וְקַיְימָא לָן דְּאֵינוֹ לוֹקֶה וּמְשַׁלֵּם! אֲמַר עוּלָּא: לָא קַשְׁיָא; כָּאן – בַּאֲחוֹתוֹ נַעֲרָה, כָּאן – בַּאֲחוֹתוֹ בּוֹגֶרֶת.

And since **we maintain** in general **that one is not** both **flogged and** liable to **pay,** if one receives lashes for having relations with his sister, why must he pay the fine as well? **Ulla said:** This is **not difficult; here,** the *halakha* in the mishna is **with regard to his sister** who is a **young woman,**[N] for whom one pays a fine and is not flogged, whereas **there,** the *halakha* in the mishna is **with regard to his sister** who is a **grown woman,** for whom one does not pay a fine.

אֲחוֹתוֹ בּוֹגֶרֶת נַמִּי, הָא אִיכָּא בּוּשְׁתָּ וּפְגָם! בְּשׁוֹטָה. וְהָא אִיכָּא צַעֲרָא! בִּמְפוּתָּה.

The Gemara asks: In the case of one who has relations with **his sister** who is a **grown woman, too,** although he does not pay a fine, **isn't there** compensation for **humiliation and degradation?**[H] He should be exempt from lashes in that case as well. The Gemara answers: **There,** the *halakha* in the mishna is **with regard to** his sister who is **an imbecile,**[N] with regard to whom there is no humiliation or degradation beyond her status as an imbecile. The Gemara asks: **But isn't** there payment for **pain**[H] even in the rape of an imbecile? The Gemara responds: The *halakha* is **with regard to a seduced woman,**[H] who is not entitled to payment for pain, as she engaged in relations willingly.

הָשְׁתָּא דְּאָתֵית לְהָכִי, אֲפִילּוּ תֵּימָא אֲחוֹתוֹ נַעֲרָה – בִּיתוֹמָה וּמְפוּתָּה.

The Gemara comments: **Now that you have arrived at this** explanation that the mishna is referring to a seduced woman, the mishna can be understood **even if you say** it is referring **to his sister** who is **a young woman.** The reason that the seducer does not pay the fine is that the *halakha* is **with regard to** one who is **an orphan and a seduced woman.**[N] Were her father alive, he would receive the payment. Because he died, the payment goes to her. Since she willingly participated in the relations, she relinquished her right to the payment, and the seducer is therefore liable to receive lashes.

אַלְמָא קָסָבַר עוּלָּא: כָּל הֵיכָא דְּאִיכָּא מָמוֹן וּמַלְקוּת – מָמוֹנָא מְשַׁלֵּם, מִילְקָא לָא לָקֵי. מְנָא לֵיהּ לְעוּלָּא הָא? גְּמַר מֵחוֹבֵל בַּחֲבֵירוֹ: מַה חוֹבֵל בַּחֲבֵירוֹ, דְּאִיכָּא מָמוֹן וּמַלְקוּת, מָמוֹנָא מְשַׁלֵּם, מִילְקָא לָא לָקֵי, אַף כָּל הֵיכָא דְּאִיכָּא מָמוֹן וּמַלְקוּת, מָמוֹנָא מְשַׁלֵּם, מִילְקָא לָא לָקֵי.

The Gemara observes: **Apparently, Ulla maintains** that in **any** case **where there is** liability to both pay **money and** receive **lashes,** e.g., one who has forced relations with his sister who is a young woman, one **pays money** but **is not flogged.** The Gemara asks: **From where does Ulla** derive **this** principle? The Gemara answers: He **derives** it **from** the *halakha* **of one who injures another. Just as** with regard to **one who injures another where there is** liability to both pay **money** for the injury **and** receive **lashes** for violating the prohibition "Lest he continues to strike him" (Deuteronomy 25:3), the *halakha* there is that one **pays money** but **is not flogged, so too,** in **any** case **where there is** liability to both pay **money and** receive **lashes,** one **pays money** but **is not flogged.**

HALAKHA

In the case of…a grown woman, too, isn't there compensation for humiliation and degradation – בּוֹגֶרֶת נַמִּי הָא אִיכָּא בּוּשְׁתָּ וּפְגָם: One who rapes a grown woman is not liable to pay the fine, but he pays for her humiliation, degradation, and pain (Rambam *Sefer Nashim*, *Hilkhot Na'ara Betula* 2:11).

But isn't there payment for pain – וְהָא אִיכָּא צַעֲרָא: One who rapes an imbecile or a deaf-mute is liable to pay only for her suffering (Rambam *Sefer Nashim*, *Hilkhot Na'ara Betula* 2:11).

With regard to a seduced woman – בִּמְפוּתָּה: One who seduced a grown woman, a deaf-mute, or an imbecile is exempt from payment (Rambam *Sefer Nashim*, *Hilkhot Na'ara Betula* 2:11).

NOTES

With regard to his sister who is a young woman, etc. – בַּאֲחוֹתוֹ נַעֲרָה וכו': Similar answers are provided in the Jerusalem Talmud, with certain differences. The responses attributed here to Ulla are cited there in the name of Rabbi Natan bar Oshaya, while the Sages of Caesarea claim that it refers to a seduced woman or to one who waives her right to the payments.

With regard to an imbecile – בְּשׁוֹטָה: Rashi explains that an imbecile has no value. The Rashash points out that an imbecile does have value with regard to valuations (see *Arakhin* 2a), and he therefore explains that Rashi is referring to her degradation. As explained elsewhere, a woman's degradation is determined by estimating the difference between the amount one would pay to purchase her as a maidservant to marry his Hebrew slave before her rape and the amount one would pay after her rape. That is not relevant with regard to an imbecile.

With regard to one who is an orphan and a seduced woman – בִּיתוֹמָה וּמְפוּתָּה: There is a variant reading cited by some early commentaries: With regard to an orphan who is an imbecile and a seduced woman. Rashi deletes the word imbecile, as it is unnecessary. Even if she is a seduced orphan, she is not entitled to payment. The Ramban agrees with Rashi, adding that the other version resulted from the fact that a minor and an imbecile are typically listed together. Conversely, Rabbi Shmuel HaNagid accepts the variant reading, explaining that orphan is not meant literally; rather, the reference is to a young woman who was betrothed and divorced, whose legal status according to the opinion of Rabbi Yosei HaGelili, cited later (38a), is that of an orphan in her father's lifetime and she is not entitled to a fine. It is necessary to add that she is an imbecile as well, to exempt him from the payments for degradation and humiliation. A different interpretation is suggested by the Ritva. He contends that although an orphan who is not an imbecile waives the payment for her humiliation, she cannot exempt one from the payment for the humiliation suffered by her family. Therefore, the Gemara added that she was an imbecile.

BACKGROUND

False conspiring witnesses – עֵדִים זוֹמְמִין: These are witnesses who are proven to have perjured themselves in order to cause another to lose a monetary dispute or cause him to be punished by the court. Testimony of witnesses can be invalidated in two manners: (1) Two other witnesses testify that an incident did not transpire as it was described by the first pair of witnesses. In that case, the testimony of neither pair is accepted, and the matter remains unresolved. (2) Two witnesses testify that the first pair of witnesses, whose testimony condemned the defendant, were elsewhere when the incident transpired and could not have witnessed the incident about which they testified. The second pair of witnesses does not contradict the version of events described by the first pair, which may in fact be true. They are merely testifying that the first pair was not present and therefore is not in a position to know what transpired. In that case, the testimony of the second pair of witnesses is accepted, and the testimony of the first pair of witnesses is rejected. Furthermore, the first pair of witnesses, once rendered false conspiring witnesses, are punished with the punishment that they sought to inflict on the defendant through their testimony (see Deuteronomy 19:16–19). Therefore, if their testimony would have resulted in the defendant's execution, they are both executed. If their testimony would have resulted in his receiving lashes, they are both flogged. If their testimony would have resulted in a penalty that cannot be applied to them, e.g., if their evidence would have disqualified the defendant from the priesthood, they are flogged.

HALAKHA

Conspiring witnesses…do not require forewarning – עֵדִים זוֹמְמִין…אֵינָן צְרִיכִים הַתְרָאָה: It is not necessary for conspiring witnesses to be forewarned prior to their testimony; rather, they are punished as soon as they are convicted for giving false testimony, as per the Gemara here and the Gemara in *Makkot* (4b; Rambam *Sefer Shofetim*, *Hilkhot Edut* 18:4 and *Kesef Mishne* there).

מַה לְּחוֹבֵל בַּחֲבֵירוֹ – שֶׁכֵּן חַיָּיב בַּחֲמִשָּׁה דְּבָרִים, וְאִי מָמוֹנָא לְקוּלָּא, שֶׁכֵּן הוּתַּר מִכְּלָלוֹ בְּבֵית דִּין!

The Gemara asks: **What** is the basis for the comparison between other cases and the case of **one who injures another?** One who injures another cannot serve as a paradigm for cases of liability for both money and lashes because the case of one who injures another is particularly stringent, **as he is liable** to pay **five types** of indemnity:[N] Injury, pain, medical costs, loss of livelihood, and humiliation. **And if** payment of **money** is a more **lenient**[N] form of punishment than lashes, one could infer *a fortiori*: If in the stringent case of injuring another, one receives the more lenient punishment, all the more so would he receive the more lenient punishment in less stringent cases; nevertheless, one who injures another cannot serve as a paradigm for cases of liability for both money and lashes. The reason is that there is also a lenient aspect with regard to injuring another, **as** it is **permitted,** in departure **from its norm, in court.**[N] The court administers lashes, injuring those convicted. The leniency is that its application is selective.

אֶלָּא גְּמַר מֵעֵדִים זוֹמְמִין, מָה עֵדִים זוֹמְמִין דְּאִיכָּא מָמוֹן וּמַלְקוּת – מָמוֹנָא מְשַׁלֵּם, מִילְקָא לָא לָקֵי! אַף כָּל הֵיכָא דְּאִיכָּא מָמוֹן וּמַלְקוּת – מָמוֹנָא מְשַׁלֵּם, מִילְקָא לָא לָקֵי!

Rather, the Gemara states that Ulla **derives** this principle **from** the *halakha* of false, **conspiring witnesses.**[B] **Just as** with regard to **conspiring witnesses, where there is** liability to both pay **money,** if they falsely testified to render one liable for payment, **and** receive **lashes,** for violating the prohibition "You shall not bear false witness against your neighbor" (Exodus 20:12), and the *halakha* is that one **pays money** but **is not flogged, so too,** in **any** case **where there is** liability to both pay **money and** receive **lashes,** one **pays money** but **is not flogged.**

מַה לְּעֵדִים זוֹמְמִין – שֶׁכֵּן אֵינָן צְרִיכִים הַתְרָאָה, וְאִי מָמוֹנָא לְקוּלָּא הוּא – שֶׁכֵּן לֹא עָשׂוּ מַעֲשֶׂה!

The Gemara asks: **What** is the basis for the comparison of other cases to the case of **conspiring witnesses?** Conspiring witnesses cannot serve as a paradigm for cases of liability for both money and lashes because the case of conspiring witnesses is particularly stringent, **as they do not require forewarning.**[H] As a rule, the courts administer punishment only to one who was forewarned not to perform the transgression. The fact that this is not a requirement in the case of conspiring witnesses indicates that it is a particularly stringent prohibition. Therefore, no proof can be cited from the case of conspiring witnesses to other cases with regard to monetary payment instead of lashes. **And if** payment of **money** is a more **lenient** form of punishment than lashes, the case of conspiring witnesses also has a lenient aspect, **as they did not perform an action**[N] but merely spoke.

NOTES

What is the comparison to one who injures another, as he is liable to pay five types of indemnity – מַה לְּחוֹבֵל בַּחֲבֵירוֹ שֶׁכֵּן חַיָּיב בַּחֲמִשָּׁה דְּבָרִים: Although not all those who injure others are liable to pay all five indemnities, they all apply potentially: Injury, for permanent damage caused; pain, for the suffering he inflicted; medical costs, for the doctor's treatment and medicine; loss of livelihood, compensation for the period during which the victim was unable to work; and humiliation, for the shame the victim suffered as a result of the attack. Clearly, depending on the circumstances the aggressor might be liable to pay only some of these indemnities, or even only one of them. Apparently, not all of these categories apply to rape, for which one pays the following: The fine; degradation, which is parallel to injury; pain; and humiliation. An earlier version of Rashi's commentary, cited by the *Shita Mekubbetzet*, states that a rapist is not obligated to pay medical expenses. However, the Rid (42a) states that a rapist is sometimes liable to pay medical costs and loss of livelihood as well. However, in that case, the *halakha* of the five types of indemnity is not unique to one who injures another. It is possible that the payments of medical costs and loss of livelihood do not stem from the rape but from injuries one caused. If so, it falls into the category of one who injures another.

And if payment of money is more lenient – וְאִי מָמוֹנָא לְקוּלָּא: The Ritva, elaborating on *Tosafot*, asks: How can it be suggested that payment of money is the more lenient punishment? The Gemara states below that one who inflicts a wound and causes less than a *peruta* worth of damage is liable to be flogged. If he inflicted more serious damage, he pays. If payment of money is a more lenient punishment, he profits from commission of a more egregious transgression. The Ritva suggests that the Torah had compassion on the injured party. Although the aggressor receives a more lenient punishment, the victim receives compensation for his injury. The *Ḥatam Sofer* states that the comparison between the punishments here is not an attempt to determine the overall relationship between payments and lashes. Rather, the Gemara notes that sometimes one is liable to pay a large sum, in which case the payment of money is the more stringent punishment, whereas other times he is liable to pay a small sum, in which case it is a lenient punishment. The punishment of lashes is fixed, while monetary punishment varies.

As this prohibited action is permitted in departure from its norm in court – שֶׁכֵּן הוּתַּר מִכְּלָלוֹ בְּבֵית דִּין: The Ritva asks: How can it be said that the prohibition against injuring another is lenient because injury is permitted in court? Can there be any comparison between one who criminally assaults another to an officer of the court who performs a mitzva by administering lashes to a convicted criminal? He explains that despite this anomaly, the contention of: As this prohibited action is permitted in departure from its norm, is independent of the nature of the leniency. It merely points to the fact that the prohibition is not in effect in all circumstances.

As they did not perform an action – שֶׁכֵּן לֹא עָשׂוּ מַעֲשֶׂה: Although the Gemara in *Bava Metzia* (90b) states: Moving one's lips while speaking is considered an action, there is a difference between a full-fledged action and speech (Rabbeinu Crescas Vidal). The Rashba similarly distinguishes between a significant action and the insignificant action of moving one's lips. The Ritva suggests that the expression: Did not perform an action, is not referring to the fact that they sinned by speaking. Rather, it is a reference to the principle that false conspiring witnesses are executed only if the person they accused was not himself executed. Consequently, they are punished only if their testimony did not cause the performance of an action.

אֶלָּא, גָּמַר מִתַּרְוַיְיהוּ; מַה הַצַּד הַשָּׁוֶה שֶׁבָּהֶן – דְּאִיכָּא מָמוֹן וּמַלְקוּת – מָמוֹנָא מְשַׁלֵּם מִילְקָא לָא לָקֵי, אַף כָּל הֵיכָא דְּאִיכָּא מָמוֹן וּמַלְקוּת – מָמוֹנָא מְשַׁלֵּם, מִילְקָא לָא לָקֵי. מַה לְהַצַּד הַשָּׁוֶה שֶׁבָּהֶן – שֶׁכֵּן יֵשׁ בָּהֶן צַד חָמוּר, וְאִי מָמוֹנָא לְקוּלָּא הוּא – שֶׁכֵּן יֵשׁ בָּהֶן צַד הַקֵּל!

Rather, Ulla **derives** the principle **from both of them,** the cases of one who injures another and of conspiring witnesses. **The common denominator of** both cases **is that there is** liability to both pay **money and** receive **lashes** and the *halakha* is that one **pays money** but **is not flogged; so too,** in **any** case **where there is** liability to both pay **money and** receive **lashes,** one **pays money** but **is not flogged.** The Gemara asks: **What** is the basis for the comparison of other cases to **the common denominator of** both cases, **as they have an element of stringency**[N] that does not exist in other prohibitions in that one who injures another pays five types of indemnity, and conspiring witnesses are flogged without forewarning? **And if** payment of **money** is a more **lenient** form of punishment than lashes, other cases cannot be derived from it, **as they have an element of leniency** that does not exist in other prohibitions. The prohibition in the case of one who injures another is selectively applied, as it is permitted, in departure from its norm, in court, and the case of conspiring witnesses is lenient because they performed no action.

NOTES

As they have an element of stringency – שֶׁכֵּן יֵשׁ בָּהֶן צַד חָמוּר: This attempt to refute an analogy based on the common denominator appearing elsewhere in the Talmud is questioned by the early commentaries. If an analogy can be refuted due to a common element of stringency, all analogies based on a common denominator can be refuted, as the only reason that the common denominator was necessary is because each of the sources has its own particular stringency or leniency. *Tosafot* explain that this objection is not raised in every case of an analogy based on a common denominator. It is raised only in cases where there is a common extreme stringency or leniency (see *Tosafot*). The Ramban states that the question of whether this explanation fits all the instances in which this refutation is raised requires additional analysis. Rabbeinu Tam in *Tosafot* suggests that the reason this refutation is raised here is because the same stringency and leniency apply in both cases. If conspiring witnesses accused one of injuring another they are liable to pay the five indemnities, and there are certain false testimonies that are permitted in court, with regard to which the prohibition "You shall not bear false witness against your neighbor" (Exodus 20:12) does not apply, e.g., testimony that they saw the new moon. The Ritva and others reject this explanation. A different explanation is suggested by the Ra'ah and his students: The objection of an element of stringency is raised only in cases when the stringent element is the very issue under discussion. In this case, since the relative severity of the various punishments is under discussion, the fact that the two sources both involve especially harsh punishments is in fact a relevant cause for refuting the analogy. By the same token, their particular leniencies are relevant when these *halakhot* are the basis of comparison to other punishments.

Perek **III**
Daf **32** Amud **b**

אֶלָּא, עוּלָּא ״תַּחַת״ ״תַּחַת״ גָּמַר, כְּתִיב הָכָא ״תַּחַת אֲשֶׁר עִנָּהּ״ וּכְתִיב הָתָם ״עַיִן תַּחַת עַיִן״, מָה הָתָם, מָמוֹנָא מְשַׁלֵּם מִילְקָא לָא לָקֵי – אַף כָּל הֵיכָא דְּאִיכָּא מָמוֹנָא וּמַלְקוּת – מָמוֹנָא מְשַׁלֵּם, מִילְקָא לָא לָקֵי.

Rather, Ulla derives the fact that one pays and is not flogged by means of a verbal analogy between the terms **for** and **for.** The verse **states** with regard to rape: "And the man who lay with her shall give to the father of the young woman fifty shekels of silver, and to him she shall be as a wife, **because** [***taḥat***] **he tormented her"** (Deuteronomy 22:29), **and it states there,** with regard to injury: **"An eye for** [***taḥat***] **an eye"** (Exodus 21:24). **Just as there,** with regard to injury, one **pays money** and **is not flogged,** so too, in **any** case **where there is** liability to both pay **money and** receive **lashes,** one **pays money** but **is not flogged.**

NOTES

From where does Rabbi Yoḥanan derive this principle – מְנָא לֵיהּ לְרַבִּי יוֹחָנָן הָא: The Gemara asked earlier: From where did Ulla derive that one pays and is not flogged? This question indicates that without that source, the assumption would have been that one is flogged and does not pay. Here, the Gemara questions Rabbi Yoḥanan's source, indicating that the assumption would have been the opposite. Although the Gemara at times questions a certain opinion based on two conflicting lines of reasoning because neither is clear or obvious, the Gemara here is difficult. *Tosafot Yeshanim* and the Rosh explain that once Ulla cited support for his approach from a verbal analogy, the burden of proof shifts, and the Gemara then seeks the source for Rabbi Yoḥanan's opinion.

רַבִּי יוֹחָנָן אָמַר: אֲפִילּוּ תֵּימָא אֲחוֹתוֹ נַעֲרָה. כָּאן – שֶׁהִתְרוּ בּוֹ, כָּאן – שֶׁלֹּא הִתְרוּ בּוֹ.

§ In proposing a different resolution to the apparent contradiction between the mishna here that rules that one pays a fine for raping his sister and the mishna in *Makkot* that rules that one is flogged in that case, **Rabbi Yoḥanan said: Even if you say** that both *mishnayot* are referring to **his sister** who is **a young woman, there** it is referring to a case **where** the witnesses **forewarned him,** and therefore the rapist is flogged; **here,** it is referring to a case **where** the witnesses **did not forewarn him.** Since no lashes are administered without forewarning, the rapist pays the fine.

אַלְמָא קָסָבַר רַבִּי יוֹחָנָן: כָּל הֵיכָא דְּאִיכָּא מָמוֹן וּמַלְקוּת, וְאַתְרוּ בֵּיהּ, מִילְקָא לָקֵי, מָמוֹנָא לָא מְשַׁלֵּם. מְנָא לֵיהּ לְרַבִּי יוֹחָנָן הָא? אָמַר קְרָא: ״כִּדֵּי רִשְׁעָתוֹ״ – מְשׁוּם רִשְׁעָה אַחַת אַתָּה מַחֲיְיבוֹ, וְאִי אַתָּה מְחַיְיבוֹ מִשּׁוּם שְׁתֵּי רִשְׁעִיּוֹת, וּסְמִיךְ לֵיהּ ״אַרְבָּעִים יַכֶּנּוּ״.

The Gemara observes: **Apparently, Rabbi Yoḥanan maintains** that in **any** case **where there is** liability to both pay **money and** receive **lashes, and** the witnesses **forewarned him, he is flogged** but does not **pay money.** The Gemara asks: **From where does Rabbi Yoḥanan** derive **this** principle?[N] The Gemara explains that he derives it from that which **the verse states** with regard to one sentenced to lashes in the court: "The judge shall cause him to lie down, and to be beaten before him, **according to the measure of his wickedness"** (Deuteronomy 25:2), from which it is inferred: **For one** act of **wickedness,** i.e., punishment, **you can render him liable, but you cannot render him liable for two** acts of **wickedness. And juxtaposed to** this it states: **"Forty he shall strike him"** (Deuteronomy 25:3), indicating that the punishment that is administered when one is liable to receive two punishments is lashes and not payment.

וַהֲרֵי חוֹבֵל בַּחֲבֵירוֹ, דְּאִיכָּא מָמוֹן וּמַלְקוּת – מָמוֹנָא מְשַׁלֵּם, מִילְקָא לָא לָקֵי! וְכִי תֵּימָא: הָנֵי מִילֵּי הֵיכָא דְּלָא אַתְרוּ בֵּיהּ, אֲבָל אַתְרוּ בֵּיהּ – מִילְקָא לָקֵי, מָמוֹנָא לָא מְשַׁלֵּם, וְהָאָמַר רַבִּי אַמִּי אָמַר רַבִּי יוֹחָנָן: הָכָּהוּ הַכָּאָה שֶׁאֵין בָּהּ שֶׁוֶה פְּרוּטָה – לוֹקֶה. הֵיכִי דָּמֵי? אִי דְּלָא אַתְרוּ בֵּיהּ – אַמַּאי לוֹקֶה? אֶלָּא פְּשִׁיטָא. דְּאַתְרוּ בֵּיהּ, וְטַעֲמָא – דְּלֵית בָּהּ שֶׁוֶה פְּרוּטָה, הָא אִית בָּהּ שֶׁוֶה פְּרוּטָה – מָמוֹנָא מְשַׁלֵּם, מִילְקָא לָא לָקֵי!

The Gemara asks: **And** what of the case of **one who injures another where there is** liability to both pay **money and** receive **lashes,** in which case one **pays money** but **is not flogged? And lest you say** that **this applies only when** the witnesses **did not forewarn him, but if they forewarned him** before he struck his friend he **is flogged** but **does not pay money, didn't Rabbi Ami say** that **Rabbi Yoḥanan said:** If one **struck** another with **a blow that** does **not** cause damage that amounts to **the value of a *peruta*,**[H] he is **flogged?** The Gemara asks: **What are the circumstances** of that case? **If** it is a case **where** the witnesses **did not forewarn him, why is he flogged?** No lashes are administered without forewarning. **Rather, obviously** it is a case **where they forewarned him, and the reason** he is flogged is that **there is not** damage that amounts to **the value of a *peruta*.** The damages are not quantifiable. The Gemara infers: However, if **there is** damage that amounts to **the value of a *peruta*,** he **pays money** and **is not flogged,** even though he was forewarned.

כְּדַאָמַר רַבִּי אֶילְעָא: בְּפֵירוּשׁ רִיבְּתָה תּוֹרָה עֵדִים זוֹמְמִין לְתַשְׁלוּמִין, הָכָא נַמִּי, בְּפֵירוּשׁ רִיבְּתָה תּוֹרָה חוֹבֵל בַּחֲבֵירוֹ לְתַשְׁלוּמִין. וְהֵיכָא אִיתְּמַר דְּרַבִּי אֶילְעָא – אַהָא: מְעִידִין אָנוּ אֶת אִישׁ פְּלוֹנִי שֶׁחָיַיב לַחֲבֵירוֹ מָאתַיִם זוּז, וְנִמְצְאוּ זוֹמְמִין – לוֹקִין וּמְשַׁלְּמִין, שֶׁלֹּא הַשֵּׁם הַמְּבִיאָן לִידֵי מַכּוֹת מְבִיאָן לִידֵי תַּשְׁלוּמִין, דִּבְרֵי רַבִּי מֵאִיר, וַחֲכָמִים אוֹמְרִים: כָּל הַמְשַׁלֵּם אֵינוֹ לוֹקֶה.

The Gemara answers that the fact that conspiring witnesses pay money can be explained **in accordance with that** which **Rabbi Ile'a said** in a different context: **The Torah explicitly amplified** the case of **conspiring witnesses** to include liability **for payment.** The Torah employed language indicating that conspiring witnesses who testified falsely in order to render one liable for payment must pay the sum and are not flogged. **Here, too,** with regard to injury, **the Torah explicitly amplified** the case of **one who injures another** to include liability **for payment.**[H] The Gemara asks: **And where is this** statement **of Rabbi Ile'a stated?** The Gemara answers that it is stated **concerning this** mishna (*Makkot* 4a). If witnesses said: **We testify that so-and-so owes another two hundred dinar, and** these witnesses **were discovered** to be **conspiring** witnesses; **they are flogged and pay, as the source** [***shem***] **that brings them to** liability to receive **lashes does not brings them to** liability for **payment.**[N] Each liability has an independent source; the source for lashes is: "You shall not bear false witness against your neighbor," while the source for payment is: "You shall do unto him as he conspired" (Deuteronomy 19:19). This is **the statement of Rabbi Meir. And the Rabbis say: Anyone who pays is not flogged.**[NH]

וְנֵימָא: כָּל הַלּוֹקֶה אֵינוֹ מְשַׁלֵּם! אָמַר רַבִּי אֶילְעָא: בְּפֵירוּשׁ רִיבְּתָה תּוֹרָה עֵדִים זוֹמְמִין לְתַשְׁלוּמִין. – הֵיכָן רִיבְּתָה תּוֹרָה? מִכְּדִי כְּתִיב "וַעֲשִׂיתֶם לוֹ כַּאֲשֶׁר זָמַם לַעֲשׂוֹת לְאָחִיו". "יָד בְּיָד" לָמָּה לִי – דָּבָר הַנִּיתָּן מִיָּד לְיָד. וּמַאי נִיהוּ – מָמוֹן.

And with regard to that mishna, the Gemara asks: **Let us say,** on the contrary, that **anyone who is flogged does not pay. Rabbi Ile'a said: The Torah explicitly amplified** the case of **conspiring witnesses for payment,** not lashes. The Gemara asks: **Where did the Torah amplify** the case of conspiring witnesses? The Gemara explains: **Now, since it states** with regard to conspiring witnesses: **"And you shall do unto him as he conspired to do unto his brother"** (Deuteronomy 19:19); **why do I** require the Torah to state in his punishment: **"A hand for a hand"** (Deuteronomy 19:21)?[N] This indicates that the punishment that takes precedence is one in which there is **an item that is given from hand to hand, and what is that** item? It is **money.**

NOTES

As the source [*shem*] that brings them to liability to receive lashes does not bring them to liability for payment – שֶׁלֹּא הַשֵּׁם הַמְּבִיאָן לִידֵי מַכּוֹת מְבִיאָן לִידֵי תַּשְׁלוּמִין: According to Rashi, the term: The source [*shem*], is referring to the biblical source for his punishment. Rabbi Meir maintains that conspiring witnesses are liable to payment due to the verse "You shall do unto him as he conspired," and the liability to receive lashes is for their transgression of "You shall not bear false witness." *Tosafot* question this understanding, as they cite proof that Rabbi Meir does not distinguish in that manner, and if the liability for lashes and payment are derived from the same verse, he holds that the sinner is lashed and pays. Some early commentaries claim that Rabbi Meir said his statement only in accordance with the opinion of the Rabbis (see *Tosafot*). Many early commentaries follow the approach of the Ramban in tractate *Makkot* (4b), who asserts that were the liability of conspiring witnesses to receive lashes, in fact, derived from the verse "You shall do unto him as he conspired," the witnesses would not be flogged, as the Torah says that they receive the punishment they plotted to inflict on others, but no more. Since they conspired to obligate the defendant to pay and not to be flogged, they too are liable only to pay and not to be flogged. According to Rabbi Meir, in contrast, it is only the obligation to pay that is derived from the verse "You shall do unto him as he conspired," while their liability to be flogged is derived from a different verse. Since Rabbi Meir maintains in general that one can be flogged and pay for a single transgression, these conspiring witnesses are flogged. According to this approach, the decisive point is not that there are two different verses, but that the source for the witnesses' liability to receive lashes is not their conspiracy but the fact that they gave false testimony. Rabbi Meir contends that their liability in this regard is a general one, unrelated to the particular individual who was the object of their testimony.

Anyone who pays is not flogged – כָּל הַמְשַׁלֵּם אֵינוֹ לוֹקֶה: Some early commentaries explain that this is as an elaboration on the opinion of the Rabbis: Not only do they reject Rabbi Meir's ruling that conspiring witnesses are flogged due to the verse "You shall not bear false witness," as this is a prohibition that does not entail an action, but in general they maintain that one does not receive two punishments for a single transgression. Others claim that Rabbi Meir made his statement in accordance with the opinion of the Rabbis. He himself is of the opinion that one can both be flogged and pay; however, he contends that in this case even the Rabbis should concede that the witnesses are liable to receive lashes, as their liability stems from a different source. The Rabbis respond that there is no difference whether their liability results from one verse or two (see Ritva).

Why do I require a hand for a hand – יָד בְּיָד לָמָּה לִי: *Tosafot* ask why this exposition is necessary, as the Torah already stated: "As he conspired," indicating that witnesses who sought to render one falsely liable to pay are themselves liable to pay that sum. Why, then, is another exposition necessary to obligate the witnesses to pay for an item that is given from hand to hand? They answer that otherwise the thought would have been that they are liable for payment only if they conspired to obligate him to pay money. In contrast, in a case where they plotted to obligate him to pay and to be flogged, perhaps they receive both punishments. Therefore, the verse teaches that whenever they are obligated to pay, they are not flogged (see Ritva). *Tosafot* suggest that this exposition is in fact unnecessary for conspiring witnesses, but it serves to emphasize the principle that one who injures another is not literally punished with an eye for an eye but with payment. The Ritva asks: Once this derivation is learned, why not say that conspiring witnesses liable to be executed and liable to pay should pay and should not be executed? He answers that with regard to lashes and payment, it is unclear which punishment is more severe, and therefore, the Sages derived that they pay and are not flogged, whether that constitutes a leniency or a stringency. However, the death penalty is clearly a more severe punishment than payment, and the Torah certainly did not intend to be lenient with one liable to be executed.

HALAKHA

If one struck another with a blow that does not cause damage that amounts to the value of a *peruta* – הָכָּהוּ הַכָּאָה שֶׁאֵין בָּהּ שֶׁוֶה פְּרוּטָה: If one injured another and the damage amounts to less than the value of a *peruta*, he is flogged and does not pay. The *halakha* is in accordance with the opinion of Rabbi Ami in the name of Rabbi Yoḥanan (Rambam *Sefer Nezikim*, *Hilkhot Ḥovel UMazik* 5:3; *Shulḥan Arukh*, *Ḥoshen Mishpat* 420:2).

The Torah explicitly amplified the case of one who injures another to include liability for payment – רִיבְּתָה תּוֹרָה חוֹבֵל בַּחֲבֵירוֹ לְתַשְׁלוּמִין: One who injures another on the Day of Atonement is obligated to pay damages, even though he is liable to receive lashes or *karet* for his action. Although the principle is that one who is liable both to receive lashes and to pay is flogged and does not pay, the Torah explicitly states that one who injures another pays for the injury. The *halakha* is in accordance with the opinion of Rabbi Yoḥanan in his dispute with Ulla (Rambam *Sefer Nezikim*, *Hilkhot Ḥovel UMazik* 4:9; *Shulḥan Arukh*, *Ḥoshen Mishpat* 424:2).

Conspiring witnesses for payment – עֵדִים זוֹמְמִין לְתַשְׁלוּמִין: If witnesses who testified that a person owes money were discovered to be false conspiring witnesses, they pay that sum and are not flogged. The *halakha* is in accordance with the opinion of the Rabbis in their dispute with the individual opinion of Rabbi Meir (Rambam *Sefer Shofetim*, *Hilkhot Edut* 18:1 and *Kesef Mishne* there; *Tur*, *Ḥoshen Mishpat* 38).

חוֹבֵל בַּחֲבֵירוֹ נַמִי, מִכְּדִי כְּתִיב ״כַּאֲשֶׁר עָשָׂה כֵּן יֵעָשֶׂה לוֹ״, ״כֵּן יִנָּתֵן בּוֹ״ לָמָּה לִי – דָּבָר שֶׁיֵּשׁ בּוֹ נְתִינָה, וּמַאי נִיהוּ – מָמוֹן.

The same can be said with regard to **one who injures another. Now, since it states:** "And a man who places a blemish upon his counterpart, **as he has done so shall be done to him"** (Leviticus 24:19), **why do I** require the Torah to state: "As one who places a blemish upon a man, **so shall be placed** [***yinnaten***] **upon him"** (Leviticus 24:20)? This teaches that this is referring to **an item that involves giving** [***netina***], **and what is that** item? It is **money.**

וְרַבִּי יוֹחָנָן, מַאי טַעְמָא לָא אָמַר כְּעוּלָּא? אִם כֵּן ״בִּשְׁלָתָּ עֶרְוַת אֲחוֹתְךָ לֹא תְגַלֶּה״

The Gemara asks: **And Rabbi Yoḥanan, what is the reason** that **he did not say** the same *halakha* **as Ulla,**[N] that where there is liability to both pay money and receive lashes, one pays money but is not flogged? The Gemara answers: **If so,** if that were the case, **you have rendered moot** the prohibition **"The nakedness of your sister…you shall not uncover"** (Leviticus 18:9) in that contrary to the standard prohibitions, no lashes would be administered for its violation.

NOTES

What is the reason that he did not say the same *halakha* as Ulla – מַאי טַעְמָא לָא אָמַר כְּעוּלָּא: The Ramban notes that it is obvious why the Gemara did not ask why Ulla did not say the same *halakha* as Rabbi Yoḥanan, as Ulla derives his *halakha* from a verbal analogy. However, the question of the Gemara is difficult, as it is clear why Rabbi Yoḥanan rejected Ulla's conclusion; it is because he did not accept his verbal analogy. *Tosafot* explain that Ulla's derivation is universally accepted, and therefore it cannot be said that Rabbi Yoḥanan rejects it. Furthermore, as the Ramban himself explains, Ulla's derivation by means of verbal analogy is more authoritative than Rabbi Yoḥanan's derivation by means of juxtaposed verses. According to the Rashba and other early commentaries, that is the basis for the Gemara's question with regard to Rabbi Yoḥanan's approach. The Ramban maintains that the Gemara is not raising a difficulty with regard to the opinion of Rabbi Yoḥanan but merely seeking to clarify the basis for his opinion.

Perek **III**
Daf **33** Amud **a**

חוֹבֵל בַּחֲבֵירוֹ נַמִי, אִם כֵּן, בִּשְׁלָתָּ ״לֹא יוֹסִיף פֶּן יוֹסִיף״! עֵדִים זוֹמְמִין נַמִי, אִם כֵּן, בִּשְׁלָתָּ ״וְהָיָה אִם בֶּן הַכּוֹת הָרָשָׁע״! אֶלָּא עֵדִים זוֹמְמִין אֶפְשָׁר לְקַיּוּמָהּ בְּבֶן גְּרוּשָׁה וּבֶן חֲלוּצָה. חוֹבֵל בַּחֲבֵירוֹ נַמִי, אֵיכָּא לְקַיּוּמָהּ כְּגוֹן שֶׁהִכָּהוּ הַכָּאָה שֶׁאֵין בָּהּ שְׁוֵה פְּרוּטָה.

The Gemara asks: Based on that reasoning, the same would hold true for **one who injures another as well;**[N] **if so,** if he pays and is not lashed, **you have rendered moot** the prohibition "Forty he shall strike him; **he shall not exceed, lest if he should exceed"** (Deuteronomy 25:3). The same would hold true for **conspiring witnesses as well; if so, you have rendered moot** the verse interpreted as addressing the matter of conspiring witnesses: **"And it shall be if the wicked man deserves to be flogged"** (Deuteronomy 25:2).[N] **Rather,** with regard to **conspiring witnesses,** that verse **can be fulfilled** in the case **of the son of a divorcée or the son of a *ḥalutza*.** If witnesses testified that a priest is the son of a divorcée or a *ḥalutza* and were discovered to be conspiring witnesses, there is no payment and they are flogged. With regard to **one who injures another as well,** the verse **can be fulfilled** in a case **where he struck him** with **a blow that** does **not** cause damage amounting to **the value of a *peruta*.**

אֲחוֹתוֹ נַמִי, אֵיכָּא לְקַיּוּמָהּ בַּאֲחוֹתוֹ בּוֹגֶרֶת! אָמַר לָךְ רַבִּי יוֹחָנָן: הַאי ״תַּחַת אֲשֶׁר עִינָּהּ״ מִיבָּעֵי לֵיהּ לְכִדְאַבַּיֵי, דַּאֲמַר אַבַּיֵי: אָמַר קְרָא ״תַּחַת אֲשֶׁר עִינָּהּ״, הַאי – ״תַּחַת אֲשֶׁר עִינָּהּ״, מִכְּלָל דְּאִיכָּא בּוֹשֶׁת וּפְגָם.

The Gemara raises a difficulty: If so, with regard to **one's sister as well,**[N] the lashes **can be fulfilled** in the case of one who had forced relations **with his sister** who is **a grown woman.** Since there is no fine in that case, he is flogged and the verse is not moot. The Gemara answers: **Rabbi Yoḥanan** could have **said to you** that he does not agree with Ulla because **this** verse: **"Because he tormented her"** (Deuteronomy 22:29), is not available for a verbal analogy, as **he requires it to** derive **in accordance with that** which **Abaye** said, **as Abaye said** that **the verse states:** The fine of fifty dinar is payment **"because he tormented her"; by inference** one may conclude **that** beyond the fine, **there is** compensation for **humiliation and degradation.**

וְעוּלָּא נָפְקָא לֵיהּ מִדְּרָבָא. דַּאֲמַר רָבָא: אָמַר קְרָא: ״וְנָתַן הָאִישׁ הַשֹּׁכֵב עִמָּהּ לַאֲבִי הַנַּעֲרָה חֲמִשִּׁים כֶּסֶף״, הֲנָאַת שְׁכִיבָה – חֲמִשִּׁים, מִכְּלָל דְּאִיכָּא בּוֹשֶׁת וּפְגָם.

The Gemara asks: **And Ulla,** who uses this verse to derive a verbal analogy, from where does he derive the *halakha* stated by Abaye? The Gemara answers: **He derives it from** the statement of **Rava,** who derives that *halakha* from the same verse, **as Rava said** that **the verse states: "And the man who lay with her shall give to the father of the young woman fifty shekels of silver"** (Deuteronomy 22:29). The superfluous phrase "who lay with her" teaches that it is for **the pleasure of lying** with her that he pays **fifty** shekels, i.e., fifty *sela*; **by inference** one may conclude **that** beyond the fine, **there is** compensation for **humiliation and degradation.**

NOTES

One who injures another as well, etc. – חוֹבֵל בַּחֲבֵירוֹ נַמִי וכו׳: Why was Rabbi Yoḥanan more concerned about rendering the prohibition with regard to one's sister moot than he was with regard to one who injures another or conspiring witnesses? The Ritva explains that there is no independent prohibition with regard to one who injures another. It is derived from the verse written with regard to the officer of the court: "Lest he exceed" (Deuteronomy 25:3). Likewise, the prohibition against conspiring to bear false witness is also derived from a verse written in another context. In contrast, with regard to a sister, the prohibition is explicit: "The nakedness of your sister…you shall not uncover" (Leviticus 18:9).

You have rendered moot: And it shall be if the wicked man deserves to be flogged – בִּשְׁלָתָּ וְהָיָה אִם בֶּן הַכּוֹת הָרָשָׁע: Why doesn't the Gemara cite the relevant prohibition and say that you have rendered moot the verse "You shall not bear false witness"? One answer is that the prohibition "You shall not bear false witness" is a prohibition that serves as a warning of death at the hands of the court, for which one is not liable to receive lashes (*Shita Yeshana,* cited in *Shita Mekubbetzet*). Alternatively, some Sages maintain that because it is a prohibition that does not involve an action, there are no lashes. Therefore, the Gemara cited the verse from which the punishment of lashes in this case is derived.

One's sister as well, etc. – אֲחוֹתוֹ נַמִי וכו׳: Why didn't the Gemara raise the difficulty that according to Rabbi Yoḥanan this negates the obligation "He shall give to the father of the young woman" in the case of one who rapes his sister? The Rashba explains that this mitzva can be fulfilled in the case of a sister if he received no forewarning, whereas according to Ulla's opinion, there would be no possibility of lashes at all in the case of a virgin sister.