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Sanhedrin Daf 49

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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

**Judging Yoav**

*disturb them, and therefore did not deserve to die.]*

Then Yoav was brought before the Court, and Shlomon judged and questioned him, “Why did you kill Avner?” He answered, “I was avenging the blood of Asael” (*for Avner killed him*). Shlomo asked him, “But Asael was a pursuer (*of Avner, and therefore, he had a right to kill him*)!” Yoav responded, “But Avner should have saved himself at the cost of one of Asael’s limbs (*he did not have to kill him*).” Shlomo asked him, “Perhaps he was not able to do so.” Yoav replied, “If he could aim exactly at his fifth rib, as it is written: *Avner, with the back end of the spear, struck him at the chomesh*; concerning which Rabbi Yochanan said: It was at the fifth rib, where the gall-bladder and liver are suspended; could he not have aimed at one of his limbs?”

Thereupon Shlomo said, “Let us leave aside the incident of Avner; why did you kill Amasa?” He answered, “Amasa disobeyed the king’s instructions, for it is written: *Then said the King to Amasa: Call the men of Yehudah together for me within three days etc. So Amasa went to call the men of Yehudah together; but he tarried etc.*” “But,” Shlomo asked him, “Amasa expounded the words “*ach*” and “*rak*” in the Torah (*and that is why he delayed*).” The Gemora elaborates: Amasa found them as they were occupied in the study of a tractate; whereupon he said, “It is written: *Whoever shall rebel against your (the king’s) commandments and shall not hearken to his words in all that you command him, he shall be put to death*. Now, one might have thought that this is true even when they are studying Torah: it is therefore written: *Only (rak) be strong and of good courage.*” [*Amasa was in his rights not to*

Rather, Yoav rebelled against the king, for it is written: *And the news (that Shlomo was appointed king) came to Yoav, (and he became afraid) for Yoav had turned after Adoniyah (and not to Shlomo), though he had not turned after Avshalom*. Rav Yehudah explains that he wished to turn after Avshalom, but did not. Rabbi Elozar explains the reason for this: David still possessed his vitality (*for he was young and strong; yoav was afraid of him*). Rabbi Yosi the son of Rabbi Chanina said: David’s stargazers (*strong men*) were still alive, for Rav Yehudah said in the name of Rav: David had four hundred children; all of them were the children of *yefos to’ar* (*gentile women – married during wartime*). They had long locks of hair, and rode at the head of the troops; it was they who were the men of strength in David’s household.

The Gemora notes: This is in disagreement with that which Rabbi Abba bar Kahana says, for he said: If not for David, Yoav would not have succeeded in war; and if not for Yoav, David could not have devoted himself to the study of Torah, for it is written: *And David executed justice and righteousness for all his people, and Yoav the son of Tzeruyah was over the army*. This means to say: Why was David able to execute justice and righteousness for all his people? It was because Yoav was over the army. And why was Yoav over the army? It was because David executed justice and righteousness for all his people.

It is written: *And when Yoav came out from David he sent messengers after Avner and they brought him back from*



*Bor HaSirah.* What is the meaning of the name Bor HaSirah? Rabbi Abba bar Kahana said: *Bor* (a pit of water) and *Sirah* (a thorn) caused Avner to be killed. [One of the reasons given for Avner's death was his indifference to the effecting of a reconciliation between Shaul and David. Instead of seeking this, he rather endeavored to increase their hatred. He did not take advantage of the following two occasions when he might have brought about the reconciliation: David found Shaul sleeping and instead of killing him, he took his spear and jug of water from beside his head. David later revealed to Shaul that he was in possession of these two items; he intended to bring about reconciliation with Shaul. Avner, however, advised Shaul against reconciliation; he contended that the jug of water might have been given to David by one of the servants. A similar incident and result happened on a different occasion when David cut off a piece of Shaul's robe. Avner suggested that it might have been torn away by a thorn and David found it afterwards.]

It is written: *And Yoav took him aside towards the midst of the gate to speak with him in peace.* Rabbi Yochanan said: He judged him according to the way of the *Sanhedrin*. So he asked him, "Why did you kill Asael? Avner replied, "I did so because Asael was a pursuer (and I was entitled to kill him as an act of self-defense)." Yoav asked him, "Then you should have saved yourself at the cost of one of Asael's limbs (you did not have to kill him)." Avner answered him, "I was not able to do so." Yoav retorted, "If you could aim exactly at his fifth rib, could you not have aimed at one of his limbs?"

It is written: To speak with him *basheli*. Rav Yehudah said in the name of Rav: He spoke to him concerning the removing of the shoe. [This refers to *chalitzah* – Yoav inquired from Avner in what way a woman without hands would remove the shoe in the ceremony of *chalitzah*. On his replying that she would do it with her teeth, he asked him to demonstrate it, and as he stooped low to do so, he drew his sword and slew him.]

It is written: And Yoav struck him there at the *chomesh*. Rabbi Yochanan said: It was at the fifth rib, where the gall-bladder and liver are suspended.

It is written (when Shlomo instructed Beneyahu to kill Yoav): *And God will return Yoav's blood upon his own head because he killed two men more righteous and better than he.* They (Avner and Amasa) were regarded as "better," because they expounded correctly the words "ach" and "rak" in the Torah, while he did not. They were "more righteous," because they were instructed verbally (from the king to do something wrong) yet did not obey, whereas he was instructed in a letter (to have Uriah placed at the front lines to be killed), and nevertheless, he carried it out.

It is written: *But Amasa did not guard himself from the sword that was in Yoav's hand.* Rav said: That was because he did not suspect him.

It is written: *And he (Yoav) was buried in his own house in the desert.* The *Gemora* asks: Was his house a desert? Rav Yehudah said in the name of Rav: It was like a desert - just as a desert is free to all, so was Yoav's house free to all (he allowed the poor people to take whatever they wanted). Alternatively, it means that just as a desert is free from robbery and licentiousness, so was Yoav's house free from robbery and licentiousness.

It is written: And Yoav brought life to the rest of the city: Rav Yehudah said: Even small fish, he would merely taste and then distribute to the poor. (49a)

WE SHALL RETURN TO YOU, NIGMAR HADIN

### **Mishna**

*Beis Din* was empowered to impose four types of death penalties: stoning, burning, beheading and strangulation.



Rabbi Shimon says: burning, stoning, strangulation and beheading. This was the procedure of stoning. (49b)

### **Precise Order of the Listing**

Rava said in the name of Rav Sechora in the name of Rav: Whenever the Sages taught by number (*as a list – in a Mishna or braisa*), it is in no particular order, except the *Mishna* of the seven cleansing agents, for we learned: Seven substances are applied to a stain (*in order to determine if it is blood*): tasteless saliva, the liquid exuded by chewed beans, urine, niter, soapwort, *kimulia*, and *ashlag*. Now, the latter part of that *Mishna* states: If they were not applied in this order, or if they were all applied simultaneously, the test is not effective.

Rav Pappa the Elder said in the name of Rav: The same exception applies to the four death penalties, for since Rabbi Shimon disputes the order, it is to be inferred that the *Tanna Kamma* was being precise in his order.

Rav Sechora did not mention this as an exception, for he does not refer to cases where the order is disputed.

Rav Pappa said: The order of service on Yom Kippur is also exactly taught, for we learned: All the services of Yom Kippur which are prescribed in a particular order, if one was performed before another, it is invalid.

The others do not mention this case for it is merely because of the added stringency (*of Yom Kippur – not because of the order of the steps*).

Rav Huna the son of Rabbi Yehoshua said: The order of the *korban tamid* is also exact, for in connection with it we have learned: This is the order of the *tamid*.

The others do not mention this case for they maintain that the *Mishna* merely teaches us that it is preferable to be carried out in this order.

The *Gemora* notes: Rav Sechora was excluding the *Mishna* which dealt with *chalitzah*, for we learned in a *Mishna*: The *yavam* and his *yevamah* come to *Beis Din*, and they give him advice suitable for him, as it is written: *Then the elders of his city shall call him, and speak to him*. And she says: *My husband's brother refuses to establish a name for his brother in Israel; he will not perform yibum with me*. And he says: *I do not want to take her*. And they would recite these verses in the Holy Tongue (*Hebrew*). It is written: *Then the yavam shall go up to him in the presence of the elders, and remove his shoe from off his foot, and spit before him*. It must be spittle that is visible to the judges. *And she shall answer and say: So shall it be done to the man that does not build up his brother's house*.

And concerning that we learned: Rav Yehudah says: The following is the correct procedure for *chalitzah*: She recites the verses and then he recites the verses. She removes his shoe, spits and recites again. The *Gemora* says that the *chalitzah* is valid even if the order was reversed. The *Gemora* cites a *braisa* which supports this: Whether drawing off the shoe preceded the spitting or whether spitting preceded the drawing off, the action performed is valid.

The *Gemora* notes: Rav Sechora was excluding that which was taught in the following *Mishna*: The *Kohen Gadol* serves in the Temple wearing eight garments, but the ordinary *Kohen* wears only four, viz., tunic, breeches, hat and belt; to which the *Kohen Gadol* adds the breastplate, *ephod*, robe and head plate. Now it has been taught: How do we know that nothing must be donned before the breeches? It is from the verse: *And the linen breeches shall be upon his flesh*. But why does the *Tanna* give mention the tunic first? It is because it is mentioned first in Scripture. And why does Scripture do this? It is because it is more significant because it covers the entire body. (49b)

### **INSIGHTS TO THE DAF**



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### **THE PROSECUTION OF YOAV**

QUESTION: After the death of David ha'Melech, Shlomo ha'Melech sought to bring Yoav to justice. He sent Benaiyahu to administer the punishment that Yoav deserved. Yoav fled into the Beis ha'Mikdash and grasped the corners of the Mizbe'ach. He refused to leave until Shlomo ha'Melech agreed that if he kills Yoav, he will accept upon himself the curse that was intended for Yoav's family.

The Gemara says that when Shlomo agreed, they brought Yoav to Beis Din to judge him for killing Avner and Amasa. The Gemara says that Yoav found a way to exempt himself from liability for the death of Avner, but the Gemara gives no defense for his killing of Amasa. The Gemara leaves us with the understanding that Yoav was found guilty for killing Amasa. However, TOSFOS points out that Yoav was exempt from liability in that case as well, because he did not receive proper Hasra'ah, warning from witnesses. Shlomo ha'Melech killed Yoav nonetheless, because of a third charge; he showed that Yoav was a "Mored b'Malchus" -- he had rebelled against the kingship of Shlomo's father, David ha'Melech.

If Shlomo ha'Melech wanted to charge Yoav for being "Mored b'Malchus," then why did he first try to prosecute him with charges of murder? Why did he not immediately charge him with being "Mored b'Malchus"?

Moreover, why did Shlomo ha'Melech accept Yoav's curse if he was able to prosecute him and kill him as a "Mored b'Malchus"? If, for someone reason, Shlomo ha'Melech was not able to kill Yoav for being "Mored b'Malchus," then why did Yoav agree to forfeit his life if Shlomo ha'Melech would accept the curse?

ANSWER: The MARGOLIYOS HA'YAM cites the TESHUVOS BEN YEHUDAH (#20) who explains Shlomo's actions based on the words of the RAMBAM (Hilchos Rotze'ach 5:14). The Rambam rules that the Mizbe'ach does not protect a person who is Chayav Misah because of a sin. Even if a person kills b'Shogeg, accidentally, and is thus obligated to be sent to Galus to an Ir Miklat, the Mizbe'ach does not protect him unless he is a Kohen who is performing the Avodah on the Mizbe'ach. However, if the king wants to kill a person (based on the king's power to execute a person), or if Beis Din wants to kill a person based on a "Hora'as Sha'ah" (to teach a lesson and not based on actual Din Torah), and the person flees to the Mizbe'ach, the Mizbe'ach protects him and he cannot be killed unless the court proves -- based on the testimony of valid witnesses -- that he is Chayav Misah for a sin that he committed.

The KESEF MISHNEH asks that according to the Rambam, how was Shlomo ha'Melech able to kill Yoav? Tosfos says that Yoav was not proven by Beis Din to be Chayav Misah for a sin, but rather he was Chayav Misah only because of the Din Malchus -- the right of the king to execute a person!

The Teshuvos Ben Yehudah answers that this is why Shlomo ha'Melech first accused Yoav of being Chayav Misah for killing Avner and Amasa. He wanted to use the court case for that crime as a pretext to remove Yoav from the Mizbe'ach.

How did this tactic work? If Beis Din found that Yoav was not guilty of the charges that Shlomo ha'Melech brought against him, then they should have returned Yoav safely to the Mizbe'ach!

The answer may be as follows. Had Yoav been found innocent, perhaps they would have returned him to the Mizbe'ach. However, although he was not found guilty of killing b'Mezid, he was found guilty of killing b'Shogeg, and thus he was Chayav Galus -- he was obligated to be sent to

an Ir Miklat. Now Yoav was trapped: if he would demand to be returned to the Mizbe'ach, Shlomo ha'Melech could not kill him as a "Mored b'Malchus." However, Yoav could be killed by the Go'el ha'Dam because of his status of a Rotze'ach b'Shogeg. Since Shlomo ha'Melech was Amasa's first cousin, Shlomo had the status of Amasa's Go'el ha'Dam and thus he could kill Yoav. On the other hand, if Yoav would demand that the court bring him to an Ir Miklat, he would be safe from the Go'el ha'Dam but Shlomo ha'Melech could kill him as a "Mored b'Malchus."

Yoav decided that he would prefer to stay with the Mizbe'ach, because he knew that the king would feel uncomfortably personally coming and killing someone himself as a Go'el ha'Dam. Benaiyahu had to obtain Yoav's permission to remove Yoav from the Mizbe'ach in order to spare Shlomo ha'Melech the embarrassment of having to come in personally to kill Yoav with his own hands (since the Go'el ha'Dam may not send a Shali'ach to do his work). Yoav agreed to leave if Shlomo ha'Melech would accept his curse, because he realized that even if he would stay at the Mizbe'ach, he still could be killed by Shlomo ha'Melech who was the Go'el ha'Dam of Amasa, and therefore he would not escape death by refusing to leave. (See the MARGOLIYOS HA'YAM #5.)

**INTERRUPTING ONE'S LEARNING IN ORDER TO FULFILL  
THE COMMAND OF THE KING**

QUESTION: The Gemara says that Amasa was correct in disobeying the king's order and not garnering the soldiers within three days, because he found them involved in learning. He derived from a verse that one should not interrupt one's Torah learning even to follow the command of a king. This implies that learning Torah is more important than following the command of a king.

A similar principle is taught in Megilah (17a), where the Gemara derives from Yakov's extended stay in the Yeshiva

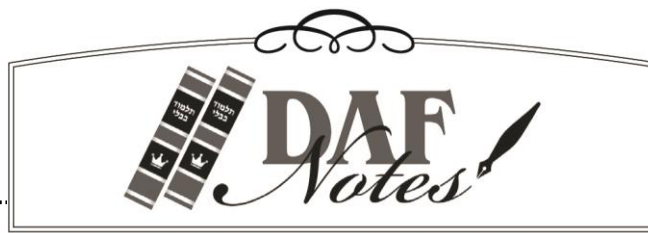
of Shem v'Ever that learning Torah overrides one's obligation of Kibud Av v'Em, honoring one's parents.

How can this idea be reconciled with the Gemara in Moed Katan (9a; see Insights there, #2) that states that a Mitzvah which cannot be fulfilled by another person overrides the Mitzvah of Talmud Torah? A person is supposed to stop learning in order to fulfill such a Mitzvah. It is clear from the Gemara here that when the soldiers who were learning did not come, there was no one else to take their place. Why, then, did Amasa not interrupt their learning to fulfill the command of the king? (NACHALAS SHIMON, Shmuel II 36:2)

ANSWERS:

(a) The ME'IRI here writes that Amasa did not disturb the soldiers because it was a matter of *public* Torah learning, Talmud Torah d'Rabim. With regard to Kibud Av v'Em, the Gemara in Megilah is not discussing a situation in which the father actually commanded the son to do something for him. Rather, it is discussing whether it is a greater Mitzvah to learn Torah even though one thereby will not have the opportunity to fulfill the Mitzvah of Kibud Av v'Em while he is learning. In such a case, Talmud Torah is considered a greater Mitzvah than having the opportunity to fulfill the Mitzvah of Kibud Av v'Em. If, however, the parents need something or ask for something specific, then the Mitzvah of Kibud Av v'Em overrides Talmud Torah.

A similar distinction is expressed by the PISCHEI TESHUVAH (YD 240:8) in the name of the PRI CHADASH. He writes that Talmud Torah is greater than Kibud Av v'Em, and for that reason a person should go to the place where he can learn best, even if it is far from the city of his parents and he will not be able to tend to, or even be aware of, his parents' needs. He adds that even if one's father or mother insists that one not travel to a certain place to learn Torah because of the risk of violence from the Nochrin in that location, the son is not required to listen to them but may travel to where he feels he will learn best. The father's



command to the son that he not learn Torah in the best way does not override the son's obligation to learn Torah in the best way. However, if the son is learning in the city of his father, then he is required to tend to his father's needs and learn only when his father does not need him. In that case, Kibud Av v'Em is a Mitzvah which cannot be fulfilled by another person and thus it overrides Talmud Torah.

(b) The CHACHAM TZVI (#38, cited by the Nachalas Shimon) distinguishes between Mitzvos that are objectively obligatory and Mitzvos that are subject to the will of a person. Since the Mitzvah to heed the words of a king, or the words of one's parent, is subject to the king's or parent's will, and he could just as easily *not* make his request and *not* obligate others to follow his will, such a Mitzvah does not override the Mitzvah of Talmud Torah. The Gemara in Kesuvos (40a) is a source for such a distinction. The Gemara there says that the Mitzvas Aseh for a rapist to marry his Anusah does not override a Lo Ta'aseh if she is prohibited to him with a Lav. Since the woman has the right to forgo marrying the man, it is a Mitzvah that is subject to a person's will and such a Mitzvah cannot override a Lo Ta'aseh, as the RAN and RASHBA (Teshuvos 1:10) explain. The TUREI EVEN in Megilah (29a) makes a similar distinction.

According to this approach, if the king or parent has an objective need for something and does not make a request based on his own will (such as when a king or parent is sick and needs medicine and treatment), then caring for the king or parent overrides Talmud Torah. When the needs of the king or parent are not objective (such as in the case of the Gemara here, when David ha'Melech insisted on assembling the soldiers within three days, even though it was not a life-and-death necessity to gather them that quickly (because if it was a matter of Piku'ach Nefesh, it certainly would have been Docheh all other Mitzvos)), those needs do not override the Mitzvah of Talmud Torah.

### HOW YOAV WAS ABLE TO KILL AVNER

QUESTION: Rebbi Yochanan says that before Yoav killed Avner, "he judged him with the judgment of Sanhedrin." Yoav proved to Avner that according to the Halachah, his act of killing Asah'el was considered murder, since he could have injured Asah'el instead and saved himself that way. That entitled Yoav, as the Go'el ha'Dam of Asah'el, to kill Avner. (Even if Avner did not receive Hasra'ah and could not be killed in court, he was no less than a Rotze'ach who kills accidentally, whom the Go'el ha'Dam is permitted to kill.)

The Gemara proceeds to relate how Yoav fooled Avner. Yoav asked Avner how a woman with no arms can perform the procedure of Chalitzah by removing the Yavam's shoe. Avner told him that the woman can do it with her teeth. When Avner bent down to demonstrate how one can remove a shoe with one's teeth, Yoav drew his sword and killed Avner.

If Yoav proved to Avner that he was not justified in killing Asah'el and thus Yoav was entitled to act as a Go'el ha'Dam, then how did Avner fall for Yoav's trick and let down his guard to let Yoav kill him? He knew that Yoav was the Go'el ha'Dam of Asah'el and thus he should have stayed as far away from Yoav as possible!

ANSWER: Perhaps the reason why Avner let down his guard is that the verse says that this interaction between Yoav and Avner occurred in the city of Chevron (Shmuel II 3:27). Chevron was an Ir Miklat, as the verse states in Yehoshua (21:11). Avner was not afraid of Yoav, the Go'el ha'Dam, because he was in an Ir Miklat, and a Go'el ha'Dam is not allowed to kill in an Ir Miklat.

If, however, they were in an Ir Miklat, then why indeed did Yoav kill Avner? Why was Yoav not Chayav Misah for doing so (since a Go'el ha'Dam who kills in an Ir Miklat is Chayav Misah)?



The answer may be learned from the words of the RAMBAM (Hilchos Rotze'ach 6:4) who distinguishes between a person who kills b'Shogeg, accidentally, and a person who kills in a manner that is close to Mezid, that is almost deliberate (such as when the killing was a result of the killer's negligence). The latter killer does not go to an Ir Miklat, and if he does flee to an Ir Miklat, the Ir Miklat does not protect him and the Go'el ha'Dam is entitled to kill him even in the Ir Miklat.

Avner killed Asah'el intentionally, but he did not receive Hasra'ah. Even if he was not aware of the Halachah that one is supposed to injure his pursuer when possible rather than kill him, such a misunderstanding of the Halachah would be considered a Peshi'ah, an act of negligence, since an act done by accident due to a lack of knowledge is considered an act done intentionally ("Shigegas Talmud Oleh Zadon").

Avner did not know that an Ir Miklat would not protect a person in his situation. Yoav took advantage of this Halachah, and Avner's lack of familiarity with it, to kill Avner in Chevron. (See MARGOLIYOS HA'YAM 49a:4 in the name of KAPEI AHARON.)

#### DAILY MASHAL

The symbiotic relationship between scholar and soldier finds its ultimate expression in these passages (*Shmuel* II 8:15-16):

"And David reigned over all Israel, and David dispensed judgment and justice to all his people. And Yoav, son of Tzuriah, was in charge of the army."

"If not for David," explains Rabbi Abba bar Cahana, "Yoav could not succeed in war, and if not for Yoav, David could not study Torah."

Maharsha calls attention to the fact that rather than mention David's ability to dispense judgment and justice thanks to Yoav's military leadership, the Sage deviates from the language of the passage and speaks of David's Torah study.

His explanation is that Rabbi Abba bar Cahana was motivated to make this change by the term "to all his people" in the above-mentioned passage. In order to be capable of dispensing judgment and justice to all the people and never err, David had to have a complete mastery of the law, something which was possible only by being free of military responsibility which would interfere with his ability to study Torah.

The other half of this relationship between scholar and soldier is already explained by Rashi who writes that it was the merit of David's Torah study which made it possible for his general Yoav to succeed in war.

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