



נדרים דף פ"ג

English Halacha Topics

Dedicated by Mr. and Mrs. Mayer and Chaya Rivka Fischl

Atonement for Sinful Intentions

The Gemara cites a Mishnah about a woman who accepted nezirus, her husband nullified it but she didn't know, and she drank wine and became impure from corpses. She is exempt from lashes. However, in Nazir (23a) it says that she receives makas mardus, a Rabbinic form of lashes. Our sugya forms a basis of a dispute among the Acharonim, as follows.

The sefer Mutzal Mai'aish (Siman 46) dealt with an unpleasant sheilah. A man consorted with a married woman, impregnating her. Then they found out that the woman's husband had already died, when they did their deed. The question now was: is the man allowed to marry her? In technical fact the man had not done a sin worthy of forbidding her, since she was already unmarried. But, since they hadn't known that, their act was done assuming they were committing adultery. The Rav wrote that it is not written about anywhere and required study.

However, the Kedushas Yom Tov (Siman 14) argues; it's clearly forbidden. As mentioned, the woman in our Mishnah is punished with makas mardus. Isn't that comparable to this sheilah – both did something they assumed was forbidden? And just like the nezirah is punished, so too should the man in the sheilah! Especially since adultery is far more serious a sin than violating a nezirus. Since the man must repent and seek atonement, it would follow that he would also not be allowed to remain with the woman. "A sinner does not profit from his sins," the Gemara states.

A similar case is of a shomeres yavam, a widow awaiting yibum, who sins with another man. The Nemukey Yosef rules that although technically she may afterward marry that man (once she receives chalitzah), Chazal penalize her and she may not. So too here, concludes the Kedushas Yom Tov. The Levush (Y.D. 157:2) records a surprising psak which is an exception to our sugya. If a married man develops a powerful longing for another woman, the Levush offers a solution. His wife can pretend she is that other woman, and thus he may fulfill his desire in a permitted way.

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On this, Shu"t Beis Yitzchak objects that our Gemara indicates otherwise. Even if one does an act that is permitted, if s/he thinks it's forbidden, atonement is necessary. How then could the Levush suggest they do such a thing?

He answers his own question that the Levush's case is different from the case of a Nazira. Cohabiting with one's wife is a mitzvah. So, it could be argued that even if one's thinks he's doing a sin, if he actually does a mitzvah, no atonement is necessary. This is as opposed to drinking wine or becoming impure, which are not mitzvah activities (Y.D. Vol 1:8).

We should point out, however, that the Levush appears to be discussing an instance in which the man risked danger to his life. In cases of pikuach nefesh we may allow transgression of any sin to save his life (except for actual adultery, idol worship or murder). So, it is not surprising that the Levush permits the charade with his own wife.

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