are the brothers. If she did not manage to stand in judgment before she became of age, then they are her own. Rabbi Shimon says: If she did not manage to collect the payments before the father died, then they belong to her.

Her earnings and what she finds, even though she did not collect them, and the father died, they then belong to the brothers. (41b5 – 42a1)

The Novelty of the Mishnah

The Gemora asks: What is the Mishnah teaching us? Didn't we already learn this in a previous Mishnah: One who seduces pays three types of payments and one who violates pays four. One who seduces pays for embarrassment, the

blemish, and the Torah mandated fine for seducing. One who violates also pays for the pain he inflicted.

The Gemora answers: Our Mishnah added that the payment goes to her father.

The Gemora asks: This is also obvious, as these payments are given for seduction. If they would be given to her, then why would the seducer pay at all, as she did so willingly?

The Gemora answers: The novel teaching of the Mishnah is (*indeed not regarding the types of payments, but rather*) the argument of Rabbi Shimon and the Rabbis (in a case where the father died before the case finished in Beis Din). (42a1)

Denying Violation/Seduction in an Oath

The Gemora cites a Mishnah: A father claimed to another, "You violated my daughter," or, "You seduced my daughter," and the other person said, "I did not violate her," or, "I did not seduce her," and the father said, "I adjure you about this," and he replies, "Amen," and afterwards he admitted (that he did indeed violate or seduce her, and that he swore falsely), he is obligated (*to pay the fine, plus an additional fifth for swearing falsely, and bring an asham offering*). Rabbi Shimon says: He is exempt, as a person does not pay a fine by his own admission (*only when witnesses prove that he is obligated*). They (*the sages*) retorted to Rabbi Shimon: Although it is true that a person does not pay a fine based on his own admission, he does pay for the embarrassment and the depreciation (*which are not fines*). [*He is therefore obligated to add an extra fifth and bring a korban, as would*

a regular person who swears that he does not owe money that he indeed owes.]

Abaye inquired from Rabbah: A father claimed to another, "You violated/seduced my daughter, and I brought you to court and you were held liable by the court to pay me money," and the other person said, "I did not violate/seduce her, and you did not bring me to court, and I was not held liable by the court to pay you any money," and he swore and afterwards admitted (that he did indeed violate or seduce her, and that he swore falsely), what would be the law in this case according to Rabbi Shimon? As he had indeed stood trial and was obligated to pay money to the father, is this considered denying "money" (and not a fine) in an oath for which one must bring a korban? Or do we say that even though the verdict that he owed money was already handed down, it is a matter of a fine (*for which one does not bring a korban according to Rabbi Shimon if he denies owing the money under oath*)?

Rabbah replied: This is already considered (*denying owing*) money, and Rabbi Shimon would agree that he is obligated to bring a korban.

Abaye asked Rabbah on his conclusion (*from a Baraisa*): Rabbi Shimon said: One might have thought that if someone says to his friend, "You violated/seduced my daughter," and the other person says, "I did not violate/seduce your daughter," or, if one said, "Your ox killed my slave," and the other person said, "My ox did not kill him," or, if one's slave says to his master, "You knocked out my tooth," or, "You blinded my eye" (*for which he would go free*), and the master said, "I did not knock out your tooth," or, "I did not blind your eye," and he swore to this, and then admitted (that he swore falsely), one might have thought that he would be obligated (*to also pay a fifth and bring a korban*). The verse therefore states: *And he lied to his friend regarding an object he was watching, or a loan, a robbery, or he withheld his wages from him, or he found a lost object and denied it, and he swore falsely*. Just as the examples listed in the verse are all unique in that they are all "money," so too this (that one is liable to

bring an oath offering) only applies regarding (denying and swearing falsely about) money. This excludes fines, for which this law is inapplicable. Now, this must be talking about a case that had already went to trial (*and yet Rabbi Shimon says that denying owing such money will never result in a korban*).

Rabbah answered: No, the *Baraisa* is talking about a case where it did not yet go to trial.

Abaye asked: Being that the first part of the *Baraisa* is discussing where the case went to trial, it makes sense that the second part of the *Baraisa* (*the statement of Rabbi Shimon*) is also discussing a case that went to trial. The first part of the *Baraisa* states: We only know that these words (the law of paying the principal, the fifth and the oath offering) apply regarding things where one pays a principal; how do we know that this also applies to (*laws where one is obligated to*) owing double the amount, four or five times the amount, fines for violation, fines for seduction or one who defames his wife? This is derived from the verse: *and he has misappropriated a misappropriation (against Hashem)*. This teaches us to include fines as well.

Abaye continues: Now, what is the case (*in this first part of the Baraisa*)? If the case did not yet go to trial, why would one be obligated to pay double? It is therefore clearly talking about denying money that he had already been obligated to pay by Beis Din. Being that the first part of the *Baraisa* is talking about a case that had already went to trial, the second part must also be talking about a case that went to trial!

Rabbah replied: I can theoretically answer you by saying that the first part of the *Baraisa* is talking about cases that already went to trial, and the second part is talking about cases that did not yet go to trial, and the entire *Baraisa* is according to Rabbi Shimon (*who is discussing post-trial cases in the first part, and pre-trial cases in the second part*). However, I will not give you a forced answer, for you could reply that (*if this is so*) the *Baraisa* should have stated in the beginning, "Rabbi

Shimon says,” or at the end, “these are the words of Rabbi Shimon (*the normal style of a Baraisa with one author*).

Rabbah continued: In fact, the entire Baraisa is discussing cases that are post-trial. The first part of the Baraisa is authored by the Rabbis, while the second is authored by Rabbi Shimon. I will admit to you regarding an oath offering that Rabbi Shimon says one is exempt (*even post-trial, and that the fine is not regarded as money*), based on the word “and he lied” (*as stated in the second part of the Baraisa*). When I said that it was considered money, I meant that this is true regarding bequeathing it to his children (*that if the father dies after the verdict regarding violation/seduction, his sons inherit the money owed as opposed to the daughter*). [See Rashba regarding how Rabbah could have meant this when Abaye directly asked him about an oath offering, not about other laws such as inheritance.]

Abaye continued to ask Rabbah a question from our Mishnah. Rabbi Shimon states: if she did not collect the money until the father dies, it belongs to her. If you say that Rabbi Shimon holds that the money is bequeathed to his children, why does Rabbi Shimon say that it belongs to the daughter? It should go to the brothers!

Rava stated: This question was difficult to Rabbah and Rav Yosef for twenty-two years, and it was not answered until Rav Yosef became the head of the Academy (*after Rabbah died*) and answered the question. He answered from the verse: *and the person who lay with the girl shall give the father of the girl fifty silver coins*. This implies that it only becomes the father’s money when it is actually given to him. When Rabbah said that this (a fine after the trial) is deemed money regarding the bequeathing to his sons, he only meant that this is true regarding other fines (not the fines of violation and seduction). [The Rashba explains that Rabbah always held this way, but could not answer Abaye’s question of what was his source that there is a difference between the fine of violation/seduction versus other fines that are inherited to sons before they are collected. The source of the

teaching had been lost, until Rav Yosef rediscovered it when he became Rosh Yeshiva.]

The Gemora asks: Regarding the killing of a slave (by one’s ox) it says: *he must give thirty silver shekels to his* (the slave’s) *master*. Here too, you should also say that this means it only belongs to the master when he actually receives the money!

The Gemora answers: The word “yitein” -- “he should give” is different than the word “venasan” -- “and he will give.” [Rashi explains that “he should give” is a command for the future.]

The Gemora asks: If so, why did Rabbi Shimon in the Baraisa derive that violation/seduction is exempt from an oath offering because of the word “and he lied?” This should be derived from the word “and he will give” (*as this word shows that violation/seduction is unlike all of the things mentioned in the verse, as they are already considered his money*).

Rava answers: The verse “and he lied” is needed in a case where there was already a trial, after which the girl became a bogeres (*older than twelve and a half*) and then died. In such a case, when the father inherits the fine, he inherits it from his daughter. [Rashi explains that in a case where the daughter receives the fine, Rabbi Shimon agrees that it is considered her money before it is collected. Accordingly, this case is similar to other monetary cases in that the money is considered her right away.]

The Gemora asks: If this is so, how could Rabbi Shimon say (*in the Baraisa*) that these are exceptions as they are fines? We see that there are some cases within these categories that are like regular monetary obligations!

Rav Nachman bar Yitzchak answered: He meant that these are exceptions as they are *primarily* fines.

Abaye pointed out to him another objection (from the Mishnah cited above): Rabbi Shimon says: He (the



violator/seducer who swore falsely and then admitted) is exempt (from an oath offering), as a person does not pay a fine by his own admission. The reason then, the Gemora infers, is because he was not tried in court, but if he was tried, in which case he does pay - even on his own admission, he would incur liability for the bringing of the oath offering!?

The Gemora answers: Rabbi Shimon argues with the Rabbis according to their own view. He explained: According to my own view, the Merciful One has exempted the man (from the oath offering) even after he had been tried in court, as may be derived from the verse: *and he lied*. According to your view, however, you must at least admit that the man is exempt if he has not yet been tried in court, since the claim advanced against him is (a payment of) a fine, and one who makes a voluntary admission to a fine is exempt.

The Gemora explains why the Rabbis disagreed: But the Rabbis are of the opinion that the claim (of the father) is primarily in respect of compensation for humiliation and depreciation (and not for the fine).

The Gemora asks: On what principle do they differ?

Rav Pappa replied: Rabbi Shimon is of the opinion that a man (a plaintiff) would not leave that which is fixed (such as the fifty shekel fine) to claim that which is not fixed (such as the payment for embarrassment and depreciation), while the Rabbis hold the view that no man would leave a claim from which the defendant could not be exempt even if he made a voluntary admission and advance a claim from which he would be exempt if he made a voluntary admission. (42a1 – 43a1)

INSIGHTS TO THE DAF

WAIVING HER RIGHTS

The Gemora states that a *bogeres* (over twelve and a half years old), who has been seduced waives her rights to the fine, depreciation and embarrassment payments because

she voluntarily agreed to the seduction. The Gemora above (40a) also stated regarding an orphan: One who seduces her will be exempt from all payments since the fine belongs to her, and her consent to the seducer is regarded as if she waived the fine.

The Ketzos Hachoshen (424:1) explains that a *bogeres* or an orphan that has been seduced waives her rights to any payments. In truth, there is an obligation for the seducer to pay, but later, she waives the payments. This functions because of the concept of *mechilah*.

Reb Shimon Shkop (42) states that this cannot function based on an ordinary *mechilah* because the payments are not yet in existence; one cannot be *mocheil* something that is not in existence yet. Furthermore, the girl should be able to retract from the *mechilah* before the seducer stands for judgment. Rather, she is waiving her rights to make any claim against him. The right to this claim is in existence and once she decides this, she cannot retract later.

The Ketzos (207:8) cites from the Bnei Yaakov that the argument that *mechilah* should not be valid because the payment is not in existence yet is not a valid one. This is because the seducer is liable for the payments as soon as he cohabits with her. Since she consented, she is *mocheil* this obligation. He adds that even if she can be *mocheil* the payments before they are actually in existence, she certainly cannot sell the rights to the payments to another before they are in existence. The payments are only in existence in respect to her rights to waive the obligation on the seducer to pay her.

The Yerushalmi disagrees with our Gemora and states that the girl who is seduced can only waive the rights to the embarrassment and depreciation payments, but not the fine. This is because a person is unable to be *mocheil* something that is not yet in their possession. The Ridvaz explains: The primary purpose of the fine is not a monetary payment; it serves as an atonement for cohabiting with this



girl, and she has no right to waive the payment that the seducer needs to pay in order to be forgiven.

DAILY MASHAL

RABBAH; ABAYE'S TEACHER

Abaye inquired from Rabbah: A person claims that someone violated/seduced his daughter, and he took him to a different Beis Din which indeed found that the perpetrator must pay. The accused denies everything, and swore to this effect. The accused then admitted that he lied. What would be the law in this case according to Rabbi Shimon? As he had indeed stood trial and was obligated to pay money to the father, is this considered denying money in an oath for which one must bring a korban? Or do we say that even though the verdict that he owed money was already handed down, it is a matter of a fine (*for which one does not bring a korban according to Rabbi Shimon if he denies owing the money under oath*)?

Rashi writes that Rabbah bar Nachmeini was Abaye's teacher. The commentators ask: Why did Rashi find it necessary to inform us that Rabbah was Abaye's Rebbe; there are numerous times throughout the *Gemora* that Abaye inquired of Rabbah, and Rashi does not write that Rabbah taught Abaye?

(As an aside, the Maharalbach (64) writes that this particular *sugya* is lengthy and extremely difficult and there are many questions, especially on Rashi's explanation of the *Gemora*. He cites fourteen questions. His student, the Maharashdam (Y"D 402) asks another twenty-four questions and answers them all.)

The *Gemora* cites Rabbah's answer and Abaye's challenge from a *Baraisa*. The commentators ask: It is evident that Abaye knew this *Baraisa*, so why did he inquire from Rabbah in the first place? The Ritva answers that it is common for a student to ask his teacher a question to hear his explanation even though he can resolve it on his own, and then, he will

ask from a *Baraisa* in order to ascertain if the answer is indeed correct.

Rabbi Chaim Braun suggests that this might be the explanation of Rashi. Rashi writes that Rabbah was Abaye's teacher in order to explain why Abaye is inquiring of Rabbah even though he knew the resolution himself.