



OVERVIEW of the Daf

1) **MISHNAH (cont.):** The Mishnah concludes with disagreements between R' Yehudah and R' Meir. One dispute relates to whether the inadvertent murderers paid rent to the Levi'im and the second dispute relates to whether the inadvertent murderers return to their position of authority upon their release.

2) Paying rent

R' Kahana asserts that the dispute in the Mishnah concerning paying rent is limited to the six official cities of refuge.

Rava disagree and offers his own understanding of the dispute.

3) Returning to one's position of authority

A Beraisa presents a disagreement whether a slave returns to his position of authority when he is set free and states that the same halacha applies to exile.

The latter statement of the Beraisa is explained.

הדרן עלך אלו הן הגולין

4) **MISHNAH:** The Mishnah enumerates the different people who receive lashes for their transgression. The Mishnah concludes with a disagreement between R' Shimon and Chachamim how much tevel one must eat to be liable to punishment.

5) Lashes for a kares transgression

It is noted that the Mishnah includes in the list of those who receive lashes those who are subject to kares but not those who are subject to the death penalty.

This is consistent with R' Akiva rather than the two dissenting opinions, R' Yishmael and R' Yitzchok, recorded in the Beraisa.

The position of R' Yishmael is explained.

R' Akiva's position is explained.

In the midst of the Gemara's analysis of R' Akiva it explains how R' Yishmael expounds R' Akiva's pasuk.

R' Avahu and R' Abba bar Mamal discuss a detail regarding R' Akiva's position.

Rava offers his own explanation of the dispute between R' Yishmael and R' Akiva.

This explanation is unsuccessfully challenged. ■

Distinctive INSIGHT

These are cases of lashes...

ואלו הן הלוקין וכו'

Ritva points out that this third and final chapter of Makkos is taught here as it actually contains the main theme of the massechta. This is where the laws of lashes are presented. However, because the first Mishnah mentioned that lashes are administered in a case of conspiring witnesses who testify that someone must go to a city of refuge, the Gemara dealt extensively with the laws of those who kill inadvertently. We now return to our scheduled theme, which is the laws of lashes.

Using a different approach, Ritva explains that this chapter is a follow-up of the halacha taught in the Mishnah (4a) where עדים זוממין testify that someone is liable to get lashes. The Mishnah rules that when these conspiring witnesses are caught they receive eighty lashes, forty for their false testimony (לא תענה), and an additional forty for their conspiring plot (כאשר זמם). Our perek now elaborates and presents the cases of lashes about which the witnesses in that Mishnah might have testified.

Rashi notes that the Mishnah does not contain an exhaustive list of all cases of lashes. Nevertheless, the selection found in the Mishnah are those cases which contain some element of חידוש. According to the text we have in Rashi, the novelty regarding the cases of כרת is to teach us that it is possible to receive lashes instead of כרת. Maharsha explains that Tosafos had a reading in the commentary of Rashi different than the text we have. Tosafos reports that Rashi struggled to understand why the cases of כרת are listed here, and Tosafos himself notes that there was no reason for Rashi to struggle, as the חידוש is that the Mishnah is written

(Continued on page 2)

REVIEW and Remember

1. Do inadvertent murderers pay rent while in the city of refuge?

2. How much tevel must one eat to be liable for lashes?

3. What is the dispute among R' Yishmael, R' Akiva and R' Yitzchok?

4. According to Rava, when does one receive lashes for a kares violation?

HALACHAH Highlight

Fulfilling a Rabbinic command when the Biblical is still in force

גרשה וחלוצה אינו חייב משום אחת בלבד

If a kohen cohabits with a divorcée who is a chalutzta he is liable for only one violation

There was once a person who had an esrog that was deficient (חסר). In order to fulfill the Biblical obligation of taking an esrog on the first day of Sukkos one must take an esrog that is whole. On the remaining days of Sukkos the obligation to take an esrog is only Rabbinic and a deficient esrog may be taken to fulfill that obligation. There was no other esrog in the entire town so the owner turned to the author of Teshuvos Chacham Tzvi to find out whether he should take the esrog and make a beracha on the first day of Sukkos to fulfill, at least, a Rabbinic mitzvah of taking an esrog. The essence of the question is whether Rabbinic enactments overlap preexisting Biblical obligations. Chacham Tzvi¹ ruled that the person should take the esrog and recite the appropriate beracha on the first day of Sukkos in fulfillment of the Rabbinic mitzvah.

Sefer Siach Yitzchok² suggests that Tosafos in our Gemara refutes Chacham Tzvi's position. Tosafos³ writes that a kohen who marries a woman who is both a divorcée and a chalutzta does not receive lashes for violating the Rabbinic injunction against marrying a chalutzta since he will receive lashes for violating the Biblical prohibition against marrying a divorcée. This indicates that when a Biblical law is in place Rabbinic injunctions do not take effect. Sefer Nossan Piryo⁴ rejects this refutation. All one can infer from Tosafos is that when one is

(Insight...continued from page 1)

by Rabbi Akiva who holds that מלקות can be given in these cases.

Aruch LaNer responds to this point of Tosafos, and he explains that according to the text of Rashi which Tosafos had, Rashi felt that if the Mishnah just wanted to illustrate that lashes can be given in cases of כרת, the Mishnah should have perhaps brought one example of כרת to make its point. The fact that the Mishnah brought seven cases of כרת to start seems to suggest that it is not merely meant to show that lashes can be given for a case of כרת. Nevertheless, he notes, that Tosafos still felt that one or two examples would not have been adequate, because the Mishnah wanted to show that lashes are only given in cases of כרת and not in any case which involves capital punishment by an earthly court. This is why the Mishnah gave multiple examples, to show that lashes are only appropriate in cases of כרת which do not have capital punishment. ■

due to receive lashes for a Biblical violation one does not receive lashes for a Rabbinic violation, the reason being that once he is receiving lashes, Chazal did not see fit to administer a second set of lashes but the Rabbinic prohibition was certainly violated. Accordingly, one could assert that Tosafos is a support for Chacham Tzvi's position. We see from Tosafos that the Rabbinic enactment is in place even though the Biblical command is in force. As such, in our case of the esrog it would seem that one should take the deficient esrog and recite the appropriate beracha on the first day of Sukkos to fulfill the Rabbinic enactment. ■

1. שו"ת חכם צבי סי' טו.
2. ספר שיח יצחק בסוגיין בתוס' ד"ה גרושה.
3. תוס' ד"ה גרושה וחלוצה.

STORIES Off the Daf

Complete Teshuvah

"השתא מיהת לא עשה..."

On today's daf we find that genuine teshuvah is so strong that it is possible to erase even a crime for which the penalty is kares.

Doing complete and permanent teshuvah is not simple however. In the words of Rabbeinu Yonah: "Even though one has admitted his sin and ceased his negative behavior he should still understand that he may not have

done enough. In order to do a true teshuvah he must ascend many levels. Perhaps one day he will fail to attain the level necessary and instead he will begin to slip back into his old behavior. Another problem which must concern him is the possibility that his base nature will overpower him.

"The only way to be sure of victory is for him to increase his yiras shomayim every day. He must also continuously daven to Hashem for aid in doing teshuvah and that He help him to overcome his base nature."

He concluded, "It is due to a hardness of the heart that many people fall

into the mistaken belief that they have done enough teshuvah and stop working on themselves. Sadly, in this manner one punishes himself since he falls into pride and is unable to honestly evaluate his level. When a person is no longer careful to work on his character defects, this is a sign that he has fallen to a low level. This person also has lost touch with his obligation to prepare himself for Hashem. He is indolent, so his base nature—always on the look-out for opportunities to cause him to fall—gains the upper hand and defeats him."¹ ■

1. שערי תשובה, שער ראשון. ■