



## Don't Drink. Don't Drink

The final *perek* of *Makkot* deals with the punishment of lashes. The *Mishnah* also discusses cases where one can be liable to multiple set of lashes. One case is where a *nazir* drank wine, despite being warned against doing so. The *Mishnah* teaches that if the *nazir* was warned only once, then even if the *nazir* spent the whole day drinking wine, he would only receive one set of lashes. If however he was warned prior to drinking each cup, then he would be liable for each drink. We shall try to understand this *Mishnah*.

The *Ritva* (21a) cites *Rashi* who explains that one can only punish an individual if he violates the prohibition, *toch kedai dibur*, within a short time after the warning. That is because if it was after that time, the person can claim that he forgot the warning. Granted that when the person drank the wine all day, one could theoretically divide it into many instances that are each equivalent to the minimum punishable amount. Nevertheless, only the first violation would be close enough to the warning to make the person liable to lashes.

The *Ritva* however cites the *Tosfot* who finds this understanding difficult. They direct our attention to the case where a person was warned against having a particular forbidden relationship, for example, a *kohen* with a divorcee. If he then violates this prohibition with different divorcees, he would be liable to multiple sets of lashes. The reason is that we say each person is distinct, "dividing" the transgression into multiple instances. This is despite the fact that the later transgressions were some time after the initial warning. The *Tosfot* therefore explain that since he was engaged with the string of prohibitions immediately, we do not say he forgot the warning in the midst of doing so.

If that is the case, why then would the *nazir* not be liable to multiple sets of lashes with one warning? The *Ri* explains that drinking the wine is considered one *guf*, like one body. We only breakup an extended action into multiple transgressions if they involved different bodies (like the example above) or multiple different prohibitions. Unless of course, as explained in our *Mishnah* he is warned prior to drinking each cup.

Interestingly the *Rambam* (on the *Mishnah*) cites the *Yerushalmi* that raises the following case. Someone warns

the *nazir* that the content of a barrel is a certain multiple of the minimum prohibited amount and if he drank it, he would be liable to that many sets of lashes. If the *nazir* then drank the wine, he would be liable to multiple sets of lashes.

The *Tifferet Yisrael* however notes that the *Rambam* omits this law in the *Mishnah Torah* (*Sanhedrin* 12). He explains that that is likely because he rules like *Rashi* that for one to be punished, the violation must be *toch kedai dibur* of the warning and these two laws contradict one another.

It interesting then that the *Bartenura* appears to cite the position of *Rashi* by explaining that the person is only punished for what he drank *toch kedai dibur*. Nevertheless, he also cites that law from the *Yerushalmi*.

Perhaps we can answer the *Bartenura* as follows. Note that everyone maintains that the violation must be *toch kedei dibur*. The debate between *Rashi* and *Tosfot* is whether an extended violation is still considered *toch kedei dibur*. Perhaps then the *Bartenura* maintains like that *Tosfot Rid* (*Kidushin* 77b) who maintains that the reason why he can only get one set of lashes if he is warned once, is not because he might forget the warning at time he drank later. Rather it is because he can claim that while he was aware of his violation, he thought that he would be punishable with only one set of lashes. He could say, that had he know each cup made him liable to another set of lashes, he would have never continued beyond the first cup.

According to this understanding the two laws do not contradict one another. His continued drinking is indeed considered *toch kedei dibur* to the warning (like the *Tosfot* explained). He however can only be liable to lashes for the first cup that was drank *toch kedei dibur*, since he can claim that he was unaware that the additional cups would have made he liable to further sets of lashes. If however, he was warned that the continued drinking would make him liable to multiple sets of lashes, then he no longer claim ignorance in his defence and would be liable to multiple sets of lashes as the *Yerushalmi* explains.

## Revision Questions

מכות ג' ב' - ט"ו

- For which offences does one receive lashes relating to:
  - The *Beit Ha Mikdash* (8)? (ג' ב' ג')
  - Fruit of *Eretz Yisrael* (4)? (ג' ב' ג')
  - One's body (4)? (ג' ה')
- When is one who breaks a bone of a *korban pesach* not liable for lashes? (ג' ג')
- Explain the debate regarding lashes and *shilu'ach ha'ken*. (ג' ד')
- Explain the debate regarding the prohibition of tattooing. (ג' ו')
- If a *nazir* drinks wine for the entire day, when would he receive multiple sets of lashes? (ג' ו')
- What other two prohibitions that apply to a *nazir* share the same law? (ג' ח')
- When is one liable for multiple sets of lashes for wearing *shatnez*? (ג' ח')
- For what single action can one be liable for eight sets of lashes? (ג' ט')
- Describe the debate regarding the previous question. (ג' ט')
- How many lashes constitutes a "set" of lashes? (ג' י')
- According to *R' Yehuda* where was the extra blow administered? (ג' י')
- What is the limitation given when determining how many lashes a person can receive? (ג' י"א')
- What is the law if it was determined that a person could receive a full amount, but once the lashes begun, it was clear the person could not bare the full amount? (ג' י"א')
- If someone was to receive two sets of lashes, how was the evaluation of how much the person could bare determined? (Provide both scenarios.) (ג' י"א')
- Describe how the person was prepared for lashes? (ג' י"ב')
- Describe the whip that was used for lashes? (ג' י"ב')
- How long was the whip? (ג' י"ג')
- Where was the offender struck? (ג' י"ג')
- What else occurred during lashes? (ג' י"ד')
- What is the law if the offender died during lashes? (ג' י"ד')
- When would the striker be sent to *galut*? (ג' י"ד')
- What is the law regarding *chayavei krittut* that receive lashes? (ג' ט"ו')
- What does *R' Shimon* learn from the *p'sukim* relating to *karet*? (ג' ט"ו')

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Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	שבת קודש
9 February י"א שבט	10 February י"ב שבט	11 February י"ג שבט	12 February י"ד שבט	13 February ט"ו שבט	14 February ט"ז שבט	15 February י"ז שבט
Makkot 3:16 - Shevuot 1:1	Shevuot 1:2-3	Shevuot 1:4-5	Shevuot 1:6-7	Shevuot 2:1-2	Shevuot 2:3-4	Shevuot 2:5- 3:1

