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Daf Notes is currently being dedicated to the neshamot of

**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

***[The Gemora had cited a dispute between R’ Yochanan and Rish Lakish: He who committed inadvertently an act which, if he had committed it deliberately, would have been punishable with death or with lashes, and at the same time committed an act punishable with something else, Rabbi Yochanan says that he is liable, but Rabbi Shimon ben Lakish said: He is not liable. The Gemora explained: Rabbi Yochanan said that he is liable, for he had not been warned (of the greater penalty), but Rabbi Shimon ben Lakish says: he is not liable, for since, if he had been warned (of the greater penalty) he would not be liable, so too, if he had not been warned of it, he is also not liable.]***

Rish Lakish asked Rabbi Yochanan (from the following verse): *[If two men shall quarrel and they hit a pregnant woman and she miscarries] and there shall be no fatality, he shall be punished* (by paying the value of the fetus). Is this not referring to an actual fatality (meaning that the woman did not die)? [We can then infer from here that if she would have died, the man would be exempt from paying for the fetus, even though he was not warned and would, in any event, not be executed! This is in contradiction to R’ Yochanan, for he maintains that it is only an act which carries an actual death sentence which exempts one from paying, not one where the death penalty cannot be carried out!]

Rabbi Yochanan answered: It refers to the judgment of fatality. [The Torah is teaching us that if the one who hit her will not be condemned to death – either because the

woman did not die, or because he was not warned, then he will pay for the fetus; otherwise (if he will be sentenced to death), he will not be liable to pay.]

There were others who reported the discussion as follows: Rabbi Yochanan asked Rish Lakish (from the following verse): *[If two men shall quarrel and they hit a pregnant woman and she miscarries] and there shall be no fatality, he shall be punished* (by paying the value of the fetus). Is this not referring to a judgment of fatality (against the person who hit the woman)?

Rish Lakish answers: No; it is referring to an actual fatality (referring to the woman). (34b4 – 35a1)

Rava asked: Is there in fact an opinion that someone who was not warned when committing a sin for which he would be liable to the death penalty and incurred a monetary obligation while sinning, that he is obligated to pay the money (*and we don’t say “Kim Ley etc.”*)? Wasn’t a Baraisa in the school of Chizkiyah taught that there is an analogy between a person who kills another person (*where he gets killed, but is not required to pay*) and a person who hits an animal (*that he is obligated to pay*)? There is no difference if when the person hit the animal, he did so inadvertently or deliberately, with intention or without intention, whether his blow was downwards or upwards. In all cases, he is obligated to pay (*for a person is always liable for his actions*). Similarly (*regarding a person killing a person, where the Torah says that the penalty is death and not payment*), there is no difference if the person hits his fellow inadvertently or deliberately,

with intention or without intention, whether his blow was downwards or upwards. In all cases, he is not required to pay. *[In both cases, the law is absolute, which implies that a person would never incur a monetary obligation when killing someone (only death).]*

Rather, when Ravin arrived (*from Eretz Yisrael*) he stated: Everyone (both R' Yochanan and Rish Lakish) agrees that he who committed inadvertently an act which, if he had committed it deliberately, would have been punishable with death, and at the same time committed an act punishable with something else, he is exempt from paying the money. The argument is only regarding a case where one committed inadvertently an act which, if he had committed it deliberately, would have been punishable with lashes, and at the same time committed an act punishable with something else (i.e., with paying). Rabbi Yochanan says: One is obligated to pay the money, as only the death penalty is compared to damaging an animal (and exempt from payment), but the case of lashes is not compared (and they are not always exempt from payment). Rish Lakish says: One is exempt, as the Torah explicitly included lashes to have the same status as death.

The Gemora asks: Where did the Torah include lashes in this law (that it has a similar halachic law to the death penalty)?

Abaye says: This is derived from a gezeirah shaveh using the word "*rasha*" – "guilty" that the Torah states both by the death penalty and by the lashes penalty.

Rava says: The source is a comparison from the usage of the word "*makeh*" – "hitting" both by hitting an animal and the lashes penalty (*with the teaching being the same as that of Chizkiyah above*).

Rav Pappa asked Rava: which word "*makeh*" stated in the Torah are you talking about? If you are referring to the

word "*makeh*" that is stated in the verse "*u'makeh beheimah yeshalmenah u'makeh adam yumas*" – "and one who hits an animal must pay for it and one who hits a man should be killed," that is a verse referring to murder (*which is punishable through the death penalty, and it has nothing to do with lashes*)!? It must be that the word "*makeh*" is from a different source, namely the verse "*makeh nefesh beheimah yeshalmenah nefesh tachas nefesh*" – "one who mortally hits an animal life should pay for it, a life for a life." Near this verse, the Torah states "*v'ish ki yitain mum ba'amiso ka'asher asah kein ye'aseh lo*" – "and a person who will inflict a wound onto his friend, as he did so will be done to him." However, the word "*makeh*" is not mentioned here! *[Accordingly, what does Rava mean when he says that "makeh" is stated by both lashes and injuring an animal?]*

Rava answers: *[The latter is the teaching I was referring to. How do I explain the absence of the word "makeh?"]* We meant to say that the *concepts* of hitting a person (for which one receives lashes) and damaging an animal are mentioned near each other (and we are therefore able to compare them to each other regarding the aforementioned laws – even though the identical terms are not used by them).

The Gemora asks: The verse Rava is citing regarding hitting a person discusses injuring a fellow man, and in such a case one indeed is obligated to pay (and he does not incur lashes)!? *[How could Rava cite this as a source for Rish Lakish that one does not pay when incurring a penalty of lashes and a monetary obligation at the same time?]*

The Gemora answers: Being that this extra verse is not necessary for hitting another man when payment is required, as the injury is more than a "*perutah*" – "small copper coin" (*as other verses discuss that*), we can apply it to a case where the injury is not a *perutah* (*where he would incur lashes and not pay; we can then compare the*



*case of hitting an animal to this case that there is no distinction between a deliberate act and an inadvertent one regarding monetary liability).*

The Gemora asks: At the end of the discussion, the verse above (as it is referring to a case where the blow did not amount to a perutah) is not a case where there is a monetary obligation at all!? [*Perhaps there is a distinction between a case where one is actually subject to lashes and where one is not, and we would say that if the act was committed inadvertently, he would not be exempt from payment!?*]

The Gemora answers: The comparison is needed to teach us regarding a case where one would hit someone (*even with warning*) and he would tear his silks (at the same time). [In such a case, if he was warned, he would incur lashes for hitting his fellow, but he would not be liable for paying, for the principle is: whenever a person is liable for lashes and paying, he incurs the lashes but does not pay. (In a case where he injures his fellow, there he would pay and not incur the lashes.) The juxtaposition of the verses teach us that just as by injuring an animal, there is no distinction between a deliberate act and an inadvertent one, so too when one hits his fellow (and does not inflict an injury worth a perutah) and tears his silks, there is no distinction between a deliberate act and an inadvertent one, and since there is a penalty of lashes – even if he was not warned and does not actually incur the lashes, he is exempt from monetary liability.] (35a1 – 35b1)

Rav Chiya said to Rava: According to that which the school of Chizkiyah taught that there is an analogy between a person who kills another person (*where he gets killed, but is not required to pay*) and a person who hits an animal (*that he is obligated to pay* - there is no difference if when the person hit the animal, he did so inadvertently or deliberately, in all cases, he is obligated to pay (*for a person is always liable for his actions*); similarly (*regarding a person killing a person, where the Torah says that the*

*penalty is death and not payment*), there is no difference if the person hits his fellow inadvertently or deliberately, in all cases, he is not required to pay), how does he know that this is talking about a regular case during a weekday (where there is therefore no distinction between how the act was done)? Perhaps it is talking about a case of Shabbos, and one could make a distinction by hitting the animal itself (for if the act was committed deliberately, he would not be liable to pay, as he would be condemned to death; so by the fact that the Torah obligates him to pay, it is evident that we are referring to an inadvertent act, and there must be a distinction between a deliberate act and an inadvertent one)?

The Gemora answers: You cannot think like this, for the verse states: *“u’makeh beheimah yeshalmenah u’makeh adam yumas”* – “And one who hits an animal must pay for it, and one who hits a man should be killed.” What is the case? If it is a case where there was no warning given, why should the man be killed? It is therefore obvious that there was a warning. If it was on Shabbos, would the one who damaged the animal be liable to pay when he was warned about transgressing Shabbos at the same time (*we would obviously say Kim Ley etc.*)? The verse therefore must clearly be talking about the weekday. (35b1)

Rav Pappa said to Abaye: According to Rabbah who understands that Rabbi Meir holds that the Torah wrote a novel law by death and a monetary fine (*in contrast to a monetary obligation*) that one pays (the fine) and is killed, who is our Mishna like? If it is like Rabbi Meir, the law of one who violates his daughter (that he is exempt from paying a monetary fine) is difficult (*as it would seem that he should be liable to pay the fine*). If it is like Rabbi Nechunyah ben Hakanah, the law of one who violates his sister should similarly be difficult (*as it would seem that he should not be liable to pay the fine, as there is a penalty of Kares involved*). If it is like Rabbi Yitzchak, the law of one who violates a mamzeres is difficult (*as one should*



*not be liable to pay because there is a penalty of lashes involved).*

The Gemora explains that it would be understandable if the Mishnah (according to Rabbah) would be in accordance with Rabbi Yochanan (who says that one is exempt from paying only if he would actually incur lashes, but if he commits a transgression in a way that he does not incur lashes, he would be obligated to pay), Rabbah could answer like Rabbi Yochanan (that the Mishnah is talking about a case where there was no warning). However, if he holds like Rish Lakish (*who says that even if one is not warned regarding a sin that incurs the lashes penalty, he is nevertheless obligated in the monetary penalty*), how could he explain the Mishnah?

The Gemora concludes that it must be that Rabbah follows the position of Rabbi Yochanan.

Rav Masna said to Abaye: According to Rish Lakish who says that the Torah included lashes to have the same laws as death, who then is the Tanna that argues on Rabbi Nechunyah ben Hakanah (*and obligates payment even when the transgression was one of Kares*)?

The Gemora answers: It must be either Rabbi Meir or Rabbi Yitzchak. (35b2 – 35b3)

## **DAILY MASHAL**

### **All your Possessions**

The Gemora differentiates between injuring a fellow the value of more than a perutah and when the wound does not amount to a perutah.

There were once two business partners who decided to split up, but they couldn't agree on the division of assets. The matter was complicated, so they brought it before R' Yaakov of Lisa, author of the Nesivos Hamishpat. One of

the partners later came to see the Rav alone and implied that he was prepared to give R' Yaakov a substantial amount of money if the judgment should go his way. Of course, R' Yaakov's initial reaction was fury at this man's gall, and he was prepared to drive him out of the house. Instead, R' Yaakov paused a minute, and, as if he had thought it was over, said to the litigant that he would consider the offer, but the sum had to be at least 1000 gulden, a truly exorbitant amount. The man smiled, pulled out his wallet and laid 1000 gulden on the table. Immediately, R' Yaakov stood up and exclaimed, "A bribe!?! The Torah clearly states: Do not take a bribe! What chutzpah!" The man stood a moment dumbfounded, but then asked the Rav why he had pretended to go along. R' Yaakov replied, "Every day I say: You should love Hashem with all your heart and all your possessions. I never feel that I adequately fulfill "with all your possessions" because I have no money. However, for a few moments, I saw an opportunity to love Hashem with 1000 gulden, so how could I pass it up?!"