

**שבת קודש סוכות תשפ"ד | מסכת כתובות דף נ"ה**

**INSIGHTS FROM OUR CHABUROS**

**Instructions to the witnesses and arranging a קנין**

אמר לעדים כתבו וחתמו והבו ליה קנו מיניה לא צריך אימלוכי ביה

The Gemara is in the middle of presenting a series of disputes between the students at Pumbedisa and the students of the city of Mechasya. One case is where a landholder instructs witnesses to write and sign a document to transfer his field to another person. All opinions agree that the halacha is that if the witnesses also accept the land on the part of the receiver by means of a formal קנין, such as סודר־חליפין, the witnesses may record the transaction in a document even without further formal instructions from the giver. The case which is disputed is where no transaction took place after the initial instructions to record the transfer. The students of Pumbedisa hold that even in this case, the witnesses may write a document, relying simply upon the instructions given them initially. Here, the students of Mechasya disagree and they hold that the witnesses should not record the event without specifically being told to do so. Rashi learns that this case is referring to where the field is being given as a gift. Tosafos notes that once a formal transaction is performed, the witnesses could record the event even if they had not originally been instructed to "write and sign" their observations. And furthermore, once they are told to write down their testimony, the witnesses would be justified in recording the event even if no קנין is done. The introductory statement of the owner instructing the witnesses to "write and sign" is only significant for the case where no קנין was later performed. It is in this case that these words are essential, and this is where we find the dispute between the students of Pumbedisa who allow the document to be written, and those from the city of Mechasya, who require a specific order from the owner. Tosafos adds that although the document may be written, if the owner chooses, he may change his mind because the קנין has not yet been made. The reason is that the owner wants the buyer to own the land as soon as possible, and he is not interested in his waiting until the קנין is completed. Tosafos, however, learns that the case here is dealing with a sales document, unlike Rashi who learned that we are dealing with a gift. Tosafos leaves the matter unresolved if the owner may change his mind in the case of a gift.

**STORIES OF THE DAF** **D'mai Fruits**

"ובתרומת מעשר של דמאי..."

Produce which an am ha'aretz claims was tithed is d'mai, is questionable. However, we find on today's daf that if some terumas ma'aser of the d'mai fruit got mixed in with chulin, we can believe the ignoramus if he claims that the produce was ma'asered. Rav Zalman of Volozhin, zt"l, was a child prodigy. At fourteen he learned in the great beis medrash in Vilna, and was well known for his brilliance. Once, a certain man came to him and expressed a desire to say over a, "peirush tov on a Mishnah in Maseches D'mai." Since the man, like many Lithuanian Jews of that time, pronounced his shin as a sin, what he said sounded like, "peiros tov." The young Rav Zalman heard his visitor out, but he felt that the man's interpretation was off. He responded sharply after the man finished, "That isn't peiros tov—it's peiros d'mai!" Meaning, this is the awful "fruit" of the scholarship of an ignoramus. As soon as the abashed man left, Rav Zalman was filled with remorse. How could he shame a fellow Jew who was talking in learning to the best of his ability? Even though they had spoken one on one and Rav Zalman hadn't shamed him in public, there was no excuse for such behavior. He frantically started to search the town for the man to beg his forgiveness but to no avail. The man was nowhere to be found. Rav Zalman searched for this man for well over a decade but still couldn't find him. It was only with great difficulty that Rav Zalman's son-in-law was able to stop him from undertaking a personal exile and taking up wandering throughout Lita so that he could admit his sin in every shul throughout the land in the hope of finding the wronged man.

When the Vilna Gaon heard about this, he summoned Rav Zalman to try and comfort and encourage him. The Gaon closed their conversation by saying, "You did everything you possibly could to find the wronged party and make amends. About just such a case the Chovos Halevavos writes in the tenth chapter of Sha'ar Hateshuvah, "If a person earnestly repents after having sinned against his friend bodily or monetarily, Hashem will cause a broad-mindedness and a love to enter his friend's heart until he forgives him..." Such was Rav Zalman's faith in the Gaon. Although he certainly was already familiar with these words of the Chovos Halevavos, he was instantly comforted as soon as the Gaon uttered them!

**POINT TO PONDER**

The Gemara says that there is a מחלוקת regarding אומדנא, and whether we can rely on them. What is the difference between an אמן סהדי which is found in many places in ש"ס and seems to be universally accepted, and אומדנא in our גמרא over which there is a מחלוקת?

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

מנכסיו writes רש"י ד"ה אין לה מזונות. What is he trying to explain? Isn't every כתובה written on the husband's assets? The גמרא says that according to רבי יוסי ברכי יהודה לא תבעי לך because he says that a אנוסה gets a כתובה of 100. If she gets a כתובה than obviously there is no question about any related תנאי כתובה. This case is different because she is allowed to stay married without a Kesuba because the husband cant send her out. What happens if the husband dies or divorces her (because he pained her and she asks for a divorce)? He must pay her a Kesuba. Therefore רש"י explains that she doesn't actually need a written כתובה but rather there is an obligation on his assets. (שיטה מקובצת).

## HALACHA HIGHLIGHT

### Using tzedaka funds for another purpose

דשמעינן ליה לר' נתן דאזיל בתר אומדנא

Because we learned that R' Nosson follows presumptions

The Minchas Yitzchok<sup>1</sup> was asked from a tzedaka collector whether funds he collected for a particular institution may be used for another institution that is similar to the first without consulting the donors. Minchas Yitzchok cited Shulchan Aruch<sup>2</sup> who rules that once money has been collected for one purpose it may not be redirected for another purpose. Certainly, when there is a strong presumption (אומדנא דמוכח) that the money was not given to be used for another institution it is prohibited to redirect those funds since a strong presumption has the halachic weight to allow a person to collect money from someone who has possession of that money (להוציא מן המוחזק).

The Afraksta D'Anya<sup>3</sup> also addressed this question. There were once members of a pious but impoverished family who were taken into captivity. As funds were being collected for their ransom, the captors set them free and the question was what should be done with the collected funds. One could argue that now that the funds are no longer needed for the mitzvah of redeeming captives the money should be returned to the donors but one could also argue that the money should be sent to the newly-released families since they are in any case impoverished.

After a lengthy analysis of the relevant issues, Afraksta D'Anya concluded that generally, the money should not be sent to the newly-released families without consulting the donors. However, in this case where the potential recipients are talmidei chachamim and specifically, since he knows many of the donors he has no doubt that they would want the money to be sent to these families to help them overcome their struggles with hunger. Although it is true that had the donors been approached in the first place to donate money for the sustenance of these families their donations would be lower than the amount they gave thinking that it was to redeem captives, nonetheless, once the money was given they would certainly waive their right to take back the money.

1. שו"ת מנחת יצחק ח"ט סי' ק"ד.
2. שו"ע א"ח סי' קנ"ג סעי' ז'.
3. שו"ת אפרקסתא דעניא ח"ג י"ד סי' קפ"ב.

## MUSSAR FROM THE DAF

### Seeing Past Possessions

בפי רב משמיה דרב אמרי, ארכביה אתרי רכשי: הרי היא כמתנת בריא, והרי היא כמתנת שכיב מרע

The Gemara discusses a case when a שכיב מרע gives a gift of his possessions to a person on his deathbed, in which it was also written that the gift was given with an act of acquisition (בה קנין שכתוב). Rav explains that such a gift is similar to the gift of a healthy person in that if the שכיב מרע recovered he still cannot retract it, since he performed a proper act of acquisition. Why would Rav assume that? Wouldn't the שכיב מרע want his possessions back if he gets better?

Lets look at a Yesod of Succos to perhaps gain an insight into Rav's אומדנא of the person. Why does the Torah call Succos חג האסיף - (Chag haAsif)? Succos is a time in which one is finished (Sof) with the harvest season and everything is brought into the storage houses. The farmers are finished with the crops and they now see them all fall apart and rot with the new season. It is a time of year when all of the leftover crops begin to wither. At this moment of gathering which is the end (Sof) of the season is when one looks up at Hashem (which is represented by the Aleph) in the beginning of the world Sof. The farmer sees the futility (Hevel- as we read on Succos in Koheles) of all that is there in the physical world. We enter the Succah and look up towards our schach and just like the farmers are reminded of the temporariness of this world, as their season is at the end, we relive that experience. This is the essence of חג האסיף (Chag haAsif). Perhaps that is the אומדנא of Rav. He understands that this שכיב מרע is at the end. At the end one sees the futility of one's gathered possession and now turns his eyes to Hashem. And therefore, he feels very intensely the vanity of the material world. He senses it so much that he is happy to give away his possessions to those he loves, even though he realizes that he may one day be healthy again, he wants his gift to be final and complete without any stipulations. Succos is a time for all of us to take stock of what is really important. While we may have physical possessions, it is the Chag to relive what the farmers went through. A time to look at our schach and place an Aleph (representing Hashem) in front of all that we have.

## PARSHA CONNECTION

In this week's daf the גמרא discusses sons inheriting a דירכרין from their father. In the הפטרה for the second day of סוכות we read about המלך who inherited what was perhaps the most important job a son can inherit, namely the building of the המקדש בית. The building was completed in חשון of the 11th year, but שלמה המלך waited until the following year to inaugurate the בית המקדש and the obvious question is why wait 11 months? The פסיקתא writes that אברהם wanted to wait for תשרי because that is the month in which אברהם was born.

משנעשה הבית בירח בול נעשה נעול י"ב חדש מחשון ועד תשרין והיו הכל ממלמלים על שלמה לומר: לא בנה של בת שבע הוא? היאך הקדוש ברוך הוא משרה שכינתו לתוך מעשה ידיו? והקב"ה חשב לערב שמחת בית המקדש בחדש שנולד בו אברהם בירח האיתנים - זה חדש תשרי. ולמה קורא אותו: (תהלים פט, א) 'ירח האיתנים' שנולד בו אברהם, שנאמר: 'משכיל לאיתן האזרחי'.

Although we understand why he waited until תשרי, we still need to understand why specifically on סוכות? Perhaps we can understand it, based on the גר"א who explains why סוכות falls out on the 15th of תשרי. The גאון explains that רבינו כלל ישראל came down with the second לוחות on יום כיפור and informed כלל ישראל that the הקב"ה had forgiven them, and that Hashem wants them to build a משכן. The building of the משכן started on טו and that's when the הכבוד returned. Perhaps השראת השכינה choose this time which represents a clean slate when everyone is pure, with a clean slate.

For more points to ponder by Rabbi Yechiel Grunhaus, or insights by Rabbi Yitzchok Gutterman, please visit our website, [dafaweek.org](http://dafaweek.org), or download the app

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