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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 Mishnah had stated: If one violates his sister, or his father's sister, his mother's sister, his wife's sister, his brother's wife, his father's brother's wife, or 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).

The Gemora notes a contradiction on this from the following Mishnah in Makkos: If one violates the following prohibitions, he will receive lashes: 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. We have learned that one cannot incur lashes and pay money for the same violation. (Since the Mishnah in Makkos teaches us that he receives lashes, it is evident that he is not required to pay!)

Ulla answers: This is not a difficulty: Our Mishnah is discussing a case where the girl is a na'arah, and the fine is applicable; the Mishnah in Makkos is discussing a case where the girl is already a bogeres, and the fine is not applicable.

The Gemora asks: Even if she is a bogeres (and the fine for violating her is not applicable), he still should be liable for her embarrassment and for her depreciation (since she is no longer a virgin)? The Gemora answers: The Mishnah is referring to a girl who is mentally deranged (where she does not have shame, and she has no value on the slave market).

The Gemora asks: But, isn't he liable to pay for the physical pain that he caused her? The Gemora answers: The Mishnah

is discussing a case where he seduced her (where she doesn't suffer any pain).

The Gemora comments: Accordingly, we can say that the Mishnah is discussing a case of a na'arah (where normally, a fine is applicable), but she was an orphan and she was seduced (in which case, she has forfeited all her rights to the monetary liabilities, since the money goes to her, for there is no father). (31b4 – 32a1)

It emerges that Ulla maintains that whenever one is liable for both money and lashes, he is liable to pay and exempt from receiving lashes.

The Gemora asks: How does Ulla know this principle? The Gemora answers: He derives it from the halachah of one who wounds his fellow. Just as there, there is a liability to pay and to receive lashes, and the halachah is that he pays and he does not receive lashes, so too, in all cases where there is a liability for both money and lashes, he is liable to pay and exempt from receiving lashes.

The Gemora asks: How can we learn from there? Perhaps it (the reason he pays and does not receive the lashes) is because one who wounds his fellow is liable to pay for five things (damages, pain, doctor bills, loss of work and embarrassment; and therefore the monetary payments is stricter than the lashes)? And if you will say that those payments are more lenient than lashes, we can ask: Perhaps we cannot derive from one who wounds his fellow; for there is an exception from the general rule of prohibition regarding lashes that Beis Din administers (other cases do not have exceptions)?

Rather, Ulla derives his principle from the halachah of witnesses who are found to be zomemim (when witnesses offer testimony and other witnesses refute them claiming that the first set of witnesses could not possibly testify regarding the alleged crime since they were together with them at a different location at the precise time that they claimed to witness the crime somewhere else; The Torah teaches us that we believe the second pair in this instance; the first witnesses are called "eidim zomemim" "scheming witnesses," and they receive the exact punishment that they endeavored to have meted out to the one they accused). (If they testify regarding money and they are found to be zomemim, they will pay and not receive the lashes for testifying falsely.)

The Gemora asks: How can we learn from there? Perhaps it (the reason he pays and does not receive the lashes) is because edim zomemim do not require a warning (and that is why we are stricter)? And if you will say that the payment is more lenient than lashes, we can ask: Perhaps we cannot derive from edim zomemim; for they did not commit an action?

The Gemora answers: Rather, Ulla derives his principle from both of them together (one who wounds his fellow and edim zomemim). The point common to both is that there are the payment of money and the punishment of lashes, and in either case he pays the money and does not receive the lashes. So whenever there are payment of money and the punishment of lashes, he pays the money and does not receive the lashes. But [it may be argued] the point common to both is [also] that they both have a strict side? And if [you will say that the payment of] money is lighter, [one can say against this] that they have both a lighter side? — Rather, Ulla learns this principle (whenever one is liable for both money and lashes, he is liable to pay and exempt from receiving lashes) from a gezeirah shavah (one of the thirteen principles of Biblical hermeneutics; it links two similar words from dissimilar verses in the Torah) from 'tachas,' 'tachas.' [We cannot ask questions on the comparison if it is derived through a gezeirah shavah.] It is written here for he has

violated her and it is written there: 'Eye for eye'. As there he pays money and does not receive lashes, so wherever there are the payment of money and the punishment of lashes, he pays money and does not receive the lashes. (32a1 – 32b1)

Rabbi Yochanan offers a different solution to the contradiction between our Mishnah and the Mishnah in Makkos. Even if the Mishnah in Makkos is referring to his sister who is a na'arah, it is discussing a case where he was warned (and therefore he is subject to the penalty of lashes), and our Mishnah is discussing a case where he was not warned (and that is why he pays).

It emerges that Rabbi Yochanan maintains that whenever one is liable for both money and lashes and he was properly warned beforehand, he receives lashes and is exempt from paying. The Gemora asks: What is Rabbi Yochanan's source for this? The Gemora answers: It is written: According to his guilt. From this, we can infer that you punish him because of one guilt, but not because of two guilts. And immediately following that, are the words: Forty lashes he shall strike him.

But behold when one person injures another person, in which case there are the payment of money and the punishment of lashes, he pays money and does not receive the lashes? And if you will say that this is only when they did not warn him, but when they warned him, he receives the lashes and does not pay — didn't Rabbi Ammi say in the name of Rabbi Yochanan that, if one person struck another person a blow, for which no perutah can be claimed as damages, he receives the lashes? What are the circumstances of the case? If they didn't warn him, why does he receive the lashes? Hence it is clear that they warned him, and the reason [why he receives the lashes and does not pay] is because the damages do not amount to a perutah, but if they amount to a perutah he pays the money but doesn't receive the lashes! — [It is] as Rabbi Ila'a said: The Torah has expressly stated that the zomemim witnesses have to pay money; so [here] also the Torah has expressly

stated that the person who injures another person has to pay money.

With regard to what has that [teaching] of Rabbi Illa'a been said? — With regard to the following: 'We testify that So-and-so owes his fellow two hundred zuz' and they were found to be zomemim, they receive the lashes and pay, for it is not the verse that imposes upon them the lashes which imposes upon them the payment [of money]. This is the view of Rabbi Meir; and the Sages say: He who pays does not receive lashes. [And] let us say: he who receives lashes does not pay? [Upon that] Rabbi Illa'a said: The Torah has expressly stated that the zomemim witnesses have to pay more money.

Where has the Torah stated this? — Consider; it is written: 'Then shall you do unto him as he had thought to do onto his brother'; why [is it written further,] 'hand for hand'? [This means] a thing that is given from hand to hand, and that is money. [And] the same applies to the case of one person who injures another person. Consider; it is written: 'As he has done, so shall it be done to him'; why [is it written further] 'so shall it be rendered unto him'? [This means] a thing that can be rendered, and that is money.

Why doesn't Rabbi Yochanan say as Ulla? — If so you would abolish [the prohibitory law]: The nakedness of your sister you shalt not uncover. [But couldn't one say] also [in the case of] one person who injures another person: If so you would abolish [the prohibitory law], 'he shall not exceed, lest, if he should exceed.' [And in case of] the zomemim witnesses too, [one could say]: If so you would abolish [the law]: 'then it shall be, if the guilty man deserves to be beaten.' But [you must say that in the case of] the zomemim witnesses it is possible to fulfill it when [the witnesses testified falsely about someone that he was] the son of a divorced woman or the son of a chalutzah. [Similarly in the case of] a person who injured another person, it also is possible to fulfill it when he struck him a blow for which no perutah can be claimed as damages. [And so you can say] also [with regard to] his sister [that] it is possible to fulfill it in the case of his

sister who was a bogeres! — Rabbi Yochanan can answer you: [The verse] for he has violated her is required for [the same teaching] as of Abaye, for Abaye said: The verse says, 'for he has violated her'. This [he shall pay] for he has violated her, [from which we infer], by implication, that there are also [to be paid damages for] shame and deterioration. - And Ulla? — He derives it from a teaching of Rava, for Rava said: The verse says: Then the man that lay with her shall give unto the father of the na'arah fifty shekel of silver; [this means that] for the enjoyment of lying [with the na'arah he has to pay] fifty [shekel of silver], [and we infer], by implication, that there are also [to be paid damages for] shame and deterioration. (32b1 – 33a2)

#### DAILY MASHAL

Tosfos HaRosh seems to indicate that witnesses for sanctifying the new month are valid even if they are false witnesses outright. He cites the Scriptural verse "These are Hashem's appointed [holy days] that you shall designate them as holy occasions," and it is learned from there that Beis Din's declaration of the new month is valid even if they choose the incorrect day through a mistake or even deliberately.

The Chasam Sofer writes that these witnesses are not transgressing the prohibition of the Torah of bearing false testimony since it is being done with the knowledge of Beis Din and they are not deceiving anyone. Rav Yosef Engel explains that these witnesses are not transgressing the prohibition of the Torah of bearing false testimony because the Torah explicitly states "Do not bear false testimony against your neighbor" and by testifying in regards to the moon, one is not testifying against his neighbor and therefore will not be included in the transgression.

Rav Elyashiv Zt"l says something very similar to the Chasam Sofer. He states that there cannot be a transgression of bearing false testimony when Beis Din is aware that the witnesses are lying. They are not deceiving anyone and Beis Din is even intimidating them to do so. This is not a lie or false testimony at all.