

שבת קודש פרשת בהר-בחוקותי | מסכת כתובות דף ל"ה

INSIGHTS FROM OUR CHABUROS

Lashes to One and Money to Another

לא צריכא דבהדי דמחייה קרע שיראים דיליה

In the Gemara, Ravin taught that Reish Lakish holds that in a case which features lashes (מלקות) and payment simultaneously, no financial restitution has to be made, even if the lashes are technically not applied. An example of this is where the infraction was done בשוגג (the witnesses did not issue a proper warning). The Gemara searches for the source of this halacha. Rava states that the source from where we learn this is the association of the word נכח which appears both in a case of lashes (Vayikra 24:18) as well as in a case of payment for damages (ibid., v.19). Just as payment for damages is due whether the infraction was intentional or unintentional, so, too is the exemption from financial restitution applied in a case of lashes, whether the case is intended (and lashes are meted out) or whether it is unintentional (when the lashes are not applied). The conclusion of the Gemara is that the case of lashes is speaking about where one person struck another and caused a bodily injury which was evaluated at less than a peruta (for which lashes are due), and at the same time he tore the fellow's clothing. In this case, the payment for damaging the clothing is suspended due to the lashes. We can note that both in the case where a person causes monetary damage while committing a capital crime, as well as in the case where he is liable for lashes, the exemption is only stated in reference to not having to pay the victim his claim while being penalized with death or lashes. The Rishonim deal with whether the sinner is exempt from damages he might cause to others, simultaneous to his violating the capital or lashes infraction. Rambam holds that the exemption applies even when the money is owed to someone other than the one to whom the lashes or death infraction was perpetrated. He writes (Hilchos Sanhedrin 16:12) that if Reuven injures a non-Jewish slave of his friend, and the injury causes less than a peruta of value of damage, Reuven will receive lashes. A non-Jewish slave is obligated in some mitzvos, and striking him is punishable with lashes. In this case, the payment is to the slave's owner, while the lashes are administered due to the infraction against the slave. Yet, Rambam explains that the case is where the injury is less than a peruta, and he adds that had the monetary loss been more, Reuven would pay and not have to receive lashes. Yet, this case is where the lashes are due to having hit the slave, and the payment is due to the owner of the slave, and Rambam still rules that the payment would eclipse and cancel the lashes.

PARSHA CONNECTION

In this week's daf the גמרא continues the discussion about a person receiving two punishments for one act, for example נמלקות ומחון. How about שכר מצוה, will a person receive more than one reward for performing a mitzvah? In פרשת בחוקותי we have a promise of גשמיכם בעתם as well as other ברכות and the מפרשים ask how can we get a reward in this world since we know that the שכר for our מצוות will be in the next world. In fact the הקדוש הקדוש אור החיים points out that the "ו" of ונתתי seems out of place, and he explains that this is meant to signify that the rain is "extra" in addition to the reward that a person will receive in the world to come. So how can we get two rewards for the same מצוה? The אלושי הקדוש offers the following answer: The word ונתתי means a מתנה (a present). The תורה is telling us that we will get a present for תלכו בחוקותי, which will not count as a reward. This way we are getting our ultimate שכר in עולם הבא and a present in this world.

STORIES OFF THE DAF "And You Shall Live By Them"

רבינ אמר חייבי מיתות שוגגין כולו עלמא לא פליגי דפטורין..."

When the Communists seized control of the Russian government, the new regime made the lives of many observant Jews miserable. Anti-religious persecution created many unusual and challenging halachic questions.

Since violating Shabbos was mandatory and people who refused were often killed for refusing, many unfortunate Jews had to violate Shabbos week after week. It was only a very select group who merited to keep Shabbos in the Soviet Union during the worst periods of anti-religious fervor who lived to tell about it.

One religious Jew who was making great efforts to observe the laws of Shabbos was accosted by a bunch of Communists. They told him in no uncertain terms that they would not tolerate his being a parasite by refraining from halachic work on Shabbos. "If you don't drive this vehicle to where we tell you, you're dead!" They were armed and clearly meant to carry out their threat. The man had no choice but to comply. As the distressed man was driving, he crashed into a fellow Jew's parked car. No one was hurt, but his friend's car was totaled. After this happened, the first man wondered if he was obligated to pay for the damage he had done to his friend's car. On this week's daf we find that all agree that even if one unintentionally transgressed a capital sin he does not pay. As everyone knows, driving on Shabbos is a capital crime and so perhaps he was not obligated to pay. On the other hand, perhaps this was different since it was actually a forced violation and was not entirely unintentional. When this man asked his Rav the halachah, he was told that he must pay. As proof, he was shown the Minchas Chinuch 296:26, whose reasoning is quite clear. The man's violation of Shabbos was not a capital offense at all! By driving on Shabbos, he fulfilled the mitzvah of v'chai bahem, 'and you shall live by them.' The act of driving literally had saved his life!

HALACHA HIGHLIGHT

Reparations for Committing Murder

חייבי מיתות שוגגין כולי עלמא לא פליגי דפטורין

One who inadvertently violates a prohibition that carries the death penalty, all opinions agree that he is exempt from the monetary payment

Rambam¹ writes that Beis Din is warned against taking redemption money (כופר) from a murderer to release him from punishment. Even if he were to give all the money in the world or if the blood redeemer (גואל הדם) was willing to forgive the murderer, he may not be exempted from punishment. The reason is that the spilled blood of the deceased is not someone else's possession that grants him the authority to forgive the murderer or release him from punishment. Minchas Chinuch² writes that despite Rambam's reference to the prohibition on Beis Din, the prohibition applies to anyone. Evidence to this assertion can be found in the writing of Sefer Chinuch³ who writes that this prohibition also applies to women, who may not serve on Beis Din. A scenario in which a woman could violate this prohibition is if she were, for example, to approach the government to absolve a murderer of his crime. The only reason Rambam mentioned Beis Din, concludes Minchas Chinuch, is that that would be the most common application of the prohibition.

Rav Yosef Engel⁴ cites the position of Mahari Weil who writes that the prohibition is violated when, for instance, the blood redeemer takes money specifically in order to forgive the murderer of his crime. On the other hand, since the murderer must make an effort to achieve atonement, a payment towards achieving that goal is permitted. Accordingly, Sefer Pischei Choshen⁵ inquires whether it is permitted for the family of the victim to sue the murderer for reparations. In an effort to resolve this matter he cites a teshuvah of Noda B'Yehudah who writes that one of the paths of repentance for one who kills another, even if it was indirect, is to pay the heirs of the victim. Rav Akiva Eiger also addressed a case of someone who killed a young man who did not have his own offspring. An elaborate and interesting list of donations and payments was drawn up to help the murderer achieve atonement. These sources suggest that payment to the family of the deceased is necessary for the murderer to achieve atonement.

1. רמב"ם פ"א מהל' רוצח ה"ד, ופ"ה ה"א
2. מנחת חינוך מצוה תי"ב אות א'
3. ספר החינוך שם
4. ספר גליוני הש"ס ד"ה לא תשקול
5. פתחי חושן ח"ה פ"ב הע"ג

MUSSAR FROM THE DAF

Strong Among Weak

כי אתא רבין אמר: חייבי מיתות שוגגין — כולי עלמא לא פליגי דפטורין

The Gemara quotes Ravin who said that everybody agrees regarding a person who did an action that is חייבי מיתות שוגגין that he is exempt from any monetary payment.

We see a very big יסוד from this Gemara, that even if an action doesn't carry the punishment of מיתה, since it still is an action that has the potential to be קים ליה בדרכה מיניה כלל, חייב מיתה, we can still say the כלל of מיתה.

What about a case where someone was forced to do an עבירה באונס such as where he was forced to be שבת and in the process caused damage. Do we also say קים ליה בדרכה מיניה? The Minchas Chinuch holds we do not. Since the person who was forced to do the עבירה was actually doing a mitzvah of וחי בהם, there is no element of חטא.

So what level of חטא is the who acted mistakenly for a חויב מיתה doing? We do know that the שוגג is doing a חטא at some level as a שוגג has to bring a עיר מקלט and go to the עיר מקלט. He is almost close to a מזיד as we see the כלל of קים ליה בדרכה מיניה applies to him.

So what is the root cause of his חטא?

The gemara in Makos 9b asks why were the three ערי מקלט cities designated on the east bank of the Jordan, where two and a half tribes resided, and three cities designated in Eretz Yisrael, where more than nine tribes resided? Abaye said: In Gilead, which is located on the east bank of the Jordan, שכיחי רוצחים (murderers are common).

The Rishonim ask what is the connection? Just because there are שכיחי רוצחים, why should that affect those who kill someone בשוגג?

The Mahrik (Parsha Masai) answers, then in an area when an עבירה is done everyone in proximity is affected, and it desensitizes all of these people to that עבירה and therefore these people are not as strong in protecting themselves from that עבירה. Therefore we see that in the area which was שכיחי רוצחים people were not as careful with their actions and שוגג murders were more common.

There is a great lesson from here. If we see ourselves in a situation when people around us are not careful about a certain mitzvah or עבירה, we must strengthen ourselves much more and put up more safeguards because we can become easily affected by the weakness of others.

POINT TO PONDER

The Gemara says that a case of חובל whereby he doesn't have to pay for the חבלה, but still has to pay for something, is in case where a person tore a garment while hitting someone. Does it mean that he tore the garment of the person he was fighting or that he tore another person's garment?

Response to last week's Point to Ponder:

אמר רב פפא says that one who borrowed a cow and killed it on שבת is פטור. Why did רב פפא pick a שואל? What would be the case if he was a שומר חנם?

A שואל is a bigger חידוש because he accepted responsibility for the item when he borrowed it, since he is חייב even באונסין. On the other hand a regular שומר is only responsible if something happens. (See מוה"ר ש"י).

For more points to ponder by Rabbi Yechiel Grunhaus, or insights by Rabbi Yitzchok Gutterman, please visit our website, dafaweek.org, or download the app

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The shavua matters is published by the Daf a week program under the rabbinical guidance of Harav Meir Stern shlita and Harav Shmuel Kamenetsky shlita

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