



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

לע"נ אסתר אביגיל בת חיה רבקה וציפורה רחל בת אסתר מחלה THE DIMONT FAMILY EDITION

# THE SHABUOT MATTERS

שבת קודש פרשת תרומה | מסכת יבמות דף צ'

לרפ"ש אברהם בן שושנה

## INSIGHTS FROM OUR CHABUROS

### Passive Lack of Fulfillment of the Mitzvah of Tzitzis

השעת לאו בש ימנ והלוב אוה רקעימ אל השעת לאו בש ול תינשד אתשה

The Gemara is in the midst of the discussion whether the rabbis have the power to negate a Torah law to support a rabbinic ruling. For example, if the blood of an offering became טמא, it becomes invalid for the service. If a kohen takes it and knowingly sprinkles it (מזיד), the Torah law is that the ציץ atones for its being used while impure. The rabbis, however, declared that this offering is not valid. We see that the rabbis can nullify the Torah law, here in order to penalize the kohen for unauthorized use of the impure blood.

Rabbi Yossi bar Chanina answers that the rabbis do not have the authority to require another offering to be brought, as the first one was technically acceptable. When we deemed the first offering invalid it was only in terms of eating the meat. Although eating the meat is fulfillment of a Torah law, the rabbis have the ability in this case to declare that we remain being passive and not eat it (שב ואל תעשה). Therefore, by declaring that the intentional act of the kohen has ruined the offering, the rabbis thereby instruct us to be passive and not fulfill the mitzvah of eating its meat. At this point, Rav Chida admits to Rabba that he was ready to ask many more questions, but this approach answers all of them. The rabbis can stop a Torah law by telling us to be passive.

Tosafos (ד"ה כולוה נמי) asks how the rabbis can rule not to place wool tzitzis (סדין) on a linen garment, due to their concern that one might inadvertently place tzitzis which are shaatnez on a nighttime garment. As a result of this rule, a person would wear a garment without tzitzis, which is an active situation of noncompliance with the Torah's requirement to place tzitzis upon one's garments.

In his answer, Tosafos establishes a tremendous fundamental understanding of the halacha of tzitzis. At the moment one is actually wrapping himself in a four-cornered garment, he is not yet obligated in tzitzis. Once the garment is wrapped around him, he is passive in his being clothed. If the rabbis exempted him from placing tzitzis in a four-cornered סדין, this is in the realm of שב ואל תעשה.

While this approach helps to explain how the rabbis can rule not to place tzitzis on a linen garment, Tosafos notes that the mitzvah does, however, seem to begin at the moment we begin to wrap ourselves, as the bracha we recite when performing the mitzvah of tzitzis is להתעטף בציצית.

Shaagas Aryeh (#32) resolves the question of Tosafos from a different angle. He explains that wearing a four-cornered garment without tzitzis is not a violation of a prohibition, but it is rather the neglect of an עשה. This is certainly a case of being passive.

## STORIES OFF THE DAF

### Annulment and Mamzeirus

ואפקעינהו רבנן לקדושין

There was a woman whose husband went abroad. Two witnesses testified that they had seen her husband die. Within a year she remarried and subsequently had a son. Tragically, after several years, her husband returned. The witnesses admitted their mistake but this was no comfort to the poor woman who needed to divorce and whose child was a mamzer. The gedolim of the generation tried in vain to somehow invalidate the mamzerus of the unfortunate child. The Maharsham, zt"l, raised the possibility of Rabbinically annulling the first marriage.

However, since he was not certain of permissibility of this, he concluded with the statement, "לא למעשה—not to be relied upon practically."

In Israel, there were certain dayanim that served on the Rabbinat's official court that wished to actually permit such children based on the above Maharsham. When Rav Shlomo Zalman Auerbach, zt"l, heard this from certain other dayanim who wished to garner his support, he protested vehemently. "Why do we never find mention of annulment in similar cases? If this is really a viable option, why didn't the Chachamim have mercy on the poor women and children by annulling the original marriage?"

He concluded, "We see, then, that annulment is not an option unless there was an attack on a Jewish community which created many such cases at once. (See Darkei Moshe, Even HaEzer #7) This is despite the terrible pain which, from a moral viewpoint, seems to indicate that annulment would be a very great mitzvah indeed. However, the Chachamim were Divinely inspired and understood that using annulment as a regular recourse would prove disastrous. It would degrade the sanctity of marriage in the eyes of the people. The moment they see annulments for such cases, they will feel that relationships outside of marriage are not so bad. After all, they will say, 'So-and-so was a mamzer and the marriage was annulled...'. The Shitah Mekubetses (Kesuvos 3a) writes this quite clearly: 'There has never been a way to purify a mamzer himself, and there never will be!'

## HALACHA HIGHLIGHT

### Punishing When Not Mandated by the Torah

שמעתי שבית דין מכין ועונשין שלא מן התורה

*I heard that Beis Din can administer lashes and punish when not mandated by the Torah*

A community appointed a group of people to oversee the conduct of its members, and included in their agreement they granted authority for this group to punish people, physically and monetarily, for transgressions. A member of the community violated an oath and was deserving of punishment but the only witnesses in the case were his relatives. These relatives were reliable but the community was uncertain whether the testimony of relatives is acceptable for these cases since Biblically relatives are disqualified witnesses.

Rabbeinu Shlomo ben Aderes<sup>1</sup>, the Rashba, answered that this oversight committee is empowered to decide as they see fit on all matters. The restrictions concerning witnesses apply only to cases adjudicated in Beis Din that is deciding matters according to Biblical law, but a case that is being adjudicated outside of that context is not bound by the same rules and decisions can be rendered based on what their present conditions require. This must be so, argues Rashba, because otherwise, we would be faced with the untenable circumstance that transgressors would never face a consequence for their actions. Nowadays, Beis Din is not authorized to adjudicate cases involving a fine – דיני קנסות, and in order to administer lashes Biblical law requires two valid witnesses who gave a proper warning to the transgressor before he committed his transgression, which is rare. There must be, asserts Rashba, some mechanism to punish transgressors even though Biblically they are exempt.

Rabbeinu Yehudah the son of Rosh<sup>2</sup> also addressed this issue in a case of a litigant who attacked and inflicted bodily harm to one of the dayanim who ruled against him. Rabbeinu Yehudah responded that our Gemara teaches that Beis Din is authorized to punish perpetrators even more severely than the Torah would in order to create a deterrent to prevent others from repeating the same crime. Therefore, although he expressed hesitation about putting this person to death, he did support a very severe punishment for this assailant.

This halacha is cited in Shulchan Aruch<sup>3</sup> and he even allows Beis Din to administer lashes to a person who has a reputation of violating prohibitions of עריות as long as the rumor continues uninterrupted.

1. שו"ת הרשב"א ח"ד סי' ש"א
2. שו"ת זכרון יהודה לרבינו יהודה בן הרא"ש סי' ע"ט
3. ש"ע ב' י"ס מ"ז ע"ש

## PARSHA CONNECTION

In this week's daf we learn about תרומה which must be eaten בטהרה, which is also the name of this week's Parsha. In fact the א"ג tells a story about a heretic who asked a question and assumed that הקב"ה is a כהן because our משה רבינו says "ויקחו לי תרומה". When commanding about the donations it says "מאת כל איש אשר ידבנו לבו תקחו" meaning that you should take from anyone whose heart donates. If they are coming forth and donating why does it say "תקחו את תרומתי" meaning take MY donation rather than theirs which means they shall give their donations. Additionally if someone donates, isn't it implying that their HEART is giving? The Alshich Hakadosh explains that the best way to donate is not by waiting until one is asked, but rather by setting aside a donation in private, and being ready to give the donation when asked. This is why it says that you should "take my donation" because the person set it aside ahead of time and it is already Hashem's. This also explains the giving heart, which is what motivated him to set aside the donation ahead of time! (See also חיד"א זצ"ל by the חומת אנך).

## POINT TO PONDER

The Gemara lists seven examples whereby חז"ל ruled against doing a Mitzva because of a Rabbinic concern. Why do we need seven examples, isn't one enough? Also why did the Gemara wait to mention these examples and instead the Gemara chose only תרומה טמאה to prove its point, wouldn't something like שופר established to point perfectly?

### Response to last week's Point to Ponder:

The Gemara discusses whether a husband can inherit his wife's estate if she died before becoming a נערה. Since a קטן or קטנה have no ability to acquire anything, how does she have assets that would be available to inherit? (אין קנין לקטן).

The question is discussed by רבי עקיבא איגר who explains that this question is dealt with by סנהדרין תוס'. There are two possibilities mentioned in תוס', one is if she inherited from her father prior to her being נתגייר and the second would be earnings from work she did.

ר' יוסף שמואל שמעלקא ב"ר יצחק מערמעלשטיין ז"ל, Shelly Mermelstien, לע"נ has been dedicated to Yevamos

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The shavua matters is published by the Daf a week program under the rabbinical guidance of Harav Meir Stern shlita and Harav Shmuel Kamenetsky shlita

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