

## IYUN ON THE DAF

By Rabbi Yitzchok Guttman

כל קבוע כמחצה על מחצה דמי

The Gemara asks how we know to make a גזרה שוה from אורשה, maybe we should make the גזרה שוה from the word בתולה. Some of the ראשונים here are bothered how we can suggest just making up a new גזרה שוה. Don't we say from the Gemara that a גזרה שוה must be a מסורה from your Rebbe and can't be made up? The ריטב"א gives a fundamental answer: in most cases the הרוסם of exactly what word to make the גזרה שוה with. What they knew was that there was some גזרה שוה made in this ענין and they had to use rules and סברא to decide what it was. Therefore, the Gemara will say that sometimes say a גזרה שוה needs to be "מופנה משני צדדין" or "מפנה אחד" or else "למדין ומשיבין" which means if the גזרה שוה isn't obviously open for a דרשה then we can ask questions on it and reject it since it may have not been the right word to make the דרשה from. (However, there are times when they had the actual word passed down as well such as in the case of ע"כ ע"כ in סנהדרין דף פ"ט ע"כ ע"כ in מסורה where ד"ה ר' שמעון רש"י says the word itself was part of the מסורה.)

## PARSHA CONNECTION

In this week's daf we learn that someone who strikes an animal is בין שוגג למזיד בין מתכוין לשאין. whether it was intentional or not. מתכוין בין דרך ירידה לדרך עליה. We find a very similar concept in פסוק with regards to a נזיר who becomes טמא, the פסוק in ו' פסוק ט' וכי ימות מת עליו בפתע פתאם וטמא ראש נזרו וגלח: says פרק ו' פסוק ט' A נזיר who became טמא under any circumstance must bring קרבנות and start again, like רש"י writes רש"י. בפתע זה אונס. The Tורה writes that these קרבנות are brought for a חטא like it says: וכפר עליו מאשר חטא על הנפש. The Gemara in פסוק ט' explains that the נזיר sinned because he deprived himself from drinking wine, and he is therefore called a חוטא. This פסוק refers to a נזיר who became טמא, and is bringing these קרבנות after becoming טהור. Why is he singled out to be called a חוטא, whereas a נזיר who didn't become טמא isn't? Both of them deprived themselves from wine, but only the one who became טמא is called a חוטא? The Gemara offers the following explanation, the נזיר who didn't become טמא elevated himself to be called קדוש during the days of his נזירות. However the one who became טמא has to start counting again from the beginning, and days which he counted prior to becoming טמא do not count towards his נזירות. This is why he is called a חוטא, because the days that he deprived himself from wine before becoming טמא, no longer count as "holy" days. With this he explains why the פסוק says: והימים הראשונים יפלו כי טמא נזרו. The answer is that their value falls, because they no longer count. Our challenge in life is to make sure that every day counts!

## STORIES OF THE DAF

True Justice

אף מכה אדם לא תחלוק בו בין שוגג למזיד

On Kesuvos 38 we find that murder must be punished appropriately. Nothing should mitigate the correct punishment for a killer, whether it is galus for negligent homicide or the death penalty for premeditated murder.

A Jewish convict who had done sincere teshuvah while incarcerated had just finished his twelve year prison sentence for being an accessory to murder. Following his release, he found that he was stuck in a thorny dilemma. A former friend had received an eighteen-year sentence for perpetrating the murder for which he was convicted as an accessory. In truth, however, the baal teshuvah had himself done the crime and it was his Jewish friend still in prison who had served as his accessory. In prison, this former friend had sworn that his mission in life after release would be to kill the baal teshuvah who had managed to get off so easy.

The first halachic question was if he had an obligation to admit that he was a better liar, and his friend was still in prison only because of his lies. Should he turn himself in to enable the earlier release of his former friend? Should he confess to his real crime and serve a longer sentence? The more difficult question revolved around the fact that his former friend had sworn to kill him. How could he enable the early release of a man who is a clear threat to his own life? Was he not a rodef?

These questions were posed to Rav Yosef Shalom Elyashiv, zt"l, and his response was as follows:

"You don't have to admit that you lied, since the accessory to murder whom you know feels no remorse, and he deserves at least 18 years in prison. Even so, it is not in the hands of every person to act on his determination that another who is not actively trying to hurt or kill him is a rodef. Especially since, in your case, the threat was made long ago."

Rav Elyashiv concluded with some practical advice, however. "Since there may be a real danger from this man, it is incumbent upon you to leave Israel. And if it is possible that he will find you in chutz la'aretz, you must have plastic surgery done to alter your appearance!"

## HALACHA HIGHLIGHT

### The Funds Used to Pay for a Kesuba

“כסף ישקול כמוהר הבתולות” (שמות כ”ב: ט”ז)

*“[The seducer] shall pay shekalim like the settlement made to besulos”*

There is a well-known disagreement (See Daf Digest #925 Kesubos Daf 10) whether the obligation to provide a kesubah for a besulah is Biblical or Rabbinic. Some Poskim<sup>1</sup> point to the phrase of the Torah, “כמוהר הבתולות – The settlement made to besulos” as an indication that a besulah should receive fifty Biblical Shekalim, or two-hundred zuz, for a kesubah. Additionally, the opinion of R’ Shimon ben Gamliel is that the obligation to pay a kesubah is Biblical and following the rule<sup>2</sup> that halacha follows R’ Shimon ben Gamliel’s opinions recorded in the Mishnah this should be the halacha. On the other hand, many of the Gaonim and Rishonim<sup>3</sup> reject this position and maintain that the origin of the kesubah is Rabbinic. The phrase “כמוהר הבתולות” is referring to the payment made to the victim of seduction, but there is no reference to an obligation to pay a kesubah. Additionally, the rule that the halacha follows R’ Shimon ben Gamliel’s opinions that are recorded in the Mishnah is not absolute since many Poskim maintain that the principle has only limited application. One difference between these two approaches is whether the money is paid in Tzuri currency if a kesubah is biblical, or Medinah currency, which is one-eighth the value of Tzuri currency, if it is Rabbinic.

Within this discussion, Chelkas M’Chokeik<sup>4</sup> writes that although Rosh maintains that the kesubah obligation is Rabbinic he, nevertheless, mandates payment with Tzuri currency. In contrast, although Ramban maintains that origin of the kesubah is Biblical, nevertheless the value of the kesubah is not dictated by the Torah, consequently, it is paid in Medinah funds. Rav Ovadiah Yosef<sup>5</sup> notes that Ramban in numerous places states that the obligation to pay a kesubah is only Rabbinic and the reference cited by Chelkas M’Chokeik was from the commentary of Ramban where he was explaining the position of R’ Shimon ben Gamliel. That should not be misinterpreted as an expression of Ramban’s opinion especially when he clearly rejects Rashi’s comments that the kesubah obligation is Biblical.

1. ע' שו"ת יביע אומר ח"ג אה"ע סי' י"ב אות א' בשם הרא"ש
2. ע' תוס' י"ד"ה אמר ר' נחמן אולם ע' בשו"ת יביע אומר הנ"ל מש"כ על כלל זו
3. שו"ת יביע אומר הנ"ל
4. חלקת מחוקק סי' ס"ו ס"ק כ"ד
5. שו"ת יביע אומר הנ"ל אות ו' ע"ש

## MUSSAR FROM THE DAF

### Taking their Place

דבעי רבא: יש בגר בקבר, או אין בגר בקבר? יש בגר בקבר –  
ודבנה הוי, או דלמא: אין בגר בקבר, ודאביה הוי

The Gemara discusses a case when somebody molested a girl when she was a נערה and before they went to court she died. The Gemara asks that perhaps בגרות takes place even after the girl dies and therefore the payment shouldn't go to the father. Tosafos asks how can this קנס go to her kids. Don't we have a כלל that one cannot bequeath one's קנס that they are owed since it is not a real asset?

Rav Elchanan in יב סימן יב gives a fascinating answer. He explains that there are certain times when a child can stand in the place of the parent not because of הלכות ירושה but rather because he is an extension of the parent in this world. That seems to be what our Gemara is suggesting. It's not pshat that the girl is aging after חיתיה, rather once she dies her son now takes her place and she has thus left the רשות of her father. The child stands in the place of the parent, and they can collect the קנס. It is not a דין ירושה.

This concept of the child taking the place of the parent after death has not only halacha ramifications but can also give חיזוק to a person who has lost a parent. This concept teaches us the awesome opportunity that a יתום has. He is an extension of his parents in this world and thus he should realize how significant all of his actions are. He is not only living for himself, but carrying out the values of the parents in this world and therefore through his actions which reflect on his parents he is actually an extension of them and his מצות are like care packages sent from this world to the next.

## POINT TO PONDER

**The Mishna writes** נערה שנתארסה ונתגרשה. Why did the נערה leave out נתארמלה? Would the din be any different if she was widowed?

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

The גמרא says that if we find the killer after the עגלה ערופה is killed, he still gets מיתה. Why would we think that he should not get punished?

The obligation on בית דין is to cleanse the “stain” of the community, which was caused by the murder. This is separate from the punishment that the murderer must receive. If the murderer is caught and punished before they bring the עגלה then both objectives are accomplished. However if he wasn't caught earlier the הוה אמינא was that בית דין is no longer obligated to cleanse the “stain”. הקב"ה will deal with the murderer in his own way. (See אילת השחר).