

## INSIGHTS FROM OUR CHABUROS

### Give Him Lashes

אסבורו כופרי מברכתא חביטא ליה

The Gemara had earlier reported the opinion of R' Elazar that a man who claims that his wife was not a בתולה is believed. In that discussion, the Gemara clarified the conditions and the extent to which the statement of the husband is believed, but the point is that there is some credibility given to his report. The Gemara then brings the story of a recently married man who came to Rav Nachman and complained that his wife was not a בתולה. Rav Nachman ruled that he should be given lashes. This seems to be a contradiction to our accepting the man's statement as truthful. Nevertheless, the Gemara reconciles R' Nachman's ruling with the ruling of R' Elazar. Rashi and Tosafos each explain the exchange in the Gemara in different ways.

Rashi understands that the statement of R' Nachman was said as a plain comment. Although he is to be trusted, his expertise indicates that he frequents the harlots of the city. Therefore, he is believed, but he is to be given lashes for his confession. Tosafos learns that the Gemara first understood that R' Nachman felt that the man was lying, and that his ruling was that the husband deserved lashes for having spoken slander about his new wife. "Are the harlots of the city in front of him that he should be familiar with these things?" he asked. The Gemara first notes that R' Nachman certainly did not believe the man, although R' Elazar said he is believed. The Gemara then answers that R' Nachman did, in fact, believe the man, and his ruling to administer lashes was not because he thought he was lying, but because he suspected that he was visiting the harlots.

Both according to Rashi as well as Tosafos, the answer of R' Achai is that R' Elazar's earlier statement to believe the husband is only in reference to a previously married man, whose claim about his new wife is credible. A man who was never married before is not believed, and this is what R' Nachman was dealing with.

## PARSHA CONNECTION

In this week's daf the גמרא describes a test conducted by רבן גמליאל ב"ר to determine whether a כלה was a בתולה. In פרשת חיי שרה we read about the famous test conducted by אליעזר to confirm the he found the right girl for יצחק. The גמרא in ע"א א' ד' ע"א in גמרא says that אליעזר was one of three people who inappropriately asked for a sign. This begs an obvious question, why would אליעזר daven for a sign from ה' regarding רבקה? In fact all he had to do was ask people where he can find נחור's family? Furthermore we read at the end of last week's Parsha, that אברהם was informed of נחור having a granddaughter רבקה, which he probably shared with אליעזר. The אלשיך הקודש offers a beautiful explanation for אליעזר's actions. אליעזר was concerned that בתואל may not agree to send רבקה to יצחק, and even if they agree to the שידוך they may not want to let him take her, because he is a עבד. He therefore decided to do a test, and thereby he will be able to show them that this is Hashem's will. Like the Possuk (פרק כ"ד פסוק ג) says: מוד' יצא הדבר. Both בתואל and לבן said that they can't stop him from bringing רבקה back because clearly this is what ה' wanted.

## STORIES OFF THE DAF

### Canceling a Transaction

"חכמים תקנו להם לבנות ישראל... והם האמינורו..."

A man once purchased a jacket that was guaranteed to be filled with the highest quality feathers; he paid for it with a series of post-dated checks. After several payments had already been cashed, the customer returned to the store and confronted the seller with a demand to have the remainder of his checks returned to him. "I refuse to pay a penny more than I already have for the coat! You sold me an inferior product and demanded a price that should have bought the very best. Recently, the outer cover tore and I was able to see for myself that it is filled with mediocre feathers. Whatever money you've already been paid more than compensates for the jacket's real worth!"

The seller, for his part, was equally infuriated. "I sold you exactly what I told you, and I can't believe you have the chutzpah to lie straight to my face. This is merely a pretext to get out of paying the remainder!"

Someone familiar with this incident asked Rav Yitzchak Zilberstein, shlit"a, his opinion. "I am just curious as to what the halachah is in this case since each side seems to have a reasonable claim."

Rav Zilberstein responded, "Since the parties didn't come to me personally, this isn't a psak. In Kesuvos 9, we find that if a chassan comes to beis din immediately after his wedding and claims that his wife was not a besulah, he is believed and she is divorced without her kesubah. On the following daf, we see that the ruling is based on the idea that since the chassan has invested so much energy and resources into the arrangement of his wedding, there is a chazakah that he really wants to remain married to his new bride. It is assumed that the only reason why a normal chassan would sabotage his own marriage so soon after the wedding would be because he is telling the truth.

The Rav continued, "In this case, why should the buyer be able to return, so many months after the purchase was made, and suddenly decide that he was cheated? Just because he claims that the cover was inferior to what he thought he was getting doesn't mean that the seller should be prohibited from cashing the remaining checks?"

## HALACHA HIGHLIGHT

A Biblical Obligation?

להם לבנות ישראל לכתולה מאתים ולאמנה מנה חכמים תקנו

*The sages enacted for Jewish women [a kesubah] for a biblical worth two-hundred zuz and for a widow one-hundred zuz*

Tosafos<sup>1</sup> questions the language of Ashkenazi kesubos that state that a woman deserves her kesubah by Biblical mandate (דחזי ליכי מדאורייתא) when the implication of the Gemara is that the requirement upon a man to give his wife a kesubah is Rabbinic. Tosafos answers that our kesubos are written in accordance with the opinion cited later that the kesubah is of Biblical origin. Rambam and Rosh<sup>2</sup>, however, maintain that the obligation of writing a kesubah is only Rabbinic, as implied by our Gemara. Shulchan Aruch<sup>3</sup> rules in accordance with Rambam and Rosh, but Rema<sup>4</sup> writes that the custom is to include the phrase דחזי ליכי מדאורייתא. Chelkas M'chokeik<sup>5</sup> explains that although halacha is like Rambam and Rosh that the enactment of the kesubah is Rabbinic, nonetheless, once the financial obligations are documented, one becomes Biblically obligated to fulfill his commitments, and thus the language is accurate. Teshuvos Maharashdam<sup>6</sup> writes that in Saloniki they would include the phrase דחזי ליכי מדאורייתא since it could be understood in one of two equally valid ways. Either the obligation of the kesubah is, in fact, Biblical but even if the obligation is only Rabbinic, nevertheless, the husband commits himself to pay the kesubah as if it was Biblically mandated.

Poskim write that even in those places where the custom is to include the phrase דחזי ליכי מדאורייתא, if it was left out the kesubah is still valid. Although there are opinions who maintain that if the kesubah is Biblically mandated it must be paid from Tzuri currency and if it is only Rabbinically mandated it may be paid from Medinah currency, which is an eighth of the value of Tzuri currency, nonetheless it is not essential to the validity of the kesubah and the husband will only be obligated to pay the smaller amount<sup>7</sup>. Rav Yitzchok Zilberstein<sup>8</sup> is uncertain about this ruling and entertains the possibility that if the phrase דחזי ליכי מדאורייתא was left out the kesubah may be invalid.

1. תוס' ד"ה אמר ר' נחמן
2. ע' סדר כתובה כהלכתה שביבי אש ח"ב סי' י"ח אות ב'
3. שו"ע אה"ע סי' ס"ו סעי' ו'
4. רמ"א שם
5. חלקת מחוקק שם ס"ק כ"ו
6. שו"ת מהרשד"ם סי' קכ"ז
7. ע' סדר כתובה כהלכתה אות ג'
8. סדר כתובה כהלכתה שביבי אש ח"ב סי' י"ט

## MUSSAR FROM THE DAF

Now or Later

Rav Nachman says that we should give this person (who we suspect of immorality) lashes from a whip made from a palm tree (כופרא). Rashi explains that palm branches have thorns, as we know from the Gemara in Sukkah 33, that we don't use כופרי for a Lulav because of the klal דרכיה דרכי נועם. The Torah's ways are pleasant.

Why do Chazal apply the כלל of דרכיה דרכי נועם only by the mitzvah of Lulav and not by the branches that are used for lashes? Wouldn't it also be unpleasant if a person was given lashes by a branch that was full of thorns? Also why is the branch that is used to give makkos called כופרא.

There is a יסוד that when a person suffers in this world, it may be a כפרה for any averos they may have done in this world. Therefore, it would seem that it is better to suffer in this world, then to have to suffer more intensely in the next world. נשל א would be, if a judge tells a person awaiting judgment for their crime, that they have to remain on house arrest instead of going to jail, they would be elated to know that they are getting off so easy. While it might be difficult for this person to remain only in their home the fact that it can get a person out of a greater punishment makes the smaller punishment tolerable.

Perhaps that is פשט in our sugya. A person receiving lashes, knows that this is a כפרה for their עבירות therefore they can find meaning in it inasmuch as the punishment is taking away from any punishment in עולם הבא. This is seen through the word to describe the branch that is used כופרא—which has the same שורש as כפרה (forgiveness). Therefore, the fact that this branch has thorns is not a lack of pleasantness of the Torah. Instead, since the person knows this is a כפרה for him, while it may be extremely painful, he will have inner joy knowing that this helping to clear out future punishments that could be much more harsh.

Going through painful situations in life is never easy. However, if a person believes that the difficult situation that they had to endure, will be a כפרה for them, the situation can become tolerable to bear.

## POINT TO PONDER

The Gemara says that חכמים were מתקן a כתובה and they also said that if he claims פתח פתוח he is believed. It would seem that even if כתובה is דאורייתא he should be believed since he is the מוחזק. Every time two people have a dispute the one who is in possession is always believed when he has a firm claim. Here too, she wants to collect and he claims רבי that he doesn't owe her because she was not a בתולה?

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

The גמרא says "האומר פתח פתוח נאמן לאוסרה עליו" why do we need his statement to prohibit him from living with her. Presumably, a ספק should be enough. Just as someone who doesn't know if his wife went to the מקוה אסור to live with her regardless of his נאמנות?

The גמרא's statement that "he is believed" is not to imply that without this statement he would be permitted to her but rather to teach us that it is only as to אסור that we credit the claim and not regarding the כתובה. Alternatively, we can say that since he is obligated to live with her, we might think that he is not believed if it is only a ספק. This is similar to the ע"ב which says that if a husband makes a נדר that he will not live with his wife we force him to live her. The הרב זוד כהן and שיטה מקובצת (see נאמן here is that he is חידוש) (כתובות ח).

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