

This month's Daf Digest is dedicated
לעילוי נשמת צבי בן יחזקאל יוסף גרין, מחסידי דעעש
From the Grin family, Sao Paulo, Brazil

OVERVIEW of the Daf

1) Those sentenced to stoning who become intermingled with those sentenced to burning (cont.)

Shmuel criticized the way R' Yehudah corrected his father based on the guidelines set forth by a Beraisa for correcting a parent.

The wording of the Beraisa is revised.

2) **MISHNAH:** The Mishnah discusses what should be done with someone who is subject to two types of execution.

3) **Administering the more severe manner of execution**

Rava explains the novelty of the Mishnah's ruling that a person who is liable to two different forms of execution is given the more severe execution.

Rabbah bar Nosson identifies the source for this ruling.

This exposition is unsuccessfully challenged.

R' Acha the son of R' Chanina elaborates on other pesukim in the same perek of Sefer Yechezkel.

A related incident is recorded.

4) **R' Yosi's position**

A Beraisa elaborates on R' Yosi's position in the Mishnah that one is executed with the first form of execution that he was liable to rather than the one that is more severe.

R' Ada bar Ahava unsuccessfully challenges R' Yosi's ruling.

5) **MISHNAH:** The Mishnah describes the procedure for someone who is a repeat offender.

6) **Punishing the repeat offender**

R' Yirmiyah in the name of Reish Lakish explains which type of repeat offender is killed.

R' Yaakov further elaborates on the circumstances of the Mishnah's ruling.

7) **Establishing a presumption of wickedness**

The fact that the offender is incarcerated after receiving lashes twice indicates that a presumption of wickedness is established after two times. This understanding is inconsistent with R' Shimon ben Gamliel who requires three incidents to establish a presumption.

Ravina explains how the Mishnah could be consistent with R' Shimon ben Gamliel.

The assertion that the Mishnah could be consistent with R' Shimon ben Gamliel is unsuccessfully challenged.

8) **Incarceration**

R' Yehudah gives a description of the cell used to hold the offender.

Reish Lakish cites a source for the concept of incarceration.

Another exposition of Reish Lakish is cited.

(Continued on page 2)

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By the Abraham family in memory of
ר' נתן אליהו בן הרב אברהם יצחק

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לע"נ רב פינחס בן זלמן

Distinctive INSIGHT

Sentencing a person to a second death penalty

סלקא דעתך אמינא כיון דנגמר דינו לעבירה קלה האי גברא קטילא הוא קמ"ל

The Mishnah taught that if a person is deserving of two death penalties, he is given the more stringent of the two. The Gemara finds this to be obvious, as there is no reason to think that his being liable for a lesser penalty as well as a more stringent one means that he would benefit and not be given the stricter punishment. Rava answers that the novelty of the Mishnah would be in reference to a case where the person was first tried and convicted of a lesser death penalty. He was later tried and convicted of a harsher death penalty. Here, we might have thought that the first, lesser penalty is binding, and the subsequent judgment which resulted in a conviction for a harsher penalty was actually rendered upon a "dead man" and therefore has no validity. The ruling of the Mishnah is that even in this case, we penalize this person with the harsher of the two penalties.

Aruch LaNer cites the Gemara in Arachin (6b) which teaches that even as someone is being led to his own execution, any oath or financial promise to the kodesh (תרומה) which he makes is valid, and if he causes damage he must pay for it. We see clearly that even after being condemned to death, a person still has a status of being a live person. Why, then, should there be any reason to think that once a person is judged to be deserving of a particular death sentence that is relatively lenient that he should not be able to be tried and judged to be deserving of another sentence, even if it be more severe?

We can explain this halacha based upon a comment of Tosafos (ד"ה ונגמר). The Gemara in Makos says that if one set of witnesses comes on Monday and testifies that Reuven was judged for a death sentence on Friday, while a second set comes and testifies on Tuesday that Reuven was sentenced to death by a different court on Sunday, the second set cannot become עדים זוממין, because we now see that they were testifying about a condemned man. We now see that their testimony about Reuven on Sunday was dealing with someone who was already a "dead man" as of Friday. Accordingly, Tosafos asks that in our Gemara, it is difficult to understand how this man can be sentenced to a more severe death once he was already convicted of a death penalty, albeit one which was less severe? Tosafos answers (second answer) that if the first set of witnesses ever become disqualified, the second set (the one which spoke about the conviction on Sunday) would be valid. This, then, could be true in our case, as well. The point of the Mishnah may be that it is specifically due to the possibility that the first set which convicted the person of a lesser death penalty may lose their validity that we consider the testimony and conviction of the second set. ■

Today's Daf Digest is dedicated
By Mel, Les & Harvey Isaacs in memory of their father
Jerome Isaacs ירוחם בן אברהם

Today's Daf Digest is dedicated
By Mouris Behboud for a Refuah Sheleimah for
אליעזר בן יהודית
ונייט חיים בן סמנדר

HALACHAH Highlight

Loaning tzedaka money

וְיֹאֵל אִשָּׁה נָדָה לֹא יִקְרַב" שלא נהנה מקופה של צדקה

"And to a woman who was a niddah he did not approach" – [this refers] to one who does not benefit from the tzedaka fund

Regarding the Gemara's admonition against benefitting from tzedaka funds, Meiri¹ cites commentators who explain that the Gemara is warning tzedaka collectors against benefitting from the tzedaka funds by taking loans. A similar ruling is found in Shulchan Aruch² where he rules that once funds are collected it is prohibited to loan the collected monies to himself or to others. Kesav Sofer³ relates that his son-in-law expressed surprise at the common practice of tzedaka collectors to give loans from the collected funds and no one ever raises the concern that the practice seems to violate Shulchan Aruch's ruling. Furthermore, he knows of a Torah scholar who collects funds to send to Eretz Yisroel who regularly loans out the money he collects and sets the due date for the loan a few days before he intends to send the money to Eretz Yisroel. This is a person who is knowledgeable in halacha and yet seems to be conducting himself in a way that is against halacha.

Kesav Sofer responded that he could justify the practice of the Torah scholar who lends the money he intends to send to Eretz Yisroel. The reason it is prohibited to loan money collected for tzedaka is that the money must be available for those who are in need of the money. If the money is tied up in loans it cannot be used by the poor when they expect it to be available. The Torah scholar who collects funds for Eretz Yisroel decides arbitrarily when he wants to send the money to Eretz Yisroel and the people there are not expecting the money to come by a certain date. As such, he has the flexibility to loan the money to others before he is ready to send it to Eretz Yisroel. Those collectors who send the collected funds to someone else who ships the money to Eretz Yisroel are not permitted to loan out the funds that they collected. Since those collectors are not in control of when the funds will be sent to Eretz Yisroel they must send it to the

REVIEW and Remember

1. What is the proper manner to correct a parent's mistake?
2. What verse would make R' Gamliel cry and why
3. When was a person incarcerated and fed barley until his stomach bursts?
4. What is a קסוה?

(Overview...continued from page 1)

9) **MISHNAH:** The Mishnah describes how one who kills not in the presence of witnesses is killed.

10) Clarifying the Mishnah

Different explanations are given for how we know that someone murdered if there are no witnesses.

R' Sheishes explains that the description in our Mishnah and the previous Mishnah combined give a full picture of how incarcerated people are put to death.

11) **MISHNAH:** The Mishnah presents additional cases in which extra-judicial action may be taken.

12) Clarifying the Mishnah

The term קסוה is explained.

The source that zealots may kill someone who stole a Temple vessel is cited.

Two interpretations for the Mishnah's case of one who blasphemes with supernatural force are recorded. ■

shipper immediately since he may be prepared to send that money to Eretz Yisroel and it is not for them to take steps to tie up those funds. ■

1. מאירי לסוגיין.
2. שו"ע יו"ד סי' רנ"ט סעי' א'.
3. שו"ת כתב סופר יו"ד סי' ק"י. ■

STORIES Off the Daf

Two interpretations

"קנאים פוגעין בו..."

A shochet holds a position of responsibility and can be removed at any time if he is deemed unfit. There is much discussion in the poskim regarding exactly what blemish disqualifies a shochet and in what circumstances his contrite repentance will allow him to retain his job.

One time, a certain shochet was caught doing the sin for which Pinchas held Zimri to account. Although this man had a large family of dependents, many people wished to remove him from his post. Rav Meir of Premishlan, ז"ל, strongly agreed. However, the Ohev Yisra-

el of Apt, ז"ל, insisted that they give the repentant shochet another chance, especially since he did his job carefully and had no other way to support his family.

When the Apter Rav told Rav Meir his opinion, the latter asked him how he could possibly justify such a position. "Our sages tell us in Sanhedrin 81 that this sin is so severe that 'קנאים פוגעין בו' — zealots may dispense justice,' just as Pinchas did with Zimri. What relevance does his livelihood have in our situation where he violated such a serious transgression?"

"That is not how I learn that Gemara at all," the Ohev Yisrael replied. "The word פוגעין also means to pray. I understand the statement, 'קנאים פוגעין בו' — those who are zealous must pray for the unfortunate sinner and induce him to repent sincerely. We can

learn this from Moshe Rabbeinu's response to Pinchas as well. He told Pinchas, 'קריינא — is this how you read this letter?' Moshe meant to explain that he did not act as Pinchas because he understood that his job was to tearfully pray for the wretched sinners.

"Even so, Moshe did not stop Pinchas from acting on his pshat. He said to him: 'לן — since you understand this halachah differently than I do, you are certainly within your rights to carry out your understanding of the law.'

The Ohev Yisrael concluded, "You are certainly within your rights to have this man deposed since, according to your understanding, he may not be retained as a shochet. However I will take no part in this since I do not understand that way at all!"¹ ■

1. סיפורי חסידים החדשים, ע' קס"ב. ■