

INSIGHTS FROM OUR CHABUROS

Cash for creditors, land for the kesubah

האי מאן דאיכא עליה כתובת אשה ובעל חוב ואית ליה ארעא ואית ליה זוזי

A person owes money for his wife's kesubah, and he also owes money to a creditor. The person has land and he also has cash, but the cash is only sufficient to pay off one of the obligations. Ameimar in the name of Rav Chama rules that the creditor is paid with the money, which is what he had lent to the borrower, and the woman is given the land, which is what she relied upon at the time of the marriage.

Ritva explains that this halacha is applicable when the husband is still living, and the kesubah is payable due to the husband's having divorced his wife. However, if the husband had died, and the widow comes to the orphans to claim her kesubah, and the creditor is coming to the orphans as well to demand repayment of the loan he had extended to their father, in this case no one will collect cash. The rule is that orphans do not have to pay from movable items (מטלטלין / chattel) to settle the debts of their father.

Ritva writes, however, that Rabbeinu Chananel understands that this case could, in fact, be speaking about where the husband had died. The case would be where the orphans have land as well as cash, and they wish to keep the land for themselves and to settle the debts of their father by paying off each claim with cash. The creditor and the wife each demand land, but the orphans want to pay them off with cash instead. The halacha is that they may pay the creditor with cash, even though the land they inherited from their father is mortgaged for payment of the loan. The reason is that even during the life of their father, the loan could have been paid back with money. The rule that the cash of orphans is not available for payment of the father's debts is only stated for the benefit of the children, but here they prefer to settle the claim with cash. The kesubah of the wife, however, must be paid with land. The reason for this is parallel to what we saw above in reference to the creditor. The woman could not have demanded cash rather than land even from her husband when he was alive, in a case where he had divorced her. Therefore, the orphans, as well, cannot pay her with cash while keeping the land for themselves.

PARSHA CONNECTION

In this week's daf the משנה says that a husband whose wife is selling his wine or fruit in his store, can ask her to swear at any time that she did not take any of the merchandise for herself. In connection with this week's parsha, we find another example of someone swearing that they will faithfully execute their mission. When אהרן גדול is tasked with doing the עבודה of יום כיפור which is the subject of the first part of פרשת אחרי מות. The משנה ה' in משנה א' פרק א' מלואים says that the זקנים would ask the גדול to swear that he will follow the guidance of the חכמים and put the קטורת on the coals after entering the קודש הקודשים and not outside of the קודש הקודשים, like the צדוקים. The פסוק (ויקרא פרק טז) ויקרא פרק טז וכל־אדם לא־יִהיֶהוּ בֹאֵה לִכְפֹּר בְּקֹדֶשׁ עַד־צִאתוֹ וְכַפֵּר בְּעֵדוּ (פסוק יז) וירושלמי יומא פרק א' הלכה ב' חיי"ו quotes רבינו בחיי"ו. The הלכה ב' חיי"ו explains that אדם א' is not referring to humans, but rather to מלאכים who "look" like אדם. (The ירושלמי apparently had difficulty with taking it literally, because obviously only אהרן גדול was permitted to enter the קודש הקודשים). Even the מלאכים do not have permission to enter the קודש הקודשים on Yom Kippur. רבינו בחיי"ו says that from this we see the high level of קדושה which the גדול attained on יום כיפור that he was even higher than the מלאכים.

STORIES OF THE DAF: The Importance of a Mitzvah

אבל במצות עשה כגון שאומרין לו עשה סוכה ואינו עושה לולב ואינו עושה

Our daf states the halacha that one who refuses to fulfill a positive mitzvah such as sukkah or lulav is lashed until he either fulfills it or dies. One of the things that can be learned from the severe penalty incurred by a person who willfully refuses to fulfill a mitzvah is just how precious the mitzvos are. The awareness of the infinite value of each and every mitzvah infused our gedolim with a zeal to perform them, and to perform them in the best possible way.

Several talmidim of Rav Shach, zt"l, came for a visit shortly before Sukkos. The moment they were ushered in, the Rebbetzin received a call. The caller was very happy to inform them that he had located a lulav that was completely free of any suspicion of being from the growth of the shemittah year. Since that year was motzei shvi'is, this was no small achievement.

When she told the Rosh Yeshiva, he was immediately consumed with a powerful longing to rush and obtain the lulav. On the other hand, what of the guests? It was certainly incorrect for him to leave them stranded waiting for his return. Not surprisingly, Rav Shach found a way around this. He asked the group, "Perhaps you would care to join me as I go to meet the person bringing my lulav?" The Rebbetzin said, "But why go at all? He is bringing it here and will arrive in just a few minutes!" The Rosh Yeshiva would not be moved. "Even just to go to some trouble for the sake of a mitzvah is itself a mitzvah. When it comes to a mitzvah I can't wait even an instant! I rush to fulfill any mitzvah!"

As they were walking to meet the man bringing the lulav, Rav Shach explained further, "Although I always listen to my wife and am willing to go to almost any length for her, I could not listen in this matter. This is an issue that relates to my ruchniyus, my spiritual life. Although Chazal taught that one should consider his wife's opinion in anything relating to the material, in spiritual matters one should not necessarily listen to his wife if she tries to deter him from ruchniyus by telling him not to bother making an effort. While it is true that even in ruchniyus one must ensure that his decisions do not adversely affect another person, it is still his own responsibility to decide what is fitting and do it promptly!"

HALACHA HIGHLIGHT

Spending over 20% of one's assets to pay back a loan

פריעת בעל חוב מצוה

Paying back a loan is a mitzvah

Rav Chaim Soloveichik¹ poses an interesting question. There is a halachic principle that states that one does not have to spend more than twenty percent of his assets to fulfill a mitzvah. Therefore, if a person borrows money and thus has a mitzvah to pay back his creditor, he should not have to pay any more than twenty percent of his assets to fulfill that mitzvah, even if the loan constitutes more than twenty percent of his estate. This question was discussed by Maharam Shik², who suggests that the principle limiting how much a person spends on a mitzvah applies only when the mitzvah does not affect others. On the other hand, concerning mitzvos that have an impact on others, like the mitzvah to pay back a loan, one is obligated to spend even more than twenty percent of one's assets to fulfill that mitzvah.

The L'horos Nossan³ answers that the principle that one does not have to spend more than twenty percent of his assets to fulfill a mitzvah applies only when one is spending money as a means to be able to later fulfill a mitzvah, rather than when spending the money is itself the mitzvah. For example, one does not have to spend more than twenty percent of one's assets to purchase an esrog since it is not the purchasing of the esrog that is the mitzvah but it is a means to be able to later fulfill the mitzvah. In contrast, regarding the mitzvah to pay back a loan it is the payment of money that is the fulfillment of the mitzvah and the principle limiting how much a person spends on a mitzvah does not apply. Another resolution suggested by L'horos Nossan is that one who does not pay back a loan becomes, by default, a thief and is violation of a prohibition. The limitation of spending twenty percent of one's assets on a mitzvah applies to positive commandments but in order to avoid violating a prohibition a person is obligated to spend all of one's money. Therefore, it is not the mitzvah to pay back a loan that obligates the borrower to pay even more than twenty percent of his estate but the prohibition against stealing that creates that obligation.

1. כתבי הגר"ח סי' קכ"ט.
2. שו"ת מהר"ם שיק או"ח סי' של"א.
3. שו"ת להורות נתן ח"ד סי' קט"ו אות ז'.

MUSSAR FROM THE DAF

Keep Your Word

אמר ליה רב כהנא לרב פפא: לדידך דאמרת פריעת בעל חוב מצוה רש"י - פריעת בע"ח מצוה - מצוה עליו לפרוע חובו ולאמת דבריו דכתיב הין צדק שיהא הין שלך צדק ולאן שלך צדק (בבא מציעא דף מט.)

The Gemara tells us that פריעת בעל חוב מצוה (paying off one's creditor) is a mitzvah. What is the source for this mitzvah to pay off one's loans? Rashi tells us based on a Gemara in Bava Metziah (49a) that one has to be truthful with one's words a halacha learned from the pasuk in Vayikra צדק ולאן שלך צדק הין שלך which teaches that your yes should be just and your no should be just. R' Akiva Eiger asks on this Rashi and sends us to the Gemara in Bava Metziah. Tosafos there asks on Rashi, what does the limud in Bava Metziah have to do with פריעת בעל חוב מצוה? When a person borrows money, they plan on returning the funds and when they can't return the funds, they don't have the money. Therefore this would not fall under the klal of אחד בפה ואחד בלב. So why would Rashi bring this limud? What was he thinking? Rav Yerucham Levovitz in Daas Torah (Shemos 209) brings a very important Yesod in life. He explains that when a person doesn't want to pay a debt that he owes, it is not because they are unable to pay the debt. Rather it is because they don't think they owe the debt. If a person truly believed he owed a debt, he would be willing to do anything and everything possible to pay the debt, even selling himself as a slave.

With that idea, one can perhaps understand Rash in our sugya. Rashi is telling us that the mitzvah to pay a debt is clearly learned from the pasuk which tells us to speak the truth. Not only is a person not keeping their word when they don't pay the debt back, but as the pasuk tells us הין שלך צדק ולאן שלך צדק, even one's "no" has to be truthful. Therefore, the person who is denying his obligation to repay the loan is not being honest. At some level he is denying he really owes the money, and therefore he states he cannot pay back. If he was truly honest, he would find a way to pay the other person back even if he doesn't have the money. The implications of this yesod in Rashi, Rav Yerucham explains extend beyond cases where a person owes money but to any situation where a person finds themselves in a nesyon. If the person remains cognizant of the great debt they have towards Hashem which we spend our lives paying back (see Shaar Chovos Avodas Elokim, Chovos Helvavos), this realization will motivate the person to come through no matter the difficulty and do the right thing.

POINT TO PONDER

The Gemara says that if someone owes a debt for a loan and a debt resulting from a כתובה and he only has one קרקע it is given to the lender. The words of the גמרא seem redundant, because it says we give it to him and NOT to the wife. Why is this necessary, obviously if we give it to one then we don't give it to the other?

Response to last week's Point to Ponder:

The Gemara tells a story about חמא בריה דרבה בר אבהו who was sent by 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 ניוג 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.

The ר"ן explains that since the messenger can be asked to swear that he paid the money, he becomes a בעל דבר in this situation and can no longer act as a witness, who must be independent.

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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