DAF A WEEK
דף השבוע
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לע"נ ברוך בענדיט וברכה גרוס ע"ה
BY MR. & MRS. DUVY GROSS

שבוע Matters

THE DIMONT FAMILY EDITION

לע"נ אסתר אביגיל בת חיה רבקה וציפורה רחל בת אסתר מחלה

שבת קודש פרשת צו | מסכת כתובות דף פ"א

INSIGHTS FROM OUR CHABUROS

The kesubah from the first or second husband

דתניא מי שמת וכו' אע"פ שכתובתה אינה אלא מנה

Rabbi Akiva Eiger notes that the amount of the kesubah of a yevama should be determined by the commitment her first husband had to her, which was for two hundred zuz. Why, then, does the Baraisa say that her kesubah is only one hundred? We must say, therefore, that the Bersaisa is assuming that the former husband married this woman when she was a widow, and her kesubah was, in fact, only one hundred zuz.

We have to wonder, however, what difference does it make that the Baraisa uses this example with its scaled back amount? The point of the Baraisa is that the yavam may not sell any of the property of his deceased brother, as it is all encumbered to pay the kesubah. The case is one where the deceased brother had left one hundred maneh, which is a huge sum as compared to the kesubah, whether the kesubah is one maneh or two maneh.

Earlier, Tosafos (ד"ה הרוצה) asks why the sale of the property of the former husband by the latter husband should be cancelled. It does not seem as if the woman stands to lose in any way by such a sale, as the rule is that if there are no assets of the former husband to pay for the kesubah, the obligation to back the value of the kesubah resorts to being the responsibility of the latter husband. In reference to this question of Tosafos, Rabbi Akiva Eiger presents a strong objection. Of course there is a great difference whether the kesubah is paid by the assets of the former husband or provided by the latter husband. If it is paid by the former husband, she stands to collect a full two hundred zuz, while if the kesubah is from the latter husband, she would only collect one hundred. Rather, we see that Tosafos understood that the case is where the woman was a widow when she married the former husband. This is why there does not seem to be any difference to her at this point whether the kesubah is paid from the property of the former or latter the second husband. Tosafos answers that if the property of the former husband is sold, she will be forced to contend with the buyers and to try to extract the property from them. We now see that the wording of the Baraisa is precise in that the kesubah of the woman is only one hundred. If the kesubah of the woman would have been two hundred, she would have every right to protest the sale of the property of the former husband, as she could have collected a full two hundred from those assets, whereas the kesubah from the second husband would not be more than one hundred. The answer is, as we have seen, that the case must be where she was already a widow when she married the first husband.

POINT TO PONDER

רש"י ד"ה לגבות מחיים writes that as long as the husband is alive she doesn't collect her כתובה. How does that explain why he doesn't have to pay for her burial? In every instance where the wife dies before the husband, she doesn't collect the כתובה.

Response to last week's Point to Ponder:

The Gemara says that a husband of a קטנה who spent money on her property can collect like someone who improved someone else's field. Is this the הלכה only if she is ממאן or even if he divorces her?

The הלכה which applies to a קטנה, is only in case where she is ממאן, but if he divorces her he has the same הלכה as someone who married a גדולה.
(See שיטה מקובצת ושו"ע סימן פח').

STORIES OF THE DAF

The Segulah

"אלא דרבי אבא קשיא..."

On today's daf, we find a reference to a situation where a husband might consider divorcing and then re-marrying his wife in order to gain the benefit of funds designated in the kesuvah. The following anecdote illustrates another situation where a husband might consider following a similar course of action.

A young couple who were childless for several years heard about an unusual segulah that was rumored to help the infertile. According to the rumor, if they divorced and then remarried it could enable them to have children. The husband was all for it. "What have we got to lose?" he asked his wife. His wife, however, was against it.

They decided to ask the Steipler Gaon, zt"l, this unusual question. The Steipler Gaon replied, "I have never heard of such a segulah. Now let us examine the different issues raised by this possible segulah: The first question to ask is if the wife can feel secure that her husband will remarry her. Perhaps this is just an excellent pretext to give a get with minimum difficulty? Perhaps the true plan here is to put off the remarriage with various pretexts and to marry someone else?"

Immediately the Gaon answered his own question, "The truth is that this is a very unlikely contingency. This would be the ultimate betrayal and we should not suspect the husband of such a despicable intention. Surely, if they agree to remarry, there is no reason to suspect foul play on the husband's part. So I will say that, halachically speaking, you may do this without question. Since I have never even heard of this segulah, however, how can I possibly advise you about what is unknown to me?"

When recounting this story, Rav Yitzchak Zilberstein, shlit"a, added, "If the woman's reason for not wanting a divorce is that she feels that this is a disgrace, she has a good claim. We learn this from Rashi in Kesuvos 81a, on the word v'elah, where he states clearly that divorce is a disgrace for both of them.

"In any event," Rav Zilberstein concluded, "They would be better off doing a less drastic segulah, like establishing a gemach. Whether this works or not, at the very least it will increase their merits in the next world!"

HALACHA HIGHLIGHT | Is a borrower a מוחזק?

בית שמאי דאמרי שטר העומד לגבות כגבוי דמי

Beis Shammai who maintain that a document that awaits collection
is like it was collected

A question that arises regarding loans is who is considered מוחזק —in possession of the money? The reason this question is so fundamental is that when there is a dispute between the borrower and lender or there is some doubt regarding some of the conditions of the loan, the money under dispute will remain with the party that is מוחזק on that money. Rav Ovadiah Yosef1 quotes the position of Panim Bamishpat that the borrower is always considered to be מוחזק on the money. The rationale behind this position is that although the borrower has a responsibility to pay back the lender, nonetheless the money that he borrowed becomes his property (מלוה להוצאה ניתנה). Therefore, if a doubt arises concerning details or obligations of the loan the borrower is considered מוחזק on the money and the burden of proof will fall upon the lender.

Rav Ovadiah Yosef disputes this conclusion and maintains that the lender is considered מוחזק. He cites a teshuvah of Rashba2 to support his position. Rashba addresses a case where there is an uncertainty whether a wife waived her right to financial support. The husband claimed that since the wife is in possession of a kesubah the principle יד בעל השטר על התחתונה- the contract owner has the lower hand should be applied and the burden of proof should rest on her shoulders. Rashba disagreed with this assertion and wrote that in this case the husband is considered the "owner of the contract" since he didn't pay off his obligation and is merely asserting that his wife waived her rights. Therefore, the burden of proof rests on the husband's shoulders. This clearly indicates that in cases involving a question of whether one may have waived his rights (מחילה) the other party has to prove that a מחילה took place. One should not, continued Rav Yosef, assert that the case of a loan and the case of a kesubah are not parallel since in the kesubah case she is in possession of a kesubah which makes her מוחזק on her rights because our Gemara states that a contract that stands ready for collection is not considered as if it is collected. Thus in both cases the money stands to be collected and there is precedent to the assertion that the one alleged to have waived his rights is considered the מוחזק.

1. שו"ת יביע אומר ח"ג חו"מ סי' ג' אות ט"ז וי"ז.
2. מובא דבריו בב"י אה"ע סי' צ"ג.

MUSSAR FROM THE DAF | Subjective Interpretation

משום איבה - רש"י המייחד לאשתו או קרקע או מטלטלין נותן איבת עולם ביניהם דסברה עיניו נותן בגירושין אבל זה שמגרש על מנת שיחזיר ידעה דלא עשה אלא למכור ופקעה לה איבה

Our Gemara teaches that the יבם should not set aside his portion of his deceased brother's assets for the כתובה.

Why does the Gemara assume there will be animosity between the couple when he simply designates part of the assets for the כתובה? (Rashi says there will be forever animosity) while the Gemara doesn't think the wife will be too upset when he divorces her in order to remarry her?

Sometimes in a relationship one side believes that the other side is doing something for sinister reasons. They believe the other side is not being upfront with them. As a result, they forever become suspicious of the other even in situations when there is no reason to be suspicious.

Perhaps that is the פשט in our sugya. The wife feels that her husband has a hidden agenda when he designates the כתובה. Going forward in the marriage, whenever he does something that can be viewed in a hurtful way, she views his actions in such a fashion all because of the original incident when she thinks he is planning on divorcing her. However in the case where he actually divorces her and remarries her, while it may be odd, she knows he has no hidden agenda.

We see from this Gemara how sensitive one needs to be with a spouse. One has to be careful not to do any actions that can potentially be interpreted in a hurtful fashion.

PARSHA CONNECTION

In this week's daf the גמרא mentions the difference between a כהן and a ישראל with regards to remarrying one's divorcee. The uniqueness of the כהנים is due to their role in serving in the בית המקדש and פרשת צו begins with a special message to the כהנים. The מצוה of תרומת הדשן has some perplexing details that need an explanation. The ויקרא פרק ו פסוק ג in פסוק says: ולבש הכהן מדו בד ומכנסי־בד ילבש על־בשרו והרים את־הדשן אשר תאכל האש את־העלה על־המזבח ושמו אצל המזבח. Why is the כהן only wearing בגדי כהונה for part of this מצוה then changing for the second part which is taking the ashes out of the עזרה? Moreover, why does it say אשר תאכל האש "the fire"? Furthermore, why does the כהן put some of the ashes next to the מזבח and the rest outside of the עזרה? The אלשיך הקדוש explains that there were two fires on the מזבח, one from שמים while the other was lit by the כהנים. The מצוה of תרומת הדשן is to impress upon us the special holy nature of the מזבח with its אש מן השמים. This is why it says האש with a ה to emphasize its unique nature. The ashes which were produced every day include both ashes from the "holy fire" as well as those resulting from the regular fire. This is why the כהן put the תרומת הדשן next to the מזבח representative of the holy fire, and those ashes miraculously disappeared into the ground. The "rest" of the ashes which represent ashes produced by the mundane fire, were taken outside of the עזרה. This is also why the כהן wore two different sets of בגדים, to highlight the difference between the two ashes.

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