



THE SHABUOT MATTERS

פסח תשפ"ב | מסכת יבמות דף ק"א

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

INSIGHTS FROM OUR CHABUROS

The Verses on the Throne

כולך יפה רעיתי ומום אין בד

The Gemara uses the verse from Shir Hashirim as a basis to teach us that a judge should not have any blemishes.

The Kli Yakar quotes the Midrash that describes the throne of Shlomo Hamelech. This exquisite and unique seat had six steps leading up to the seat. Each one of the steps had a verse from the Torah written upon it. The first step featured the verse "Do not pervert justice." Written on the second step was the verse "Do not show preference in judgement." On the third the verse cited was "Do not accept bribery." The fourth step had written upon it "Do not plant an asheira tree near the altar of Hashem." The fifth step featured the verse "Do not construct a multi-stone altar for the service of Hashem." Finally, the sixth and final step had written upon it, "Do not offer to Hashem any ox or sheep that has a blemish."

Kli Yakar notes that the throne of the king was used in judgement. We can understand the theme of the verses inscribed upon the first three steps. These are admonitions regarding how to judge fairly. What was the reason the upper three steps had upon them verses dealing with details of the construction of the altar? Kli Yakar answers that our Gemara declares that a judge should not have a blemish. How, though, can we learn a halacha from a verse in Shir Hashirim? Is this a Torah law, and if so, where is there an indication in the Torah itself to teach this? The answer is that the verses on Shlomo's throne are all found in consecutive order, at the beginning of Parashas Shoftim (Devarim 16:19-22 and 17:1). The juxtaposition of the verses teaches that the laws of judging are parallel to the laws of the altar. Therefore, just as a blemished animal is disqualified for the altar, so too is a judge ineligible if he is blemished.

STORIES OFF THE DAF

The Anpilayos of Alexander the Great

חלצה במנעל חליצתה כשרה, באנפילה חליצתה פסולה

The Midrash Rabbah at the end of Parshas Chayei Sara #61 recounts the following anecdote that also appears in the third chapter of Megillas Taanis:

Alexander the Great wanted to ascend to Yerushalayim, but the Kusim tried to instill enmity within him against the Jews. They said to him, "Be warned! The Jews will never allow you to enter their Kodesh HaKodashim!"

Givah ben Kosem heard their slander and prepared two אנפילין (slippers or socks), which he adorned with two jewels that were worth a fortune. When the Macedonian ruler arrived at Har HaBayis accompanied by Givah, his companion feared to ask Alexander the Great to remove his shoes for halachic reasons. "Surely he will think that this is just a pretext to keep him out of the Kodesh HaKodashim as the Kusim had warned him," Givah reasoned.

So Givah said instead, "Your majesty should remove his shoes and put on these אנפילין since the floor of the Mikdash is slippery." The monarch complied and they entered the Mikdash together.

When the Minchas Yitzchak, ז"ל, told over this Midrash, he commented, "Although it is forbidden to enter the Mikdash with shoes, we can see that אנפילין are permitted. How do we know that they are not really considered shoes? The Gemara in Shabbos 66 implies that one may enter the Mikdash wearing any footwear considered invalid for chalitza. Since in Yevamos 101 the Mishnah states that אנפילין are unsuitable for chalitza, one may enter the Mikdash while wearing them.

The Midrash continues: "When they came to the Kodesh HaKodashim, Givah, himself a kohein, said, 'Until here we have permission to enter. But it is forbidden for us to go any further.'

Alexander the Great said in anger, "When I leave here, I am going to diminish you!"

Since Givah was very tall, he acted as if the king was saying that he would reduce him to average height instead of threatening to punish him. Givah quipped, "If your majesty can do that, he will be considered an expert physician and I will pay him very much indeed!"

Alexander the Great wanted to force his way into the Kodesh Kodashim anyway, but a snake came and bit him. The great ruler grew suddenly ill and had to turnback!

YOM TOV CONNECTION

In this week's daf the Gemara to illustrate that a Jewish court must be perfect quotes a possuk from שיר השירים which we read on פסח. There are various reasons given to explain the connection between פסח and שיר השירים. For example, the verse: "לנסתי ברכבי פרעה" is a reference to the Egyptians chasing the Jews into סוף ים. Another reason is based on the Midrash which says that the מלאכים sung שיר השירים during סוף ים קריאת ים סוף. (See שיר ים). The מדרש quotes this אלשיך הקדוש in explaining why it says שיר השירים אשר לשלמה instead of שיר השירים אשר לשלמה. שיר המעלות לשלמה or מזמור לדוד. Based on the above מדרש that this Song existed before שלמה wrote it, it makes perfect sense to describe it as a Song המלשל רשא and not לשלמה to denote the fact that he did not create it, but was designated to write it. Given the Song's origins it is appropriate to read it when we also read about ים סוף קריאת ים!

HALACHA HIGHLIGHT

Monetary Matters

מפיקנא סלקא דעתך והא על פי שנים עדים אמר רחמנא

Do you think he would collect money? Doesn't the Torah say, "According to the word of two witnesses?"

Rambam¹ rules that a judge, who has a strong sense of ambam rules that a judge, who has a strong sense of how a case should be decided, may decide monetary cases according to that sense even though there are no witnesses. What then is the purpose of witnesses if judges can decide cases even in the absence of witnesses? Answers Rambam, the testimony of witnesses is necessary for cases where the judge is uncertain. In such circumstances the Torah writes that the testimony of the two witnesses should be used to decide the case. Our Gemara, however, seems to undermine this ruling. The Gemara indicates that money can only be taken from one party to be given to another party when there are two witnesses. How then, could Rambam rule that a judge may decide the matter on his own sense of what is correct?

Rav Yaakov of Lisa², the Nesivos Hamishpat, answers that Rambam is, in fact, consistent with our Gemara and the only validity he assigns to the judges' assessment of the evidence is that the judge can effectively undermine the credibility of a suspicious contract but as far as taking money from one party to give to another even Rambam agrees that the judge does not have that power. The only circumstance where it would be allowed is when the evidence is obvious to anyone what the outcome should be but in cases that are dependant upon the discretion and opinion of the judge it is unacceptable.

Ramban³ disagrees with Rambam on this matter and maintains that monetary cases may not be decided without witness testimony under any circumstances. Even what appears to be very strong circumstantial evidence is unacceptable. Shulchan Aruch⁴, in theory, rules in accordance with Rambam on this matter but in practical terms accepts the qualification to this halacha mentioned by Rambam himself. Rambam⁵ writes that this allowance for judges to decide monetary matters according to their assessment of the circumstantial evidence applied only in earlier generations but nowadays since there is a greater prevalence of corruption and concern for an abuse of power it was agreed that matters would no longer be decided in this fashion.

1. רמב"ם פכ"ד מהל' סנהדרין ה"א
2. נתיבות המשפט סי' ט"ו סק"ב
3. רמב"ן בהשגותיו לספר המצוות ל"ת ר"צ
4. שו"ע חו"מ סי' ט"ו סע' ה'
5. רמב"ם שם ה"ב

MUSSAR FROM THE DAF

Knowing the Neshama

The Avnei Nezer once told his son the Shem MiShmuel that the Zohar says one should not marry a widow in the first year after her husband's death but it is permissible to marry a chalutzah within a year of her husband's death. What is the difference?

The Shem MiShmuel (Parshas Lech Lecha) explains that the reason one would not want to marry an Almanah during the first year is because there is a concept that the ruach of her first husband is still with her during the first year (this is because the neshama of a niftar is known to go up and down to shamayim during the 12 months after the petira). However, after the 12 months are over the neshama goes up and leaves the Almana. The Shem MiShmuel explains, that a man who does not have any children, stays attached to this world as the neshama does not have any נצחיות in this world. By contrast, a person that leaves over children has a source of נצחיות in this world, which then allows the neshama to go up and leave this world. Therefore, when a yevama has a child with the yavom, this creates the נצחיות of the brother who was niftar, and now allows the neshama to be free and go to shamayim.

And in a case where he doesn't want to perform Yibum, the mitzvah of chalitzah can create the same result. How so? A shoe represents the vessel which connects the body and the ground. The body is similar to the shoe in that it is the vessel that connects a person's higher soul (rooted in Shamayim) to his lower soul in this world. Therefore, when the woman removes the shoe from the Yevam, she is being מנטל the connection that the nefesh of the deceased has in this world. Through this action, she is enabling his soul to go upwards. This also explains why a Yevama is assur until Chalitzah or Yibum is performed with her (as her husband's רוח stays attached to her)

In a similar vein Reb Wolbe (AleI Shur, Chelek Aleph, 302) discusses how one can live forever. He explains if we identify with the neshama, then even when the גוף goes into the grave we live forever through our neshama which is eternal. Reb Wolbe explains that the best way to identify with the neshama is to be a giver in this world. As the neshama gives and the body takes. By being a giver we align ourselves more closely with our neshomos than with the bodies.

POINT TO PONDER

The Gemara described how רב שמואל asked רב יהודה to join in a דין for Chalitzah. He responded by saying that he is a גר and גרים can't join this ב"ד. Rashi writes that he and his father converted. Why does Rashi mention his father? How does רש"י know that his father converted?

Response to last week's Point to Ponder:

The גמרא says that רבא used to deal with a דין תורה of a lady before dealing with a man's דין תורה, because a lady has more זילותא. What would be the דין if a lady and a תלמיד חכם come together? Do we still give priority to the lady זילותא, or do we prioritize the תלמיד חכם because of כבוד התורה?

If the man coming to דין is a תלמיד חכם then it would be disrespectful to have him wait. Therefore the דין of prioritizing a lady's dispute would only apply if the other party in line does not include a תלמיד חכם. (See (ריטב"א).

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

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