

**ראש השנה | מסכת כתובות דף נ"ג**

**INSIGHTS FROM OUR CHABUROS**

**Support for the daughter of the yevama**

בעי ריש לקיש בת יבמה יש לה מזונות או אין לה מזונות

**R**eish Lakish presents an inquiry regarding a case where a yavam performed yibum with the yevama, and a daughter was born. If the yavam, her father, now dies, does the daughter receive support from the brothers from the estate of her father? On the one hand, we know that the kesubah of the yevama herself is only collected from the estate of the first husband. This would lead us to say that the second husband, the yavam, is responsible for neither the kesubah nor the conditions of the kesubah (תנאי כתובה), namely, support for the daughter. On the other hand, if the kesubah cannot be collected from the estate of the first husband, for example where there are no assets to be distributed, the obligation for the kesubah reverts to the second husband. This is a rabbinic enactment in order that it not be too easy for the second husband to dismiss the yevama from being his wife. Therefore, perhaps even the conditions of the kesubah are also his responsibility, including support for this daughter. This question remains unresolved (תיקו).

Tosafos notes that the inquiry of Reish Lakish is only posed in reference to support for the daughter of the yevama, but not regarding the yevama. The reason is that it is obvious to Reish Lakish that the yevama certainly receives support from the second husband. In reference to her, we would say כתובה ככתובה, and that just as the kesubah itself becomes the responsibility of the second husband, he would also assume the ancillary obligations. And, the question is only valid if there are no funds available from the estate of the first husband. If there are funds from the first husband, the daughter would receive support from them. Tosafos then brings others who explain that the query of Reish Lakish is valid even if funds from the first husband are available. We understand that the first husband only promised to support any daughters which would be his own. However, the second husband might assume responsibility for his own daughter.

**STORIES OF THE DAF**

**Silence is an Admission**

“סבר מירתח רתח...”

**O**nce, a pair of businessmen who often invested together had a falling out. One was very upset because he felt that he had been cheated. Since the two had trusted each other implicitly up until that point and there was no corroborative documentation, the accuser found that it would be next to impossible to prove his claim in beis din. After he unburdened his heart to a sympathetic friend, the accuser's friend offered what seemed like a plausible strategy. “Even if you haven't got conclusive proof, you can still outsmart your former partner. As is well known, the Talmudic rule is ‘shetikah k'hodaah’—silence is like an admission. So if you confront him in front of witnesses and he remains quiet, you have him!”

Soon afterward, the man with the grievance confronted his former partner publicly, loudly lamenting, “How could you have cheated me when we have always worked together and been the best of friends? How could things have come to a state where I am forced to summon my former good friend to beis din?” Although even went so far as to specify how much he was owed and exactly how he had been cheated in front of a group of people, the accused remained silent. When they came to court, the accused denied everything. The plaintiff wanted to know: did his opponent's silence in the face of a public admonition constitute a halachic admission or not? The Shut Afarkasa D'eyna, zt"l, ruled, “‘Shetikah k'hodaah’ is definitely not a universal maxim. Silence is not tantamount to admission in this case. One proof is found in Kesuvos 53a. The Gemara tells us that when Rav Pappa coerced Yehuda bar Mareimar to accompany him on a visit to Abba Surah to convince him to give a bigger dowry for his daughter, Yehuda sat in silence. Abba Surah thought Yehuda was silent because he was angry that the dowry Abba was willing to give his daughter was insufficient. Although Abba had a change of heart, it came out that Yehudah's silence was not out of anger at Abba at all! So we see that although sometimes remaining silent is tantamount to outright admission, at other times it is not!”

**YOM TOV CONNECTION**

**In this week's daf** the גמרא says that one should not transfer an inheritance from one son to another, because we don't know what kind of children they will have. In the הפטרה for the first day of ראש השנה we read that חנה was unwilling to give up on שמואל in exchange for another child. She was insisting on keeping him alive, and was confident that he would grow up to be someone very special. Based on our גמרא which says that one doesn't know how a child will turn out, why was חנה so confident? Why was she זוכה to have שמואל? The מדרשים quotes two fascinating מדרשים that answer these questions. The midrash writes that every year אלקנה would travel to the משכן with his family and stay in the city center to encourage others to follow him and his family to the משכן. He used a different route every time, so that over the years he was able to inspire many Jews to follow him. (See ילקוט שמעוני below), in that merit הקב"ה told him that שמואל will come from him.

אמר לו הקב"ה: אלקנה, אתה הכרעת את ישראל לכף זכות וחנכתם במצות זכו בים על ידך, אני אוציא בן מנחך שיכריע את ישראל לכף זכות ויחנך אותם במצות. A second מדרש says that a voice used to announce the coming of שמואל who will salvage the Jews. In fact every lady who gave birth to a boy used to name him שמואל with the hope that she will merit to bring שמואל into this world. But when the boys grew up and didn't behave properly they realized that this is not שמואל. However when חנה had שמואל the שמואל stopped and that's how she knew that she had the real שמואל. Wishing everyone a חתימה טובה and הצלחה with all of our children and grandchildren!

## HALACHA HIGHLIGHT

Withholding an inheritance from a “bad” son

לא תיהיו בעבורי אחסנתא אפילו מברא בישא לברא טבא

*Do not be present when an inheritance is transferred even from a bad son to a good son*

The Chasam Sofer<sup>1</sup> explains that the bad son – ברא בישה – does not refer to a son who is a heretic; rather it refers to one who is either not so careful in his fulfillment of mitzvos or is disrespectful to his father. The implication of this comment is that it would be permitted to transfer property away from a child who is a heretic so that he should not receive anything as an inheritance. The Maharam Shick,<sup>2</sup> a student of Chasam Sofer, also writes that a father who has a son who is an אפיקורוס or does not practice Judaism does not have to be concerned with the possibility that the child may have children who are deserving since heretics do not raise their children with Torah values. The Shearim Mitzuyanim B’Halacha<sup>3</sup> disagrees with this conclusion and citing a comment of Tosafos in Avodah Zarah<sup>4</sup> indicates that the restriction against transferring an inheritance from a bad son includes a son who is a heretic.

Rav Moshe Feinstein<sup>5</sup> commented that in his opinion it is obvious that the bad son mentioned in the Gemara refers to one who is not careful in his fulfillment of mitzvos but believes in Hashem and His Torah and sends his children to day school. This type of person may have children who are upright because as wicked as the father may be in certain areas of his life the fundamentals of his Judaism are in place. The children of a heretic, on the other hand, and one who knowingly and intentionally violates Shabbos and does not send his children to day school will almost never end up as upright Jews. Consequently, since the likelihood of one of these children ending up righteous is slim it is permitted to transfer the inheritance to one of the other children.

1. שו"ת חת"ס חו"מ סי' קנ"ג
2. שו"ת מהר"ם שיק חו"מ סי' מ"ג
3. שערים המצויינים בהלכה סי' קצ"ג קו"א סק"ז
4. תוס' עבודה זרה כו: ד"ה אני
5. שו"ת אג"מ חו"מ ח"ב סי' נ'

## MUSSAR FROM THE DAF

The Stabilizing Factor

מאי דעתך – משום דאמר ליה שמואל לרב יהודה: שיננא, לא תיהיו בעבורי אחסנתא אפילו מברא בישא לברא טבא – דלא דינא מאי זרעא נפיק מיניה

In our Gemara Shmuel tells Rav Yehuda not to transfer a Yerusha from a bad son to a good son, as one doesn't know who will come from that “bad” son (perhaps that bad son will father worthy children.)

The Yeraim asks a well known question from Avraham Avinu. He asks how did Avraham give all his נכסים to Yitzchok. Isn't that a problem of אכסנתא מברא בישא לברא טבא (giving one's Yerusha from one son to the other son). We know that Avraham fulfilled the complete Torah אפילו דינים דרבנן?

Avraham fulfilled the Torah al derech chassidus. This means that he did mitzvos even though he was not commanded to do so. Once we were commanded in the Torah, one couldn't switch the Yerusha. The question is, wouldn't one think that if one is doing the mitzvos al derech chassidus, that they would even be more careful in keeping all the particulars of the Torah. Perhaps the Yeraim means to explain that when one keeps the Torah through one's own sechel and deduces the halachas there is more room for one to use one sechel to deduce when halachas will or won't apply. However, when one keeps the Torah because it now is a mitzvah from Hashem, then there is now a level of Yirah within the mitzvah. Yirah creates a “stabilizing” factor, that requires one to only perform the mitzvah as it was given over.

We see from our Gemara how careful we have to be when fulfilling Mitzvos. We have to fulfill them exactly as the halacha prescribes. Rationalization can lead one to miss the mark in long term fulfillment of mitzvos.

## POINT TO PONDER

רש"י ד"ה אין לה מזונות explains this to mean her support when she is widowed. Since מזונות for a אלמנה is only provided until she collected her כתובה, what does he mean that she doesn't have מזונות? Since she doesn't have a כתובה why would we think that she has מזונות at all? (Even if not for the fact that כתובה ככתובה).

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

The גמרא says that in case the husband dies before he was able to free his wife from captivity, the יתומים are not obligated to free her, because the תנאי for freeing one's wife includes returning her to be his wife. In this case, since he died we cannot fulfill this condition. What would be the הלכה by a wife of a husband? Since he cannot, in any event, live with her would the יתומים have to redeem her?

The מהר"ם שיק writes that it would not make a difference, because of פלוג .