

# The Weekly Daf



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**Yevamot 48 - 54**

Week of 10 16 Shevat 5760 / 17 23 January 2000

Rav Weinbach's insights, explanations and comments for the 7 pages of Talmud studied in the course of the worldwide **Daf Yomi** cycle

## How Reliable is the Record?

A *mamzer*

whom he can marry.

But what exactly is a *mamzer*

defines a *mamzer* as a child born from parents whose union is forbidden by law. How serious the violation must be to produce a *mamzer* is a matter of dispute.

The strictest approach is that of Rabbi Akiva who rules that even if the relationship is punishable only by lashes and not with death its product is a *mamzer*. On the opposite extreme is the view of Rabbi Yehoshua that only if the violation is punishable by death at the hands of the court is the child considered a *mamzer*. In between is the position of the Sage Shimon the Timnite, that even if the violation is punishable by *karet* (extirpation, or premature death) the child is a *mamzer*.

An interesting support was provided for the position of Rabbi Yehoshua by Rabbi Shimon ben Azai. (Rashash notes that points out in Mesechta Avot 4:1). He found an old family record in Jerusalem which stated that a certain person was a *mamzer*

punishable by death at the hands of the court was he considered a *mamzer*, and not if the violation had been punishable by a lesser penalty. The *halacha*, nevertheless, is like the position of Shimon the Timnite. The record cited by Shimon ben Azai is not considered a conclusive proof because it may simply have been reporting the facts on the case rather than describing halachic parameters.

Shimon ben Azai, however, interpreted this record as a halachic statement that only a violation punishable by death at the hands of the court creates a *mamzer*. Why then, asks Tosefot, did the record not simply state that he was a *mamzer* because his parents had committed a capital crime, rather than mention the specific nature of their offense? His answer is that the record wished to stress that even though adultery is punishable by the least severe of the four categories of death penalties, and even though a married woman can become permissible by divorce in the lifetime of her husband (a situation unique to a married woman, which does not exist for relatives forbidden through marriage; such relatives remain forbidden even with the end of that marriage), the product of such a union is nevertheless a *mamzer*.

Yevamot 49a

## Abusing the Agent

Even though the penalty of lashes mentioned in the Torah applies only to one who has transgressed a Torah prohibition, the *makot mardut*

Among those violations for which the Sage Rav decreed such a punishment was the abusing of an agent of the Rabbis. Rashi explains that this refers to the agent of a rabbinical court. Tosefot, however, contends that this is a reference to an agent of any Torah Sage and not necessarily of a rabbinical court. As support for this position, Tosefot cites the following incident related in Mesechta Kiddushin (70a):

A resident of the Babylonian community of Nehardea entered a butcher shop in the city of Pumpedita and ordered some meat. He was told that he would be served only after they filled the order of the agent of Rabbi Yehuda ben Yechezkel. Upset by

When it was reported to Rabbi Yehuda how this rude fellow had abused his agent, he excommunicated him. This, concludes Tosefot, proves that abusing the agent of a Torah Sage, even when he is not acting in the capacity of an agent of the court, deserves punishment.

One problem, however, remains. The *gemara* (*Pesachim 52a*) states that excommunication is a more severe penalty than lashes. Why then, asks Tosefot, did Rabbi Yehuda not settle for the lashes dictated by the Sage Rav?

The answer, suggests Tosefot, may be that giving lashes is a sufficient punishment for one who abuses the agent of the Sage because this is only an *indirect*

he more severe penalty, excommunication.

Yevamot 52a

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