

Mishna, Tractate Baba Kama  
Chapter 8, Mishna 1  
December 8, 2013

- A) Mishna
- 1) How is the subject of this mishna different from almost everything we have seen up to now in this tractate?
    - a) Where – (in chapters 1, 2 and 3) have we earlier seen laws that are nevertheless related to what is discussed in our mishna?
  - 2) Of the **דברים חמישה** discussed in our mishna, which of them was/were the consistent exclusive focus of the earlier chapters?
  - 3) Does the **חובל** always have to pay **דברים חמישה**?
    - a) What words should be added to the opening phrase of the mishna – in Hebrew or in English translation - to reflect the answer to this question?
  - 4) What inconsistency of prepositions do we find in the opening phrase of the mishna?
    - a) How could the mishna be reworded so as to remedy this inconsistency (There are at least three different possibilities)?
    - b) Can you make any suggestion as to how such an inconsistency might have developed?
  - 5) Identify the five parts of the mishna that follow the introduction!
  - 6) In each of these five parts, identify the principle and differentiate it from the example (All present a principle while not all present an example)!
  - 7) Concerning the three examples given in the case of **נזק**: What clear difference is there between the first two and the last one?
    - a) How might we interpret that last example so as to bring it into line with the first two?
  - 8) Concerning the ruling that **הכל לפי המביש והמתביש**: what does this actually mean and how do you think it is to be applied?
  - 9) What adverb/adjective is implied before the words **המביש את הערום**?
    - a) What is the intent in the case of these three examples of **ערום**, **סומא**, and **ישן**?
  - 10) In the case of **נפל מן הגג**, where have we earlier learned the principle that explains why the person is **חייב על הנזק**?
  - 11) When the mishna states that the person is **חייב על הנזק ופטור על הבושת**, what three questions remain unanswered?
    - a) From the structure of the mishna, what would appear to be the most probable answer to these three questions?
  - 12) In what way is **בושת** apparently different from all the payments?
- B) The Torah source of the **בושת** payment - Deuteronomy 25:11-12
- 1) How would you understand the scenario described in these two verses according to the pshat?
  - 2) What would you think is the rationale of the very harsh punishment meted out here?
    - a) In light of the answer to the above question, would the law be as harsh were it a man who had done what is described here?
  - 3) How does the mishna interpret the scenario and how is the mishna's interpretation of the scenario different from the pshat?
  - 4) In what way does the mishna apparently interpret the words **וקצותה את כפה** in the verse?
- C) Philo of Alexandria on these verses from Deuteronomy

Philo of Alexandria, The Special Laws, part III

ABOUT WOMEN NOT BEHAVING IMMODESTLY

XXXI. (169) Market places, and council chambers, and courts of justice, and large companies and assemblies of numerous crowds, and a life in the open air full of arguments and actions relating to war and peace, are suited to men; but taking care of the house and remaining at home are the proper duties of women; the virgins having their apartments in the centre of the house

within the innermost doors, and the full-grown women not going beyond the vestibule and outer courts; (170) for there are two kinds of states, the greater and the smaller. And the larger ones are called really cities; but the smaller ones are called houses. And the superintendence and management of these is allotted to the two sexes separately; the men having the government of the greater, which government is called a polity; and the women that of the smaller, which is called economy. (171) Therefore let no woman busy herself about those things which are beyond the province of economy, but let her cultivate solitude, and not be seen to be going about like a woman who walks the streets in the sight of other men, except when it is necessary for her to go to the temple, if she has any proper regard for herself; and even then let her not go at noon when the market is full, but after the greater part of the people have returned home; like a well-born woman, a real and true citizen, performing her vows and her sacrifices in tranquility, so as to avert evils and to receive blessings. (172) But when men are abusing one another or fighting, for women to venture to run out under pretence of assisting or defending them, is a blameworthy action and one of no slight shamelessness, since even, in the times of war and of military expeditions, and of dangers to their whole native land, the law does not choose that they should be enrolled as its defenders; looking at what is becoming, which it thinks desirable to preserve unchangeable at all times and in all places, thinking that this very thing is of itself better than victory, or then freedom, or than any kind of success and prosperity. (173) Moreover, if any woman, hearing that her husband is being assaulted, being out of her affection for him carried away by love for her husband, should yield to the feelings which overpower her and rush forth to aid him, still let her not be so audacious as to behave like a man, outrunning the nature of a woman; {16}{#de 25:11.} but even while aiding him let her continue to be a woman. For it would be a very terrible thing if a woman, being desirous to deliver her husband from an insult, should expose herself to insult, by exhibiting human life as full of shamelessness and liable to great reproaches for her incurable boldness; (174) for shall a woman utter abuse in the marketplace and give vent to unlawful language? and if another man uses foul language, will not she stop her ears and run away? But as it is now, some women are advanced to such a pitch of shamelessness as not only, though they are women, to give vent to intemperate language and abuse among a crowd of men, but even to strike men and insult them, with hands practised rather in works of the loom and spinning than in blows and assaults, like competitors in the pancratium or wrestlers. And other things, indeed, may be tolerable, and what any one might easily bear, but that is a shocking thing if a woman were to proceed to such a degree of boldness as to seize hold of the genitals of one of the men quarrelling. (175) For let not such a woman be let go on the ground that she appears to have done this action in order to assist her own husband; but let her be impeached and suffer the punishment due to her excessive audacity, so that if she should ever be inclined to commit the same offence again she may not have an opportunity of doing so; and other women, also, who might be inclined to be precipitate, may be taught by fear to be moderate and to restrain themselves. And let the punishment be the cutting off of the hand which has touched what it ought not to have touched.

#### D) Rabbinic interpretations of the verses in Deuteronomy

מסכת סנהדרין, פרק ח', משנה ז

ואלו הן שמצילין אותן בנפשו, הרודף אחר חברו להרגו, אחר הנכור ואחר הנצורה המא' רסה. אבל הרודף אחר הבהמה, והמחלל את השבת, והעובד עבודה זרה, אין מצילין אותן בנפשו:

#### **SANHEDRIN: CHAPTER 8: MISHNAH 7**

These one saves by (taking) their life: one pursuing his fellow to kill him, or to commit homosexual rape, or to rape a betrothed woman. But one who pursues after a beast to commit bestiality, or one who intends to desecrate the Shabbat, or one who intends to practice idolatry - we do not save them by (taking) their life.

"וקצותה את כפה". מלמד שאתה חייב להצילה. מנין שאם אין אתה יכול להצילה בכפה, הצילה בנפשה תלמוד לומר "לא תחוס עיניך".

רבי יהודה אומר נאמר כאן "לא תחוס עיניך" ונאמר להלן (דברים יט:כא) "לא תחוס עיניך", מה להלן ממון אף כאן ממון:

Sifrei to Sefer Devarim, section 293 (page 312)

"Then you shall cut off her hand" – it teaches that you are obligated to save her. How do we know that if you are unable to save her by (cutting off) her hand, you save her by (taking) her life? The verse says: "your eye shall have no pity".

Rebbi Yehudah says: It says here: your eye shall have no pity", and it says elsewhere: "your eye shall have no pity" (Deuteronomy 19:21); just as the meaning of "your eye shall have no pity" elsewhere is monetary compensation, so is the meaning of "your eye shall have no pity" here monetary compensation.

מסכת בבא קמא דף כ"ח עמוד א'

תא שמע: "וקצתה את כפה" - ממון.

מאי לאו בשאינה יכולה להציל על ידי דבר אחר? - לא, שיכולה להציל על ידי דבר אחר, אבל אינה יכולה להציל על ידי דבר אחר פטורה ... אבל אינה יכולה להציל על ידי דבר אחר נעשה ידה כשליח בית דין.

Babylonian Talmud, Tractate Baba Kama page 28a

Come and hear: *Then thou shalt cut off her hand*, means a monetary fine.

Does not this ruling apply even in a case where there was no other possibility for her to save [her husband]? — No, it applies only where she was able to save [him] by some other means. Whereas in a case where there was no other possibility for her to save [her husband], she is exempt [from any fine or punishment]. ... In such a case where there was no other possibility for her to save [her husband], her resort to force should be considered as if exercised by an officer of the court [in the discharge of his duties].

E) תחובל בחברו בחברו

- 1) Exodus 21:22-25
- 2) Leviticus 24:13-21
  - a) Take special note of verse 18
- 3) Deuteronomy 19:16-21
  - a) Numbers 35:31

F) ריפוי and שבת

- 1) Exodus 21:18-19

G) צער

מסכת בבא קמא, דף פד עמוד א'

רב זביד משמיה דרבה אמר קרא פצע תחת פצע ליתן צער במקום נזק

רש"י על הסוגיה הנ"ל

במקום נזק – ואף על פי שיש שם תשלומי הנזק משלם אף הצער ומקרא יתירא קדריש דהא כתיב כויה תחת כויה למה לי פצע תחת פצע וכויה וחבורה מדריש לקמן:

H) Gemara's explanation of what the mishna says about the payment for ריפוי

מסכת בבא קמא, דף פה עמוד א'

אמרי מאי שלא מחמת המכה כדתניא הרי שעבר על דברי רופא ואכל דבש או כל מיני מתיקה מפני שדבש וכל מיני מתיקה קשין למכה והעלה מכתו גרגותני יכול יהא חייב לרפאותו תלצוד לומר - רק

1) Rishonim on what the mishna says about the payment for בושת

רש"י על המשנה

הכל לפי המבייש - אדם קל שבבייש בושתו מרובה:  
והמתבייש - אדם חשוב שנתבייש בושתו מרובה

רבנו מנחם המאירי על מסכת כתובות, דף מ עמוד א'

אמר המאירי אי זהו בשת וכו' שאין שמין לבזוייה כנכבדת ולא לקטנה כנערה וכן המתביישת מן הנכבד כמתביישת מן הפחות ... וכן היא בתלמוד המערב לא דומה מבייש את הגדול למבייש את הקטן ולא דומה מתבייש מן הגדול למתבייש מן הקטן בשתו של גדול מרבה ונזקו מועט רוצה לומר אם בייש הוא את אחרים בשתו של קטן מועט ונזקו מרבה

Sources Used in Preparation:

משה הלברטל, מהפכות פרשניות בהתהוותן

JPS Commentary on The Book of Exodus, chapter 21, verses 23-25