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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: The violator must drink from his pot (and the seducer, if he wants to send her away, he may do so).

Rava from Parzakya said to Rav Ashi: Since the laws of the violator and the seducer are derived from each other, let them be derived from each other for this matter as well!?

The Gemora answers: It is written (by the seducer): *he shall provide her with a marriage settlement to be a wife for him.* “For him” implies that it must be with his consent. (39b3 – 40a1)

Unfit to the Violator

The *Mishnah* had stated: How does the violator “drink from his pot”? He is required to marry her even if she is lame, blind or afflicted with boils. If, however, she committed adultery after the marriage or if she is unfit to marry into the congregation, he may not remain married to her, as it is written: *And she shall be to him as a wife.* She must be a woman that is fit for marriage to him.

Rav Kahana said: I asked the following question to Rav Zevid from Nehardea: Why doesn’t the positive commandment that the violator should marry his victim override the negative prohibition against marrying a woman unfit to him (*such as a mamzeress*)?

Rav Zevid replied to Rav Kahana: When do we say the principle of *Aseh doche lo saaseh*? In a case like the positive commandment of circumcision overriding the negative commandment of cutting off the *tzaraas* on the foreskin, where one cannot choose not to fulfill the *mitzvah*; however

here, if the victim says that she does not want to become married to the violator, there is no positive commandment at all (*we therefore, in cases where she is unfit to marry him, advise the victim to say that she does not want to become married to him*). (40a1)

Mishnah

The *Mishnah* states: An orphan who was betrothed and then divorced; Rabbi Elozar says: One who violates her will be obligated to pay the fine, whereas, one who seduces her will be exempt (*since the fine belongs to her, and her consent to the seducer is regarded as if she waived the fine*). (40a1)

A Na’arah is like an Orphan

Rabbah bar bar Chanah said in the name of Rabbi Yochanan: Rabbi Elozar is following in the opinion of Rabbi Akiva, his teacher, who said: A woman who was betrothed and then divorced; she has a right to the fine and the fine belongs to her. How do we know that Rabbi Elozar is following Rabbi Akiva’s opinion? It is because Rabbi Elozar states: An orphan who was betrothed and then divorced; One who violates her will be obligated to pay the fine, whereas, one who seduces her will be exempt.

The *Gemora* asks: Isn’t the case regarding an orphan an obvious ruling? What was the necessity for the *Mishnah* to state such a case? Rather, the *Mishnah* is teaching us that a *na’arah*, who was betrothed and then divorced (*and the father is still alive*) is like an orphan. Just as the fine belongs to the orphan, so too, regarding a *na’arah*, who was betrothed and then divorced, the fine belongs to her. (40a1 – 40a2)

Mishnah

The *Mishnah* asks: What is the payment of embarrassment?

The *Mishnah* answers: It is based upon the stature of the one who is causing the embarrassment, and upon the one who is becoming embarrassed (*a greater person causes more embarrassment and a greater victim has greater embarrassment*).

The following is the manner in which we evaluate depreciation: We see her as if she would be a slave being sold in the marketplace; we evaluate how much she was worth before the violation occurred and how much she is worth now (*and the violator will pay the difference; Beis Din estimates how much a person would pay for her if he were to purchase her as a slave woman to marry off to a favorite slave, with whom he is pleased; obviously, there would be a difference in her value now that she is not a virgin any longer*).

The fine is the same for every woman (*and there is no need for any evaluation*). Any liability where the Torah prescribes a set amount is the same for every person. (40a2)

Embarrassment and Depreciation

The *Gemora* asks: Perhaps when the Torah said that a violator and a seducer are required to pay fifty *selaim*, that is the only monetary obligation, and there is no payment for embarrassment and depreciation?

Rabbi Zeira answers: If that were so, then, if one cohabited with a princess will pay fifty and one who cohabited with the daughter of a commoner will also pay fifty. Obviously not! (*Since the indignity of the former is undoubtedly greater, she should be entitled to more. Hence it follows that, in addition to the statutory sum which the Torah has awarded to all alike, an additional sum for indignity must be paid in accordance with the status of the offended party.*)

Abaye asked him: If so, the same might be argued in respect of a slave (*killed by a muad ox*). Should compensation (*for whom the Torah fixes at thirty shekels*) for a slave who

perforates pearls be thirty and that for one who does needlework, it should also be thirty?

Rather, Rabbi Zeira explains as follows: If two men forcibly violated her, one in a natural way, and the other in an unnatural manner, shall they say that one who cohabited with a sound woman (*a virgin*) shall pay fifty and the one who cohabited with a degraded woman should also pay fifty? Obviously not!

Abaye asked him: If so, the same might be argued in respect of a slave: Should the compensation for a healthy slave be thirty and that for one afflicted with boils also be thirty?

Rather, this, said Abaye, is the explanation: The Torah stated (*as the reason for the statutory fine*): *Because he had afflicted her*. It is as if the Torah is saying that these (*the fifty shekalim*) must be paid because he had afflicted her; however, compensation for embarrassment and depreciation must also be paid.

Rava presents an alternative source: The Torah said: Then the man that lay with her shall give to the girl's father fifty *shekels* of silver. We can infer that for the gratification of lying with her, he gives fifty; however, compensation for embarrassment and depreciation must also be paid. (40a2 – 40b1)

Embarrassment and Depreciation Payments belong to the Father

The *Gemora* asks: How do we know that the payments for embarrassment and depreciation belong to the father; perhaps they are paid to her?

The *Gemora* answers: It is written [Bamidbar 30:17]: *In her naarus, in her father's house*. We derive from here that all profits generated by a *na'arah* belong to the father. It is therefore evident that the payments for embarrassment and depreciation go to him, and not to her.

The *Gemora* objects to this *drashah*: Let us examine that which Rav Huna said in the name of Rav: How is it known that a daughter's earnings belong to her father? It is because it is written [Shmos 21:7]: *When a father shall sell his daughter as a maidservant*. The Torah juxtaposes the words "daughter" and "maidservant" to teach the following: Just as the earnings of a maidservant belong to her master, so too, the earnings of a daughter belong to her father. The *Gemora* asks: Why is it necessary to expound the verse in this manner? Let us derive this *halachah* from the verse mentioned above, namely, *In her naarus, in her father's house?*

Rather, it is evident that this verse cannot be the source for this *halachah*. This is because the aforementioned verse is discussing the annulment of vows (*and we cannot derive from there that the payments for embarrassment and depreciation belong to the father*).

The *Gemora* asks: Why can't we compare the two *halachos*, and say that just like the father has control over his daughter's vows, he should receive the payments for embarrassment and depreciation?

The *Gemora* answers: We cannot derive a monetary *halachah* from a prohibitory one.

The *Gemora* asks: Let us derive the *halachah* from the fact that the fine belongs to the father?

The *Gemora* answers: We cannot derive a monetary *halachah* from a fine.

Rather, the *Gemora* concludes: It is derived by the means of the following logic: The father has a right to betroth his daughter to a repulsive man or one who is afflicted with boils (*thereby embarrassing her and depreciating her value*) and receive the betrothal money in exchange. It is therefore evident that the payments for her embarrassment and depreciation belong to her father. (40b1 – 40b2)

The Mishnah had stated: The following is the manner in which we evaluate depreciation: We see her as if she would be a slave being sold in the marketplace; we evaluate how much she was worth before the violation occurred and how much she is worth now.

How is she assessed? The father of Shmuel replied: It is estimated how much more a man would pay for a virgin slave than for a non-virgin slave to attend upon him. 'A non-virgin slave to attend upon him'! What difference does this make to him? — [The meaning], however, [is this: How much more a man would pay for] a virgin slave than for a non-virgin slave for the purpose of marrying her to his slave. But even if 'to his slave', what difference does this make to him? — [We are dealing here] with a slave who gives his master satisfaction. (40b2 – 40b3)

Mishnah

The *Mishnah* states: 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 father may sell his daughter as a minor, but there is no fine for her. There is a fine for a *na'arah*, but she can no longer be sold. A *bogeres* cannot be sold and there is no fine for her. (40b3)

Age of the Girl

Rav Yehudah said in the name of Rav: The *Mishnah's* words are in accordance with Rabbi Meir, but the *Chachamim* maintain that a girl can be entitled to a fine even though she can still be sold, for we 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.

The *Gemora* discusses the Scriptural sources for these opinions: Rav Chisda said: What is Rabbi Meir's reason? Scripture said: And to him she shall be for a wife; the text thus speaks of a girl who may herself contract a marriage. And the Rabbis? Rish Lakish replied: Scripture said: na'ar which implies even a minor.

Rav Pappa the son of Rav Chanan of Bei Kelochis heard this and proceeded to report it before Rav Shimi bar Ashi [when the latter] said to him: You apply it to that law; we apply it to the following: Rish Lakish ruled: A man who has defamed his minor wife is exempt, for it is said in Scripture: And give them to the father of the na'arah; Scripture expressed the term as a full na'arah.

Rav Adda bar Ahavah demurred: Is the reason then because the Merciful One has written na'arah, but otherwise it would have been said that even a minor [was included], surely [it may be objected] it is written in Scripture: But if this matter was true, and the signs of virginity were not found in the Na'arah, then they shall bring out the na'arah to the door of her father's house, and [the men of her city] shall stone her, while a minor is not, is she, subject to punishment? — [The explanation,] however, [is that since] na'arah [has been written] here [it may be inferred that here only is a minor excluded] but wherever Scripture uses the expression of na'ar even a minor is included. (40b4)

¹ Commentary to the Torah Shemos 20:8

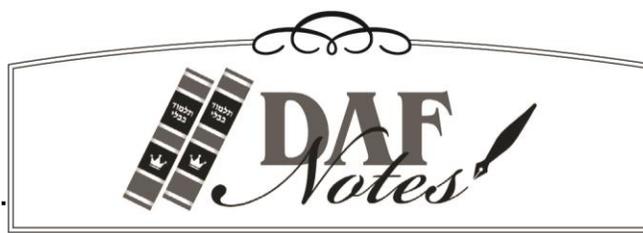
INSIGHTS TO THE DAF

Positive Commandment Overriding a Negative One

The *Gemora* states that a positive commandment can override a prohibition that carries with it a standard punishment.

The *Gemora* provides an example for this: The positive commandment of performing circumcision overrides the negative commandment of cutting off tzaraas. My brother, Reb Ben cites the opinion of Rabbeinu Nisim Gaon, who writes the following: Many people cast doubt on this precept, as we know that a negative commandment is more stringent than a positive commandment, so why should a positive commandment supersede a negative commandment? Rabbeinu Nisim answers that a positive commandment is set, and if there is a negative commandment, the negative commandment only functions if there is no contradiction to the positive commandment. This is what Hashem decreed, that the positive commandments remain in place, and the negative commandment only functions if there is no contradiction to the positive commandment. The Ramban¹, however, writes that the reason a positive commandment supersedes a negative commandment is because in reality, a positive commandment is greater than a negative commandment. A positive commandment is a reflection of the love Hashem has for us, because one who fulfills the instructions of his master is beloved by his master and the master will have compassion on him. A negative commandment, however, is a reflection of Hashem's Attribute of Judgment, and stems from fear. Since love is greater than fear, the Torah states that a positive commandment supersedes a negative commandment.

Based on this premise, the Meshech Chochmah explains that one who violates a negative commandment deserves a greater punishment than one who does not fulfill the will of Hashem. Nonetheless, since it is the will of Hashem that one observes both positive and negative commandments, one



who fulfils a positive commandment demonstrates his love for Hashem. One who does not violate a negative commandment, however, merely demonstrates that he is afraid and nothing more. For this reason, the torah states that a positive commandment supersedes a negative commandment. An example of this is one can wear Tzitzis with Techeiles on a garment of linen, as the positive commandment of wearing Tzitzis supersedes the negative commandment of shaatnez. The reason for this is that one who wears shaatnez does not transgress the will of Hashem. In fact, the opposite is true, as by donning Tzitzis, he is fulfilling the will of Hashem.

In regards to the question: Why is it that a positive commandment overrides a prohibition and yet the punishment for transgressing a prohibition is much more severe than the punishment for not fulfilling a positive commandment?

Reb Yossie Schonkopf said over a parable from his Rebbe: A trucker is hired to transport a load across the country and the owner warns him not to go beyond the speed limit, not to crash the vehicle and to follow all the road instructions. If the trucker does everything perfectly but doesn't unload the goods at his destination; rather, he arrives at the destined location and immediately turns around carrying the same load, what is accomplished by the fact that the trucker obeyed the speed limit and followed all the rules?

The meaning is as follows: Our mission in life is to accomplish in this world and 'build the love towards HaShem,' therefore, this building overrides the transgressions. The prohibitions are only there to protect what has been built and not to suffocate the building.

This concept is elucidated by the Ramban in Parshas Yisro. He states that the fulfillment of a positive commandment is based on ahavas HaShem, loving HaShem and refraining from committing a transgression is based on yiras HaShem fearing HaShem. It is a higher level to serve HaShem through

love, but it is worse to violate a prohibition, which is based upon fearing HaShem.

My brother, Reb Ben asked a similar question: The Gemora states that a positive commandment will override a negative commandment when both commandments are performed simultaneously. It is noteworthy that the Gemora in Sota states that a mitzvah cannot extinguish an aveira, a sin, yet an aveira can extinguish a mitzvah. Apparently, the principle that a positive commandment can override a negative commandment is not a contradiction to this Gemora. Perhaps the idea is that when one performs an aveirah intentionally, he has rebelled against HaShem, and it is not possible for one to appease HaShem with a mitzvah when he has just committed an act of rebellion. When one is simultaneously overriding the negative commandment by performing a positive commandment, however, he is demonstrating that he is fully aware that he is performing a negative commandment, yet he is permitted by the Torah to override the negative commandment. This principle allows him to perform the positive commandment and be rewarded for its performance.

DAILY MASHAL

Shabbos and Bushah

The Mishnah and the Gemora discuss the obligation of compensating for humiliation.

It is interesting to note that the word in Hebrew for embarrassment is 'bushah,' and this has the same basic letters as 'Shabbos.' On Shabbos, our physicality is supposed to be renounced by the all-prevailing Presence of Hashem. We and our world should be 'ashamed,' as it were, at our insufficiency in comparison with the spiritual reality that surrounds us on Shabbos. By observing shabbos, as our Creator intended, we are recognizing the purpose of our existence in this world, and our striving towards that true spiritual growth.