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Sanhedrin Daf 53

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Daf Notes is currently being dedicated to the neshamot of

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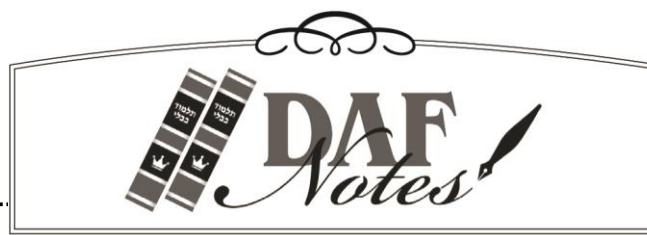
Rabbi Zeira asked of Abaye; Those who are stoned, but in whose case Scripture does not explicitly decree stoning, so that we derive the penalty by analogy from Ov and Yidoni, from which phrase do we deduce it: from ‘they shall surely be put to death’, or from ‘their blood shall be upon them’? He replied: It is deduced from the phrase ‘their blood shall be upon them,’ for if it is inferred from the passage ‘they shall surely be put to death,’ what need is there of the words ‘their blood shall be upon them’? But do you say that it is deduced from ‘their blood shall be upon them’; what need is there then of the phrase ‘they shall surely be put to death’? — As it has been taught in a braisa: He who smote him shall surely be put to death; for he is a murderer. I know only that he may be executed with the death that is decreed for him: From where do I know that if you cannot execute him with that death, you may execute him with any other death? — From the verse: He who smote him shall surely be put to death, implying in any manner possible.

Rav Acha of Difti questioned Ravina: Now, had the deduction been from the phrase: they shall surely be put to death — what would be Rabbi Zeira's difficulty? Shall we say that his difficulty would be in respect of [adultery with] a married woman, namely, that we ought to learn the manner of death from the law of Ov and Yidoni; just as there it is stoning, so here too? But since the Divine Law ordained stoning for an

arusah, it follows that a nesu'ah is not stoned! If, again, the difficulty would arise in respect of one who smites his father or mother; namely, that we ought to learn [by analogy of Ov and Yidoni [that he is stoned]? But instead of deducing it from Ov and Yidoni, etc., deduce it rather from adultery with a married woman [who is strangled], since you may not make a deduction in favor of a stringent penalty in preference to a lenient one.

He replied: His difficulty would be in respect of all others who are stoned, for if it [the punishment of them by stoning] is deduced from the phrase: they shall surely be put to death, why deduce it from Ov and Yidoni; deduce it rather from the adultery of a married woman?

MISHNAH: The following are stoned: he who commits incest with his mother, his father's wife, or his daughter-in-law; he who cohabits with a male or beast; a woman who commits bestiality with a beast; a blasphemer; an idolater; he who gives of his offspring to Molech; an Ov and Yidoni; one who desecrates the Shabbos; he who curses his father or mother; he who commits adultery with a betrothed maiden; he who incites [individuals to idolatry]; he who seduces [a whole town to idolatry]; a sorcerer; and a wayward and rebellious son.



One who commits incest with his mother incurs a penalty in respect of her both as his mother and as his father's wife. Rabbi Yehudah said: He is liable in respect of her as his mother only. One who commits incest with his father's wife incurs a penalty in respect of her both as his father's wife, and as a married woman. [He is guilty in respect of the former] both during his father's lifetime and after his death, whether she was widowed from erusin or from nesu'in. He who commits incest with his daughter-in-law incurs a penalty in respect of her both as his daughter-in-law and as a married woman. [He is guilty in respect of the former] both during his son's lifetime and after his death, whether she was widowed from erusin or from nesu'in.

GEMORA. It has been taught: Rabbi Yehudah said: If his mother was unfit for his father, he is guilty only in respect of her maternal relationship to him. What is meant by unfit for him? Shall we say, forbidden to him on pain of extermination or death inflicted by the Beis din? This would prove that the Rabbis hold that even for such he incurs a twofold penalty. But how so, seeing that his father cannot be legally married to her at all? — Rather, it must refer to a woman who is forbidden to him in virtue of a negative precept, Rabbi Yehudah agreeing with Rabbi Akiva, who holds that kiddushin is not valid between those who are interdicted to each other by a negative command.

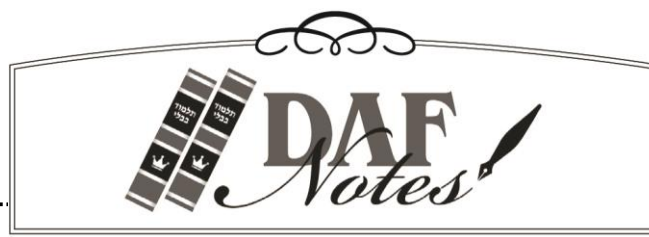
Rabbi Oshaya objected: [We have learned:] A woman who is forbidden [to her deceased husband's brother] by a positive precept, or on the score of sanctity, must submit to the chalitzah ceremony, but may not marry her brother-in-law. Now 'forbidden by a positive precept' means the prohibitions in the second degree,

imposed by a Rabbinic decree, and why is it thus designated? Because it is a 'positive precept' to obey the Sages. 'Forbidden on the score of sanctity' refers to the prohibition of a widow to [marry] a Kohen Gadol, and of a divorcee or a chalutzah to marry an ordinary Kohen; and why is it so called? Because it is written: they [sc. the Kohanim] shall be holy unto their God. And it has been taught regarding this: Rabbi Yehudah reversed the definition. Now, though reversing the definition, he agreed on the fundamental law, that these required chalitzah [before being free to marry others]. But if you maintain that Rabbi Yehudah agreed with Rabbi Akiva [on the invalidity of kiddushin between those who are forbidden by a negative command], then consider: Rabbi Akiva places those who are forbidden by a negative command in the same category as those who are forbidden on pain of extermination; but are not the latter exempt from both chalitzah and yibum?

The Gemora answers: Rabbi Yehudah reverses the definition according to the ruling of the first Tanna, with which, however, he disagrees.

The Gemora states: When Rabbi Yitzchak came, he taught as we have learned [in our Mishnah]: Rabbi Yehudah said: he incurs guilt only on account of her maternal relationship to him. Now why is this?

Abaye said: Scripture said: The nakedness of your father, or the nakedness of your mother, you shall not uncover, she is your mother. [This teaches:] You must punish him for maternal incest, but not for incest with his father's wife.



The Gemora asks: If so, what of the verse: The nakedness of your father's wife you shall not uncover; it is your father's nakedness? Does it not imply that you may penalize him for incest with his father's wife, but not for maternal incest? In that case, if she is both his mother and his father's wife, one verse implies the exclusion of maternal incest [as the incriminating offence] — and the other excludes incest with his father's wife [as punishable]. Now if he is punished for incest with his mother, even when not his father's wife, and with his father's wife, though not his mother, shall we say that when she is both his mother and his father's wife, he incurs no penalty at all?

A further difficulty is this: Do not the Rabbis admit the existence of this verse: 'she is your mother'? But they interpret it as teaching the law deduced by Rav Shisha, the son of Rav Iddi; in that case, Rabbi Yehudah must also utilize it for the same purpose.

Rather, Rav Acha the son of Ikka said as follows: The Torah said: [she is thy mother; you shall not uncover] her nakedness. This teaches us: You may penalize him for one degree of 'nakedness,' but not for two degrees. If so, what of the verse: You shall not uncover the nakedness of your daughter-in-law; she is your son's wife, you shall not uncover her nakedness? Does this too teach: You may penalize him for one degree of 'nakedness,' but not for two? But we have learned: He who commits incest with his daughter-in-law incurs a penalty in respect of her both as his daughter-in-law and as a married woman. (He is guilty in respect of her both during his son's lifetime and after his death); and Rabbi Yehudah does not dispute this! But since she is but one person, though forbidden in a double capacity, the Torah said: 'her nakedness'

[singular]; here too then, [in the case of one's mother who is also the father's wife] since she is one person, even if she were doubly forbidden, the Torah said: 'her nakedness.'

Rather, Rava answered as follows: Rabbi Yehudah maintains that the nakedness of your father [you shalt not uncover], means your father's wife, deducing this by a gezeirah shavah, and it applies to her whether she is his mother or not; from where do we know then that one's mother who is not his father's wife is likewise forbidden? — From the verse: the nakedness of your mother you shall not uncover. [Hence the phrase:] 'she is your mother' teaches that he is guilty only on account of her maternal relationship, but not because she is his father's wife.