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Punishment for Slandering

The *Gemora* cites a *Baraisa* discussing the punishment administered to one who slanders. And they shall punish him refers to a monetary fine; And chastise him refers to lashes. One can readily understand why ‘And they shall punish’ refers to a monetary payment since it is written: ‘And they shall punish him a hundred shekels of silver and give them to the father of the na’arah’; from where, however, is it deduced that ‘And chastise him’ refers to lashes? — Rabbi Avahu replied: We deduce ‘Shall chastise’¹ from ‘Shall chastise’² and ‘Shall chastise’³ from ‘Son’⁴ and ‘Son’ from ‘Son’⁵ [occurring in the Scriptural text:] Then it shall be, if the guilty one is a son of [i.e., liable to] lashes. (46a1)

Warning against Slandering

The *Gemora* asks: From where do we derive that the Torah issues a warning against slandering (*in order to receive punishment for a sin, the Torah must explicitly state a warning prohibiting that particular action*)?

Rabbi Elozar said: It is from the following verse: *You shall not go about as a talebearer*. Rabbi Nosson said: It is from the following verse: *Beware of any evil word*.

The *Gemora* asks: What is the reason that Rabbi Elozar does not use the other text?

The *Gemora* answers: That text is required for the deduction made by Rabbi Pinchas ben Yair: *Beware of any evil*

word. Rabbi Pinchas ben Yair deduced that a man should not indulge in immoral thoughts by day that might lead him to uncleanness (*seminal emission*) by night.

The *Gemora* asks: What is the reason that Rabbi Nosson does not use the other text?

The *Gemora* answers: That text is required to warn the court that it must not be lenient with one of the litigants and harsh to the other. (46a1 – 46a2)

The *Gemora* cites a *Baraisa*: If a (*slandering*) husband did not say to the witnesses, “Come and give evidence for me,” but rather, they volunteered to give it, he does not receive lashes, nor is he required to pay the hundred *sela*. If the accusation is true, she or her false witnesses that became *zomemim* (*witnesses who other witnesses proclaim could not possibly have seen the event, as they were together in a different location, see Makkos 2a*) are hurried to the place of stoning.

The *Gemora* asks: How can we think that she would receive stoning together with false witnesses? It must mean that either she, or her false witnesses that became *zomemim* receive stoning.

The *Gemora* comments: The reason that he does not receive lashes is because he did not tell them to give their evidence. Had he, however, told them to testify, he would have been

¹ With regard to the defamer.

² With regard to the ben sorer u’moreh.

³ With regard to the ben sorer u’moreh.

⁴ Written in that same verse.

⁵ With regard to lashes in the verse.



subject to the prescribed penalties even though he did not hire them. This ruling comes to exclude the viewpoint of Rabbi Yehudah, for it was taught in the following *Baraisa*: Rabbi Yehudah ruled: A husband does not receive any penalties unless he has hired the witnesses.

What is Rabbi Yehudah's reason? Rabbi Avahu replied: A *gezeirah shavah* is drawn between 'placing' and 'placing.' Here it is written: And he placed upon her a wanton accusation, and elsewhere it is written: Do not place upon him interest, as there [the offence is committed through the giving of] money, so here [also it can be committed only by the giving of] money.⁶ Rav Nachman bar Yitzchak said, and so did Rav Yosef Tzidoni teach a *Baraisa* at the school of Rabbi Shimon ben Yochai: A *gezeirah shavah* is drawn between 'placing' and 'placing.'

Rabbi Yirmiyah inquires: What is the law if the husband hired the witnesses with land (*the Scriptural source would seem to indicate that he will only be liable if he hires them with money, food or any movable object*)? What is the law if he hires them with less than a *perutah*? What is the law if he hired them both with a single *perutah*?

Rav Ashi inquired: What is the law if he slandered her on account of his first marriage (*he married her, divorced her and married her again*)? What is the law if he slandered her on account of his brother's marriage (*his brother died childless and he performed yibum; he now claims that she was not a virgin when she married his brother*)?

The *Gemora* resolves one of the inquiries, for Rabbi Yonah taught a *Baraisa*: It is written: I gave my daughter to this man. We may infer from here that the law of slandering is applicable only when the father gave his daughter to this man, and not to the *yavam*. (46a2 – 46a3)

The Laws of the Defamer

[The *Gemora* elaborates on the dispute mentioned above (45b) between the Rabbis and Rabbi Eliezer ben Yaakov as to

whether the laws of the slanderer apply even if the couple did not cohabit.] What is [the opinion of] the Rabbis and what is [the opinion of] Rabbi Eliezer ben Yaakov? It was taught in the following *Baraisa*: What is the case of the slanderer? The husband comes to *Beis Din* and says to his wife's father, "I did not find your daughter to be a virgin." If there are witnesses that she committed adultery, she receives a *kesuvah* of a *manah*.

The *Gemora* interrupts to ask: If there are witnesses that she committed adultery, she receives a *kesuvah* of a *manah*!? She is liable to stoning!?

Rather, this is what the *Baraisa* was saying: If there are witnesses that she committed adultery while under his jurisdiction, she is subject to stoning. If she cohabited before the *erusin*, she receives a *kesuvah* of a *manah*. If his accusation is found to be a false one, he incurs lashes and he is required to pay one hundred *selaim*. These laws are applicable whether he cohabited with her or whether he did not cohabit with her. Rabbi Eliezer ben Yaakov says: These words were only said if he did cohabit with her.

The *Gemora* asks: According to Rabbi Eliezer ben Yaakov, one can well understand why the Torah stated: *And he comes to her ... and I came near to her*, but according to the Rabbis, what is the meaning of that expression?

The *Gemora* answers: *And he comes to her* means with wanton charges, and *I came near to her* means with words.

The *Gemora* asks: According to Rabbi Eliezer ben Yaakov, one can well understand why the Torah stated: *I did not find signs of virginity on your daughter*, but according to the Rabbis, what is the meaning of that expression?

The *Gemora* answers: It means that the husband could not find witnesses to confirm her virginity.

⁶ The hiring of witnesses.

The *Gemora* asks: According to Rabbi Eliezer ben Yaakov, one can well understand why the Torah stated: *And these are the signs of my daughter's virginity (her parents produce the bloodstained sheet and bring them to Beis Din, proving that she was indeed a virgin)*, but according to the Rabbis, what is the meaning of that expression?

The *Gemora* answers: It means that her father produces witnesses who confirm her virginity (*presenting witnesses who testify that the husband's witnesses are zomemim*).

The *Gemora* asks: According to Rabbi Eliezer ben Yaakov, one can well understand why the Torah stated: *And they shall spread out the sheet*, but according to the Rabbis, what is the meaning of that expression?

Rabbi Avahu answered: They explain the charge which he submitted against her, as it was taught in the following *Baraisa*: *And they shall spread out the sheet* teaches us that the witnesses of this one and those of the other one come, and the matter is clarified like a new sheet. Rabbi Eliezer ben Yaakov said: The words are to be taken in their literal sense; they produce the actual sheet. (46a3 – 46a4)

Rabbi Yitzchak the son of Rav Yaakov bar Giyorei sent in the name of Rabbi Yochanan: Even though we do not find elsewhere in the Torah that there is a distinction between cohabitation in an ordinary manner and cohabitation in an unnatural manner in respect to lashes and fines, in regards to a husband who slanders, there is the following distinction: He is subject to the punishments of slandering even if he cohabits with his wife in an unnatural manner, provided that he accuses his wife of committing adultery in an ordinary manner.

The *Gemora* asks: According to which *Tanna* was this ruling issued? It cannot be according to the Rabbis, for they hold that the husband is subject to the punishments of slandering even if he does not cohabit with her. It can also not be following Rabbi Eliezer ben Yaakov's opinion, for he holds

that the husband is subject to the punishments of slandering only if he cohabits with his wife in a natural manner.

The *Gemora* retracts and cites another version: Rav Kahana sent in the name of Rabbi Yochanan: The husband is subject to the punishments of slandering only if he cohabits with his wife in a natural manner and only if he accuses his wife of committing adultery in an ordinary manner. (46a4 – 46b1)

Mishnah

The *Mishnah* states: A father has jurisdiction over his daughter regarding her betrothal; he receives the money, he accepts the document, or he can give his daughter to him for cohabitation. The father is entitled to that which she finds, and to her earnings and to annul her vows. He receives her *get*, but he does not eat the fruit of her property during her lifetime (*if she had inherited property from her mother's family*).

Once she is married (*nisuin*), the husband exceeds the father in that he does eat the fruit of her property during her lifetime. He is obligated to provide for her maintenance, for her ransom and for her burial. Rabbi Yehudah says: Even the poorest man in Israel may not hire less than two flutes and a wailing woman to lead the mourning at his wife's burial. (46b1)

Scriptural Sources

The *Gemora* asks: How do we know that a father is entitled to his daughter's betrothal money?

Rav Yehudah says: It is written concerning a Jewish maidservant who becomes a *na'arah*: *She shall leave free of charge, without payment*. Since the words *without payment* are seemingly superfluous, we derive from here the following exposition: There is no payment paid to this master, but there is a payment made to a different master (*when a na'arah leaves his jurisdiction*). Who is that? It is her father (*when the na'arah gets married, the father is entitled to the betrothal money*).

The *Gemora* asks: Perhaps there is a payment, but the payment belongs to her and not to her father?

The *Gemora* answers: Since the father is empowered to give his daughter in marriage, it stands to reason that he receives the payment as well.

The *Gemora* persists in its questioning: Perhaps the father is entitled to her betrothal money only when his daughter is a minor, at a time that she does not have a hand (*capable of making legal transactions*); however, a *na'arah*, who has a hand (*capable of making legal transactions*), let her betroth herself and receive the money?

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 betrothal money goes 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 betrothal money?

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.

And should you suggest that that this should be inferred from the law of compensation for embarrassment and depreciation, it could be retorted that embarrassment and depreciation are different, since 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.

This, however, is the explanation: It is logical to conclude that when the Torah excluded another case of "going out," the exclusion was meant to be understood in a manner similar to the original (*just as in the verse concerning the maidservant who became a na'arah, it is the master, and not the maidservant, who, in the absence of the specific text to the contrary, would have received the money for the latter's redemption, so too in the implication it must be the father (who corresponds to the master), and not his daughter, who is to receive the money when she leaves his jurisdiction at betrothal*).

The *Gemora* asks: But one "going out" is not like that of the other, for in the case of the master, the maidservant departs his jurisdiction completely, whereas in the "going out" from the jurisdiction of her father, she still lacks being given over for *chupah*?



The *Gemora* answers: In respect of the annulment of vows, she does depart from her father's jurisdiction, for he cannot annul her vows by himself any longer. As we have learned in the following *Mishnah*: Concerning a betrothed *na'arah*, her father and her husband are both necessary to annul her vows. (46b1 – 46b4)

The *Gemora* asks: Where is the Scriptural source indicating that the father accepts the betrothal document and that he can give his daughter to a man for betrothal by cohabitation? It is written: and become another man's wife. We compare the different forms of 'becoming' to each other. (46b4)

INSIGHTS TO THE DAF

Lashes without an Action

The *Gemora* states: If the husband defames his wife, he receives lashes. This is true even though this prohibition does not entail any action.

Tosfos in Shavuos (21a) asks: The *Gemora* there lists three prohibitions that one violates without performing an action, and nevertheless, one incurs lashes for transgressing them. They are: Violating an oath, making a *temurah* (*attempting to exchange an animal that possesses sanctity with one that does not*) and one who curses his fellow using the name of Hashem. Why doesn't the *Gemora* include the case of a husband who defames his wife? It is also a prohibition that does not involve an action, but yet, one incurs lashes for its violation.

Tosfos answers: It is not necessary for the *Gemora* to include this case in the listing because the fact that the husband receives lashes is explicitly written in the Torah. Tosfos adds that even if you say that this case should be included in the listing, it is not a question as to why it was omitted because the *Gemora* wasn't listing every applicable case.

The Ramban answers that the *Gemora* is in accordance with Rabbi Yehudah who rules that the husband does not receive any penalties unless he has hired the witnesses. Accordingly,

this prohibition does involve an action, and that is why it is not included in the listing.

The Brisker Rav (Temurah 3a) answers that the lashes received is not because the husband violated the prohibition of slandering, for anyone who talks *lashon harah* does not receive lashes. The lashes are one of the laws for one who defames his wife; he is required to pay a fine, he may not divorce her and he receives lashes. The *Gemora* required a verse for the warning only because there is a rule that one may not receive lashes unless the Torah states a warning. Accordingly, this is why it is not included in the listing; he does not receive lashes because he violated a negative prohibition, but rather, it is one of the components of the laws for one who defames his wife.

DAILY MASHAL

GUARD YOUR EYES

Rabbi Pinchas ben Yair states: One should not think inappropriate thoughts by day for that will come to tumah by night.

The Satmar Rebbe writes: The obligation to be careful in this area is greater than it is by all other mitzvos. By ordinary mitzvos, one needs to protect himself during the performance of the mitzvah and minimal preparation beforehand. For example, the mitzvah of tefillin - one is not allowed to lose focus or be distracted from the tefillin, but nevertheless, that is only while he is actually performing the mitzvah. And it is the same with all mitzvos. Shemiras habris, however, is different. One is obligated to be on guard every moment of the day, for if his attention wanes from this - even for one moment, he can come to improper thoughts and this can lead to inappropriate actions. The eye sees and the heart desires; it is for this reason that one must be constantly aware to guard his eyes.