

שבת קודש פרשת ויצא | מסכת כתובות דף י"ב

לע"נ דבורה רבקה בת ר' יצחק

INSIGHTS FROM OUR CHABUROS

A Claim of Certainty

רב הונא ורב יהודה אמרי חייב, ברי ושמא ברי עדיף

f Reuven claims that Shimon owes him a hundred dollars, and Shimon responds by saying that he is not sure whether he owes it or not, Rav Huna and Rav Yehuda rule that Reuven's claim of certainty is believed, and he may collect the money from Shimon. The general rule is that we can only extract money based upon presentation of clear proof- המוציא מחבירו עליו הראיה. How are we to understand this fascinating opinion of Rav Huna and Rav Yehuda who allow Beis Din to collect money based upon indications that are not conclusive?

Pnei Yehoshua (commentating upon Tosafos "Rav Huna") explains that we have an assumption (חזקה) that a person will not confront another and claim money unless the claim is true. We do not assume that Reuven, in our case above, is deceitfully lying. Because Shimon does not counteract this position of Reuven, the money may be collected.

Chasam Sofer explains that with his counter-claim of doubt, Shimon is admitting that his possession of the money is not indicative of his ownership. Therefore, when Beis Din rules that it be given to Reuven, Beis Din is not actually extracting money from someone who is in full possession.

The (ח: יח) מובץ שיעורים (כ"ו) פארורים explain that the claim of certainty of Reuven is not powerful enough to win. However, every claim in court must have a claim to counter it. Reuven has registered a claim, and Shimon must respond. When he says that he does not know, the claim of Reuven wins because it has not been neutralized.

Tosafos explains that the claim of Reuven is exceptionally R' Yehuda and R' Huna maintain that he is obligated to pay because the certain claim is stronger than the uncertain claim whereas R' Nachman and R' Yochanan maintain that, due to the uncertainty of the matter, the money should remain with its current owner.

Abaye demonstrates that Shmuel agrees with the position of R' Huna and R' Yehudah. It is suggested that the dispute between R' Yehudah and R' Huna versus R' Nachman and R' Yochanan is the same dispute of the Mishnah between R' Gamliel and R' Eliezer versus R' Yehoshua.

R' Nachman asserts that he could even follow the position of R' Gamliel and the Gemara begins to demonstrate that R' Nachman is consistent with R' Gamliel.

PARSHA CONNECTION

In this week's daf the משנה discusses someone who eats by his father-in-law. The principal subject of this week's parsha is Yaakov's stay with his father-in-law לבן. When Yaakov first came to 'לבן house יעקב house יעקב הכי אחי אתה ועבדתני חינם: worked for a month without getting anything in return. ואימר לבן ליעקב הכי אחי אתה ועבדתני חינם: Lavan says, you are my brother and you worked for me for free, tell me what's your compensation. The beginning of the plop seems out of context, how does being his brother relate to working for free? Also, he should have asked how MUCH do I owe you, but instead he asks what do you want? The אלשיך הקודש was not looking for financial compensation, and therefore said as follows, you are my brother, meaning you are cunning like me, so you must have a hidden agenda, please tell what is your agenda. He therefore doesn't ask how much, but rather what do you want, to which יעקב replies by asking for.

STORIES OFF THE DAF

The Sure Claim

"אוקי ממונא בחזקת מריה..."

nce, a grocer approached one of his regular customers and said, "Your wife has been pilfering from my store. You owe me for all those items I saw your wife take that she didn't pay for!"

Although when the husband asked his wife about the grocer's accusation, she denied it, the husband was fairly sure that the claim was probably justified. He was well aware that his wife had had some trouble with kleptomania in the past, and so he asked Rav Yitzchak Zilberstein, shlit"a, if he was obligated to pay for his wife's theft.

Rav Zilberstein responded, "Although we find that in practical terms a husband is not responsible for what his wife steals (see Choshen Mishpat 349:1) this case is different. Since you or your children must have eaten from the stolen item, it comes down to whether the grocer is reliable. If we believe the grocer, the husband must pay. Based on Kesuvos 12b, we hold that even if a person makes a sure claim about a disputed sum, he is not necessarily believed without proof if the other party is unsure that his claim is well-founded. To discharge one's heavenly obligation, however, the unsure one must pay the disputed amount, as we find in Choshen Mishpat 79:9. In your case, the grocer appears to have a sure claim, but since your wife casts it into doubt, one might think you have no obligation to pay. However, I believe that your wife's kleptomania is like a chazakah that supports the grocer's claim. You must therefore pay. On the other hand, the grocer must swear how much she took since otherwise any unscrupulous grocer can claim whatever he wishes from the husband at any time."

HALACHA HIGHLIGHT

The Status of a Woman who had her בתולים Restored

אמר רבה זאת אומרת כנסה בחזקת בתולה ונמצאת בעולה יש לה כתובה מנה

Rabbah said: The Baraisa teaches that if one married presuming his wife was a בעולה and it turned out to be a בעולה she receives a kesuba worth one hundred zuz

ur Gemara discusses the issue of the value of the kesubah of a man who marries a woman presuming that she is a בעולה and discovers that she is a בעולה. Poskim debate whether a woman who is a בעולה is permitted to conceal this fact from her husband-to-be. One issue is whether concealing this information undermines the acquisition since the man is entering the marriage under false pretenses (חקח טעות). A second issue is whether concealing this information renders the kesubah invalid and the couple are prohibited to one another until a kesubah worth one hundred zuz can be written.

The L'Horos Nassan¹ was asked about the kesubah of a woman who had her בתולים opened when she was younger to allow blood to exit her body, and the opening was subsequently stitched closed. L'Horos Nosson responded that this matter would seem to parallel a dispute between Tosafos² and Tosafos Ri"d³. Tosafos seems to indicate that any time a woman's בתולים is not intact she is categorized as a מוכת עץ and her kesubah would be one hundred zuz. Tosafos Ri'd, however, disagrees and draws a distinction regarding how the בתולים was lost. The reason the kesubah of a woman who is a מוכת עץ is one hundred zuz is because the בתולים was damaged without her intent, which renders her less desirable. On the other hand, if a woman knowingly removes to prevent pain or discomfort it does not detract from her desirability and since she never cohabited there is no reason her kesubah should not be worth two hundred zuz. Upon further analysis he writes that since the doctors subsequently stitched closed the opening the woman could be considered a בתולה. This case would thus be compared to a girl less than three years old who is considered a בתולה regardless of what happened to her since it will regenerate. Similarly, since the doctor is able to repair the בתולים she is considered a בתולים and deserves a kesubah worth two hundred zuz.

> 1. שו״ת להורות נתן ח״ה סי׳ צ״א 2. תו״ס י״א: ד״ה ושמואל 3. תוס׳ רי״ד שם ד״ה איתמר

POINT TO PONDER

The Mishnah states that according to יהושע 'ז if a husband claims that his bride was not a בתולה and she responds by saying that she was נאנט after they were engaged she isn't believed. The words of the משנה are נאמנת simply say לא מפיה אנו חיין what does it mean, we don't live on her words?

Response to last week's Point to Ponder:

The גמרא says that גר קטן מטבילין אותו על דעת בית יברית how about his דין? Geyrus requires both מילה and טבילה.

There are two answers given by the ראשונים. The first is that the גמרא wanted to focus on טבילה which applies even to women. The second answer is that זכים לאדם tor the boy. (See שיטה מקובצת and ערב"א and ערב").

REVIEW AND REMEMBER

- 1. Does a woman receive a kesubah if her husband married her assuming she was a בתולה and it turned out he was wrong?
- 2. Is it permitted for a man to give his wife a more valuable kesubah?
- 3. What were the two stages for the development of the kesubah for the daughter of a kohen?
- 4. Explain the disagreement concerning someone who responds to a claim with the phrase "I don't know."