

פסח תשפ"ד | מסכת כתובות דף פ"ה

INSIGHTS FROM OUR CHABUROS

Relying upon a single witness

בת רב חסדא קים לי בגווה

Rava was married to the daughter of Rav Chisda. Once, a woman came to the court of Rava, and as a result of the situation, the woman was liable to take an oath. Rav Chisda's daughter informed Rava, her husband, that she knew that that particular woman was suspect of swearing falsely. Rava accepted the information, and reversed the oath and placed it upon the woman's disputant. Usually, when an oath is called for, a defendant can swear and exempt himself from having to pay. In this case, Rava allowed the claimant to swear and collect.

Another time, when Rav Pappa and Rav Ada bar Masna were sitting in front of Rava, a document was brought before Rava for collection. Rav Pappa testified as a single witness that the document had been paid. Rava declared that one witness was inadequate to put the document in doubt. Rav Ada bar Masna wondered out loud, "Is not Rav Pappa as worthy and reliable as was the daughter of Rav Chisda [whom Rava had trusted as a single witness]?" Rava admitted that he was personally familiar that his wife would not lie, but that he was not directly and personally familiar with Rav Pappa, and he could not rely upon him as a single witness with certainty.

We see from the discussion in the Gemara that there are times when a judge can arrive at legal conclusions without two valid witnesses, and the judge can rely upon a single witness whom he knows personally to be truthful. Rambam rules accordingly (Hilchos Sanhedrin 24:1): "A judge should judge monetary matters according to what his mind leads him to believe is correct, even if he is lacking full proof to that affect. For example, if someone is liable to take an oath, and the judge is told by someone whom he trusts that this person is suspect regarding oaths, the judge should reverse the oath and administer it to the one claiming against the one suspect of taking false oaths. Why, then, does the Torah require two witnesses, if one witness is adequate? The answer is that the judge may rely upon two witnesses even in a case where he is not personally acquainted with them and he is not certain about their credibility."

קרית ספר, in his commentary to Rambam, writes that the source for this halacha is the verse (2 Divrei Hayamim 19:6): "He said to the judges, 'Take care in what you do, for it is not for man's sake that you judge, but for Hashem's, and He is with you in the matter of judgment.'" A judge can and must do what is correct in his eyes.

PARSHA CONNECTION

In this week's daf the גמרא tells a story about בר אבהו who was sent to pay off a loan by אבהו and was told by the lender that he is keeping the money as repayment for a different loan. We find a very similar story regarding בני ישראל and their work in מצרים. The גמרא (אלכסנדרוס מוקדון) tells of a story which took place during the time of Alexander the Great when the Egyptians came to claim back the silver and gold which the Egyptians lent בני ישראל before leaving מצרים. One named בן פסיסא asked the חכמים for permission to respond to the Egyptians' claim. He told them as follows: it says in the Torah (שמות יב ט) that בני ישראל were slaves in Egypt for 430 years: ומושב בני ישראל אשר ישבו במצרים. Where is the money which בני ישראל are owed for the work which they did for 430 years? The Egyptians asked for 3 days to respond, and never came back! The חכמים ask, why were 30 years added to the 400 years, that אברהם was told will be the length of מצרים? The גלות מצרים? The יקר explains that the פסוק seems redundant because it says ומושב בני ישראל אשר ישבו מצרים. He explains that the original גזירה was for בני ישראל to be גרים in מצרים, meaning that they shouldn't settle there but rather live there as immigrants, but many Jews actually "settled" there like it says that 4/5 wanted to stay in מצרים. This is why the פסוק stresses אשר ישבו, and this is why 30 years were added to the total.

STORIES OF THE DAF | The Whole Truth

ולא יהא רב פפא ככת רב חסדא
 בת רב חסדא קים לי בגווה מר
 לא קים לי בגוויה

On today's daf we find that although Rava accepted his wife's testimony that a witness was not trustworthy, he would not accept Rav Papa's word that a loan document had been paid. When asked why he believed his wife and not Rav Papa he replied, "I know my wife would not lie. I am not sure about Rav Papa."

A certain person asked Rav Yaakov Kaminetsky, zt"l, for a favor. "I am sick and need a very expensive operation. Although I can not possibly afford the medical treatment that I need, the government will not pay for it because I own a house and am considered to be in the category of one who has assets to pay for the operation and hospitalization. So I would like to ask the Rav a favor. I want to write up a document stating that I owe the Rav a giant sum of money. If I can show the government that my house is not free and clear, the entire procedure won't cost me a dime! After the procedure, we will nullify the document. I am asking the Rav because I trust him not to take unfair advantage of me."

Rav Yaakov replied gently but firmly, "I cannot possibly comply with your wishes in this matter. I never say a lie, and I certainly will not commit one to writing. This is a serious prohibition and in addition it goes against my grain.

He concluded, "If I would not do this for my own benefit, how can I be expected to do so for anyone else's benefit?"

HALACHA HIGHLIGHT

Tzedaka to a Torah scholar or to a relative

קרוב ותלמיד חכם תלמיד חכם קודם

If one of them is a relative and the other is a Torah scholar, the Torah scholar takes precedence.

The Netziv¹ was once asked a question related to prioritizing one's tzedaka. If a Torah scholar from the Diaspora asks for tzedaka at the same time there is a request from a poor person from Eretz Yisroel, who is given priority? Should the money be given to the one who lives in Eretz Yisroel since Shulchan Aruch² prioritizes those who live in Eretz Yisroel above those who live in the Diaspora or should precedence be given to the Torah scholar based on the principle that those who are greater are given priority?

In the course of his discussion of this question Netziv cites a dispute between Shulchan Aruch and Shach whether a father who is not a Torah scholar is given priority over a Torah scholar. Shulchan Aruch³ indicates that priority is given to the Torah scholar if the father is himself not a Torah scholar. Shach⁴, on the other hand, disagrees and demonstrates that even if the father is not a Torah scholar he has priority over the Torah scholar. This disagreement, however, is limited to the question of whether to give to one's father or Torah scholar but certainly if the question is whether to give tzedaka to a Torah scholar or another relative the Torah scholar will take priority. Netziv proves this assertion from our Gemara. Our Gemara relates that when a person on his death bed gives a gift to Tuviah and it turns out that he has a relative named Tuviah and he is friendly with a Torah scholar named Tuviah the assumption is that he intended the money to go to the Torah scholar.

Netziv notes that the Chacham Tzvi⁵ maintains that our Gemara is not a valid precedent for the halachos of tzedaka because our Gemara discusses death bed gifts that are determined by assessing the intent of the deceased rather than tzedaka priorities that follow a different set of rules. Nevertheless, Netziv maintains that regarding the question of prioritizing a Torah scholar or a relative (other than one's father) our Gemara is instructive and teaches that a Torah scholar takes priority. Chofetz Chaim⁶, however, cites in the name of Rav Akiva Eiger that relatives take priority over Torah scholars and includes a number of important related details that are beyond the scope of this article.

1. שו"ת משיב דבר ח"ב סי' מ"ז.
2. שו"ע יו"ד סי' רנ"א.
3. שו"ע שם סע' ט.
4. ש"ך שם ס"ק י"ז.
5. שו"ת חכם צבי סי' ע.
6. ספר אהבת חסד ח"א פ"ו סע' ז.

MUSSAR FROM THE DAF

Where to give your resources?

אמר "טוביה" ואתא קרוב ותלמיד חכם — תלמיד חכם קודם

The Gemara tells us about a case when a person dies and they declared that their estate should go to Tuvya. If there are two people in the town named Tuvya in which one is a karov (relative) and one is a Talmid Chacham, the Gemara states that we give the inheritance to the Talmid Chacham.

R' Elchanan (Kovetz Shiurim, 310) quotes R' Akiva Eiger on Shulchan Aruch (YD Siman 241, sif 3) who quotes the Chacham Tzvi that a relative has precedence over a talmid chacham when giving out tzedakah. There seems to be a contradiction between our Gemara (a Talmid Chacham comes first) and the halachos of tzedakah which states that the karov comes first.

Perhaps, there is a difference which can explain the seeming contradiction. When it comes to taking care of one's basic needs (Tzedekah), the halacha says that a relative comes before the Talmid Chachom. However, our Gemara is speaking about giving a gift in a situation where everybody's basic needs are taken care of. In such a situation we see that a person would want to give the gift to the talmid chacham.

Through one's life, there is the common question of how much one should be focusing one's resources on one's family vs the community. We can learn a yesod from our sugya. When one's family is not being sustained (spiritual, financial, or emotional) one needs to put one's resources into one's family. However, if one's family is functioning, one can now choose to use one's resources to help be mechazek the community.

POINT TO PONDER

The Gemara tells a story about רבא בר אבהו who was sent by רבא בר אבהו דרבי אבהו to pay off a debt. After he paid the lender he asked for the שטר and was told that they are keeping the money for a different loan. The גמרא says that they are believed because they have a מיגו of denying ever getting paid. How can they deny the payment? The messenger is a witness that he made the payment to them, and will contradict them.

Response to last week's 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 הראייה עליו הראייה.

Since this is a ספק and it was grabbed AFTER the ספק developed it is called שנוולד הספק, which does not help and the item is returned to its original owner (מרא קמא) see שו"ת חלק אי קיי"ב מהר"ט.

For more points to ponder by Rabbi Yechiel Grunhaus, or insights by Rabbi Yitzchok Gutterman, please visit our website, dafaweek.org, or download the app

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