

OVERVIEW of the Daf

1) Violating a relative (cont.)

The Gemara concludes its challenge to the Mishnah's ruling that one must pay a fine for violating a relative.

Ulla offers a resolution to the contradiction.

Following an examination of this resolution the Gemara concludes that a distinction could be made between a woman that is violated and a woman that was seduced.

2) Lashes and payment

This resolution indicates that Ulla maintains that when one is liable to lashes and payment he must pay rather than receive the lashes.

The Gemara inquires after the source for this ruling.

After numerous failed attempts to find a source for this position the Gemara finally identifies a source that one must pay rather than receive lashes.

3) Violating a relative and lashes and payment (cont.)

R' Yochanan offers an alternative to Ulla's resolution to the challenge against our Mishnah which leads the Gemara to the conclusion that when one is liable to lashes and payment he receives lashes rather than pay the money.

The source for R' Yochanan's position is identified.

R' Yochanan's position is unsuccessfully challenged from the case of one who wounds someone who is liable to pay rather than receive lashes.

The Gemara answers that wounding someone is an exception to the rule because the Torah explicitly teaches that the punishment is to pay rather than receive lashes.

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REVIEW and Remember

1. What is **בושת ופגם** and how is it calculated?
2. What transgression makes **זוממים עדים** deserving of lashes?
3. How does R' Yochanan know then when given the choice between lashes and payment the correct punishment is lashes?
4. Where does the Torah indicate that one who strikes someone must pay rather than receive lashes?

Distinctive INSIGHT

"Injuring" is permitted in the case of a Jewish court

מה לחובל בחבירו שכן חייב בחמשה דברים, ואי ממונא לקולא, שכן הותר מכללו בבית דין

In his Kovetz Shiurim (#92), Rav Elchonon Wasserman, zt"l, asks that we find other examples where striking another Jew is condoned according to halacha, other than the case of Beis Din who may administer lashes to a sinner. A father may strike his son to discipline him, and a Torah teacher (a Rebbe) may lovingly strike his student to command his obedience, a mohel can perform the mitzvah of milah, although it causes a wound, and a doctor may make an incision or draw blood. In all these cases, injuries are not only permitted, but they are also mitzvos. Why does the Gemara only cite the one case of a Jewish court which administers lashes in illustrating how a case of injuring is permitted?

Reb Elchonon notes (קובץ הערות ע"ה) that the "injury" examples we listed are all cases which are designed for a future benefit. To train or discipline a child for the future, to heal a patient or to perform the mitzvah of milah—these are all constructive actions to improve the one who is "wounded," and they are not at all in the category of causing an injury. The only exception is in the case of Beis din, whose action is in administering retribution to a sinner for an action he has already perpetrated. This is a case of injury, and we find that the Torah allows it in this case.

According to this definition, when the court issues lashes in order to reinforce their authority (שלא מן הדין לעשות סייג), see Rambam, Sanherdrin (24:4), it would not be a case of a permitted "injury," but rather a constructive act for the future.

Chasam Sofer explains that the lashes administered by a Jewish court is not a case of **מכללו הותר** because the strikes they hit are required and necessary. The prohibition of the Torah is not stated in terms of a completely permitted act, so we cannot say that the prohibition is suspended in this case. The reference in our Gemara, he explains, is specifically to a case where Beis din decides to give **מלקות** in a case of a **סייג**, to establish their

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HALACHAH Highlight

Administering medication to manage pain

והאמר ר' אמי אמר ר' יוחנן הכהן הכאה שאין בה שוה פרוטה

Didn't R' Ami in the name of R' Yochanan say that one who hits his friend with a blow that is not worth a perutah...

Poskim discuss the issue of providing patients with pain relief medication like morphine in order to alleviate the suffering of patients even though it could potentially damage the patient's health. Rav Shlomo Zalman Auerbach¹ cited our Gemara as proof that it should be permitted since our Gemara declares that suffering is very difficult for a person to bear; therefore one should be merciful towards the patient and take the necessary steps to alleviate the pain. Additionally, pain and suffering weakens the body and many times is potentially more damaging than the sedative, therefore, it is permitted to administer these medications. He does add, however, that if the patient is conscious and is aware of his condition, one should consult with the patient about administering these medications. In the event the patient cannot be consulted, it is still permitted to administer the medication. The reason is that the Gemara and Rashi² explain that the verse, "You should love your neighbor like yourself," teaches that one should not do to others what one does not want for himself. Accordingly, since most people who are suffering seek relief from their pain, it can be assumed that this patient also wants to be alleviated from suffering.

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authority. Here, there is no explicit mitzvah being fulfilled, and the justification is that the court is strengthening Torah observance. Yet, the fact that it is permitted illustrates that causing an injury has some applications which are exceptional.

According to Chasam Sofer, the question of R' Elchonon is not a problem, as the Gemara is not referring to any time striking is done for the purpose of a mitzvah, but it is rather discussing the one case of Beis din enforcing its authority. ■

In a related issue the Mishneh Halachos³ addressed the question of whether a woman who is giving birth is permitted to have an epidural to numb the pain of the contractions even though there is a slight risk of complications from the injection. He rules that it is permitted and cites our Gemara, as well as others, to build the case that suffering can be even worse than death. Therefore, since it is permitted to alleviate suffering he allows women to have an epidural even on Shabbos despite the fact that injections involve possible chillul Shabbos. Rav Shmuel Halevi Wosner⁴, the Shevet Halevi, takes a more hesitant approach. He writes that a woman who is suffering from labor pains is permitted to have an epidural, but he rules against the practice of those women who enter the hospital with the intention of having an epidural before the pain has become unbearable. ■

1. שו"ת מנחת שלמה תנינא סי' פ"ו.
2. גמ' סנהדרין פ"ד: ופרש"י שם.
3. שו"ת משנה הלכות ח"י"ד סי' רס"ו.
4. שו"ת שבט הלוי ח"ט סי' ע"ה. ■

STORIES Off the Daf

Malkos or Money

"דאיכא ממונא ומלקות..."

Rav Shalom of Kaminka, zt"l, often traveled to raise money for various important causes. Once while on such a journey, he traveled to a town of simple people who followed Chassidic customs. When he arrived, the entire town came out to greet him. They showed Rav Shalom the greatest respect and seemed willing to do anything to please him. That night, they put him up at the best-appointed home in town, and the next morning at davening, the community skipped Tachanun. At first, the Rav assumed that there was a bris that day, or perhaps a chasan was in the shul, but after

the morning prayers were finished, the prominent members of the community declared that they had skipped Tachanun in honor of their distinguished guest.

Oddly enough, despite the community so obviously going out of its way to honor the Rav, he utterly failed to raise any funds. Rav Shalom barely made a penny despite his sincere and concerted efforts to inspire the simple folk to donate some of their hard-earned money.

When it came time to leave the town he quipped, "In Kesuvos 32b we find an argument regarding the consequences of performing a certain act. Rav Yochanan holds that one is punished with lashes but doesn't pay a fine, and Ulla holds that one pays but does not receive lashes.

Rav Shalom continued, "Even though there is a difference of opinion, we still don't find anyone who claims that we

don't give either punishment! Yet it appears as though the people of this town have adopted just such a novel approach. As you know, in our nussach of Tachanun, we begin with the breast-beating malkos of Ashamnu—and you skipped this. Nu—perhaps here in this town you hold like Ulla, who holds that you should pay the fine instead. But I hardly got any donations from you even though you are clearly a prosperous community. So you must have developed your own line of reasoning—since you didn't do malkos or pay!" ■

(Overview...Continued from page 1)

The place where the Torah indicates that one should pay rather than receive lashes is identified.

The Gemara begins to explain why R' Yochanan does not explain like Ulla. ■