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

Makkos Daf Tes Zayin

- The Gemara just said that the machlokes between **R' Yochanan and Reish Lakish** is based on the effectiveness of a warning given in safek, where **R' Yochanan** says it is a valid warning and **Reish Lakish** says that it is not. The Gemara now says that they follow their reasoning that they held elsewhere, in the following case, where a person swore that he would eat this loaf of bread today and the day passed and he did not eat it – **R' Yochanan and Reish Lakish** both say that he does not get malkus. **R' Yochanan** says he does not get malkus, because he was oiver a lav that had no action, and **Reish Lakish** says he doesn't get malkus, because it was a warning given in safek (when he was warned there was still time left in the day, so it was uncertain whether he would be oiver on his oath). The Gemara explains that they both follow the view of **R' Yehuda**, who says in a Braisa that the Torah makes the lav of leaving over the Korbon Pesach until the morning a "nitek l'assei" by saying that it should be burned, and in that way teaches that he would not get malkus for this lav. **R' Yochanan** says, if not for the "nitek l'assei" he would be chayuv malkus, which shows that a warning given in safek is valid. **Reish Lakish** says if not for the "nitek l'assei" he would be chayuv malkus, which shows that a lav that has no act would bring about a chiyuv malkus.
    - **Q: Reish Lakish** must surely agree that leaving over the Pesach until the morning involves a warning given in safek, so why doesn't he say like **R' Yochanan**? **A:** He holds like another Braisa where **R' Yehuda** says that if a person hits or curses two men, one of whom is his father, but he doesn't know which is his father, and he hit or cursed them one after the other, he would be patur, because the warning was given in safek.
    - **Q: R' Yochanan** must surely agree that leaving over the Pesach is a lav without an action, so why doesn't he say like **Reish Lakish**? **A:** He holds like a statement said in the name of **R' Yehuda in the name of R' Yose Haglili**, that all lavim in the Torah that don't have an action are not chayuv in malkus, except for swearing falsely, temurah, and cursing using the name of Hashem.
    - **Q: R' Yehuda** seems to self-contradict himself!? **A:** According to **Reish Lakish** he would say that there are two Tanna'im who disagree as to what **R' Yehuda** held (one says he held that a warning given in safek is effective and one said it is not effective). According to **R' Yochanan** we can answer that the Braisa of Pesach is the view of **R' Yehuda**, and the Braisa where **R' Yehuda** says in the name of **R' Yose Haglili** is the view of his rebbi, but **R' Yehuda** himself would not hold that way.
- A Mishna says, if someone takes a mother bird from on its babies (instead of sending the mother away and taking the babies, as is required for the mitzvah of shilu'ach hakein), **R' Yehuda** says he gets malkus (for the lav) and no longer needs to send her away (the assei is meant to be done before the lav, and once the lav is done it is too late to do the assei). The **Chachomim** say he should now send away the mother and will not get malkus, based on the general rule that a lav that has an assei to remedy it will not result in malkus.
    - **R' Yochanan** said, this case and only one other are the only cases where one would not get malkus only if he actually does the assei. The other cases of lav shenitek l'assei don't make someone chayuv in malkus even if he doesn't do the assei. **R' Elazar** asked, what is the other case? **R' Yochanan** said, think and you will find it. **R' Elazar** did so and found the Braisa that says that if a rapist who is a Yisrael divorced his victim, he remarries her and does not get malkus.
        - **Q:** This fits well according to the understanding of an earlier Braisa that a person would get malkus for not doing the assei that remedies the lav immediately after being warned to do so. However, according to the view that he won't get malkus until it is no longer possible for him to do the assei, this is possible by

shilu'ach hakein (if he, for example, killed the mother), but what would the case of the rapist be? If he killed the woman, he would be chayuv misah and patur from malkus anyway!? **A: R' Simi of Chozna'ah** said, the case would be where he acted as her shaliach to accept kiddushin for her from someone else. He thereby made it impossible to ever remarry her.

- **Q: Rava** asked, if she made him a shaliach, it is she who is making it impossible, not him!? If she didn't make him a shaliach, then he has no authority to accept kiddushin for her!? **A: R' Simi of Neharda'a** said, the case is where he made a neder in public that she would be assur to him. This makes it impossible to ever marry her.
  - **Q:** This fits well according to the view that such a neder cannot be annulled, but according to the view that it can be annulled, it is not impossible to marry her!? **A:** He made a neder on the consensus of the public and of Beis Din, based on an aveira that she had done. This type of neder can certainly not be annulled.

- **Q:** Are there only two cases where one would not get malkus only if he does the assei? There is the case of stealing, where the Torah says "lo sigzol" and then says "v'heishiv es hagezeila"!? There is the case of collateral where the Torah says that the lender may not enter the debtor's house to take the collateral, but then says that if he took the collateral "hasheiv tashiv lo"!? **A:** In these cases the robber or lender are chayuv to pay for what they took, therefore there would not be malkus.
  - **Q: R' Zeira** asked, what about where someone took the collateral from a ger who then died, leaving no heirs to whom the lender must pay for what he took? He should get malkus there!? **A:** Even in this case he was chayuv to pay, but the claim of the ger becomes lost upon his death. Therefore, there is no malkus.
- **Q:** With regard to leaving over "pe'ah", the Torah says "lo sichaleh pe'as…", but if the person did cut it off the Torah says "le'ani v'lager tazov osam", and a Braisa says that one can give pe'ah even after the grain was cut from the ground, even after it was made into a pile, and at the very latest, once the pile was smoothed. After that, the Braisa seems to say that it would be too late to give pe'ah. If so, this should be another case of where he should get malkus!? **A: R' Yochanan** holds like **R' Yishmael** who says that pe'ah can even be given after the grain was made into flour or even after it was baked into bread. Therefore, it doesn't become impossible to do the assei.
  - **Q:** Even according to **R' Yishmael** it would become impossible in a case where he already ate the bread!? **A:** Rather, it must be that when **R' Yochanan** said there was "one other" it is referring to this case of pe'ah, and not the case of the rapist, because in that case he cannot make it impossible to marry her. Even if he made a neder on the consensus of the public, it can still be annulled, because it stands in the way of doing a mitzvah, and such a neder can always be annulled.

V'HA'OCHEIL NEVEILOS UTREIFOS SHEKATZIM UREMASIM…

- **R' Yehuda** said, if a person eats a worm found in cabbage he gets malkus based on "sheretz hashoreitz ahl haaretz". In fact, **R' Yehuda** gave malkus to someone for doing so.
- **Abaye** said, if someone ate a water sheretz he would get 4 sets of malkus (2 for the two general lavim against eating sheratzim, and 2 for the two lavim against eating water sheratzim). If he ate an ant he would get 5 sets of malkus (2 for the two general lavim against eating sheratzim, and 3 for the 3 lavim against eating land sheratzim). If he ate a "tzira" (some type of stinging, flying insect) he would get 6 sets of malkus (2 for the two general lavim against eating sheratzim, 3 for the 3 lavim against eating land sheratzim, and one for the lav against eating flying sheratzim).
- **R' Achai** said, one who holds himself back from going to the bathroom is oiver on "lo tishaktzu". **R' Bibi bar Abaye** said, one who drinks from the keili used by a bloodletter is oiver on "lo tishaktzu".
- **Rabbah bar R' Huna** said, if a person ground 9 ants, creating a mixture less than a kezayis, and he then added one live ant to the mix, which then made the mixture the size of a kezayis, and he

ate the entire mixture, he would get six sets of malkus – 5 for eating a "berya" (an entire living thing) and one for eating a kezayis of neveilah. **Rabbah in the name of R' Yochanan** said, this is true even if the ground mixture was made of only 2 ants, not 9. **R' Yosef** said this is true even if the ground mixture was made of only one ant. The Gemara says, they are not arguing, but are rather discussing different size ants.

ACHAL TEVEL UMAASER RISHON…

- **Rav** said, one who eats tevel of maaser ani would get malkus. This follows **R' Yose** in a Braisa that learns a gezeira shava to teach that the lav of "lo suchal" even applies to grain from which all terumos and maaseros were separated, except for maaser ani.
    - **R' Yosef** said, this view is the subject of a machlokes in a Mishna where **R' Eliezer** says that one need not verbally separate maaser ani from demai and the **Chachomim** say that it must be so separated. Presumably the machlokes is that the **Chachomim** say the produce is considered to remain in the status of tevel until the maaser ani is at least verbally separated, and **R' Eliezer** says that the maaser ani in the produce does not render it tevel. **Abaye** said, if that is the machlokes, why do they argue only in a case of demai, which is a case of safek? Why not argue in a case when the maaser ani was definitely not separated? Rather, all agree that not separating maaser ani renders the produce as tevel. The machlokes is only in regard to demai. **R' Eliezer** holds that ahmei haaretz would definitely separate maaser ani, and therefore there is no reason to treat the demai as if maaser ani was not separated, and the **Chachomim** hold that since it is a bother to separate it, they may have not done so.