



Produced by Rabbi Avrohom Adler, Kollel Boker Beachwood

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Moshe Raphael ben Yehoshua (Morris Stadtmauer) o”h

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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

Rabbi Elozar says: *Edim 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) pay money and do not receive lashes because it is not possible to properly warn them beforehand.

Rava explains why this so: When can they be warned? If we warn them some time before they testify, they may claim that they had forgotten the warning. If we warn them immediately prior to their testimony, they will become frightened and not testify. If we will warn them after their testimony, what was done already, was done!

Abaye asks: Why can't they be warned immediately after they concluded their testimony (and they will still be able to retract from their given testimony)?

Rav Acha the son of Rav Ika asks: Why can't we warn them some time before their testimony and then remind them subtly during their testimony?

Abaye then retracted from his question: It is evident that *eidim zomemim* do not require a warning; for if they would require a warning, the *halachah* would be that if we did not warn them, they would not get killed. This cannot be; for they attempted to have the defendant killed without

receiving a warning (*since their testimony was proven to be false*); should we require a warning in order for them to be killed? The Torah states: We should do unto them what they tried to do to their brother, and this would be missing (*if they would need a warning*).

Rav Samma the son of Rav Yirmiyah demurred: But now [according to your argument], [if the witnesses testified falsely about someone that he was] the son of a divorced woman or the son of a chalutzah, since this case is not included in 'as he had thought etc.' a warning should be required! — The verse says: 'You shall have one manner of law'; [this means] a law that is equal for you all. (33a2 – 33a3)

Rav Shisha the son of Rav Idi provides another source for the *halachah* regarding one who wounds his fellow that he pays and does not receive lashes. It is written [Shmos 21:22]: *And if men shall fight and they hurt a pregnant woman, so that she miscarries*. Rabbi Elozar said: The Torah is discussing a case where one of the combatants was striving with intent to kill the other, for it is written: *But if there shall be a fatality, then you shall give a life for life*. How shall we understand this case? If they did not warn him, why should he be killed? Hence it is obvious that he was warned. There presumably is a rule that when one is warned regarding a severe matter, he is automatically warned for a lighter matter (*which would be for lashes if he would only wound his fellow*). Yet, the Torah states: *And if there is no fatality, he shall be fined (for the worth of the offspring)*. (*It emerges that he must pay for killing the babies and he receives the lashes for striking the woman.*)

Rav Ashi asks: How do we know that when one is warned regarding a severe matter, he is automatically warned for the lighter matter? Perhaps it is not so! And even if we will say that it is so, how do we know that the death penalty is more severe; perhaps receiving lashes is more severe, for Rav had said: If they would have whipped Chananya, Mishael and Azaryah, they would have succumbed and served the idol!?

Rav Samma the son of Rav Assi said to Rav Ashi, and others say that Rav Samma the son of Rav Ashi said to Rav Assi: There is an obvious difference between a beating with a limit (*lashes, where the maximum is thirty-nine*) and a beating without a limit (*such as the one Chananya, Mishael and Azaryah would have received*).

Rav Yaakov from Nehar Pekod asks on Rav Shisha: Your source is fine according to the Rabbis who understand the verse of *then you shall give a life for life* to an actual life (*obviously, the striker was warned that he would receive the death penalty*), but according to Rebbe, who understands the verse to mean that he will be liable to pay money for killing the woman (*since he didn't intend to strike her*), what is there to say (*he was never warned for the stricter punishment*)? (33a3 – 33b1)

Rather, Rav Yaakov from Nehar Pekod in the name of Rav provides a different source for the *halachah* regarding one who wounds his fellow that he pays and does not receive lashes. It is written [Shmos 21: 18 – 19]: (*If one fellow strikes another and he does not die, but rather, he falls into bed...)* *If he rises and walks outside under his own strength, then the striker shall be absolved.* Now, would it enter your mind that the victim is walking in the street and the striker should be killed? Rather, the Torah teaches us that they imprison the striker; if the victim dies, they kill him and if he does not die, he shall pay for the loss of work and for the doctor bills. How shall we understand this case? If they did not warn him, why should he be killed? Hence it is obvious that he was warned. There presumably is a rule that when one is warned regarding a severe matter, he is automatically warned for a

lighter matter (*which would be for lashes if he would only wound his fellow*). Yet, the Torah states: *He shall pay for the loss of work and for the doctor bills.* (*It emerges that he must pay for killing the babies and he receives the lashes for striking the woman.*)

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Rav Mari asks on Rav Yaakov's source: How do you know that the Torah means that if the victim rises, then the striker is absolved from the death penalty; perhaps the Torah is referring to one who was striking unintentionally, and the Torah means that he is exempt from going to exile?

The *Gemora* remains with a difficulty. (33b1 – 33b2)

Rish Lakish offers a different solution to the contradiction between our *Mishnah* and the *Mishnah* in Makkos. Our *Mishnah* reflects the opinion of Rabbi Meir, who holds that whenever one is liable for both money and lashes, he incurs both punishments.

The *Gemora* asks: If the *Mishnah* is following Rabbi Meir's opinion, the violator should also pay the fine if he violated his daughter; why didn't the *Mishnah* mention that case?

The *Gemora* attempts to answer by differentiating between a case where there is lashes and payment (*Rabbi Meir would say that he incurs both*) and a case where there is a death penalty and payment (*where Rabbi Meir would agree that he is exempt from the payment*).

The *Gemora* proves from the following *Baraisa* that this is not the case. The *Baraisa* states: If one stole an ox and slaughtered it on *Shabbos*, or he stole and slaughtered it for idol worship, or he stole an ox that was destined to be stoned and he slaughtered it, he is liable to pay the payment of four and five (*times the value of the ox*); these are the words of Rabbi Meir. (*This is a case where he is subject to a death penalty, and nevertheless, is liable to pay.*) The *Chachamim* say: He is exempt from paying.

The *Gemora* states that this *Baraisa* is not a proof, for it was stated regarding this *Baraisa*: Rabbi Yaakov said in the name of Rabbi Yochanan, and some say [that] Rabbi Yirmiyah said in the name of Rabbi Shimon ben Lakish: Rabbi Avin and Rabbi Ila'a and the whole company [of scholars] said in the name of Rabbi Yochanan: the *Baraisa* refers to a case where the robber did not slaughter the animal himself; rather, he instructed an agent to slaughter it for him (*in which case, he himself is not subject to death*).

The *Gemora* asks: How can this be the correct explanation for the *Baraisa*? Can one fellow (*the agent*) commit the sin and the other fellow should be liable to pay?

[The *Gemora* provides various Scriptural sources proving that a robber is liable to pay the four or five payments even if it was slaughtered by an agent.] Rava said: The Divine law says: and slaughter it or sell it; [this teaches that] as the sale is [effected] through [the participation of] another person, so [may] the slaughtering [of the animal] be through another person. In the School of Rabbi Yishmael it was taught: [the word] 'or' [is] to include the agent. In the School of Chizkiyah it was taught: [the word] 'instead' [is] to include the agent. (33b1 – 33b4)

DAILY MASHAL

OVERCOMING A TEST

The *Gemora* asks: How do we know that the death penalty is more severe; perhaps receiving lashes is more severe, for Rav had said: If they would have whipped Chananya, Mishael and Azaryah, they would have succumbed and served the idol!?

Reb Bunim from Parshischa said: The reason that they weren't tested by means of whipping is because the Holy One, Blessed is He does not test anyone beyond his ability. Every test is given according to that particular person's individual strength. This should serve as a tremendous *chizuk* for a person. If he is being tested; it is clear that he has the innate strength to overcome it.

Reb Baruch Sorotzkin, the Telzer Rosh Yeshiva once told this over to a woman who was being severely tested. Reb Mottel Gifter, also a Rosh Yeshiva in Telz was on the phone at the same time, and he said emphatically, "Baruch, it's easy for you to say!"

Yes, it's easy to say, but if it would be easy to hear as well, it wouldn't be a test. Hashem should give us all the strength to overcome whatever our test might be.