

15 Menachem Av 5782
August 12, 2022



Kesuvos Daf 37

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Daf Notes is currently being dedicated to the neshamot of

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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

Rav Pappa bar Shmuel asks the following contradiction to Rav Yosef: Could Rabbi Yehudah hold the view that a female captive is deemed to have retained her state of purity, when it was, in fact, taught otherwise in a Baraisa: If a woman convert discovered some menstrual blood on the day of her conversion, Rabbi Yehudah ruled: It is sufficient to regard her as being tamei from the time she discovered it. [We do not go back retroactively, but rather, we consider all food and objects that she came into contact with to be regarded as *tamei* from the moment she experiences a discharge of blood. Ordinarily, we would go back twenty-four hours because *we assume that the uterine walls have prevented other blood from being discharged previously*; here, since we cannot go back a full twenty-four-hour period, as she converted during this time, and blood discharged before her conversion is not tamei, the Rabbis were lenient, and ruled that she transmits tumah only from the time of the discharge and on.] Rabbi Yosi ruled: She is subject to the same laws as all other women, and, therefore, causes tumah (to terumah and kodashim) retroactively for twenty-four hours, or for the period intervening between her last examination and her previous examination. [The most we can go back is twenty-four hours, and in this case until her conversion. If the last time the woman examined herself was many days ago, then we assume tumah from the moment of conversion. But if she examined herself since the conversion, she is only tamei from that point and on.] She must also wait three months (before marrying; as it takes three months to ascertain if she is pregnant or not, and this way, we can determine if the

fetus was conceived prior to her conversion, or afterwards); these are the words of Rabbi Yehudah. Rabbi Yosi, however, permits her to be betrothed and married immediately. [Evidently, R' Yehudah is concerned that the captive had relations before her conversion; why does he rule in our Mishnah then that a captive is presumed to still be a virgin?]

Rav Yosef said to him: You are pointing out a contradiction between a convert and a captive!? [They belong to totally different categories, since a convert does not watch herself (before converting), while a captive does watch herself. (36b4 – 37a1)]

Rav Pappa bar Shmuel asks the following contradiction regarding a captive: We learned in the following *Baraisa*: Rabbi Yehudah said: A convert, captive or slavewoman who were redeemed, converted or freed when they were older than three years and one day are required to wait three months until marrying (*in order to determine if she is pregnant or not and to thereby establish its status; even though a minor cannot become pregnant, this decree was enacted on account of older women*). Rabbi Yosi allows them to become betrothed and marry immediately. (*It is evident from this Baraisa that Rabbi Yehudah's opinion is that we suspect captives of cohabitating, yet, in our Mishnah, Rabbi Yehudah's opinion is that we assume a captive is still a virgin!?*)

Rav Yosef remained quiet until he eventually asked Rav Pappa bar Shmuel: Did you hear anything regarding this particular issue?



Rav Pappa bar Shmuel answered in the name of Rav Sheishes: The *Baraisa* is discussing a case where the captive was actually seen cohabiting with one of her captors.

The *Gemora* asks: If so, what is Rabbi Yosi's reasoning (*allowing her to marry immediately*)?

Rabbah answers: Jewish women who engage in illicit relations utilize an absorbent cloth (certain birth-control methods) in order not to become pregnant.

The *Gemora* asks: This answer is understandable by the case of a convert since she is planning to convert, she protects herself in advance and ensures that she does not become pregnant. A captive also will protect herself, for she does not know where her captors will be taking her (*and perhaps there will be Jews there willing to redeem her*). A slavewoman might hear from her owner that he intends on freeing her, and thereby, she will take precautionary measures in order not to become pregnant. However, the *Gemora* asks: Why would a slavewoman that goes out because the master knocked out her tooth or eye (*in which the halachah is that the master is required to release her*) protect herself from becoming pregnant; she does not know that this will indeed happen!?

The *Gemora* notes why the following answer would not suffice: And were you to suggest that Rabbi Yosi (who ruled leniently) did not speak of an unexpected occurrence (such as the case where the slavewoman unexpectedly got injured), it might be retorted that there is the case of a woman who was violated or seduced, which are also unexpected occurrences, and yet it was taught in a *Baraisa*: A woman who has been violated or seduced must wait three months; these are the words of Rabbi Yehudah, but Rabbi Yosi permits immediate betrothal and marriage!

Rather, Rabbah answers: Women who engage in illicit relations invert themselves after cohabitation in order to avoid becoming pregnant.

The *Gemora* asks: Why does Rabbi Yehudah disagree?

The *Gemora* answers: Rabbi Yehudah disagrees because he is concerned that they will not do so properly. (37a1 – 37a3)

The *Mishnah* had stated: Whoever is liable with his life does not pay money. This is derived from the fact the Torah states [Shmos 21:22]: *And if men shall fight and they hurt a pregnant woman, so that she miscarries. If there shall be a fatality, he shall be punished (referring to the monetary payment for the fetus).*

The *Gemora* asks: Is this where we derive the *halachah* from? Is it not derived from the following verse: *According to his guilt*. From this, we can infer that you punish him because of one guilt, but not because of two guilts!?

The *Gemora* answers: The verse cited in the *Mishnah* teaches us the *halachah* that one, who is liable with his life is not obligated to pay any monetary payments. The other verse is teaching us the *halachah* where one is liable to receive lashes and a monetary payment.

The *Gemora* explains why the two verses are necessary: For if we had been told only of that which deals with the penalties of death and money, I might have thought that the principle (of giving only one punishment) is applied (only here) because it involves loss of life (and such a severe punishment suffices), but not to the penalties of lashes and money, where no loss of life is involved (and perhaps both punishments should be given). And if we had been told only of lashes and money, I might have thought that the principle (of giving only one punishment) is applied (only here) because the transgression for which

lashes is inflicted is not very grave, but regarding the penalties of death and money where the transgression for which the death penalty is imposed is very grave, I might think that it (the principle) does not apply (and he should incur both punishments). Therefore, it was necessary to have both verses.

The *Gemora* asks: Why would two verses be necessary according to the opinion of Rabbi Meir, who holds that whenever one is liable for both money and lashes, he incurs both punishments?

The *Gemora* answers: One verse teaches us the *halachah* that one, who is liable with his life, is not obligated to pay any monetary payments. The other verse is teaching us the *halachah* that one, who is liable with his life, does not receive lashes.

The *Gemora* explains why the two verses are necessary: For if we had been told only of that which deals with the penalties of death and money, I might have thought that the principle (of giving only one punishment) is applied (only here) because we must not inflict one penalty upon one's body and another upon one's possessions, but in the case of death and lashes, both of which are inflicted on one's body, I might have thought that it (both punishments) is deemed to be but one long death penalty and both may, therefore, be inflicted upon him. And if we had been told only about death and lashes, I might have thought that the principle (of giving only one punishment) applies here because no two punishments may be inflicted upon the body of a person, but in the case of the penalties of death and money, one of which is on his body and the other monetary, I might have thought that both may be inflicted. Both verses were, therefore, necessary. (37a3 – 37b1)

The *Gemora* asks: What is the necessity for the following verse: *You shall not take atonement money for the life of*

a murderer? (If he is liable with death, he is obviously not obligated to pay?)

The *Gemora* answers: The Torah has here stated: You shall take no monetary fine from him and thus exempt him from the death penalty.

The *Gemora* asks: What is the necessity for the following verse: *And you shall not take atonement money for him that is fled to his city of refuge?*

The *Gemora* answers: The Torah has here stated: You shall take no monetary fine from him and thus exempt from exile.

Why are two verses needed? The *Gemora* explains that a verse is necessary to teach us the case of an unintentional murder, where he has not committed such a grave transgression, and perhaps he can pay and be exempt from exile, and that a verse is necessary to teach us the case of a person who killed deliberately, where paying money would save a loss of life. (37b1 – 37b2)

The *Gemora* asks: What is the necessity for the following verse: *And there will be no atonement for the land for the blood that is spilled therein, except by the blood of him that spilled it?*

The *Gemora* answers: It was required for that which we learned from the following *Baraisa*: How do we know that if the murderer has been discovered after the heifer's neck had been broken, he is not to be acquitted (*though the heifer atones for the people if the murderer is unknown*)? It is from this verse: *And there will be no atonement for the land for the blood that is spilled therein, except by the blood of him that spilled it (once we know the identity of the murderer, he must be executed; the decapitation of the heifer atones only if his identity is unknown).*

The *Gemora* asks: Then what is the necessity for the following verse: *And you shall put away the spillers of innocent blood from your midst?*

The *Gemora* answers: It was required for that which we learned from the following *Baraisa*: How do we know that execution by the sword must be at the neck? It is from this verse: *And you shall put away the spillers of innocent blood from your midst*. All spillers of blood are compared to the atoning heifer. Just as its head is cut at the neck, so is the execution of those who spill blood at the neck.

The *Gemora* asks: If so, should the comparison be carried further? Just as there, its head is cut with an axe and from the back of the neck, so too, murderers should be executed with an axe and from the back of the neck?

Rav Nachman answered in the name of Rabbah bar Avuha: It is written: *And you shall love your fellow as yourself*. Choose for him an easy death (*one that he will die quickly*). (37b2)

The *Gemora* asks: What is the necessity for the following verse: *Any condemned one, who among man has been condemned, shall not be redeemed (he shall be put to death)?*

The *Gemora* answers: It was required for that which we learned from the following *Baraisa*: From where do we know that if one, who is about to be put to death, says, "The *erech* of myself is upon me," he has said nothing? It is written: *Any condemned one . . . shall not be redeemed*. One might have thought that this is true even if he pronounced this vow before the sentence was finalized, therefore it is written: *from a man*, i.e., but not all men.

The *Gemora* asks: But what will Rabbi Chanina ben Akavia, who holds that he may be made the subject of an *erech* vow because his worth is fixed (*in the Torah*), do with this verse?

The *Gemora* answers: He needs this for that which was taught in the following *Baraisa*: Rabbi Yishmael the son of Rabbi Yochanan ben Berokah said: Since we find that those who are to be put to death by the hand of heaven (*if his mu'ad ox killed a person*) can give money and thereby obtain atonement, as it is written: *when an atonement payment shall be assessed upon him*; I might have thought the same should be applied to those who are to be put to death by the hand of man (*perhaps you should take money from him and thus exempt him from the death penalty*), therefore it is written: *Any condemned one . . . shall not be redeemed*. From here I may derive this teaching only with regard to severe penalties of death – for those which even when committed unintentionally, no atonement is possible (*such as one who curses God or his father*); But from where do I know that it applies also to lesser penalties of death - for those which at least when committed unintentionally, atonement is possible (*such as one who desecrates the Shabbos*)? It is therefore written: *Any condemned one*.

The *Gemora* asks: But could this not have been inferred independently from the verse: *You shall not take atonement money for the life of a murderer*, and we inferred from there: You shall take no monetary fine from him and thus exempt him from the death penalty. What was the necessity then for the verse: *any condemned one*?

Rami bar Chama replied: It is necessary, since I might have thought that this applied only where murder had been committed in the course of an upward movement, because no atonement (of exile) is allowed when such an act was committed unintentionally (as derived from the Scriptural verses), but that where murder was committed in the course of a downward movement, which is an act committed unintentionally that may be atoned (through exile), a monetary fine may be received from him and thereby he would be pardoned from execution.



Therefore, we were taught that in no circumstances may the death penalty be commuted for a monetary fine. (37b2 – 38a1)

DAILY MASHAL

Paying and Piercing

Our Gemora says: Whoever is liable to pay does not receive lashes.

Based upon this, the Panim Yafos answers the following question: The *Gemora* in *Kiddushin* states: Why was an ear chosen (*to be pierced - when a Jewish servant wishes to stay by his master even after the six years*) more than other limbs of a person's body? Hashem says that the ear that heard on Mount Sinai, "*For to Me Bnei Yisroel are servants,*" and not servants to servants, and he went anyway and chose a master for himself, his ear should be pierced. The question begs to be asked: If the piercing is because of his stealing, why don't we pierce his ear immediately? Why do we wait until he wants to stay longer?

Our *Gemora* states that whoever is liable to pay does not receive lashes. If one is liable a punishment of lashes and money for one action, he does not receive lashes and pay, but rather, he pays and he does not incur the lashes.

Accordingly, we can say that the thief was deserving of getting his ear pierced immediately – except, since he is required to pay for that which he stole, and selling him as a servant is instead of his payment, he is therefore exempt from the piercing, for he cannot pay and receive "lashes." However, after he served his six years, and he says, "I love my master, my wife and my children; I do not want to go free," he is revealing to us that his serving as a servant was not a punishment for him. Retroactively, he reverts to the *halachah* that he should be punished for selling himself as a servant through piercing.

What is Repentance?

Our Gemora discusses the atonement for various sins.

A person who was guilty of committing severe sins over a long period wanted to repent and turned to the chief rabbi of Prague, HaGaon Rav Yechezkel Landau zt"l, author of *Noda' BiYehudah*, to request an order of repentance befitting him. From his reply we can learn the essence of true *Teshuvah*.

The main point of repentance is what is in the heart: In his long reply the Gaon mentions that neither the Tanach nor the Talmud indicates the number of fasts required to atone for each sin, though the *mussar* works mention such. If that person wants to fast accordingly, even all the years of Mesushelach would not suffice to fulfill his obligations. He therefore took the trouble to explain to him that the main point of *teshuvah* depends on the heart and not in punishing the body by fasting or other afflictions.

We conclude with the statement of *Yismach Moshe* (*parashas Naso*), who supports the opinion of the *Noda' BiYehudah* by explaining why we do not find any **commandment** to repent in the Torah except for **confession**. It is obvious, then, that the essence of repentance is remorse. If a person truly regrets his sin, he needs no command to repent; if he feels no remorse, a command would not help.