

שבת קודש פרשת בא | מסכת כתובות דף כ'

INSIGHTS FROM
OUR CHABUROS

By Rabbi Yitzchok
Guterman

אלא אמר רב נחמן רב נחמן אוקי תרי להדי תרי ואוקי ממונא בחזקת מריה

The Gemara brings a מחלוקת about עדים who forgot their testimony. רב הונא says that they have to remember at least some of it without looking at the שטר. רב יוחנן says they don't need to remember any of it. רש"י clarifies that they need to remember it once they look at the שטר. If even after looking at the שטר they don't remember it then they can't say testimony based on it as we have a principle of תוספות ולא מפייהם ולא מפי כתבם. רב ד"ה points out that a שטר is believed even though the random עדים who are מקיים the שטר don't know what happened. If so, certainly the עדים who saw it themselves can be מקיים the שטר even if they have zero recollection of what happened. The key difference is that they can't testify on their own as if they know what happened but can only say we know this שטר has our handwriting which makes it into a valid שטר. Once it has the status of a שטר it is believed because the שטר has an independent "power" as it is considered כמי שנחקרה עדותן בב"ד (meaning it is as if the testimony was already given in בב"ד). The הלכות עדות פרק ג' הל' ד' in רמב"ם says something fascinating. He says that מדאורייתא we don't believe the שטר for exactly this reason of כתבם ולא מפייהם! It is only a דין דרבנן that we have a right to believe a שטר and only because of the fear of לווין בפניו. It sounds like a גט would not work if the עדים don't recall it themselves. The רמב"ן asks many questions on this רמב"ם as does the ש"ך in סי' ק"כ. It seems to be an explicit פסוק in פסוקים. "שדות בכסף יקנו וכתוב בספר וחתום למען יעמדו ימים רבים" of נ"ך in פסוקים. The גיטין וקידושין ושטרין קנין are an exception where עדות בכתב are acceptable מדאורייתא since the purpose of the עדים in those cases are different. עיין שם באריכות.

PARSHA CONNECTION

In this week's daf the Gemara discusses a situation in which someone is reminded of an event he had previously witnessed and on the basis of the reminder testifies about the event. The assumption is that once he is reminded about the event he will recall it and testify based on his own recollection. In פרשת בא we find two מצוות which serve as a reminder to us regarding מצרים, namely יציאת מצרים, because the Torah gives for הבן פדיון. The reason the Torah gives for הבן פדיון is because הקב"ה killed the firstborn of the Egyptians but spared the Jewish firstborns. The אלשיך הקודש asks, how are born today related to the בכורות? (Being firstborn is not something passed through inheritance). The פרק י"ג פסוק ט"ז in פסוקים says: והיה לאות על ידכה ולטוטפת בין עיניך כי בחזק יד הוציאנו יהוה ממצרים. The פדיון הבן seems somehow connected to תפילין, and we need to understand why? The אלשיך הקודש explains that we perform the מצוה of הבן פדיון today as a reminder of what would have happened to us if we were still in מצרים. Just like we say in the מצוה וזכור... הוא יצא ממצרים. So too the מצוה of הבן פדיון should trigger a reminder that this could have been us. With this we can appreciate the connection to תפילין which are also meant as a reminder like it says הוציאנו יהוה ממצרים, meaning US not just our forefathers. Furthermore it says that the תפילין של ראש are to be placed "בין עיניך", instead of saying on your head (like it says על ידך), because our eyes help us imagine being in מצרים.

STORIES
OFF THE DAF
An Amputated
Limb

"ומוכי שכינ זרועותיהם..."

A certain Jewish man was unfortunately forced to surgically amputate a limb for medical reasons. After the man had recovered from the surgery, he remembered learning in Kesuvos 20b that those afflicted with שחין (most likely what is now called "Hansen's disease,") would bury their limbs that had fallen off. The man asked the Shvus Yaakov, zt"l, if he was obligated to bury the limb as is perhaps implied in Kesuvos 20b. The Shvus Yaakov replied, "This is no proof. Perhaps they buried the limbs because they wished to, but there is no obligation to do so. However, one must nevertheless be careful with the limb so that a kohen will not enter the room where it lies and become defiled by it." The Nodah B'Yehudah, zt"l, concurs that there is no obligation to bury the limb of a living person. He too explains that the reason why the mukei shchin did so in our Gemara was to ensure that they not defile anyone. In a contrary view, the Pachad Yitzchak, zt"l, reports that once someone's limb was removed from him, Beis Din did indeed force him to bury it. The Ma'avar Yabok brings the Sefer HaLikutim of the Divrei Yosef which says that the Rambam, zt"l, once came to someone in a dream and told him to bury his severed finger. Despite these divergent opinions, the Shvus Yaakov still brought a very compelling proof to support his position. "In Bava Kama 85a, the Gemara asks how we can evaluate the pain, tza'ar, of losing a limb when one has already been compensated for the actual loss of the use of the limb by paying nezek. The Gemara states that we evaluate how much a person who has a dangling and useless limb would be willing to accept as compensation to cut off his limb. In response, the Gemara rejects this as over-compensation, since the fact that his limb will be used to feed dogs of necessity adds an element of shame that makes him demand a higher price; such a figure will necessarily include some degree of payment of בוש. So we see clearly, if Chazal entertained the hypothetical situation of the limb going to the dogs that there is no outright obligation to bury it properly!"

HALACHA HIGHLIGHT Over the Phone

תנו רבנן כותב אדם עדותו על השטר ומעיד עליה אפילו לאחר כמה שנים

The Rabbis taught: A person may write his testimony on a document and testify about that matter even many years later.

The Mishneh Halachos¹ wrote that it is incorrect, except in pressing, exceptional cases, for a rav to answer questions over the phone, and a rav should certainly not respond over the phone to people he does not know, since it will inevitably lead to mistakes. This ruling was challenged on the following basis. The only related restriction that could be invoked for this ruling is that testimony must be given directly from the witness to the court and it may not be submitted to the court in writing. It would seem, however, that this restriction is a Biblical decree that is limited to testimony, and cannot be applied to other cases like answering questions. Additionally, Rabbeinu Tam² allows a witness to submit his testimony in writing and there is no reason to think that using a telephone should be any worse. Therefore, it should be permitted to ask and respond to questions over the phone especially when it provides significant benefit to the questioner.

Mishneh Halachos³ replied that his hesitation is not at all related to the case of testimony; rather his hesitation is from a practical perspective. The concern is that people have a tendency to be terser when talking on the telephone than they would be if they were talking to the rav in person. Consequently, they may decide to delete some details, thinking that they are not so important when, in fact, they could sway the halacha from one decision to another. This also causes the rav to make assumptions regarding certain matters that may not be true that will ultimately lead to an incorrect ruling. Another concern is that the rav may answer the question quickly and upon further consideration may decide to change his ruling, but without knowing who asked the question he will be unable to contact the questioner to inform him that he changed his position.

1. שו"ת משנה הלכות בהקדמה ובחלק ח'
2. שם ח"ב סי' קכ"ב
3. שם

MUSSAR FROM THE DAF Know Yourself

מסייע ליה לרבי אסי. דאמר רבי אסי: אין מקיימין את השטר אלא משטר שקרא עליו ערער והוחזק בבית דין

R' Asi teaches us that only if there was an ערער (challenge) on the שטר, only then would the שטר have the status of being מוחזק in Bais Din. Rashi, explains further that without a challenge there is a חשש that the שטר is fraudulent.

This statement seems counterintuitive!? Only if one challenged the validity of the shtar, would there be a possibility for the שטר to be certified? One would think that a שטר which was not challenged, would have more validity than one which claims were made against it.

The פשט is that once there was a question regarding the validity of the שטר, the Bais Din will be forced to thoroughly research the validity of the עדים and the שטר to insure that it was effected properly.

There is a great lesson to be learned from this יסוד!

Self knowledge is critical for all areas of Avodas Hashem. The more one knows one's self (specifically one's מעלות (attributes)), the more one can appreciate the gift of one's uniqueness and therefore know which areas to build with. Sometimes a person cannot be sure of who they are and what כחות they have been given. However, if they are placed in a situation in which there is an ערער upon them in which another or circumstances question their abilities and self, the person will find themselves truly forced to know themselves. Because of the ערער, they now have a level of clarity of self knowledge, that they would never have had they not been challenged.

While we never look forward to having an ערער on ourselves ח"ו or a שטר, the clarity that it brings afterward allows us to see Hashem's overriding השגחה.

POINT TO PONDER

The Gemara says that בר שטיא was a person who is sometimes lucid and sometimes not, and he would only win the case of תרי ותרי, if he inherited the property. If he bought the property than we can tell him that just like he could have been not in control of his faculties when he sold it, so too maybe he wasn't in control when he bought it. The גמרא earlier said that עדים would not sign on a שטר if it wasn't בגדול נעשה. Why can't we say the same here, namely that they wouldn't sign if he wasn't in control of his faculties?

Response to last week's Point to Ponder:

The גמרא states that if two witnesses signed a שטר and died, and now two עדים come and testify that they recognize the signatures but the witnesses were קטנים when they signed the שטר, the halacha would depend on whether the עדים' signatures were already confirmed, in which case we do not believe the second pair of עדים. On this the גמרא asks, isn't it תרי ותרי. Since the second pair is saying that the witnesses were קטנים and we have no contradicting testimony, why would it be considered two pairs contradicting each other?

The ראשונים explain that the question of תרי ותרי only refers to אנשים מוחמת נפשות or קרובים whereby the first pair of עדים can contradict them, but if for example they testify that they are רשעים than the second pair is believed. (See שיטה מקובצת).

For more points to ponder by Rabbi Yechiel Grunhaus, or insights by Rabbi Yitzchok Gutterman, please visit our website, dafaweek.org, or download the app

To share an insight from your Chabura please email info@dafaweek.org

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

To sponsor a publication, please contact Rabbi Zacharia Adler, Executive Director at info@dafaweek.org or call 507-daf-week. Sponsorship for one week is \$100

Sections reprinted with permission from the Chicago Torah Center