



Produced by Rabbi Avrohom Adler, Kollel Boker Beachwood

Daf Notes is currently being dedicated to the neshamot of

Moshe Raphael ben Yehoshua (Morris Stadtmauer) o”h

Tzvi Gershon ben Yoel (Harvey Felsen) o”h

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

Temporary Depreciation

Rabbah inquired: What would be the *halachah* regarding a loss of work that temporarily renders the injured person of less value? What is an example of this? For instance, where he struck him on his arm and the arm was shriveled, but will ultimately recover fully. Do we say that since it will ultimately recover fully, he is not required to pay him for the value of the arm, or perhaps he should be liable to pay, since for the time being, he diminished his value?

Come and hear from the following *Mishnah*: If one strikes his father and his mother without making a bruise upon them (*for then, he is not liable for capital punishment*), or he bruises another man on *Yom Kippur*, he is liable for all five things. Now, what is the case where no bruise was made? Is it not referring to a case where he struck him on his arm which will ultimately recover, and it is nevertheless states that he is liable for all five things!

The *Gemora* rejects the proof: It may be said that we are dealing with a case where he made him deaf (*where it is a permanent damage*) without making a bruise on him.

The *Gemora* asks: But did Rabbah not say that he who makes his father deaf is subject to capital punishment, for it is impossible to cause deafness without first making a bruise through which a drop of blood falls into the ear?

Rather, perhaps we are dealing here with a case where the son shaved him (*and there is a temporary loss without a wound*)! But will not the hair grow again in the case of shaving? And this is the exact case of our inquiry (*proving that he does pay for a temporary loss*)!

The *Gemora* rejects the proof: It may be said that we are dealing here with a case where the son smeared a cream over his hair, so that no hair will ever grow there again.

The *Gemora* explains what the payments are for in this case. The pain is where he had cracks on his head and thus suffered on account of the cream. He must pay for the healing to lessen the pain. There is a loss of work, for he was a dancer (*jester*) in wine houses and he needs to make gestures by moving his head, but now, on account of the pain, he cannot do so. And the embarrassment should certainly be paid, for there is no greater degradation than this.

The *Gemora* comments: Rabbah’s inquiry was obvious to Abaye in one way, and to Rava in a different way, for it was said: If one struck his fellow on his arm and the arm was shriveled, but will ultimately recover fully, Abaye said that in cases where an injured person is expected to fully recover, he is compensated both for the larger disability (*the fact that presently, his market value has diminished*) and the smaller disability (*the loss of work that he incurs from the fact that he is laid up in bed because of the pain*). Rava holds that he is only compensated for his day to day losses. (85b4 – 86a2)

It was stated: If one cuts off the hand of his Jewish servant, Abaye said that he pays the larger disability (*the fact that presently, his market value has diminished*) to the slave and the smaller disability (*the loss of work that he incurs from the fact that he is laid up in bed because of the pain*) to the master. Rava holds: It all should be given to the servant, who would be required to purchase real property whose produce would be enjoyed by the master.



The *Gemora* rules: It is obvious that where the servant (*on account of the injury*) became depreciated in his personal value while no loss was caused to the master, as for instance, where the damager cut the top of the servant's ear or the top of his nose, the entire payment would go to the servant himself. It was only where the depreciation affected the master as well that Abaye and Rava disagree. (86a2)

Humiliation According to their Stature

The *Mishnah* had stated that the amount paid for embarrassment depends on the social stature of both the victim and the damager.

The *Gemora* notes that the *Mishnah* is seemingly not following the opinion of Rabbi Meir or Rabbi Yehudah, but rather, it is only in accordance with Rabbi Shimon, for we learned in a *Baraisa*: All kinds of injured people (*whether rich or poor*) should be considered as if they were aristocrats who have become impoverished since they are all the children of Avraham, Yitzchak and Yaakov; this is the view of Rabbi Meir. Rabbi Yehudah says that embarrassment in the case of the eminent man will be evaluated in accordance with his eminence, and in the case of the insignificant man, it will be evaluated in accordance with his insignificance. Rabbi Shimon says that wealthy people will be considered merely as if they were aristocrats who have become impoverished, whereas the poor will all be put on the level like the least among them (*and their embarrassment is minimal*).

Now, in accordance with whom is our *Mishnah*? It could not be in accordance with Rabbi Meir, for the *Mishnah* states that all are to be estimated in accordance with the status of the damager and the victim, whereas according to Rabbi Meir, all types of people are treated alike. It could similarly not be in accordance with Rabbi Yehudah, for the *Mishnah* states below that one who insults a blind person is liable, whereas Rabbi Yehudah says that a blind person is not subject to the payment of embarrassment. Must the

Mishnah therefore not be in accordance with Rabbi Shimon!?

The *Gemora* suggests an alternative explanation: You may say that the *Mishnah* is in accordance with Rabbi Yehudah. For the statement made by Rabbi Yehudah that a blind person is not subject to the payment of embarrassment means that no payment will be taken from him when he insulted others, whereas when it comes to paying him for embarrassment, we would surely rule that he must be paid.

The *Gemora* rejects this: But since it was stated in the concluding clause of the *Mishnah*: If he insulted a person who was sleeping, he would be liable to pay for embarrassment, whereas if a person who was asleep insulted others, he would be exempt, and no ruling was made to the effect that a blind person insulting others should be exempt, it may surely be implied that in the case of a blind person, there is no difference whether he was insulted by others or whether he insulted others (*as in all cases, the payment of embarrassment would apply*).

It is therefore clear that the *Mishnah's* ruling is in accordance with Rabbi Shimon. (86a2 – 86a3)

Assessing Degredation

The *Gemora* asks: Who is the *Tanna* of the following *Baraisa*? If he intended to insult a small person, but insulted a big person instead, he would be required to pay the big person the amount due for the embarrassment of the small person, and so also where he intended to insult a Canaanite slave, but insulted a freeman instead, he would be required to pay the freeman the amount due for the embarrassment of the slave. According to whom is this *Baraisa* following? It cannot be following the opinion of Rabbi Meir, Rabbi Yehudah, or even Rabbi Shimon. Assuming that "small" meant that he is small in possessions (*poor*) and "big" means that he is in big in possessions (*rich*), it cannot be in accordance with Rabbi Meir, for he said that all types of people (*rich or poor*) are treated alike. It could similarly not

be in accordance with Rabbi Yehudah, for he ruled that in the case of slaves, the payment for embarrassment does not apply. And it could not be in accordance with Rabbi Shimon, since he holds that where the offender intended to insult one person and inadvertently, he insulted another person, he would be exempt, for the payment for embarrassment is likened to murder, and just as in the case of murder, there is no liability unless the intention was for the particular person killed, as it is written: *And ambushes him and rises up against him*, which teaches us that there would be no liability unless where he intended to kill that particular person, so should it also be in the case of embarrassment, that no liability should be imposed on the offender unless he intended to insult that particular person, as it is written: *And she sends forth her hand and grabs his embarrassing place*, which similarly teaches us that there should be no liability unless he intended to insult that particular person.

The *Gemora* answers: It might still be said that the *Baraisa* is in accordance with Rabbi Yehudah, for perhaps his ruling that in the case of slaves there would be no liability for embarrassment means only that no payment will be made to them, though in the matter of assessment, we can still base the assessment on them (*and that amount will be given to the freeman*).

Alternatively, I may say that the *Baraisa* is in accordance with Rabbi Meir, for why should you think that “small” meant that he is small in possessions (*poor*) and “big” means that he is in big in possessions (*rich*)? Perhaps “big” means an actual adult and “small” means an actual minor.

But, the *Gemora* asks: Is a minor capable of suffering degradation?

The *Gemora* answers: Yes, as it is elsewhere stated by Rav Pappa that if a minor is old enough that if he is reminded of some insult, he feels embarrassed, he is subject to the laws of embarrassment, so also here, we are dealing with a case where the minor is old enough that if he is reminded of some insult, he feels embarrassed. (86a3 – 86b1)

Mishnah

If one insults a naked person, or if one insults a blind person, or if one insults a sleeping person, he is liable. If a sleeping person caused the embarrassment, he is exempt. If someone fell off from a roof and he damaged and embarrassed someone, he only pays for damages and is exempt from the shame, as it is written: *And she sends forth her hand and grabs his embarrassing place*. This teaches us that there should be no liability unless he intended to cause injury. (86b1)

Not Insulting

The *Gemora* cites a *Baraisa*: If he insulted a person who was naked, he would be liable, though there could be no comparison between one who insulted a person who was naked and one who insulted a person who was dressed. If he insulted him in the bathhouse, he would be liable, though there could be no comparison between one who insulted a person in a bathhouse and one who insulted a person in the market place.

The *Baraisa* had stated: If he insulted a person who was naked, he would be liable.

The *Gemora* asks: Does a naked person suffer degradation (*he seemingly does not care what people think about him*)?

Rav Pappa answers: What is the meaning of naked? It is that a wind came and lifted up his clothes, and this person came along and raised them higher, thus further embarrassing him.

The *Baraisa* had stated: If he insulted him in the bathhouse, he would be liable.

The *Gemora* asks: Does one become embarrassed in a bathhouse (*for they are normally not dressed there*)?

Rav Pappa answered: It is referring to a case where he embarrassed him by the river (*and since it is public, it is not so common for him to undressed there*). (86b1)

Died in his Sleep

Rav Abba bar Mammal inquired: What would be the *halachah* if someone insulted someone while he (*the victim*) was sleeping, and then he died (*without ever realizing that he was insulted*)?

What is he asking? - Rav Zevid explains the inquiry as follows: Does the assailant pay for embarrassment because the victim is insulted, and since in this case, he died before waking and was never insulted, no payment should be required, or is the payment perhaps on account of the public degradation, and since here there was degradation, he should be liable?

The *Gemora* attempts to resolve this inquiry from the following *Baraisa*: Rabbi Meir says: A deaf-mute and a minor are subject to be paid for embarrassment, but a deranged person is not subject to be paid for embarrassment. Now, all is well if you say that embarrassment is paid on account of the public disgrace, for then it is understandable why a minor should be paid for embarrassment. But if you say that embarrassment is paid on account of the insult, is a minor subject to feel insulted?

The *Gemora* counters: What then is the reason? Is embarrassment paid because of the public disgrace? Why then should the same not apply even in the case of a deranged person?

They said: It may be said that with regards to a deranged person, there is no humiliation greater than this (*and he cannot be embarrassed anymore than he already is*).

But in any case, why not conclude from this statement that embarrassment is paid on account of the public disgrace, for

if it is on account of the insult, is a minor subject to feel insulted?

The *Gemora* rejects the proof: It is elsewhere stated by Rav Pappa that if a minor is old enough that if he is reminded of some insult, he feels embarrassed, he is subject to the laws of embarrassment, so also here, we are dealing with a case where the a minor is old enough that if he is reminded of some insult, he feels embarrassed.

Rav Pappa explains the inquiry differently: Does the assailant pay for embarrassment because the victim is insulted, and since in this case, he died before waking and was never insulted, no payment should be required, or is the payment perhaps on account of his family's humiliation, and since here the family was humiliated, he should be liable?

The *Gemora* attempts to resolve this inquiry from the following *Baraisa*: A deaf-mute and a minor are subject to be paid for embarrassment, but a deranged person is not subject to be paid for embarrassment. Now, all is well if you say that embarrassment is paid on account of the family's humiliation, for then it is understandable why a minor should be paid for embarrassment. But if you say that embarrassment is paid on account of the insult, is a minor subject to feel insulted?

The *Gemora* counters: What then is the reason? Is embarrassment paid because of the family's humiliation? Why then should the same not apply even in the case of a deranged person?

The *Gemora* answers: It may be said that with regards to a deranged person, there is no humiliation greater than this (*and he cannot be embarrassed anymore than he already is*).

But in any case, why not conclude from this statement that embarrassment is paid on account of the family's humiliation, for if it is on account of the insult, is a minor subject to feel insulted?



Rav Pappa answers: We are dealing with a case where the minor is old enough that if he is reminded of some insult, he feels embarrassed.

The *Gemora* provides support to this from a *Baraisa*: Rebbe says that a deaf-mute is subject to be paid for embarrassment. A deranged person is not subject to be paid for embarrassment. Regarding a minor, it depends.

Rav Pappa explains: If the minor is old enough that if he is reminded of some insult, he feels embarrassed, he will be paid for embarrassment. However, if when reminded, he still is not embarrassed, he is not subject to be paid for embarrassment. (86b2 – 86b3)

Blind Person

The *Mishnah* had stated that if one insults a blind person, he is liable.

The *Gemora* notes that the *Mishnah* is seemingly not following Rabbi Yehudah's opinion, for we learned in a *Baraisa*: Rabbi Yehudah says: A blind person is not subject to be paid for embarrassment. And similarly, Rabbi Yehudah exempts a blind person from going to exile (*for inadvertently killing someone*) and from incurring lashes and from receiving capital punishment.

What is the reasoning of Rabbi Yehudah? Rabbi Yehudah derives this through a *gezeirah shavah* from *zomemin* witnesses using the term 'your eye' [inserted in the case of embarrassment from the term] 'your eye' occurring in the case of *zomemin* witnesses: just as there blind people are not included, so also here blind people should not be included.

A blind person is not exiled, for we learned in a *Baraisa*: It is written: *without seeing*. This teaches us that a blind person (*who does not have the ability to see*) who killed another person inadvertently will not be liable to go to exile; these

are the words of Rabbi Yehudah. Rabbi Meir says: This phrase comes to include a blind person.

What is the reason of Rabbi Yehudah? — He might say to you [as Scripture says]: 'As when a man comes into the forest with his fellow to chop wood', which might include even a blind person. The Merciful One therefore says 'without seeing' to exclude [him]. - But Rabbi Meir might contend that just as the Merciful One inserted 'without seeing' [which implies] an exception, and the Merciful One further inserted 'without awareness', [which similarly implies] an exception, we have thus an exclusion followed by another exclusion, and the established rule is that an exclusion followed by another exclusion is intended to include. - And Rabbi Yehudah? — He could argue that the word 'without awareness' came to be inserted to except a case of intention.

[Exemption from] liability to be put to death by a court of law is derived [through a *gezeirah shavah* from the term] 'murderer' [used in the section dealing with capital punishment and the term] 'murderer' [used in the section setting out] the liability to be exiled.

[Exemption from] liability of lashes is learned [through a *gezeirah shavah* from the term] 'wicked' [occurring in the section dealing with lashes and the term] 'wicked' occurring in the case of those who are liable to be put to death by a court of law.

Another [Baraisa] taught: Rabbi Yehudah says: A blind person is not subject to [the law of] embarrassment. So also did Rabbi Yehudah exempt him from all the judgments of the Torah. What is the reason of Rabbi Yehudah? — The verse states: Then the congregation shall judge between the assailant and the avenger of blood according to these laws; whoever is subject to the law of the 'assailant' and 'the avenger of blood' is subject to judgments, but he who is not subject to the law of the 'assailant' and the 'avenger of blood' is not subject to judgments (86b3 – 87a1)



INSIGHTS TO THE DAF

Paying for Humiliation

Rav Abba bar Mammal inquired: What would be the *halachah* if someone insulted someone while he (*the victim*) was sleeping, and then he died (*without ever realizing that he was insulted*)?

Rav Zevid explains the inquiry as follows: Does the assailant pay for embarrassment because the victim is insulted, and since in this case, he died before waking and was never insulted, no payment should be required, or is the payment perhaps on account of the public degradation, and since here there was degradation, he should be liable?

The *Gemora* cites a *Baraisa*: Rebbe says that a deaf-mute is subject to be paid for embarrassment. A deranged person is not subject to be paid for embarrassment. Regarding a minor, it depends.

Rav Pappa explains: If the minor is old enough that if he is reminded of some insult, he feels embarrassed, he will be paid for embarrassment. However, if when reminded, he still is not embarrassed, he is not subject to be paid for embarrassment.

It is noteworthy that the *Gemora* in Rosh Hashanah discusses a case where someone at times is normal and at times, he is deranged. It is some sort of bipolar disorder where he cycles on and off from “normal” to “abnormal.” Reb Avi Lebovitz wonders what the *halachah* would be if one embarrassed this person when he was deranged, but later he becomes normal and is embarrassed about what happened, would the assailant be responsible? Do we say that since at the time that the act was done he was deranged, the assailant is exempt, or do we say that since the obligation for paying embarrassment is for the feeling of humiliation, the assailant should be liable?

DAILY MASHAL

Rabbi Meir contends that just as the Merciful One inserted ‘without seeing’ [which implies] an exception, and the Merciful One further inserted ‘without awareness’, [which similarly implies] an exception, we have thus an exclusion followed by another exclusion, and the established rule is that an exclusion followed by another exclusion is intended to include.

The Chidushei HaR”im says that the more one minimizes (i.e., humbles) himself, the greater his stature is increased.