

OVERVIEW of the Daf

1) Taking redemption money to pardon a murderer (cont.)

Rami bar Chama offers a suggestion why two verses are necessary to teach that money may not be taken from a murderer to pardon him from punishment.

Rava refutes this explanation.

Rami bar Chama offers an alternative explanation which is also rejected by Rava.

R' Ashi suggests an explanation and clarifies how to explain the two verses according to Rabba.

2) **MISHNAH:** R' Yosi Haglili and R' Akiva disagree whether a נערה who was engaged and divorced receives a fine for having been violated.

3) Clarifying the dispute

The Gemara suggests that the dispute between R' Yosi Haglili and R' Akiva relates to a difference in interpretation of the phrase "אשר לא אורשה".

R' Akiva's interpretation is unsuccessfully challenged.

The Gemara inquires about what led R' Akiva to interpret the verses in the way that he interpreted them.

The rationale behind R' Akiva's interpretation is explained.

On a tangential note, a Baraisa is cited in which R' Yosi Haglili cites the source to equate the fine of the girl who is violated with the fine of a girl who is seduced.

R' Akiva's opinion in this Baraisa seems to conflict with R' Akiva's position elsewhere.

It is acknowledged that there are two conflicting versions of R' Akiva's position.

The Baraisa's version of R' Akiva's position is unsuccessfully challenged.

A Baraisa is cited which, according to R' Chisda's explanation, is interpreted to reflect the dispute between the two versions of R' Akiva's position.

4) Collecting the fine

Abaye rules that if the girl dies before the fine is collected the violator is exempt from paying the fine.

Although Abaye was confident about this matter, Rava was uncertain when he asked whether a girl becomes a בוגרת in the grave.

This inquiry is explained. ■

Distinctive INSIGHT

The lessons from Tanna d'vei Chizkiya

אמר ליה רבא הא נמי מאידך תנא דבי חזקיה נפקא, דתנא דבי חזקיה עין תחת עין, ולא עין ונפש תחת עין

Rami bar Chama had explained that the two verses of "כל חרם" and "ולא תקחו כופר" each teach that a person who commits murder cannot be redeemed with ransom. The Gemara notes that the reason we have two verses to teach this concept is in order to clearly indicate that no ransom is allowed whether the murder took place in an upward or in a downward motion.

Rava responded to Rami bar Chama and he showed that based upon the rule which Tanna d'vei Chizkiya taught, there would be no need for a second verse to teach the halacha not to redeem a murderer, no matter what the circumstances of his crime. Rather, Rami b. Chama explains that the two verses are needed to clarify that the law of קים ליה בדרבה מיניה applies in two types of murder/monetary loss. One is where Reuven blinds Shimon, and that injury then resulted in Shimon's demise. The other case is where Reuven blinded Shimon and killed him at the same time, but not through the worsening of the eye injury. In both cases, Reuven is deserving of capital punishment, and he does not pay the financial restitution for blinding Shimon's eye.

Again, Rava questions this contention of Rami b. Chama, and he shows that this further lesson is known from the verse "עין תחת עין," and the two verses of "כל חרם" and "ולא תקחו וגו'" are not needed for this halacha.

The truth is that the main lesson of Tanna d'vei Chizkiya is actually to teach that the verse which states "an eye for an eye" is not literal, but rather that monetary restitution is paid when a personal injury is inflicted. His lesson is that if we were to punish an aggressor who blinded someone by blinding him in return, the process cannot be controlled perfectly, and there are cases when our injuring this person could result in not only his being blinded, but in his death as well. Therefore, the Torah states, "an eye for an eye," and not an eye and a life for an eye. This proves that the verse must mean that the assailant pays monetarily for his act, and not that we injure him. Rashi explains that nevertheless, we can also read into the words of Tanna d'vei Chizkiya that we cannot apply two punishments for one crime. ■

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By the Okner family in memory of their grandfather
Dr. Peter Harry Okner
ר' פנחס הערש בן ר' שמואל, ע"ה

HALACHAH Highlight

The funds used to pay a kesubah

”כסף ישקול כמוהר הבתולות” (שמות כ"ב: ט"ז)

“[The seducer] shall pay shekalim like the settlement made to besulos”

There is a well-known disagreement (See Daf Digest #925 Kesubos Daf 10) whether the obligation to provide a kesubah for a besulah is Biblical or Rabbinic. Some Poskim¹ point to the phrase of the Torah, “כמוהר הבתולות – The settlement made to besulos” as an indication that a besulah should receive fifty Biblical Shekalim, or two-hundred zuz, for a kesubah. Additionally, the opinion of R’ Shimon ben Gamliel is that the obligation to pay a kesubah is Biblical and following the rule² that halacha follows R’ Shimon ben Gamliel’s opinions recorded in the Mishnah this should be the halacha. On the other hand, many of the Gaonim and Rishonim³ reject this position and maintain that the origin of the kesubah is Rabbinic. The phrase “כמוהר הבתולות” is referring to the payment made to the victim of seduction but there is no reference to an obligation to pay a kesubah. Additionally, the rule that the halacha follows R’ Shimon ben Gamliel’s opinions that are recorded in the Mishnah is not absolute since many Poskim maintain that the principle has only limited application. One difference between these two approaches is whether the money is paid in Tzuri currency if a kesubah is biblical, or Medinah currency, which is one-eighth the value of Tzuri currency, if it is Rabbinic.

Within this discussion, Chelkas M’Chokeik⁴ writes that although Rosh maintains that the kesubah obligation is Rabbinic he, nevertheless, mandates payment with Tzuri currency. In contrast, although Ramban maintains that origin of the kesubah is

REVIEW and Remember

1. What does the phrase “עין תחת עין” teach?

2. According to R’ Akiva, what does the phrase “אשר לא אורשה” teach?

3. What is the contradiction between R’ Akiva’s opinion in the Mishnah and his opinion in the Baraisa?

4. Explain the phrase “יש בגר בקבר”?

Biblical, nevertheless the value of the kesubah is not dictated by the Torah, consequently, it is paid in Medinah funds. Rav Ovadiah Yosef⁵ notes that Ramban in numerous places states that the obligation to pay a kesubah is only Rabbinic and the reference cited by Chelkas M’Chokeik was from the commentary of Ramban where he was explaining the position of R’ Shimon ben Gamliel. That should not be misinterpreted as an expression of Ramban’s opinion especially when he clearly rejects Rashi’s comments that the kesubah obligation is Biblical. ■

1. עי שוית יביע אומר חייג אהייע סי ייב אות אי בשם הראי"ש.
2. עי תוסי י. ד"ה אמר ר' נחמן אולם עי בשוית יביע אומר הנ"ל מש"כ על כלל זו
3. שוית יביע אומר הנ"ל.
4. חלקת מחוקק סי ס"ו ס"ק כ"ד.
5. שוית יביע אומר הנ"ל אות ו' ע"ש. ■

STORIES Off the Daf

True Justice

”אף מכה אדם לא תחלוק בו בין שוגג למזיד...”

On Kesuvos 38 we find that murder must be punished appropriately. Nothing should mitigate the correct punishment for a killer, whether it is galus for negligent homicide or the death penalty for premeditated murder.

A Jewish convict who had done sincere teshuvah while incarcerated had just finished his twelve year prison sentence for being an accessory to murder. Following his release, he found that he was stuck in a thorny dilemma. A former friend had received an eighteen-year sentence for perpetrating the murder for which he was con-

victed as an accessory. In truth, however, the baal teshuvah had himself done the crime and it was his Jewish friend still in prison who had served as his accessory. In prison, this former friend had sworn that his mission in life after release would be to kill the baal teshuvah who had managed to get off so easy.

The first halachic question was if he had an obligation to admit that he was a better liar, and his friend was still in prison only because of his lies. Should he turn himself in to enable the earlier release of his former friend? Should he confess to his real crime and serve a longer sentence? The more difficult question revolved around the fact that his former friend had sworn to kill him. How could he enable the early release of a man who is a clear threat to his own life? Was he not a rodef?

These questions were posed to Rav Yosef Shalom Eliashiv, shlit"א, and his response was as follows:

“You don’t have to admit that you lied, since the accessory to murder whom you know feels no remorse, and he deserves at least 18 years in prison. Even so, it is not in the hands of every person to act on his determination that another who is not actively trying to hurt or kill him is a rodef. Especially since, in your case, the threat was made long ago.”

Rav Eliashiv concluded with some practical advice, however. “Since there may be a real danger from this man, it is incumbent upon you to leave Israel. And if it is possible that he will find you in chutz la’aretz, you must have plastic surgery done to alter your appearance!” ■

