



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

### Kesubos Daf Lamed Gimmel

- **R' Elazar** said, the reason that zomamim are subject to payment rather than to malkus is because we cannot give them a warning before they do the aveirah, therefore we cannot give them malkus. **Rava** explained, they cannot be warned, because if they are warned before saying their testimony they will claim that they forgot when making the testimony. If they are warned at the time of testimony, that will prevent people from making even truthful testimony. And, once the testimony is done it is surely too late to warn them.
  - **Q: Abaye** asked, why can't we warn them "toch kidei dibur" of their testimony? **R' Acha the son of R' Ika** asked, why can't we warn them earlier and then gesture to them during the testimony to remind them of the warning? **A: Abaye** then said, in truth zomamim do not even need to be warned before they are punished. The pasuk tells us to do to them as they wanted to do. They wanted to kill another without giving him a warning, so we kill them without the need to give them a warning.
    - **Q: R' Sama the son of R' Yirmiya** asked, what about the case when they get malkus for attempting to give a Kohen the status of a chalal? In that case the pasuk of "do to them like they wanted to do to the other" is not in effect. If so, we should need to warn them before giving them malkus!? **A:** The pasuk says "mishpat echad yihyeh lachem", which teaches that one set of rules apply, and therefore the Halacha is that zomamim never need to be warned before being punished.
- **R' Shisha the son of R' Idi** said that one who hits and damages another pays money and does not get malkus based on the pasuk that says "v'lo yihyeh ason anosh yei'aneish" (if he intended murder and ultimately did not murder, he must pay rather than get malkus). The pasuk is explained by **R' Elazar** as referring to a case where the person was warned against the death penalty, and this warning suffices as a warning against malkus, because a warning for a more stringent punishment suffices as a warning for a more lenient punishment.
  - **Q: R' Ashi** asked, why do we assume that a warning for a more stringent punishment suffices for a more lenient punishment? Even if we do assume that, why do we assume that the death penalty is more stringent than malkus? Maybe malkus is more stringent as we find that **Rav** said that the pain of malkus is very, very severe? **A: R' Sama the son of R' Assi** said to **R' Ashi**, **Rav** was referring to an unlimited number of malkus. However, when it is limited in number, it is not worse than death.
  - **Q: R' Yaakov of Nehar Pekod** asked, this explanation can work according to the **Rabanan** who say the pasuk refers to where a warning was given. However, according to **Rebbi** the pasuk may be understood where no warning was given, which may be why the pasuk says that he pays and gets no malkus. However, how would we know that where he was warned we would still make him pay and not give him malkus? **A: R' Yaakov** said in the name of **Rava**, we learn from a pasuk that if a person is at risk of dying from being hit, we imprison the attacker and await the outcome of the victim – if he dies we put the attacker to death, and if he does not die we make the attacker pay. Clearly the case must be where he was warned for the death penalty (or else there would be no possibility of him receiving the death penalty), which suffices as a warning for the more lenient malkus, and yet the pasuk teaches that we make him pay and he does not get malkus.
    - **Q: R' Ashi** asked, why do we assume that a warning for a more stringent punishment suffices for a more lenient punishment? Even if we do assume that, why do we assume that the death penalty is more stringent than malkus? Maybe malkus is more stringent, as we find that **Rav** said that the pain of

malkus is very, very severe? **A: R' Sama the son of R' Assi** said to **R' Ashi, Rav** was referring to an unlimited number of malkus. However, when it is limited in number, it is not worse than death.

- **Q: R' Mari** asked, maybe that pasuk is referring to one who killed the person accidentally, in which case we wait to see if he will be subject to galus, and not to the death penalty (which means he was not warned at all)!? This Gemara says, this remains a **KASHYEH**.
- **Reish Lakish** said, our Mishna does not argue with the Mishna that says the person would get malkus for bi'ah with the women listed. Our Mishna follows the view of **R' Meir**, who says that one can get malkus and have to pay money for the same action. When our Mishna says he must pay, it means in addition to malkus.
  - **Q:** If our Mishna follows **R' Meir**, then even one who violates his daughter should be subject to the penalty, and yet the Mishna later on says that he is not!? Even though he would be chayuv misah in that case, a Braisa says that **R' Meir** requires payment even if the person is chayuv misah in the case where one stole a sheep and slaughtered in on Shabbos!? **A:** That Braisa was explained to be referring to a case where one person stole and he instructed another person to shecht it (so he is chayuv to pay because he is not chayuv misah).
    - **Q:** Why would he be chayuv for a shechita done by someone else? **A: Rava** said, the Torah compares the shechting of the sheep to the selling of the sheep, to teach that just as the selling is done through someone else, one would be chayuv if the shechita was done through another as well. **R' Yishmael** taught that the word "oy" teaches that one would be chayuv through a shaliach. The Yeshiva of **Chizkiya** taught that this is learned from the word "tachas".