

שבת קודש פרשת יתרו | מסכת כתובות דף כ"ב

In memory of Dr. Aaron David Claman

INSIGHTS FROM
OUR CHABUROS

The Case of
אשם תלוי

מכדי תרי ותרי נינהו, והבא עליה באשם תלוי קאי

The Baraisa cites a case of a woman whose husband went away to a distant location and did not return. Two witnesses came and testified that the husband had died. Two other witnesses then came and testified that the husband had not died. The halacha is that the woman may not remarry, but if she did remarry, she need not be removed from the second husband. Rebbe Menachem bar Yosi argues against this last point, and he contends that even if she remarried, she must be removed from the second husband. He then clarifies that we only terminate the second marriage if the woman remarried after the second set of witnesses came and effectively cancelled the testimony of the first ones, that the husband had died. However, if the woman remarried before the second set of witnesses arrived, even Rebbe Menachem agrees that the woman may remain remarried to the second man, whom she married legally. The Gemara questions Tanna Kamma who allows this woman to remain remarried even if she acted after hearing that the testimony of her husband's death was questionable. Is this woman and her partner not liable for an אשם תלוי for acting where a chattas offering might be needed (this is a case of possible adultery)? How can they remain married? Tosafos here cites a dispute among the Amoraim in כריתות (17b), and only Rav Asi requires an אשם תלוי when a person eats a single piece of fat, not knowing whether it was שוון which is permissible, or whether it was חלב, which is prohibited. However, Chiya bar Rav holds that an אשם תלוי is only required when a person eats one of two pieces which were in front of him, one permitted and one prohibited, and he now does not know which one he ate. Tosafos in כריתות explains that our Gemara only mentions the אשם תלוי according to Rav Asi, as our case of marrying a new husband is only comparable to the case of partaking of a single item, not knowing whether it is permitted or not. Tosafos in our Gemara explains that the question here can be understood even according to Chiya bar Rav. The reason Chiya bar Rav in כריתות explains that אשם תלוי applies only when a person eats one of two pieces is that the case has to have the potential to be resolved, and this is usually when at least one piece remains which can still be analyzed. Tosafos notes that in our case the situation of marrying when the status of the first husband is questionable can also potentially be resolved, by means of more witnesses or with other evidence. Here, even Chiya bar Rav would agree that the case is eligible for an אשם תלוי.

STORIES
OFF THE DAF

The Words of
the Wise

"מנין שהפה שאסר הוא הפה שהתיר..."

Rav Yechezkel of Kozhmir, zt"l, once offered a certain moreh hora'ah important guidance in rendering halachic decisions.

"When you think about it, the process of halachah appears perplexing at times. For example, very often we find that while the Shulchan Aruch permits something, the Rema can be stringent. Is it possible that one has permitted that which is truly forbidden? Could it be that one or the other actually ate traifos, for example? The truth, however, is as we say, that 'these and those are the words of the living G-d.' There are many possible interpretations of the law, but the actual halachah depends on the sages of each and every generation. And what determines what the halachah really is? The speech of the chachomim. Each sage's word made the object or action in question permitted or prohibited. It is his words that reveal the רצון ה' for that particular question, in that particular place, and that particular moment in time. Accordingly, a נורה הוראה must use his faculty of speech very carefully and make certain never to abuse it. Every word he speaks should be in absolute holiness and purity!" When the Divrei Yisrael, zt"l, recounted this he would comment, "This explains the fact that halachic precedent doesn't necessarily follow the greatest scholar's opinion. Sometimes the halacha follows the lesser scholar because his speech is more pure than the greater scholar's. This can be understood from the Gemara in Kesuvos 22a which states: 'The mouth that prohibited is the mouth that permitted.' This can also be read differently. 'It is the mouth that permits. It is the mouth that prohibits.' In order for the words of the contemporary scholar to become halacha they must be spoken by a mouth that is holy and pure. It is the worthy mouth alone that permits and prohibits!"

PARSHA CONNECTION

In this week's daf the משנה discusses the case of a woman who claims that she was married and then divorced. The מדרש לקח טוב says that צפורה divorced משה and derives it from the word שלוחיה in the beginning of the פרשה which is similar to the words in תצא כי פרשת where when talking about a man divorcing it says ושלחה מביתו. The פרשה begins with the words: "וישמע יתרו כהן מדין חותן משה", the name יתרו was ascribed to יתרו only after he was מגייר, so why does the Torah call him יתרו already now? Furthermore if יתרו had already been מגייר, why is he still called כהן מדין which refers to his service to עבודה זרה? Also why does it mention here that יתרו was חותן משה? The הקודש explains that the תורה is teaching us a very important lesson in getting close to הקב"ה. Although יתרו was a כהן מדין he was able to become "יתרו" (a who had a פרשה named for him) because he listened, hence יתרו יושמע. Many heard about ים סוף קריאת ים סוף like it says that ALL the waters in the world split, but they didn't internalize the message as did יתרו. The reason why יתרו was זוכה to HEAR the message was because he was חותן משה. So every word in the פסוק is teaching us an additional lesson.

HALACHA HIGHLIGHT

A Retraction Based Upon a Justification

אמרה טמאה אני וחזרה ואמרה טהורה אני... אם נתנה אמתלא לדבריה באמת

If a woman declares that she is temai'ah and then declares that she is tehorah... if she offers a justification she is believed.

When a woman makes what seems to be a serious declaration that she is a niddah, she is considered a niddah based on the principle that one can render something forbidden by making a declaration that the object is prohibited – שויא אנשיה חתיכה דאיסורא. If, however, the woman retracts her statement and is able to give a justification for her first misleading statement, it is accepted and she is not considered a niddah. One example is a woman who assumed and declared she was a niddah because she found a stain on her garment but later realized that the blood came from a wound and she is not a niddah¹. Another example is a woman who declared herself a niddah in the midst of a quarrel she was having with her husband. If she later asserts that her original claim was a reaction to the quarrel and was not in fact true she has offered an acceptable justification and removes her status of being a niddah².

In certain cases a woman is not believed even if she offers a justification for her initial misleading statement. One practical example is a woman who told several people of her status as a niddah. Once the matter became public knowledge even a justification is no longer accepted to change her status³. A second case is if a woman conducts herself like a niddah for thirty days or longer, she is not believed to change that status even with a justification⁴.

On the other hand, there are certain instances where even a simple retraction is accepted. One case is where within approximately two seconds (תוך כדי דבור) she immediately retracted her

declaration that she is a niddah⁵. A second example is where it was obvious all along that her statement was made in jest and she never intended to make a serious declaration that she is a niddah⁶. A third example is where it is clear and evident that her initial declaration that she is a niddah was provoked by the anger she had towards her husband (in contrast to the earlier halacha where it was not obvious)⁷.

1. ש"ך יו"ד סי' קפ"ה סק"ג
2. ע' שו"ת הרדב"ז ח"ד סי' רס"ד
3. ע' ט"ז שם סק"ב בשם מהר"ל מפראג אולם ע' בתורת השלמים שם אות ג'
4. פת"ש שם סק"ה
5. רמ"א שם וע' ג'
6. רמ"א שם וע' ערוה"ש סע' י'
7. רמ"א שם וע' ערוה"ש סע' י"ב

POINT TO PONDER

The Mishna says that a woman who claims that she was married and got divorced is believed because הפה שאסר הוא הפה שהתיר, but if there are witnesses that she had been married she is not believed. Do the witnesses have to come before she made her claims?

Response to last week's Point to Ponder:

According to the חכמים that the עדים that are הלוואה שטר are testifying on the actual שטר and not certifying the שטר why isn't it considered only a פה? מלוה על פה? Could the לווה claim פרעתי לווה?

When the גמרא says that they are testifying שטר שבשטר, על מנה שבשטר, it doesn't mean that they are only testifying about the loan and not about the שטר, what it means is that the main objective of the testimony is to confirm that the loan happened. Alternatively once we confirm the contents of the שטר it automatically takes off the ערעור of the לווה and it reverts to its original status as a שטר בשטר. (פני יהושע ובית יעקב see).

REVIEW AND REMEMBER

1. When is it permitted for a kohen to marry a woman who was kidnapped?
2. Explain אמתלא.
3. What is the point of dispute between Tanna Kamma and R' Menachem bar Yosi?
4. When would a woman behave brazenly to her husband?

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