



OVERVIEW of the Daf

1) Minors and non-Jews (cont.)

Rami bar Chama explains why R' Avahu's teaching does not resolve his question and the issue remains unresolved.

The sources for the many rulings in the Baraisa that was cited are presented.

2) Actively violating a prohibition

R' Yehudah in the name of Rav asserts that one who actively violates a prohibition is liable to lashes but if the violation does not involve an action he is not liable.

This principle is unsuccessfully challenged.

Another statement is cited that also indicates that one must perform an action to be liable to lashes and then presents a number of exceptions to that rule.

R' Yochanan in the name of R' Meir presents the source that one who swears falsely is subject to lashes.

This interpretation is unsuccessfully challenged.

This source only addresses a vain oath so the Gemara searches for the source that addresses a false oath.

R' Avahu questions the need for this derivation and suggests a circumstance in which the derivation is needed.

This explanation is unsuccessfully challenged.

Another unsuccessful challenge to this explanation is presented.

R' Yochanan asserts that temurah is not an exception since his speech accomplishes an action.

The source is presented for the law that one who curses another with the name of God may be punished by lashes.

This exposition is unsuccessfully challenged. ■

REVIEW and Remember

1. Why is it not permitted to derive benefit from an animal declared sacred by a non-Jew?
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2. Which prohibitions carry the punishment of lashes?
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3. For what type of false oath does one receive lashes?
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4. What is the source that one may take an oath to fulfill a mitzvah?
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Today's Daf Digest is dedicated
לע"נ מרת רחל פריידא בת ר' ישראל ע"ה
by her family

Distinctive INSIGHT

Taking an oath that is truthful

אימר אפילו שבועת אמת...לא מצית אמרת דהכתיב ובשמו תשבע

R' Yose HaGalili was quoted as saying that lashes are meted out for one who has violated a negative commandment of the Torah only if an act was done by doing so. The exceptions to this were one who swears, one who exchanges a sanctified animal for a non-sanctified one, and someone who curses the name of God. Regarding the case of swearing, the Gemara analyzed the possibilities and determined that this cannot be referring to where a person took an oath to confirm something that is truthful. Rather, it refers to a case where a person swore falsely or in vain.

Sfas Emes notes that according to the assumption of the Gemara, that it would be prohibited to use God's name even in swearing truthfully, the source for this would have been the posuk (Devarim 6:13 and 10:20), "Fear God, your Master," or the verse cited by R' Yose HaGalili (Devarim 28:58), which also emphasizes that we must exercise utmost fear and trepidation in mentioning God's name. Using His name in an oath is a form of casual usage of God's name and is arguably a sign of disrespect.

According to the conclusion of our Gemara, it seems that there is nothing wrong with taking an oath that is truthful. From Rambam (Hilchos Shevu'os 11:1) it even seems that there a person fulfills a positive mitzvah when he declares an oath which is accurate. He writes, "Just as one is in violation of a negative commandment if he pronouncing a false or untrue oath, so too it is a positive command for a person to take an oath in God's name when it is warranted in court, as it says, (Devarim 6:13) 'and in His name shall you swear.' Taking an oath in God's great and holy name is part of serving Him, and it is an illustrious and very holy matter to use His name in this manner."

Many Rishonim explain that the posuk which says to take an oath in God's name is not a positive mitzvah, but it is only a matter which we are permitted to do (see Rashi and Ramban in their commentaries on the Chumash).

While we have presented a disagreement regarding the nature of the Torah's approach to taking a truthful oath, the Rishonim explain that our custom is not to take oaths at all, even if they be truthful. The Midrash to Parashas Matos states that God told the Jewish people, "You might think that it is correct and fitting to swear in My name if

HALACHAH Highlight

Lashes for reciting a beracha in vain

ומקלל חברו בשם

And one who curses his friend with the Name of God

The Gemara discusses the issue of administering lashes for violating a Torah prohibition and the general rule is that one who violates a prohibition that involves an action is liable to lashes whereas if the prohibition is violated without an action one is not liable. R' Yosi HaGalili is cited as noting a number of exceptions to this rule and one of the exceptions is one who curses his friend using the Name of God. The source for this exception is the pasuk that states (Shemos 20:7), **כי לא ינקה ה' את אשר ישא את שמו לשוא** – God will not absolve one who takes His Name in vain. This implies that God will not absolve the transgressor but Beis Din can absolve the transgressor by administering lashes.

Rav Hai Gaon¹ discusses the custom to say the beracha **מקדש השבת** in the Shabbos morning kiddush the same way that it is recited in the Shabbos night kiddush. He responded that the practice is foolish and the person is liable to lashes for violating the prohibition against taking God's Name in vain since the beracha was not necessary. It is clear from Rav

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the oath is truthful. You should know that one may swear only if he possesses all of the characteristics listed in the verse (ibid.), 'You should serve God and fear Him, (and only then) you may swear using His name.' ■

Hai Gaon's response that reciting an unnecessary beracha constitutes a violation of a Biblical prohibition and one is liable for lashes for this transgression. Sefer Pesach HaD'vir² questions this position from our Gemara. The Gemara is clear that generally one is not subject to lashes unless he violates a prohibition with an action. How then is it possible for one to be liable to lashes for using God's Name in vain when the prohibition is without an action since in halacha speech is not considered an action? Furthermore, even though there are many authorities who maintain that one who recites a beracha in vain violates a Biblical prohibition, nevertheless, we do not find that one who violates that prohibition is liable to lashes. Moreover, even though the prohibitions against cursing and reciting a beracha in vain are derived from the same pasuk, it is evident from the Gemara that lashes are administered only for cursing and not any of the other prohibitions that are derived from the same pasuk. ■

1. שערי תשובה סי' קט"ו.

2. פתח הדביר ח"ג סי' רפ"ט סק"א ד"ה ברם זוהי. ■

STORIES Off the Daf

A Change of Plans

שבועה שלא אוכל ככר זו

Today's daf discusses the halachos of one who broke his vow.

Rav Shimshon Pincus writes, "In our days it is possible for a person to go to university and still stay on the Torah path. But not too long ago this was a very rare event. Almost invariably, when one went to university his kippah began to shrink until it was invisible. Sadly, his mitzvah observance quickly disappeared along with his kippah!¹ There were notable exceptions, but these were very rare.

One father heard about a potential shidduch that sounded exactly right for his daughter. The one disadvantage was that the young man learned in university. It was well known that such institutions taught outright kefirah and most

students were swept along with the spirit of such places, losing most if not all of their emunah due to these teachings. On the other hand, those who managed to get through university with emunah had a marked advantage, since they often could get a much better job. This was an obvious advantage, especially in a largely poor area.

Although he had some misgivings, the father agreed to the match, making a neder not to marry his daughter to anyone else without the chasan's agreement.

Shortly afterwards, during a conversation with his future father-in-law the young man spoke words of outright kefirah. Since it was obvious that this was what the young man believed, the father declared that he wanted to break off the shidduch. He explained the matter to his daughter who agreed that this was a serious blemish and was willing to break the shidduch. "But what about the neder?" she asked.

The Rema writes that one who makes a neder to marry off his daughter to someone cannot annul the vow without the chassan's consent. Not surprisingly, the chassan was unwilling to break the shidduch.

When this question reached the Maharsham, zt"l, he ruled that they could break the vow. "Although the father knew that the chassan was in university and most who attend such institutions go off the derech, he was not aware that this young man held heretical beliefs. This is like a case of a father-in-law who agreed to a shidduch with a chassan known to do wicked deeds who then began doing worse ones. In this case the Rashba permits annulling the vow even without his consent, and the same is true in our situation."² ■

¹נפש שמשון, חנוכה

²שו"ת מהרש"ם, ח"ו, סי' קס"ג ■