



THE שבווע MATTERS

שבת קודש פרשת ויגש

מסכת יבמות דף לב

לרפ"ש נחמה איטא בת עליזה

לע"נ ברוך בענדיט וברכה גרוס ע"ה
by Mr. & Mrs. Duvy Gross

Insights from our Chaburos

Three Examples of the Dispute of Rebbe Chiya and Bar Kapara

זר שאכל מליקה רבי חייא אומר חייב שתים, בר קפרא אומר אין חייב אלא אחת

The Gemara brings a series of three disputes between Rebbe Chiya and Bar Kapara which illustrate the concept of איסור כולל—whether a more inclusive prohibition can be applied and be added to a pre-existing prohibition.

The first case is that of non-kohen who performs the service in the Beis Hamikdash on Shabbos. Rebbe Chiya holds that he is liable for two prohibitions, for being a non-kohen who officiates and for violating Shabbos. Bar Kapara holds he is liable only for one sin, that of being a non-kohen who officiates. The Gemara brings a second example of this dispute. A kohen who has a blemish officiates while he is ritually impure. Rebbe Chiya holds he is liable for each infringement, officiating while impure and while being blemished. Bar Kapara holds he is liable for one sin. The Gemara then presents a third and final example of this dispute. A non-kohen eats the flesh of a bird of a chattas which was “slaughtered” by מליקה. Rebbe Chiya holds he is liable for two sins—a non-kohen who eats kodosh, and for eating flesh that was not slaughtered properly. Bar Kapara holds he is liable for one sin.

What is the purpose of illustrating this dispute in three different ways? Hagahos Rabbi Meir Horowitz notes that the first case is an example of כרת (violating Shabbos) being added upon a case of a non-kohen doing the service, which is liable for death from heaven (מיתה בידי שמים). The next case illustrates the service of a blemished kohen who is liable for מיתה בידי שמים adds upon a לאו, the case of service while impure. Finally, the third case shows eating an improperly slaughtered bird, which is a לאו being added upon another לאו, the case of a non-kohen eating from a chattas. Accordingly, Rebbe Chiya who holds that he is liable for two sins, each case is increasingly more novel than the one preceding it. According to Bar Kapara, the person is liable for one sin in each case. Here, the style is וְאִין זו וְאִין זו—he is liable for one in the first case, and it could go without saying that he is only liable for one in the successive cases.

Stories off the Daf

“Rebbi Chiya Jumped In...”

קפץ רבי חייא ונשבע

In our Gemara, we see that both Rebbe Chiya and Bar Kappara interjected and swore to each of their versions of what Rebbe had really taught. Rebbe Chiya swore that a non-kohen who served on Shabbos or in a state of ritual impurity transgresses only one sin, while Bar Kapara swore that he transgressed two sins simultaneously. From their acts, we can see the fervor of talmidei chachamim. They don't state what they believe to be true in a cold and detached way. They live for Torah, and just as (כביכול) a “true fan” of a sports team evidences a great deal of excitement at his team's victories and deep distress at its setbacks, so too does a true talmid chacham sometimes show what we would consider to be an unusual degree of passion for his beloved study.

Rav Eliezer Gordon, zt”l, was once passing the shul in Slobodka where he served as Rav when he overheard a dispute regarding a certain matter through the open window of the building. One student asked the other a challenging question and the other tried to answer, but the questioner was unsatisfied with the answer he received. Immediately, the Rav dashed to the door to enter the shul so that he could take part in the discussion, but the door was locked. Without pausing for an instant, the Rav jumped on the windowsill and leaped into the shul to join the heated debate, much to the shock and alarm of the two chavrusos!

Rav Shach, zt”l, would often find himself unable to sleep if he had an unresolved question. In a great state of agitation, he was known to sometimes spring from his bed to look up another source or to seek out another opinion. At odd hours he would try to speak out his question with another Gadol or with whoever was still in the beis midrash at whatever hour the question occurred to him. On at least one occasion, Rav Shach even stayed up all night, davened with the sunrise, and took the first bus to Yerushalayim so that he could place his query before the Brisker Rav, zt”l!

Parsha Connection

In this week's daf we learn about two תנאים who each “jumped” and swore to the veracity of their respective versions of Rebbi's (בנינו רביהוה) teaching. In this week's parsha, we read about the actions of יהודה, who was one of Rebbi's forefathers (ביהודה ובנימין) teaching. Yehuda's actions represent a total reversal from his position at the end of פרשת מקץ, when he told Menashe (per מדרש רבה) that all of the brothers will come back to Egypt and become slaves. What changed his mind, that he now decided to aggressively fight Yosef? The Alshich Hakadosh explains that the brothers believed that all of their troubles were due to their mistreatment of Yosef. Because they had sold him into slavery, they were being subjected to a similar fate in Egypt. Yehuda was willing to accept a fate of ALL the brothers becoming slaves, because he viewed it as a fitting punishment. However, when he heard that only Binyomin would be enslaved, he realized that this cannot be a punishment for selling Yosef. The ten brothers who actually sold him were not the ones being punished, and the one who was being punished (Binyomin) had not even been involved. He therefore concluded that this is unrelated, and that Yosef must be persecuting them because he dislikes them. If so, Yehuda reasoned, he must fight and defeat him.

CONTINUED →

Halacha Highlight

Moving the Body of a Jew Buried Next to a Non-Jew

מאי נפקא מינה לקברו בין רשעים גמורים
What difference does it make? [The difference is that he will be] buried amongst the completely wicked.

Shulchan Aruch¹ rules, based on our Gemara, that one should not bury a wicked person near a righteous person. Over the course of history, the question has come up what to do when one realizes that a righteous person is buried next to a wicked person. Rav Moshe Sofer², the Chasam Sofer writes that this is not a reason to exhume the body. Other Poskim³ suggest as a remedy to the situation that a partition should be erected between the two graves.

Based on this ruling that restricts burying a wicked person near a righteous person, Rav Moshe Feinstein⁴ was presented with the following inquiry. There was once a person who, due to Soviet law prohibiting the existence of a Jewish cemetery, was buried in a non-Jewish cemetery. When the deceased's family was given permission to leave they did not want to leave their relative behind in the non-Jewish cemetery nor could they obtain permission to exhume the body to take with them to America. They decided to remove the body from the grave, burn the remains and take the ashes with them. The question posed to Rav Feinstein was whether they made the correct choice.

Rav Feinstein writes that the question requires analysis since both issues are Biblical. On one hand there is a Biblical obligation to bury the deceased⁵ (and not cremate him) as indicated by the words, כי קבור תקברנו (because you should bury him). On the other hand, the prohibition against burying a Jew with non-Jews is also a Biblical law, derived from Halacha L'Moshe M'Sinai⁶. It would seem, writes Rav Feinstein, that the obligation to bury the deceased is a greater obligation than the restriction against burying a Jew with a non-Jew. The reason is that burial provides a person with atonement and that atonement will take place even if one is buried next to someone wicked or a non-Jew. On the other hand, the restriction against burying a Jew next to a non-Jew or someone who is wicked relates to honoring the deceased and honoring the deceased is not as weighty as not having a burial. Therefore, Rav Feinstein concludes that they did not make the correct decision to remove the body and burn the remains which thereby precluded any further burial.

1. שו"ע יו"ד סי' שס"ב ס"ה

2. שו"ת חתם יו"ד סי' של

3. שו"ת מנחת יצחק חו" סי' קל"ו, ושו"ת שבט הלוי חו" סי' קצ"ב

4. שו"ת אגמ"י יו"ד חו" סי' נ"ו

5. גמ' סנהדרין מ"ו

6. ע"י שו"ת אגמ"י הנ"ל ע"פ גמ' סנהדרין מ"ו

Mussar from the Daf

Renewing our vows

The Gemorah quotes Rebbe Shimon who says that an issur can't be chal on another issur. Why not? The Tosafos Rid in Kiddushin (3b) explains that the Torah will only assur something that was previously muttar, however something that is already assur cannot become assur again. However, the Gemorah in Nedarim (8a) explains that one can make a shvuah to do a mitzvah. How can one do that? If a person is already commanded to do a mitzvah, how can he make a shvuah on top of that? What is the point of such a shvuah? The gemorah answers that in order to mizarez (energize) one's self to do a mitzvah, he may make a shvuah on a pre-existing mitzvah. The question therefore arises, why is an issur different than a mitzvah? How can our gemorah's statement that once something is assur a shvuah cannot be made on top of it, be reconciled with the gemorah in Nedarim, which allows a person to do so in order to motivate himself to do a mitzvah? Perhaps the answer is as follows. If a person doesn't take an issur seriously, then making a shvuah won't change the fact that he doesn't have the proper regard for the sanctity of the Torah. However, when it comes to performing a positive mitzvah, sometimes a person genuinely wants to fulfill his obligation, but can be bested by lethargy and languor. He may feel an inability to muster the requisite energy and motivation to perform certain mitzvos. Tosafos (Nedarim) says the Torah allows one to say Hashem's name "I'vat-alah" (through making a shvuah) in order to motivate him to perform a mitzvah!! This illustrates the degree to which the Torah values motivating people to perform mitzvos. There are many methods of self-motivation. Whether it be teaching a class, finding a chevrusa, or taking a test; the Torah recognizes the importance of finding external means with which to propel ourselves in our performance of mitzvos.

Point to Ponder

The Gemara describes how two Tannaim each swore that they heard something from Rebbi (רבינו הקדוש). For example, in relation to a non-Kohen who works in the Bais Hamikdash on Shabbos, one said that he heard Rebbi say that he would be guilty of two לאוין, and the other said that he heard Rebbi say one. Seeing as one of them clearly swore falsely, would he need to do Teshuva and bring a sacrifice (when the Bais Hamikdash is rebuilt, IYH)?

Response to last week's Point to Ponder

Why would the Chalitza of the co-wife not give the impression that the Erva was fully divorced, and that the יבם chose Chalitza over Yibum (which happens often)? אב"י makes this point regarding גירושין, even though it is not the same as קידושין. Since earlier אב"י argued that being strict regarding יבום may result in others assuming incorrectly that she is not married (when in fact she is ספק married), we see that we must assess ALL of the ramifications of our decision. He therefore makes the argument regarding גירושין, which although is not perfect, is a fair compromise that facilitates a mitzva of chalitza. (See תוס' הראשון).

ר' יוסף שמואל שמעלקא בר' יצחק מערמעלשטיין ז"ל Shelly Mermelstien לע"נ Yevamos has been dedicated in

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