

## INSIGHTS FROM OUR CHABUROS

### Beis Din Should Not be Disgraced

תנא קמא סבר כיון דאחתיניה לא מסקנין ליה חיישינן לזילותא דבי דינא

The Gemara discusses a case where Beis Din responded to a developing situation. A certain person was assumed to be the son of a kohen. A rumor emerged that his mother was a chalutza or divorcée, and the Beis Din determined that his status as a kohen was void. A single witness came and declared that he knew that he was a valid kohen, and his status was reinstated. Two witnesses then came and said that he was, in fact, the son of a divorcée or chalutza, and Beis Din again demoted his status. One more witness arrived, and joined the first single witness in declaring him a valid kohen. Although both Rabbi Eliezer ben Shimon and Chachamim agree that this final single witness joins with the previous single witness to comprise a pair, they argue whether Beis Din will reinstate the person as a kohen. Rabbi Eliezer holds that Beis Din would appear disgraced due to their having ruled too many times in this case, so we cannot restore this kohen to his position.

Rashi explains that the specific problem in Beis Din appearing indecisive and capricious is when they have to change their same ruling twice. After all, in this very case the Beis Din first responded to the rumor, but they were willing to alter the initial decision and promote the kohen when the first single witness arrived. It is only when the two witnesses demoted him and the second single witness arrived that Beis Din was concerned about the disgrace factor. It was only when they were faced with a second reversal of his demotion that they resisted.

Tosafos, however, explains that the concern to preserve the reputation of Beis Din is a factor with even one reversal. The reason why the court was not reluctant to promote the kohen when the first single witness arrived even after his being demoted when the rumor had spread is that the initial reaction to the rumor was not based upon witness testimony and a court decision. However, when Beis Din alters the lowering of the status of the kohen which was due to a rumor, this is not viewed with any element of disgrace. The problem is the one change which the Beis Din makes later to promote the kohen based upon the second single witness, after having demoted him due to the two witnesses who had arrived earlier.

## PARSHA CONNECTION

In this week's daf the Gemara discusses whether מעשר can be used as a זקקה for חזקה. Originally, מעשר received ליום and עזרא changed it. This week's parsha alludes to a similar change. Before the חטא העגל the עבודה in the משכן was going to be performed by the בכורות in each family, but they lost this privilege due to the חטא העגל. The Gemara says: שמות פרק לב פסוק כט in פסוק ה' כי: ויאמר משה מלאו ידכם היום לה' כי: איש בבנו ובאחיו ולתת עליכם היום ברכה. The חזקוני explains that this ברכה is a reference to a פסוק in עקב - פרשת עקב which says that after the עגל Hashem separated לוי שבט לוי the whole בני ישראל. When משה רבינו said לוי the whole בני ישראל participated in the עגל, why was לוי the only ones who came forth? The חזקוני explains that לוי שבט was the only שבט where everyone came forth because no one from בני ישראל participated. The reason for this was because משה רבינו was from their שבט they all believed in him and refused to go along with the עדה. Perhaps the ברכה which is mentioned in this week's פרשה refers to the מעשר as well as the עבודה.

## STORIES OFF THE DAF

### The Kohen's Wife

האשה שנחבשה בידי עובדי כוכבים... אסורה לבעלה

Many difficult halachic issues needed to be confronted after the devastation of the Holocaust. One of the more wrenching of them was the uncertain status of the wives of kohanim. After all they had suffered and the miracle of being reunited with their wives after the war, were kohanim now required to separate forever? As we see on today's daf, a woman who is captured under the dominion of non-Jews is prohibited to return to a kohen husband even if she was only captured for the purpose of ransom. Although this rule applies to Yisraelim as well, the unique circumstances of WWII eliminated the problem for non-kohanim. In the case of the wives of Yisraelim, the captive woman's willingness is a determining factor of her status. Since it was clear that the Nazis were interested in destroying the Jewish people, any Jewish woman married to a Yisrael could be assumed to have been forced. But what is the law about the wives of kohanim who are prohibited even if they were unwilling?

When the Satmar Rav, zt"l, was asked this question by a kohen he replied, "Definitely." He explained, "One reason is because the Nuremberg laws prohibited 'Aryans' from having relations with Jews; it was a criminal offense punishable by a prison sentence. There is an argument between the Rishonim as to whether this should be considered a mitigating factor, but I have reason to say that even according to those who disagree your case would be an exception. The dissenters felt that the threat of punishment is insufficient because it is most likely that the authorities would ignore any infraction; most threats of punishment in such cases were ostensibly for the protection of the captive woman. However, the Nazis' reasons for punishment were entirely different; it was part of a long and determined campaign to 'cleanse' non-Jewish society of the so-called Jewish taint. This is a unique deterrent, one based on the non-Jews' self-interest, and on this basis I am מתיר."

## HALACHA HIGHLIGHT

### Utilizing a Doctor's Exam for a Captive

האשה הנחבשה בידי עבדים... ע"י נפשות אסורה לבעלה

*A woman taken into captivity by idolators... if it was for capital crim she is prohibited to her husband (because of the suspicion that the idolator violated her.)*

**A** certain kohen became engaged to a בתולה who had been held in the concentration camps. It then occurred to them that there should be a concern that she was violated while in captivity and as a result they should not be permitted to marry. The Chelkas Yaakov<sup>1</sup> wrote at length about the topic and offered many reasons they should be permitted to marry. He wondered, though, whether a doctor's exam to determine whether she is a בתולה is appropriate since any time there is a chazakah that could be clarified, it is necessary to make that clarification. More generally one could ask why any captive בתולה is prohibited when it is possible to check her status by having her sit on a barrel like the Gemara (!) mentioned earlier. The Taz<sup>2</sup> answers that examining a woman using a barrel is ineffective since there is the suspicion that the idolater did הערה, which also prohibits her to a kohen.

Chelkas Yaakov concluded that an exam is unnecessary in this case and based his conclusion on a principle recorded in Pischei Teshuvah<sup>3</sup>. Pischei Teshuvah writes that the only time it is necessary to perform an exam is when, following the exam, the matter will become definitively clarified. If, however, the exam can only prove whether or not the item is prohibited but it will not prove definitively whether it is permitted, an exam is not required. Therefore, a doctor's exam can only demonstrate that she is not a בתולה and thus prohibited, but it cannot prove that she is permitted since according to Taz there is the concern that the idolater performed הערה. Consequently, since the exam will not be conclusive it is not necessary to be performed.

He then suggests that the exam should be done since it is possible to prove that she is certainly prohibited and to not perform an exam is equivalent to shutting one's eyes from something prohibited. He concludes, based on a comment of Noda B'Yehudah<sup>4</sup>, that if following the exam there will only be a possible prohibition, rather than a definitive, an exam is not necessary. Furthermore, the Gemara<sup>5</sup> indicated that it is not respectful to examine Jewish women for these matters; therefore we should not suggest these exams when not absolutely necessary.

1. שו"ת חלקת יעקב אה"ע סי' מ'
2. ט"ז אה"ע סי' ז' ס"ק י"ג
3. פת"ש י"ד סו"ס ק"י
4. שו"ת נדע ביהודה מהד"ק י"ד סי' נ"ז
5. גמ' לעיל י

## POINT TO PONDER

**The Gemara discusses** a story of someone who said that he recalled being taken to the מוקה and then being fed תרומה. He adds that they used to call him יוחנן אוכל תרומה. Why is this last statement necessary? He already said that he was fed תרומה.

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

The תרומה quotes רשב"ג that if we saw someone performing נשיאות כפים in Alexandria of old it is proof that they are ארזים. Why is it relevant to us now to know what was once the case in Egypt?

Even after the community left Alexandria the prior practice could be relevant to a case where witnesses saw someone's grandfather do נשיאות כפים in Egypt years ago, we can use this testimony to confirm the person's heritage.

## REVIEW AND REMEMBER

1. Why is maaser rishon given to kohanim rather than Levi'im?
2. How many people does it take to mount a challenge to a person's status?
3. What is the issue of דינא דבי דינא?
4. Is a woman imprisoned by idolaters assumed to have been violated?

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