

שבת קודש פרשת במדבר | מסכת כתובות דף צא'

INSIGHTS FROM OUR CHABUROS

The mitzvah for orphans to pay their father's debts

מצוה על היתומים לפרוע חוב אביהם

A person owed one hundred zuz, and he died. The orphans inherited a small field worth fifty zuz, and the creditor came to collect it. The orphans paid him fifty zuz cash to stop his collection. The creditor then attempted to collect the field a second time, for the remaining fifty zuz of the loan. The matter was brought before Abaye. He ruled that the first fifty zuz cash which they paid was done as a fulfillment of the mitzvah of orphans to pay the debt of their father, and that the lender had the right to now collect the field. If however, the orphans had said that they were paying him "for the field," this would remove his claim from it. ר"ן explains that we would view the legal maneuver as if they had given him the land and then had bought it back, thus releasing his claim from it.

ר"ן writes in the name of the Rishonim that the mitzvah for orphans to repay the debts of their father only applies to using assets they inherited from their father, as in our case where they inherited a small land from him. However, there is no requirement for the orphans to pay from their own resources which they did not inherit from their father. Rashba, however, writes that the mitzvah upon the orphans to pay the debts of the father applies both to assets they received from their father as well as to their own funds. He stipulates that there is a difference in the nature of the obligation depending on which funds are used. If the funds are those received from the father, the orphans are compelled to use them to pay off the debts of the father. If they use their own money, they simply have a mitzvah to pay, but we do not force them to do so.

According to ר"ן, the story in our Gemara can be dealing in a case where the orphans had other property from their father beside the small land which they lender had tried to collect. Because the gesture of the orphans to pay is only elective, in order to fulfill the mitzvah, they can claim that the fifty zuz was to repurchase the small land, and that they do not wish to pay any more. However, according to Rashba, we must say that the only land inherited was that one small piece. If there were other lands, even if the orphans claim that they paid the cash to redeem the small tract, they would be obligated to use other lands to pay the remaining balance of the loan from the land they inherited from their father.

REVIEW AND REMEMBER

1. Explain כתובה נעשית מותר לחברתה
2. What condition must be met for two sets of children to collect their mother's kesubah?
3. What is the dispute between Ravina and R' Avira.
4. Are orphans obligated to pay their father's debts?

STORIES OF THE DAF

The Bequest

"ובשיתא ירחי מי קא ילדה..."

The father of a large family was once approached by an elderly friend. "Although I've saved a great deal of money, I have no children to whom I will be able to leave my legacy. I would like to bequeath a large sum of money for your use on one condition—that only your firstborn son will inherit this money after your own passing." The father thanked his old friend and said that he wanted to think about it.

The more he thought about it, the more it seemed to be a question that ought to be presented to a competent halachic authority. Did not Chazal teach in Shabbos 10b that one should learn from the incident with Yosef not to show favor one son over the others? For the sake of two selaim of silk that Yaakov gave to Yosef exclusively, they became jealous. As a result, the entire Jewish people went down to Egypt. On the other hand, in Kesuvos 90b we find that the enactment that the sons of a man who married two women inherit their respective mother's kesuvos is pertinent even when one wife dies before the husband and the second dies after him. We are not afraid that this will cause a quarrel between the brothers. Since the husband inherited the first wife's kesubah, the sons of the other woman could conceivably claim that all money inherited by the father should be divided equally between all the heirs. The second wife's kesubah was only owed by the estate after the man died since this wife outlived him. Perhaps here, too, one need not worry about jealousy?

The man consulted with Rav Yitzchak Ziberstein, shlit"a, who responded, "I don't think there is any correlation between the gemara in Kesuvos and your case. גמרא דכתובת בנין דזכרון does not engender hatred between the brothers because it is the law and is not an expression of their father's preference. In any case, if your sons are made aware that this money was given to you only on condition that your firstborn son will inherit it, there will certainly not be any bad feeling among them. On the contrary! What son doesn't want his father to have the use of a large sum of money just because some of the children won't inherit it?"

HALACHA HIGHLIGHT: Does redeeming a captive also cover a debt the redeemer owed the captive?

מצוה על היתומים לפרוע חוב אביהן הני קמאי מצוה עבדיתו וכו'

It is a mitzvah for the orphans to pay off their father's debt; therefore, the first money was in fulfillment of that mitzvah

There was once a person (Shimon) who was taken into captivity and the captor would only release him if Reuven would give him an expensive ring that he owned. Reuven agreed and gave his ring to secure Shimon's release. Some time later Shimon filed a claim against Reuven for money that he owed him. Reuven responded that he didn't owe anything since the ring he gave to have Shimon released from captivity was worth more than the amount that Shimon now wished to collect. Shimon answered that the ring was given in fulfillment of the mitzvah of redeeming a captive and if Reuven intended to use the ring to pay off his debt he should have stated so at the time he gave the captor his ring. Since he was silent about that matter it is clear that his intent is for the mitzvah and the debt remains in force.

Rav Yosef Chaim of Baghdad¹, the Ben Ish Chai, answered the question from our Gemara. Our Gemara relates that a man died with a debt of one-hundred zuz and left behind a piece of land worth fifty zuz. The creditor took the field to cover the debt and the heirs paid the creditor fifty zuz and took back possession of their father's field. The creditor returned and took the field a second time to cover the remainder of the loan. The orphans claimed that they had purchased the field from the creditor and therefore it was not encumbered towards their father's loan. For his part, the creditor argued that the money was given to redeem their father's land by paying off part of the debt so the land remained encumbered towards the loan. They went to Abaye to rule on the matter and he ruled that since there is a mitzvah for orphans to pay off their father's debt, the assumption is that they were fulfilling that mitzvah rather than purchasing the land, unless otherwise stated. Therefore, concludes Ben Ish Chai, since there is a mitzvah to redeem a captive, the assumption is that Reuven intended to fulfill that mitzvah and if he intended to pay off his loan he had the responsibility to state that fact explicitly.

1. שו"ת תורה לשמה סי' שמ"ז.

PARSHA CONNECTION

In this week's daf the Gemara discusses situations whereby children are looking to maximize their share in their parents estate. פרשת במדבר starts with a count by "family" like it says in the beginning of the Parsha: שאו את-ראש כל-עדת בני-ישראל למשפחתם לבית אבתם במספר שמות כל-זכר לגלגלתם the counting was done by family as opposed to just a total of everyone. This reflects the emphasis which we place on family. How was this count conducted? רש"י writes that it was done with שקלים while others disagree and point to the word לגלגלתם to support their opinion that it was not done with שקלים. Why would this count be different from the previous count which had to be done with שקלים? The יקר כלי offers a beautiful explanation for the difference. He explains that the first count after the חטא העגל had to be done via שקלים due to a concern for הרע עין. He further explains that הרע עין is primarily a concern when something unusual happens, for example a poor man becomes rich. When a wealthy man becomes a little richer it is "expected" and he is therefore not in danger of הרע עין, however when a poor man suddenly becomes wealthy, הרע עין is a concern because people look at him and say, why does he "deserve" this wealth. Similarly when בני ישראל first came to מצרים they were only 70 people, so when they were first counted and became 600 thousand there was a considerable concern for הרע עין. However once they were counted once, counting them again and finding a similar number would not cause a concern of הרע עין. Therefore this count did not necessitate using שקלים.

POINT TO PONDER

The Gemara says the argument is whether we need a דינר מקרקעי or is it enough if there is a דינר worth of ירושה דאוריתא. Since the concern is to preserve מטלטלין, and everyone agrees that מטלטלין would be part of any ירושה?

Response to last week's Point to Ponder:

The Mishnah says that if a man was married to two wives and died, the first wife has priority in collecting her כתובה. How about while he is alive, does the first wife have priority regarding מזונות?

The שיטה מקובצת writes that with regard to מזונות both wives enjoy equal rights to מזונות irrespective of who he married first.