



Today's Daf In Review is being sent l'zecher nishmas Habachur Yechezkel Shraga A"H ben R' Avrohom Yehuda

Kesubos Daf Lamed Beis

HABAH AHL ACHOSO V' AHL ACHOS AVIV...

- **Q:** A Mishna says that one who has bi'ah with his sister, father's sister, mother's sister, wife's sister, brother's wife, father's brother's wife, or with a niddah, gets malkus. Now, we have a rule that one who gets malkus does not pay money for the same act that he gets malkus for. If so, our Mishna that says that he does pay must hold that he does not get malkus!? **A:** **Ulla** said, our Mishna is discussing where the sister is a naarah, so he pays the fine and doesn't get malkus. The other Mishna is discussing where the sister is already a bogeres, so there is no fine, and is why he gets malkus.
 - **Q:** A bogeres would get money for boshes and pegam, and he should not get malkus there either!? **A:** The Mishna is discussing where she is a shoteh, who does not get boshes or pegam.
 - **Q:** She should still get money for the pain that he caused her!? **A:** The Mishna is discussing a case of when she was seduced and not raped, so there is no pain.
 - Based on this, we can even say that the other Mishna is discussing a sister who was a naarah, but the case is where she was an orphan and was seduced, so there is no payment due to her.
 - **Q:** We see that **Ulla** holds, that wherever one is chayuv money and malkus, he pays the money and need not get the malkus. Where does he know this from? **A:** He learns it from the case of one who hits another person. Such a person pays for the damage he caused and is then patur from malkus.
 - **Q:** Maybe the payment of money is only considered to be more stringent in the case of one who damages another, because he is chayuv is 5 forms of payment, but in any other case, maybe we choose to give him malkus rather than make him pay!? And if the reason payment is preferred is because it is lenient and we want to be more lenient on the person, we still can't learn from the case of one who hits another, because that case is unique in that it is allowed in Beis Din (Beis Din may hit another when giving malkus)!? **A:** He learns it from eidim zomamim, who are chayuv malkus and payment, and they are required to make payment and do not receive malkus.
 - **Q:** Maybe that case is different because zomamim don't need to be warned, and they also don't do a true act!? **A:** He learns it from a tzad hashava from one who hits and from zomamim. They are both chayuv malkus and payment, and they both pay and are patur from malkus. The same is therefore true of all other cases.
 - **Q:** Maybe we can't learn out from those two cases, because they each have a stringent aspect (as stated) and a lenient aspect!? **A:** **Ulla** learns it from a gezeirah shava on the word "tachas", from one who hits to one who violates a naarah.
 - **R' Yochanan** said that the other Mishna may also be discussing a sister who is a naarah, and the difference between our Mishna and that Mishna is that in that Mishna the man was warned that he would get malkus, whereas in our Mishna he was not.
 - **Q:** From here we see that **R' Yochanan** holds that if one is chayuv money and malkus for which he has been warned, we choose to give him malkus and make him patur from payment. How does he know this? **A:** The pasuk says "kidei rish'aso", which teaches that we only give one punishment for an action, and not two. The pasuk then says "arba'im yakenu", which teaches that when faced with malkus and payment, we are to give him malkus.

- **Q:** When one hits and damages another, he is chayuv for money and malkus and yet we make him pay and he is then patur from malkus!? **A:** It is as **R' Illa'a** said regarding zomamim, that the Torah specifically said to make them pay and not get malkus. The same is regarding one who hits another.
 - Regarding zomamim the pasuk says that we must do to them as they wanted to do to the other, and the pasuk then says "yad b'yad". This teaches that we make them give something that passes from hand to hand (i.e. money) rather than get malkus.
 - Regarding one who hits another the pasuk says we must do to him as he has done to the other, and the pasuk then says "kein yinasen bo". This teaches that he must do something that can be given (i.e. money) and is then patur from malkus.
- **Q:** Why doesn't **R' Yochanan** use the gezeira shava as **Ulla** did? **A:** He says that it nullifies the effect of the pasuk that says that one gets malkus for bi'ah with his sister.
 - **Q:** That can't be right, because the full effect of the pasuk will take place with regard to any sister who is not a naarah!? **A:** **R' Yochanan** holds like **Abaye** that the word tachas regarding one who violates is needed for another drasha. **Ulla** learns this drasha from another pasuk, as does **Rava**.