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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

**[The Torah writes: "If a man finds a virgin maiden, who is not betrothed, and seizes her, and lies with her, and they are found; then the man who lay with her shall give to the maiden's father fifty silver (shekels), and she shall be his wife; because he afflicted her, he may not send her away all his lifetime" (Deut. 22:28-29). This verse teaches that a man who violates a maiden is obligated to pay her father a fine of "fifty silver," i.e., fifty selas (two hundred dinars); he is also obligated to marry the violated girl (if her father and she agree), and he is forbidden to divorce her. We also derive from the wording, "If a man finds a virgin maiden," that the fine is payable only under the following conditions: (1) she must be a "maiden" (a *na'arah*), i.e., she must have the signs of puberty (two hairs), and she must be between the age of twelve years and one day, and twelve and one-half years, when she becomes a *bogeres*, and (2) she must be "a virgin," i.e., a girl who has not engaged in sexual relations. Our Mishnah teaches that the fine must be paid irrespective of whether he can fulfill "and she shall be his wife," and even in cases of forbidden sexual unions punishable by *kares* (the punishment of being "cut off from among the people").]**

The Mishnah states: These are the *na'aros* (girls who have reached maturity; generally at twelve years old until they become a *bogeres* at twelve and a half) who are entitled to a fine (if a man violates an unmarried woman, he must pay a penalty of fifty shekalim to her father): If one cohabits with a *mamzeres*, a *nesinah*, or with a Cuthean (converts to Judaism after an outbreak of wild animals in

*Eretz Yisroel and their conversion was debated as to its validity*); if one cohabits with a convert, a captive, or with a slavewoman who were redeemed or converted, or freed before the age of three years and one day; if one cohabits with his sister, or with his father's sister, with his mother's sister, with his wife's sister, with his brother's wife, with his father's brother's wife, or with a *niddah* (a menstruating woman), they are entitled to a fine. Even though they incur *kares*, they are not liable to the Court imposed death penalty (and therefore, they are not exempt from the fine). (29a1 – 29a2)

[Does it mean that only] these blemished *na'aros* get the fine, [but] unblemished ones [do] not? — He means as follows: These are blemished *na'aros* who get the fine: If one cohabits with a *mamzeres*, a *nesinah*, or with a Cuthean etc.

The Gemora infers from our Mishnah that only a girl who is a *na'arah* is entitled to the fine, but a minor would not be entitled to this fine.

The Gemora asks: Who is the *Tanna* that holds like that?

Rav Yehudah said in the name of Rav: It is the opinion of Rabbi Meir, for we have learned in the following *braisa*: Concerning a minor girl from one day old until she produces two pubic hairs; her father is entitled to sell her as a maidservant, but she is entitled to a fine. Concerning a girl who produced two pubic hairs until she reached the state of *bogeres* (generally, from twelve years and one day until twelve and a half); she is entitled to a fine and



her father does not have the right to sell her as a maidservant. These are the words of Rabbi Meir, for Rabbi Meir says: Anytime that the father can sell her, she does not receive a fine; and anytime she does receive a fine, her father cannot sell her. The *Chachamim* say: Concerning a minor girl from three years and one-day old (*the age where she is fit for cohabitation*) until she reached the state of *bogeres*; she is entitled to a fine.

The *Gemora* asks: The *Chachamim* said that she is entitled to a fine. May we infer from there that the father has no right to sell her?

The *Gemora* answers: No! There is a fine at this age besides the right of the father her to sell her as a maidservant. (29a2 – 29b1)

The *Mishnah* had stated that women who are unfit to be married are nevertheless entitled to receive a fine if they are violated.

The *Gemora* asks: Why is this the case? It is written [Devarim 22; 29]: *And she shall be to him a wife*; and it is learned from here that he has an obligation to marry her only if she is qualified to be married by him. (*We can infer from here that the fine is payable only if he violated a girl whom, in law, he could marry, but as to the women mentioned in the Mishnah, who are either generally prohibited to an Israelite for marriage, or there is kares barring their way to marriage, there should be no fine due to them.*)

Rish Lakish answers: It is written in the Torah: *Na'arah, na'arah* and *ha-na'arah* (*the 'hey' at the beginning of the word is also available for exposition*). Once, the word '*na'arah*' is necessary for itself (*ordinary unblemished girls*); once to include those girls where one would be liable for violating a mere prohibitory law, and once to include those girls where one would be liable for violating a transgression punishable with *kares*.

Rav Pappa answers: It is written in the Torah: *Besulah, besulos, ha-besulos*. Once, the word '*besulah*' is necessary for itself (*ordinary unblemished girls*); once to include those girls where one would be liable for violating a mere prohibitory law, and once to include those girls where one would be liable for violating a transgression punishable with *kares*.

The *Gemora* asks: Why doesn't Rav Pappa learn like Rish Lakish?

The *Gemora* answers: The word *na'arah* is necessary to teach us a different *halachah* in accordance with the exposition of Abaye, for Abaye said: If one violates a woman and she later dies, he is exempt from paying the fine, for it is said: *And he shall give to the father of the na'arah*; [this means]: To the father of a *na'arah*, but not to the father of a dead [person].

The *Gemora* asks: Why doesn't Rish Lakish learn like Rav Pappa?

The *Gemora* answers: The word *besulah* is necessary to expound a *gezeirah shavah*, for it was taught in a Baraisa: he shall pay money according to the settlement made to the virgins, [this means that] this shall be like the settlement made to the virgins, and the settlement made to the virgins shall be like this. [The exposition is between the laws where one violates a girl and where one seduces a girl. If one seduces a girl, the fine is fifty just like the *halachah* is if he violated her. If one violates a girl, the payment is in *shekalim* just like the *halachah* is if he seduced her.]

But Rish Lakish also requires it for [the same teaching] as that of Abaye, and Rav Pappa also requires it for the *gezeirah shavah*? — Take therefore six words: '*na'arah*', '*na'arah*', '*the na'arah*', '*virgin*', '*virgins*', '*the virgins*': Two [are necessary] for themselves, one for the teaching of

Abaye, and one for the analogy, [and] two remain over: one to include [those na'aros, the marrying of whom involves the transgression] of a plain prohibitory law, and one to include [those na'aros, the marrying of whom involves] a transgression punishable with kares.<sup>1</sup> (29b1 – 29b2)

The *Gemora* states that our *Mishnah's* viewpoint excludes the opinion of the Tanna of the following Baraisa: And she shall be to him a wife. Shimon Hatimni says that the violator only pays a fine if he violates a woman where there is a possibility where she can become his wife. Rabbi Shimon ben Menasya says that the violator only pays a fine if he violates a woman where she would be qualified for him to keep her as a wife.

The *Gemora* asks: What is the practical difference between these two opinions?

Rabbi Zeira answers: A *mamzeres* or a *nesinah* would be the difference between them. According to the one who says that there must be the possibility of her 'becoming' his wife, here also there is the possibility of her 'becoming' his wife. And according to the one who says that there must be the possibility of her remaining his wife, here there is not the possibility of her remaining his wife.<sup>2</sup>

The *Gemora* asks: According to Rabbi Akiva who holds that *kiddushin* does not take effect with women prohibited by a mere prohibition, what would the practical difference between these two opinions?

The *Gemora* answers: A widow to a *Kohen Gadol* would be the difference between them, and this according to

<sup>1</sup> The *Gemora* concludes that six words are necessary altogether. Two are necessary for itself. One to teach Abaye's *halachah* and one for the *gezeirah shavah*. One to include those girls where one would be liable for violating a mere prohibitory

Rabbi Simai, for it is taught: Rabbi Simai says: Of all Rabbi Akiva makes mamzerim, except [the offspring of] a widow and a Kohen Gadol, for the Torah says: 'he shall not take', and 'he shall not profane', [this teaches that] he makes [his offspring] profane, but not mamzerim.

The *Gemora* asks: And according to Rabbi Yesheivav, who says: Come and let us cry out against Akiva ben Yosef, who says: Whenever the marriage is forbidden in Israel the child [of such marriage] is a mamzer, what is the difference between them? — The difference between them is with regard to the marriage with an Egyptian or an Edomite [woman], in which case there is a transgression [merely] of a positive law. — That is all right if Rabbi Yesheivav [by his statement] only came to exclude the view of Rabbi Simai. But if his statement was his own, whenever the marriage is forbidden in Israel, the child [of such a marriage] is a mamzer. It would include also a marriage with regard to which a positive law has been transgressed. What is [then] the difference between them? — The difference between them is with regard to a girl, who is no more a virgin, who married a Kohen Gadol. — And why is this different? — It is a law which does not apply to all. (29b2 – 30a1)

#### INSIGHTS TO THE DAF

##### **'Kim leih b'dirabah mineih' in a case of uncertainty**

Reb Akiva Eiger rules that if one seduces an idolater, he is exempt from paying a fine because of the principle of '*kim leih b'dirabah mineih*,' one incurs the more severe penalty of death and he is not liable for the monetary payments. Since the *halachah* is: Zealots have a right to kill one who cohabits with an idolater, he will not be required to pay the fine. If, however, it is uncertain if the girl is a Jew or

law, and one to include those girls where one would be liable for violating a transgression punishable with *kares*.

<sup>2</sup> *Kiddushin* would take effect with them, but they cannot remain married.



an idolater, he will be liable for the fine because in this situation, the zealots cannot kill him.

Reb Elchonon Wasserman in Koveitz Shiurim (84) learns from here that whenever it is uncertain if the principle of '*kim leih b'dirabah mineih*' applies, he would still be liable for the payment.

Reb Yitzchak Zilberstein comments that if not for Reb Elchonon, a distinction could have been made between a court-imposed death penalty and a case where one incurs death by the hands of the zealots. In a case of an uncertainty regarding a court-imposed death penalty, such as one who desecrated *Shabbos* in a time where it is uncertain if *Shabbos* has started or not (*bein hashemoshos*), and at the same time he burned the stalks of his fellow, he would be exempt from paying for the damages. The reason is as follows: Even though, *Beis Din* cannot administer the death penalty, he would be exempt from paying because he might be liable for death. However, in a case where one does not incur a death penalty; it is a transgression where zealots have a right to kill him. In a case of uncertainty, where he may not be killed, he should certainly be responsible for the monetary payments involved.

#### DAILY MASHAL

#### QUEEN ESTHER'S ORDERS

Reb Shmuel the Badchan said over by the *Beis Yisroel's* wedding: Esther instructed Mordechai: Go and gather all the Jews, *leich kenos es kal hayehudim*. Don't read the word '*kenos*' with a '*kaf*,' meaning gather, but rather with a '*kuf*,' meaning penalize.

The Jewish people were being sold for the purpose of being destroyed. Esther instructed Mordechai to issue a monetary fine against all the Jews.

Her rationality for this was as follows: Our *Gemora* states: Anytime that there is a fine (*a girl twelve years old*), there cannot be a sale (*the father is not entitled to sell his daughter as a maidservant*). If the Jewish people would be fined, they cannot be sold.

#### FOOD FOR THOUGHT

\*\*\* Why are the halachos of violation and seducing in *Meseches Kesuvos*?

\*\*\* The *Mishnah* states: These are the *na'aros* (*girls who have reached maturity; generally at twelve years old until they become a bogeres at twelve and a half*) who are entitled to a fine.

Rashi explains: If a man violates an unmarried woman, he must pay a penalty of fifty shekalim to her father.

Why did Rashi choose to explain the *Mishnah* to be referring to a case of violation; the same *halachah* would be true if a man seduces a woman?

\*\*\* Rabbi Meir said: Concerning a minor girl from one day old until she produces two pubic hairs; her father is entitled to sell her as a maidservant, but she is entitled to a fine.

Why does she have to be one day old; couldn't the father sell her as a maidservant while she is still in her mother's womb?