

This month's Daf Digest is dedicated
לעילוי נשמת צבי בן יחזקאל יוסף גרין, מחסידי דעעש
From the Grin family, Sao Paulo, Brazil

OVERVIEW of the Daf

1) Clarifying the Mishnah (cont.)

Rava challenges the first two explanations of the reference to "others" in the Mishnah and offers his own interpretation of whom that reference refers.

A Beraisa is cited that is consistent with Rava's interpretation of the Mishnah.

The first ruling of this Beraisa is challenged.

One possible resolution is suggested but rejected.

A final explanation is presented.

2) Warned for a severe punishment

The Gemara infers from the Mishnah that one who is warned for a severe punishment is considered warned for a less severe punishment as well.

R' Yirmiyah rejects this inference and offers an alternative explanation to the Mishnah.

3) Those sentenced to stoning who become intermingled with those sentenced to burning

R' Yechezkel taught the Mishnah to his son and R' Yehudah, R' Yechezkel's other son, suggested a change to the explanation of R' Shimon's position.

The Gemara records the entire conversation between R' Yechezkel and R' Yehudah regarding the correct wording of the Mishnah. ■

REVIEW and Remember

1. How does Rava explain the Mishnah?

2. Explain זה וזה גורם.

3. Why does R' Yirmiyah reject the inference from the Mishnah that one who is warned for something severe is considered warned for something less severe?

4. Why did R' Yehudah oppose his father's reading of the Mishnah?

Distinctive INSIGHT

A warning for a stricter penalty can be used for a lesser penalty

שמע מינה מותרה לדבר חמור הוי מותרה לדבר קל, א"ר ירמיה
הכא במאי עסקינן כגון שהתרו בו סתם, והאי תנא הוא וכו'

The Mishnah (79b) discusses the case of groups of condemned people become mixed among each other. If we now have some people who deserve a more severe penalty standing among others who deserve a less severe penalty, we can only execute all of them using the less severe death sentence. Even though, for example, among these people are those who violated the Shabbos, and therefore deserve stoning, there are also some who are only murderers, and they only deserve death by the sword (76b). We would therefore execute this group by the sword, thus not subjecting anyone to a punishment which is more harsh than he deserves.

This ruling results, however, in our executing some of these condemned individuals with a punishment which is lighter than they deserve, and thus a punishment which they were not warned about. The Gemara concludes from this that a warning for a more stringent penalty is automatically valid as a warning for a lesser penalty. In other words, when the Shabbos violator was warned that his misdeed would result in his receiving stoning, which is a harsh penalty, this same warning can be effective if we need to execute him by the sword instead, which is a lesser penalty.

Tosafos (here, ד"ה הוי, 45b, משום) notes that we learned earlier (45b) that if, for any reason, we cannot implement the particular death penalty which was judged appropriate for a particular crime, we are allowed to execute the criminal with any form of death available. Using that rule, the comment we find in our Gemara is no longer conclusive. It might be that the warning for a more stringent penalty is not valid for a lesser penalty, but the reason the condemned people who are mixed together are killed with the lesser of the penalties is that we use the rule to execute a person in any manner available when we cannot use the prescribed manner.

Tosafos answers that the halacha that we can kill a person with a method other than the one prescribed is only said in reference to a murderer, and it is based upon a verse in that context. In fact, ר"ן points out that we can kill a murderer even with a more severe form of death if necessary.

HALACHAH Highlight

Making a **מי שברך** for a fetus

עובר ירך אמו הוא

A fetus is like the thigh of its mother

Rema¹ writes concerning the custom of “shlugging kaparos” on Erev Yom Kippur that the custom is to take a rooster for males and a hen for females. If a woman is pregnant, one custom is that her husband takes two roosters, since she may have a son. Vilna Gaon² explains that the reason only two roosters are taken rather than two roosters and a hen, one rooster for the father and a rooster and a hen because the fetus may be male or female, is that we follow the opinion of Tosafos³ that a fetus is considered a limb of his mother and if the fetus is female the hen taken for the mother already covered the fetus. Magen Avrohom⁴ wrote that two hens are not taken, one for the mother and a second for the fetus, because two people can receive atonement from a single animal. Vilna Gaon takes issue with this assertion. Two people can fulfill their commitment to bring a voluntary offering with a single animal but when a korban is brought for atonement it is necessary for each person to offer his own animal. Since kaparos follows the mechanism of a korban brought for atonement it is necessary for each person to use a separate animal.

Sefer Toras Hayoledes⁵ wonders about the correct way to make a **מי שברך** for a fetus that is **ר"ל** ill. He writes that according to Vilna Gaon it would seem that it is unnecessary

(Insight...continued from page 1)

Similarly, we find this halacha in reference to the members of an **עיר הנדחת** and for those deserving of stoning, but not in regard to any other cases. Therefore, our Mishnah can be explained in reference to those who are deserving of other forms of the death penalty for whom we could not apply a different death penalty, unless we say that the warning for the more serious penalty is adequate for the lesser penalty. ■

to mention the fetus in the **מי שברך**. Since Vilna Gaon does not require a separate hen for the fetus given that the fetus is a limb of the mother, so too, it is unnecessary to mention the fetus separately from the mother. The requirement of the father to bring a rooster for the fetus even though the fetus is a limb of the mother is because it is considered to be a male limb and as such the chicken hen for the mother does not cover her “male” limb. As far as the **מי שברך** is concerned it does not matter whether the fetus is male or female since either way the fetus is a limb of the mother, thus a **מי שברך** that mentions the mother is sufficient. He adds, however, that Rav Chaim Pinchas Sheinberg is of the opinion that a **מי שברך** should be made for the fetus since the beracha addresses the future as well and in the future the fetus will be independent from its mother. ■

1. רמ"א או"ח סי' תר"ה סעי' א'.
2. ביאור הגר"א שם סק"ה.
3. תוס' ד"ה עובר ירך אמו.
4. מג"א שם סק"ב.
5. ספר תורת היוולדת פ"י סעי' י'.

STORIES Off the Daf

Picking and choosing

”מקושש...”

Today's daf discusses the **מקושש עצים**.

Once, when Rav Yochanan of Ramastrivka, ז"ל, visited a certain city, a huge throng came out to greet him. Among the crowd were all the Jewish notables and virtually every Jewish man, woman, and child in town. A certain opponent of the rebbe was also present and was very distressed to see such an impressive welcome. This man was so furious that he actually approached the rebbe and brazenly said, “You are sup-

posed to be modest and hold yourself to be of no consequence. If this is so, why has everyone come out to greet you? What have you done to deserve such honor?”

“I also have no idea why they are giving me such distinction,” the rebbe shrugged. He immediately added, “Yet if this is how they are treating me, it is clear that this is heaven's will and if that is the case, you should be as afraid to provoke me as you would a raging flame!”¹

A similar thing happened to Rav Meir of Premishlan, ז"ל, when a chassid of Rav Yisrael of Ruzhin, ז"ל, spent time with him. When it was clear that the chassid was judging Rav Meir and

found him wanting compared to other tzaddikim, Rav Meir said, “Do you know why the **מקושש עצים** deserved to die? The word for wood, **עצים**, can also refer to tzaddikim. As our sages explain on the verse,— **היש בה עץ** is there any tree there?” – the spies wanted to know if there is a tzaddik in Canaan whose merit will protect them. It is possible to explain that a **מקושש עצים** is one who picks and chooses between tzaddikim and arbitrarily decides that one tzaddik is worthy and deserving while another is not. The punishment of such a person is very severe...”² ■

1. מעיין הברכה, מנחם אב, תש"ס, ע' כ"ז
2. סיפורי חסידים עה"ת, פרשת שלח ■