

## שבת קודש פרשת מצורע | מסכת כתובות דף פ"ד

לז"נ שלום משה בן יעקב ויעקב קאפאל בן שלמה זלמן הלוי

### INSIGHTS FROM OUR CHABUROS

#### The relatives of R' Yochanan who grabbed the cow

קריביה דר' יוחנן תפוס פרה דיתמי מסימטא אתו לקמיה דר' יוחנן א"ל שפיר תפסתוה

The Mishnah (84a) featured an argument between R' Tarfon and R' Akiva regarding a person who died and left potential heirs, a wife to whom he owes for her kesubah, and a debtor. If, among the assets he left behind are detached fruits, if there is more than enough than necessary for the wife or the debtor, R' Tarfon rules that the excess is given to "the weakest one," and R' Akiva rules that it should be given to the heirs.

There was a case where a creditor was able to grab chattel of the orphans after the death of their father, the debtor. The judges at first allowed the property to remain in his possession in accordance with the opinion of R' Tarfon, but Reish Lakish reversed the ruling and took away what the creditor had grabbed. Reish Lakish held that the halacha here follows R' Akiva. Rabbi Yochanan criticized Reish Lakish and told him that it is sufficient to rule according to R' Akiva before any action is taken, but once the property was grabbed, it should remain where it is.

The Gemara relates an actual case where relatives of Rabbi Yochanan grabbed an animal from orphans as payment for a loan they had extended to the father. Rabbi Yochanan ruled that they could keep it. When they came to Reish Lakish, he reversed the ruling and directed them to return the animal. Rabbi Yochanan then told his relatives to listen to Reish Lakish, as he said, "What can I do? Reish Lakish disagrees with me."

Tosafos Ri"d explains that Rabbi Yochanan changed his view and agreed with the opinion of Reish Lakish. This is why he acquiesced to his view. Rashi, however, seems to say that R' Yochanan remained opposed to Reish Lakish, but he simply felt that his view and that of Reish Lakish were equally balanced, and that there was no justification to reverse the ruling of Reish Lakish. Therefore, they had to return the animal. Why is it, though, that grabbing (תפיסה) would not be effective when we have a situation where R' Yochanan and Reish Lakish disagree? What is the justification to reverse the action of taking the animal?

ט"ו מנהרי"ט explains that when the disagreement in halacha refers to whether תפיסה / grabbing is justified in the first place, we do not say that once one of the parties grabs the item that he may now hold onto it.

Nevertheless, ש"ך (C.M. 101) argues against the ט"ו מנהרי"ט, and he points out several reasons why no conclusions may be made from this case. Among them is that R' Yochanan might agree with Reish Lakish (as explained by Tosafos Ri"d), or that R' Yochanan had actually disqualified himself, as he was a relative. Therefore, this was not a bona fide case of halachic doubt.

### REVIEW AND REMEMBER

1. Does a husband inherit property Bilbically or Rabbinically?
2. Why does the Mishnah mention both loans and deposits?
3. Explain טעה בדבר משנה חוזר.
4. Why isn't chazakah a valid proof of ownership for mobile animals?

### STORIES OF THE DAF

#### Unlawful Seizure

"שפיר תפסיתוה"

"You have seized lawfully..." A poor Jew once agreed to smuggle merchandise. On the road, the hired driver realized that the merchandise was contraband and saw an opportunity. He stopped the wagon and said, "I know that your merchandise is contraband. Unless you give me one hundred rubles, I will denounce you."

Seeing that the driver was in earnest, the smuggler cried, "But this is not my merchandise—I am just moving it for someone else! In my pocket there are no more than a few rubles. Where can I possibly obtain a hundred rubles to give you?"

"Your words mean nothing to me," replied the driver. "This is not my wagon either, but does anyone have mercy on me? If you do not have cash, give me a hundred rubles' worth of merchandise instead."

Seeing that he had no other choice, the Jew agreed. The Jewish smuggler noted the details of the wagon and the driver, and when he reached Lodz he went and told all to Rav Eliyahu Chaim Meisels, zt"l. The Rav requested that the Jew stay in town a few days and promised to try to help him. The Rav then told his aide to go to the place where the wagon drivers congregate and to hire that same driver on behalf of the Rav. When the driver arrived, Rav Meisels said, "Why don't you sit down and have lunch. I will be ready to travel soon enough." The driver agreed, and while he was eating, the Rav's aide hid the horse and wagon. After the driver ate, he went out to check the wagon and found that it was missing.

He ran back to the Rav. "Rebbi, I am lost! The horse and wagon are not mine, and the owner is known to be very harsh. He will take revenge on me and report me. He will claim that I sold his horse and wagon and kept the money for myself. Please help me!"

"Why are you so worried?" asked the Rav. "Just take the hundred rubles that you stole yesterday, and buy yourself a horse and wagon." The driver blanched. The Rav continued, "Thief! Did you have mercy upon a Jew when he pleaded with you? Why should anyone have mercy on you?"

Clearly bested, the driver said, "I am willing to return everything." Rav Meisels concluded, "Then go and get it right away. As for your loss, we can talk about that later!"

## HALACHA HIGHLIGHT

### Burying a woman next to her husband

וכגון שהורישתו אשתו בית הקברות

*R' Yochanan refers to a case where one's wife bequeathed the family burial plot*

The implication of our Gemara is that it was common for members of the same family to be buried in the same plot. Interestingly, this idea is mentioned by Ramban<sup>1</sup> in his commentary to the Torah. When Avrohom Avinu wanted to purchase a place to bury Sarah he identified himself as a stranger and sojourner. Ramban explains that the custom in those times was for families to own a plot of land in which they would bury their dead and the strangers, i.e. non-residents, would all be buried in one place. Avrohom thus told then that in one regard he is a stranger because he does not have a plot of land to bury Sarah but now that he intends to live in this new land he wants a plot of land to use for the burial of his family members like the other people who are sojourners in the land. This principle is echoed in Shulchan Aruch<sup>2</sup> where it rules that if a woman's father and husband disagree whether she should be buried next to her father or husband she is buried next to her husband. Similarly, if her father does not want her buried next to him and her husband also does not want his wife buried next to him she is buried next to her husband. Accordingly, Divrei Malkiel<sup>3</sup> wonders why it is no longer customary to bury women next to their husbands. The question is strengthened in light of the comment of Ma'avar Yabok who writes that the soul of a woman receives contentment when she is buried next to her husband.

He suggests that perhaps the custom applied only during those times when community cemeteries did not exist and families would be buried in their own plot of land. Nowadays, however, there are community cemeteries and if men and women were buried next to one another there is a concern that if two burials, one for a male and one for a female, are taking place at the same time it could lead to an inappropriate mingling of the men and the women. This concern about mingling is heightened in the context of a cemetery or while a burial is taking place since the Zohar emphasizes that during these times one must assure that men and women do not meet one another. Therefore, to avoid these issues men and women are buried separately so that even if there is a funeral for a male and a female that occur at the same time there will not be a problem of intermingling. Divrei Malkiel does conclude by noting that in some communities they continue to bury husbands and wives together and each community should follow its custom.

1. רמב"ן בראשית כג:ד.
2. שו"ע י"ד סיד שס"ו סע' ג' ד'.
3. שו"ת דברי מלכאל ח"ד סי' ע"ב.

## PARSHA CONNECTION

In this week's daf the משנה uses a unique expression regarding the priority given to various claimants: "ינתן לכושל שבהם". The word כושל is also found in פרק קה פסוק לו where תהלים פרק קה פסוק לו describes the מצרים as follows: "ויציאם בכסף וזהב ואין". In this particular פסוק it describes בני ישראל leaving with silver and gold. What does the פסוק mean when it says that there was no כושל amongst the שבטים? The רד"ק explains that because everyone got all of the gold and silver which they borrowed from the Egyptians, they all had plenty and no one was weak or poor.

The first time that משה רבינו is told about בני ישראל borrowing from the מצריים is in פרשת שמות and is one year before they actually borrowed anything. In fact they needed to keep it a secret and חז"ל praise their ability to keep it secret. Why was it necessary to tell משה רבינו about the borrowing so much in advance? The אלשיך answers this question along with another famous question, which is why did משה רבינו tell פרעה that they are going away for only 3 days, why not tell him the truth, that they are leaving for good? The אלשיך explains that הקב"ה wanted to teach us through the 10 נכות, but פרעה had to be deserving of the נכות. If פרעה thought that he is losing 600,000 plus slaves forever, it would be too much of a ניסיון for him, and he can't be blamed for refusing. However if פרעה was being asked to let בני ישראל out for just three days, and he still refused that would justify a punishment. With this we can understand why the borrowing was also mentioned now. The מצריים would not be willing to lend the gold and silver if they thought they were leaving forever. But since they thought that were only going for three days they would be more willing to do so. This is why the borrowing was mentioned now since it gives another explanation for why פרעה was told that בני ישראל only wanted to go for 3 days.

## POINT TO PONDER

When רבי יוחנן heard that ר"ל issued a ruling that they need to return the פרה he said, what can I do but my colleagues argue with me. Since he disagreed with ר"ל and they already had possession, why didn't he tell them to keep it? We have a rule that המוציא מחבירו עליו הראיה.

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

The Gemara quotes a ברייתא which says לאשמור לאשמור then asks about writing to his wife. The גמרא then asks הואי נמי לה וכי כתב לה. Since the גמרא is asking how does writing it help, why does it first bring the ברייתא about אמירה which doesn't seem to add anything to the question?

The גמרא wants to establish that הכותב in the משנה means writing without a קנין. By bringing the הלכה about האומר it shows that the כותב is similar to saying, meaning without a קנין. (See ר"ן).

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