

Daf Notes

Insights into the Daily Daf

18 Tishrei 5768

Kesuvos Daf 29

September 30, 2007

Daf Notes is currently being dedicated to the neshamah of **Asher Ben Moshe** o"h.
May the studying of the Daf Notes be a zechus for his neshamah and may his soul find
peace in Gan Eden and be bound up in the Bond of Life.

Visit us on the web at <http://www.daf-yomi.org/> , where we are constantly updating the archives from the entire Shas. Produced by Rabbi Avrohom Adler To subscribe, please send email to: dafnotes@gmail.com

Daily Daf

The *Mishna* states: These are the *na'aros* (girls who have reached maturity; generally at twelve years old until they become a *bogeres* at twelve and a half) who are entitled to a fine (if a man violates an unmarried woman, he must pay a penalty of fifty *shekalim* to her father): If one cohabits with a *mamzeres*, a *nesinah*, or with a *Cuthean* (converts to Judaism after an outbreak of wild animals in Eretz Yisroel and their conversion was debated as to its validity); if one cohabits with a convert, a captive, or with a slavewoman who were redeemed or converted, or freed before the age of three years and one day; if one cohabits with his sister, or with his father's sister, with his mother's sister, with his wife's sister, with his brother's wife, with his father's brother's wife, or with a *niddah* (a menstruating woman), they are entitled to a fine. Even though they incur *kares*, they are not liable to the Court imposed death penalty (and therefore, they are not exempt from the fine).

[The Torah writes: "If a man finds a virgin maiden, who is not betrothed, and seizes her, and lies with her, and they are found; then the man who lay with her shall give to the maiden's father fifty silver (*shekels*), and she shall be his wife; because he afflicted her, he may not send her away all his lifetime" (Deut. 22:28-29). This passage teaches that a man who violates a maiden is obligated to pay her father a fine of "fifty silver," i.e., fifty *selas* (two hundred dinars); he is also obligated to marry the violated girl (if her father and she agree), and he is

forbidden to divorce her. We also derive from the wording, "If a man finds a virgin maiden," that the fine is payable only under the following conditions: (1) she must be a "maiden" (a *na'arah*)," i.e., she must have the signs of puberty (two hairs), and she must be between the age of twelve years and one day, and twelve and one-half years, when she becomes a *bogeret*, and (2) she must be "a virgin," i.e., a girl who has not engaged in sexual relations. Our *mishnah* teaches that the fine must be paid irrespective of whether he can fulfill "and she shall be his wife," and even in cases of forbidden sexual unions punishable by *karet* (the punishment of being "cut off from among the people"). Introduction to this chapter from *Kehati*] (29a)

The *Gemora* infers from our *Mishna* that only a girl who is a *na'arah* is entitled to the fine, but a minor would not be entitled to this fine.

The *Gemora* asks: Who is the *Tanna* that holds like that?

Rav Yehudah said in the name of Rav: It is the opinion of Rabbi Meir, for we have learned in the following *braisa*: Concerning a minor girl from one day old until she produces two pubic hairs; her father is entitled to sell her as a maidservant, but she is entitled to a fine. Concerning a girl who produced two pubic hairs until she reached the state of *bogeres* (generally, from twelve years and one day until twelve and a half); she is entitled to a fine and her

father does not have the right to sell her as a maidservant. These are the words of Rabbi Meir, for Rabbi Meir says: Anytime that the father can sell her, she does not receive a fine; and anytime she does receive a fine, her father cannot sell her. The *Chachamim* say: Concerning a minor girl from three years and one day old (*the age where she is fit for cohabitation*) until she reached the state of *bogeres*; she is entitled to a fine.

The *Gemora* asks: The *Chachamim* said that she is entitled to a fine. May we infer from there that the father has no right to sell her?

The *Gemora* answers: No! There is a fine at this age besides the right of the father her to sell her as a maidservant. (29a – 29b)

The *Mishna* had stated that women who are unfit to be married are nevertheless entitled to receive a fine if they are violated.

The *Gemora* asks: Why is this the case? It is written [Devarim 22; 29]: *And she shall be to him a wife*; and it is learned from here that he has an obligation to marry her only if she is qualified to be married by him. (*We can infer from here that the fine is payable only if he violated a girl whom, in law, he could marry, but as to the women mentioned in the Mishna, who are either generally prohibited to an Israelite for marriage, or there is kares barring their way to marriage, there should be no fine due to them.*)

Rish Lakish answers: It is written in the Torah: *Na'arah, na'arah* and *ha-na'arah* (*the 'hey' at the beginning of the word is also available for exposition*). Once, the word '*na'arah*' is necessary for itself (*ordinary unblemished girls*); once to include those girls where one would be liable for violating a mere prohibitory law, and once to include those girls where one would be liable for violating a transgression punishable with *kares*.

Rav Papa answers: It is written in the Torah: *Besulah, besulos, ha-besulos*. Once, the word '*besulah*' is necessary for itself (*ordinary unblemished girls*); once to include those girls where

one would be liable for violating a mere prohibitory law, and once to include those girls where one would be liable for violating a transgression punishable with *kares*.

The *Gemora* asks: Why doesn't Rav Papa learn like Rish Lakish?

The *Gemora* answers: The word *na'arah* is necessary to teach us a different *halacha*, for Abaye said: If one violates a woman and she later dies, he is exempt from paying the fine.

The *Gemora* asks: Why doesn't Rish Lakish learn like Rav Papa?

The *Gemora* answers: The word *besulah* is necessary to expound a *gezeirah shavah* between the laws where one violates a girl and where one seduces a girl. If one seduces a girl, the fine is fifty just like the *halacha* is if he violated her. If one violates a girl, the payment is in *shekalim* just like the *halacha* is if he seduced her.

The *Gemora* concludes that six words are necessary altogether. Two are necessary for itself. One to teach Abaye's *halacha* and one for the *gezeirah shavah*. One to include those girls where one would be liable for violating a mere prohibitory law, and one to include those girls where one would be liable for violating a transgression punishable with *kares*. (29b)

The *Gemora* states that our *Mishna*'s viewpoint excludes the opinion of Shimon Hatimni who maintains that the violator only pays a fine if he violates a woman where there is a possibility where she can become his wife. It also excludes the opinion of Rabbi Shimon ben Menasya who holds that the violator only pays a fine if he violates a woman where she would be qualified for him to keep her as a wife.

The *Gemora* asks: What is the practical difference between these two opinions?

The *Gemora* answers: A *mamzeres* or a *nesinah* would be the difference between them. *Kiddushin*

would take effect with them, but they cannot remain married.

The *Gemora* asks: According to Rabbi Akiva who holds that *kiddushin* does not take effect with women prohibited by a mere prohibition, what would the practical difference between these two opinions?

The *Gemora* answers: A widow to a *Kohen Gadol* would be the difference between them. (29b)

INSIGHTS TO THE DAF

'KIM LEIH B'DIRABAH MINEIH' IN A CASE OF UNCERTAINTY

Reb Akiva Eiger rules that if one seduces an idolater, he is exempt from paying a fine because of the principle of '*kim leih b'dirabah mineih*,' one incurs the more severe penalty of death and he is not liable for the monetary payments. Since the *halacha* is: Zealots have a right to kill one who cohabits with an idolater, he will not be required to pay the fine. If, however, it is uncertain if the girl is a Jew or an idolater, he will be liable for the fine because in this situation, the zealots cannot kill him.

Reb Elchonon Wasserman in Koveitz Shiurim (84) learns from here that whenever it is uncertain if the principle of '*kim leih b'dirabah mineih*' applies, he would still be liable for the payment.

Reb Yitzchak Zilberstein comments that if not for Reb Elchonon, a distinction could have been made between a court-imposed death penalty and a case where one incurs death by the hands of the zealots. In a case of an uncertainty regarding a court-imposed death penalty, such as one who desecrated *Shabbos* in a time where it is uncertain if *Shabbos* has started or not (*bein hashemoshos*), and at the same time he burned the stalks of his fellow, he would be exempt from paying for the damages. The reason is as follows: Even though, *Beis Din* cannot administer the death penalty, he would be exempt from paying because he might be liable for death. However, in a case where one does not incur a death

penalty; it is a transgression where zealots have a right to kill him. In a case of uncertainty, where he may not be killed, he should certainly be responsible for the monetary payments involved.

QUEEN ESTHER'S ORDERS

Reb Shmuel the Badchan said over by the *Beis Yisroel's* wedding: Esther instructed Mordechai: Go and gather all the Jews, *leich kenos es kal hayehudim*. Don't read the word '*kenos*' with a '*kaf*,' meaning gather, but rather with a '*kuf*,' meaning penalize.

The Jewish people were being sold for the purpose of being destroyed. Esther instructed Mordechai to issue a monetary fine against all the Jews.

Her rationality for this was as follows: Our *Gemora* states: Anytime that there is a fine (*a girl twelve tears old*), there cannot be a sale (*the father is not entitled to sell his daughter as a maidservant*). If the Jewish people would be fined, they cannot be sold.

FOOD FOR THOUGHT

*** Why are the halachos of violation and seducing in Meseches Kesuvos?

*** The *Mishna* states: These are the *na'aros* (*girls who have reached maturity; generally at twelve years old until they become a bogeres at twelve and a half*) who are entitled to a fine.

Rashi explains: If a man violates an unmarried woman, he must pay a penalty of fifty shekalim to her father.

Why did Rashi choose to explain the *Mishna* to be referring to a case of violation; the same *halacha* would be true if a man seduces a woman?

*** Rabbi Meir said: Concerning a minor girl from one day old until she produces two pubic hairs; her father is entitled to sell her as a maidservant, but she is entitled to a fine.

Why does she have to be one day old; couldn't the father sell her as a maidservant while she is still in her mother's womb?