

INSIGHTS FROM OUR CHABUROS

Nullifying the oaths and curing the blemishes

מה בין חכם לרופא, חכם עוקר את הנדר מעיקרו, ורופא אינו מרפא אלא מכאן ולהבא

The system of "releasing oaths—התרת נדרים" is that a sage (חכם) can listen to the one who took the oath and then determine whether the explanation he gives for regretting ever having taken the oath is a valid one. The wise man can serve in the capacity to cancel the oath on his own, or, in the absence of a single qualified judge, three amateur judges (הדיוטות) can serve as a panel to cancel the oath.

Rashi explains that when the oath is determined to be cancelled, it is cancelled retroactively, and it is considered as if it never existed. If the husband had given the kiddushin on the condition that the woman not have oaths at that time, and the oaths she had are later reversed due to התרה, the oaths are removed and the kiddushin is now viewed as being valid.

When a man presents kiddushin on the condition that the woman not have any blemishes, and it turns out that she had blemishes, the kiddushin is obviously nullified. If the woman visits a doctor, and he is able to cure the woman of her blemishes, they are not cured retroactively, but rather only from this moment and beyond. At the moment of kiddushin, the blemishes were still there, and the kiddushin is therefore not valid even after she is healed.

We see that, according to Rashi, the determining factor in the validity of the kiddushin is a function of the husband's condition about the woman's status at the moment of kiddushin.

Tosafos (ד"ה חכם), however, learns that the difference between the husband's statements concerning oaths or blemishes is to what extent he cares about the issue involved. If the woman had blemishes, even if they are later cured, the husband was particular that these defects not have been there at the moment of kiddushin, and we know that they were present. This is why the kiddushin is not valid even if she is later healed. In regards to oaths, however, the husband only cares that the woman not be bound by these artificial restrictions. Once they are lifted through the oaths being nullified, the husband is satisfied, and the kiddushin is valid.

PARSHA CONNECTION

In this week's daf the גמרא discusses a lady who gets healed by a doctor whether a Kiddushin made on condition that the woman has no ailments is valid. The source for permitting a doctor to heal someone, even though the ailment came from הקב"ה, is a פסוק with regards to a person hurting another. The possuk אמ"י קום והתהלך בחוץ על-משענתו ונקה המכה רק שבתו יתן (שמות פרק כא) says, ורפא ירפא. The Gemara of לשון פה בבא קמא דף פה פה learns from the double ורפא ירפא, that a doctor has permission to heal (מכאן שנתנה רשות לרופא לרפא) אלשיר. The ורפא ירפא offers another explanation for the double wording of the kiddushin. When we look at the previous פסוקים we see a pattern of behavior which preceded this point. The תורה starts with וכו' יריבן אנשים וכו', meaning if two people are "fighting" which initially starts with words, and then one hits the other and causes him to need medical care, etc. So now there are two ailments that need healing, one is the physical wounds and the other is the נפש which was חוטה by lifting a hand on another person, המרים יד על חבירו נקרא רשע. This is why it says רפא twice, once for the physical ailment and the second for the spiritual ailment.

STORIES OF THE DAF

Sensitivity Training

דאמר אדם רוצה שתתבזה אשתו בבין דין

On today's daf we find a difference of opinions among the Chachomim as to whether a man will mind seeing his wife shamed in Beis Din in order to annul a vow so that they can preserve their marriage. In this particular case, one would say that the ends justifies the means; however the question of whether one Jew can tolerate another being shamed can have broad repercussions in other areas of interpersonal relations. Sometimes, a person's self-interest is so great that he has no sensitivity whatsoever to the damage he can cause by shaming another.

There were once two shoemakers who lived in the same town. Fortune shined on one of them and he eventually became very wealthy. His fellow craftsman, on the other hand, lived the life of a simple cobbler of the late 1800's in eastern Europe. Unfortunately, the poor shoemaker was filled with envy for the wealthier man and decided that a good public roasting would even the score between them. However, this is not as easy accomplished as it might sound. A poor man cannot effectively embarrass a wealthy man easily, since the wealthier person can simply ignore the poor man. Not only would the poor man fail to achieve his objective, he would effectively highlight the great difference in their social positions. So the poor shoemaker waited quietly for the perfect opportunity to ensure that his barb would hit home.

Eventually, the wealthy man's daughter became engaged to be married to a son of one of the most prominent families in the town. At the wedding, as the wealthy shoemaker was escorting the chosson to the chuppah, the poor shoemaker struck. In front of all the guests, he approached the wealthy man with a broken shoe in hand and barked, "So how much do you take to fix this sole?" The בעל שמוחה was so mortified that he fell into a fit, and died then and there.

Although Rav Yisrael Salanter, zt"l, initially wished to be a פרוש, an ascetic, who would serve Hashem by separating himself from others and performing his service in seclusion, this incident caused him to change direction. After hearing about how low a person can go when his self-interest blinds him to the damage shaming another will cause, he resolved to begin the Mussar movement.

HALACHA HIGHLIGHT

Full Disclosure

אין אדם רוצה שתתבזה אשתו בבית דין

A man does not want his wife to be disgraced in Beis Din

A common question that arises in the context of shidduchim is whether or not one is obligated to disclose all information related to one's past even when it is unflattering and may potentially end a possible shidduch. There was once a girl from a prominent family who was seduced when she was a young girl. This incident led her into a period of a few years of severe depression and she even became suicidal. After some years of therapy, her condition improved and the doctor recommended that she get married. Needless to say this young woman was embarrassed about her past and there was a concern that if, by disclosing her history she would not get a shidduch, this could lead her back into depression and perhaps awaken her suicidal tendencies. The question was whether or not she is obligated to disclose her history or due to the circumstances and the potential damage that could occur, is it permitted to withhold this information? Rav Yekusiel Yehudah Halberstam¹, the Klausenberger Rebbe, addressed the matter from a number of different perspectives and in the end decided that in that particular circumstance it was permitted to withhold the information. The basis of his lenient ruling was that withholding this information could potentially save her life and we could assume that her husband would waive his hesitations in order to save her life.

Rav Moshe Feinstein² was also asked a similar question from a girl who was promiscuous when she was younger but had subsequently done teshuvah and was now looking to marry a religious boy. Rav Moshe ruled that she must disclose the information but added that she is not obligated to, and, in fact, it is prohibited to disclose the information immediately. Rather, she should go out the first few dates without raising the issue and then when she knows that he is interested in possibly marrying her should she tell him about what happened. Furthermore, he instructed her to present it in a way that clearly indicates that it was a terrible mistake on her part and that it is not characteristic of her behavior to alleviate the fear her potential husband may have in marrying this girl.

1. שו"ת דברי יציב אה"ע סי' ט"ו.
2. שו"ת אג"מ אר"ח ח"ד סי' קי"ח.

MUSSAR FROM THE DAF

You can always go back

תנו רבנן: הלכה אצל חכם והתירה – מקודשת. אצל רופא וריפא אותה – אינה מקודשת. מה בין חכם לרופא? חכם עוקר את הנדר מעיקרו, ורופא אינו מרפא אלא מכאן ולהבא

The Gemara tells us that if a man marries a woman on the condition that she has no nedarim, and she goes to a chacham to annul her nedarim, they are מקודשת. However if she goes to a doctor, and he heals her from her wounds, she is not מקודשת. What is the difference? The Gemara answers that the Chacham can uproot the neder retroactively, while the doctor only heals from now and going forward.

What is the root reason why a Chacham can make a change retroactively while a doctor cannot? The answer is that the Chacham is using Torah to go into the past. B'Derech Hateva one cannot go back in time. Torah, however, is above nature. The Zohar ע"א קס"א – פ' תרומה דף קס"א ע"א – tells us that באורייתא Hashem looked at the Torah to create the world. We see from here that the Torah is above nature and is therefore not limited by nature. However, science works within nature. This idea can help us understand the miracle of Teshuva. In any relationship, when one wrongs another, there is no way to go back in time and undo what one did to another. However, Teshuvah is also above nature. The Gemara in Pesachim 54a tells us that Teshuva is one of the things that was created before the world שנברא קודם שבעה דברים נבראו העולם ואלו הן תורה ותשובה וגן עדן וגיהנם וכסא הכבוד ובית המקדש ושמו של משיח. The chiddush of Teshuva is that it allows one to go back in time and erase what was done in the past. We see from the halacha of a chacham being matir a neder the power of Torah. We see how one can overcome nature and change the past.

POINT TO PONDER

The Gemara says if a woman goes to a חכם and he is מתיר her נדרים she is מקודשת למפרע. According to those who maintain that קידושין על תנאי and afterwards we find out that the woman had גט, and can remarry, why aren't we concerned that she will later go to a חכם and undo the נדרים which will make her מקודשת למפרע to the first person?

Response to last week's Point to Ponder:

רש"י ד"ה אלא טעמא דרב writes that we assume that he lived with her לשם קידושין but with regards to the כתובה he is maintaining the original תנאי. If רב is saying that the current ביאה is for קידושין that means that she is only ארוסה and ארוסה doesn't get a כתובה. So why does רש"י write that he is maintaining the original תנאי? It's not necessary.

רש"י is explaining that אין אדם עושה בעילתו בעילת זנות can be understood in two ways, one is that the original קידושין is null and void, and now he is מקדש בביאה, the second is that because he doesn't want a בעילת זנות he is forgiving the תנאי. According to the second way, we still need to deal with the כתובה. (See חידושי הר"ן).