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Explaining our Mishna

The *Gemara* asks: Now, the *Tanna* has just concluded the Tractate Makkos; why does he teach Sh'vuos immediately afterwards?

The *Gemara* answers: It is because we learned in a Mishnah: One is liable for two places for rounding the corners of his head, one on each side of his head, and one is liable for two spots on each side of his beard area, and one spot under them, and since these are both cases of one prohibition that are liable for two penalties, our *Mishnah* teaches that regarding oaths, there are two which in actuality are four.

The *Gemara* asks: Why, in our *Mishnah*, does the *Mishnah* list all the other cases of "two which are four," when the *Mishnahyos* by *Shabbos* and by *tzara'as*, it does not?

The *Gemara* answers: Oaths and the awareness of *tumah* are written next to each other (in the Torah), and are similar that they both bring a *korban olah v'yored* (a sliding-scale *korban*); therefore, they are mentioned together. And since we already mentioned two cases, we mention the other two as well.

The *Gemara* asks: Why are oaths mentioned first, and yet, the awareness of *tumah* cases are explained first?

The *Gemara* answers: The awareness of *tumah* cases are explained in short (*relatively speaking – the first two chapters*), so they are dispensed with first; whereas the laws dealing with oaths are more numerous, they are dealt with afterwards. (2b3 – 3a1)

The *Gemara* explains what the *Mishnah* means in each case when it stated that they are "two which is four."

1. There are two oaths of utterance (*that are mentioned explicitly in the Torah*), namely: "I will eat," or, "I will not eat"; that are four (*which are derived from the verse*), namely: "I ate," or, "I did not eat."
2. There are two laws concerning the awareness of *tumah* (impurity), namely: A person who became *tamei*, but forgot it and ate sacrificial food or entered the Sanctuary; which become four, namely: if he remembers that he is *tamei*, but he was not aware that it was sacrificial food, or he did not know that he was entering the Sanctuary.
3. There are two laws concerning carrying on *Shabbos*, namely: A poor man standing outside extends his hand inside a private domain, and takes an object from there, bringing it into the public domain, or, a man was standing inside a private domain and picked up an object from its place, and placed that object into a public domain; which become four, namely: A man standing inside extends his hand into a public domain, and takes an object from there, bringing it into the private domain, or, a man was standing in a public domain and picked up



an object from its place, and placed that object into a private domain.

4. There are two types of *tzara'as* (a group of skin conditions, for which the Torah decrees *tumah*), namely: *se'eis* and *baheres*; which become four, namely: *se'eis* and its subdivision, and *baheres* and its subdivision. [The *Gemara* will explain the different shades and colors which are *tamei*.] (3a1 – 3a2)

The *Gemara* asks: According to which *Tanna* is our *Mishnah* following? It cannot be Rabbi Yishmael, nor can it be Rabbi Akiva!? It cannot be Rabbi Yishmael, for he maintains that one is only liable on oaths involving the future, and it cannot reflect Rabbi Akiva's opinion, for he holds that one is only liable for a forgetfulness of *tumah*, not if he forgot the *Mikdash*!?

The *Gemara* answers: The *Mishnah* can be in accordance with either of them, for when the *Mishnah* states that there are "two which are four," it means that for some he will be liable (to bring the *korban*), and for some he will be exempt from liability.

The *Gemara* asks: How can it be said that some of the cases are for non-liability? Shouldn't all the cases be compared to the cases of *tzara'as*, where they all cause liability?

The *Gemara* answers: The *Mishnah* is following Rabbi Yishmael's viewpoint; however, he only said that one is not liable for oaths involving the past regarding the liability of bringing a *korban* (for inadvertently violating his oath); however, he will be subject to lashes (if he deliberately violated it). This is in accordance to Rava who says that the Torah clearly stated that a false oath is like a vain oath (regarding lashes): just as an oath in vain is necessarily in the past (being untrue the moment it is uttered, and it is subject to the penalty of lashes), so

is a false oath in the past (subject to the penalty of lashes).

The *Gemara* asks: It is understandable (that he is punished with lashes) in the case of [the oaths of] "I ate," or, "I did not eat," for it is in accordance with Rava; and also in the case where he said, "I will not eat" and he does eat, for it is a prohibition which involves an action, but in a case where he took an oath that he will eat, and then he didn't eat, how can he receive lashes? Is this not a case where it is a negative prohibition that does not involve an action!?

The *Gemara* answers: Rabbi Yishmael maintains that one may incur lashes for a negative prohibition even if it does not involve an action.

The *Gemara* asks: If so, we have a contradiction in the viewpoint of Rabbi Yochanan! For Rabbi Yochanan says that the *halachah* always follows the ruling of an anonymous *Mishnah* (and our *Mishnah* is such an example; we can therefore extrapolate that Rabbi Yochanan rules that one may incur lashes for a negative prohibition even if it does not involve an action). But it was stated: If one swore to eat a loaf of bread today, and the day passed, Rabbi Yochanan and Rish Lakish agree that he does not receive lashes for the prohibition of a false oath, but for different reasons. Rabbi Yochanan says that he is exempt because he only passively transgressed the prohibition, while Rish Lakish says that he is exempt because the warning administered was doubtful, since there was always more time that the person could have eaten it.

The *Gemara* answers: Rabbi Yochanan found a different anonymous *Mishnah* (which rules that there are no lashes when a person only passively transgressed the prohibition). Which anonymous *Mishnah*? If you will say



that it is the following anonymous Mishnah: We learned in a *Mishnah*: If someone leaves over some meat from a pure *korban pesach* or breaks a bone from an impure *korban pesach*, they do not receive lashes. Granted that he who breaks the bone from an impure *korban pesach*, does not receive lashes, because it is written: You shall not break a bone of it — of one that is fit and not of a disqualified pesach. And, presumably the reason why he does not incur lashes in the case where he left over some meat from a pure *korban pesach* is because it does not involve an action, and one who transgresses such prohibitions does not receive lashes.

The *Gemara* asks: How does Rabbi Yochanan know that the *Mishnah* is in accordance with Rabbi Yaakov, who holds that one who transgresses a prohibition that does not involve an action does not receive lashes? Perhaps the *Mishnah* is reflecting the opinion of Rabbi Yehudah, and the reason that there are no lashes is because there is a positive commandment after the prohibition; otherwise, he would incur lashes. For it was taught in a *Baraisa*: *And you shall let nothing of it (korban pesach) remain until the morning; and that which remains from it until the morning you shall burn with fire.* Now, the Torah follows up a negative prohibition (*of leaving over*) with a positive one (*of burning that which is leftover*), thereby teaching us that one does not incur lashes for it. This is Rabbi Yehudah's view. Rabbi Yaakov said: This is not the real reason (*that he does not incur lashes*), but it is because it is a negative prohibition that involves no action, and one does not incur lashes for violating any negative prohibition that involves no action.

The *Gemara* answers: He found a different anonymous *Mishnah*, for we learned: If one says, "I take an oath that I will not eat this loaf," and then he says again, "I take an oath that I will not eat this loaf," and he eats it, he is guilty of transgressing only one oath (*for the second*

oath cannot take effect upon the first one). This is an oath of utterance for which the punishment of lashes is inflicted for a deliberate transgression, and a *korban olah* v'yored for an unwitting transgression. The *Gemara* infers from here: This is an oath for which the punishment of lashes is inflicted for a deliberate transgression, but in the case where he swears that he will eat, and he did not eat, he would not receive lashes. [*This is presumably because the transgression involves no action, and this anonymous Mishnah would be the one with which Rabbi Yochanan agrees.*] (3a2 – 4a1)

INSIGHTS TO THE DAF

Poor Man

The Bartenura asks, why did the *Tanna* use the example of the poor man and not merely state, "the person standing in the public domain?"

1. The Bartenura answers that the *Tanna* is teaching us that although the householder is giving the poor man charity, he has still violated the *Shabbos*, because this is what is known as a "*mitzvah haba'ah b'aveirah*, a positive commandment that was fulfilled by committing a sin.

2. The Tosfos Yom Tov, however, contends that this idea only holds true according to the opinion in the *Gemara* that one who erred in assuming that he is performing a *mitzvah* is liable. This would not be reconciled, however, with the opinion that posits that one who erred in assuming that he did a *mitzvah* is not liable. The Tosfos Yom Tov therefore writes that only regarding mitzvos that one is allowed to perform on *Shabbos*, such as *bris milah*, can one suggest that if he performs the *mitzvah* through the means of a sin, he is not liable. Concerning the *mitzvah* of *tzedakah*, however, one is not allowed to give

tzedakah on *Shabbos*, and therefore he is certainly deemed punishable for giving charity to the poor person. [Rabbi Akiva Eiger, questions this, however, as we see that one is not allowed to fulfill the *mitzvah* of *lulav* on *Shabbos*, and yet there is an opinion that maintains that one who was involved in handling a *lulav* on *Shabbos* would not be liable a punishment.]

3. The Chemdas Shlomo writes that the only case where we say that one may be exempt from punishment is when he is obligated to perform some act for the *mitzvah*. In such a situation we can seek leniency for someone who was involved in performing the *mitzvah* even at a time when he was prohibited to do so. Regarding charity, though, one is not obligated to hand the poor man the article. The householder can leave the article for the poor man, without having to transfer the article from the private domain to the public domain. By transferring the article from one domain to another, the householder has incurred a sin that is liable a punishment.

Reb Aharon Leib Shteinman answers that we only say that one who erred in performing a *mitzvah* is not liable when the involvement in the *mitzvah* led the person to sin. In the case of the *Mishnah* however, the *mitzvah* of giving charity did not distract the householder. Rather, the householder erred in not remembering that it was *Shabbos* or not being cognizant that this was a forbidden act of labor. In such circumstances one is not exempt from the punishment of having committed a sin.

DAILY MASHAL

The Daf HaYomi for Shavuot

The participants of Daf HaYomi start to learn Shevuot, which contains 49 dapim. It is a time-worn custom to

learn this tractate during the counting of the Omer, one daf each day, as practiced by the Chasam Sofer zt"l (see Minhagei HaChasam Sofer, Ch. 2, os 21, and Responsa Chasam Sofer, E.H., I, 100). An appropriate hint for this custom has even been cited in his name: In daf 34, learnt on Lag BaOmer we are told that "Rabbi Shimon [bar Yochai] says..." The gemara comments: "They laugh about it in Eretz Israel" – an indication of the rejoicing on his yahrtzeit in Eretz Yisrael (Bein Pesach Lishevu'os).