

שבת קודש פרשת פנחס | מסכת כתובות דף צ"ה

לע"נ לאה בת שרגא

INSIGHTS FROM OUR CHABUROS

A messenger adding to the instructions of its mission

איבעיא להו אמר ליה זבין לי ליתכא ואזל חבן ליה בורא-מאי? מוסיף על דבריו הוא וליתכא מיהא קני...

The Gemara inquires about a case where a seller asked his messenger to sell his field the size of a *lischa*, one half a *kur*, to a buyer. The messenger went and sold a field, but the one he sold was twice the size, a full *kur*. The messenger was certainly not justified in representing the seller in the sale of the second *lischa*, and that part of the sale is cancelled. The question is what is the status of the sale of the first *lischa*? Did the messenger faithfully represent the seller to this extent, or do we say that his selling one piece of land which was too big indicates that he abrogated his role as the seller's agent completely, and the sale of even the first half of the field is rescinded?

The commentators note that the question is only applicable in a case where the agent sold an item larger than he was authorized to sell. R' Shlomo Kluger (ס' חכמת התורה- נח) writes that he might resolve this inquiry with an insight provided in a verse from Tehillim (105:28): "He sent darkness and made it dark, and they did not defy His word." Why would we think that the darkness defied the word of Hashem whereby the verse makes a special point of reassuring us that it remained loyal?

The Midrash (Shemos Rabba 14:1) teaches that Hashem sent darkness upon Egypt, but the darkness itself added more than it was commanded to do. We might have thought that by acting on its own in regard to the added amount, the darkness demonstrated that it was not functioning as Hashem's agent, but it was rather acting completely on its own accord, even in regard to the initial amount of darkness which it shed. This is why the verse teaches that, in fact, the darkness was not abandoning its role as Hashem's messenger. We can also understand another Midrash (Bereshis Rabba 33:5, this one in reference to Noach sending the raven from the ark: "And he sent the raven." (Bereshis 8:7) This corresponds to the verse (Tehillim 105:28), "He sent darkness and made it dark." The commentators to the Midrash struggle to find the correlation of these two verses. According to our approach, we can say that the raven was only instructed to scout the surface of the water and land once, but it did so many times. The Torah clearly states that this was a fulfillment of its mission. By adding, its actions were not considered acting independent of its instructions. This is the same concept found in reference to the darkness, which was in compliance of its mission although it added more than the orders it was given.

STORIES OF THE DAF The Special Offer

"הוסיפו לו אחת..."

The furniture in the Talmud Torah was no longer merely outdated—it was literally falling apart. It was time to purchase new goods. After a lot of hard work, a donor was finally found. He gave every penny needed and the purchase was arranged. The administrator purchased the furniture in a particular store known for high quality products. At the time of the purchase, the store was running a special offer; for every big purchase, a very nice piece of furniture would be given as a gift. The administrator, also a teacher in the school, was not so well off and would get a great deal of pleasure from a new piece of furniture. However, he was suddenly struck by an alternate way of seeing the situation. Perhaps the man who had given the donation deserved the furniture for which the Talmud Torah itself had no need? He wondered if he was obligated to relinquish it and decided to consult with Rav Yitzchak Zilberstein, shlit"a.

The Rav Zilberstein answered, "In Kesuvos 98b, we find that if an agent bought something for the one who had engaged his services and the seller gave one item extra, the halachah follows the opinion of Rami Bar Chama regarding Rav Yosi. If the sold item has a fixed price, the engager and the agent split the extra item. If not, the entire item goes to the engager. This is the decision of the Shulchan Aruch as well."

Rav Zilberstein concluded, "The price of furniture is fixed, so you split the value of the freebie with your donor."

PARSHA CONNECTION

In this week's daf we learn about a *אלמנה* dealing with male *יתומים* who inherited their father's assets. *פנחס* discusses the laws of inheritance and also contains the very famous *יתומות* *ארץ ישראל*. They came to *משה רבינו* and asked for their father's share in *ארץ ישראל*. Rashi writes that they are named as the daughters of *יוסף בן יוסף*, because just like *יוסף* loved *ארץ ישראל* so too his descendants loved *ארץ ישראל*. The obvious question is, how do we know that they loved *ארץ ישראל*, maybe they just want property and would have been just as happy with land outside of *ארץ ישראל*? The *נצי"ב* in his commentary *דבר העמק* suggests the following answer. The *Possuk* (במדבר פרק כז פסוק ד) says: *למה יגרע שם-אבינו מתוך משפחתו כי אין לו בן*. They asked for an estate amongst their uncles. We know that they were from *מנשה* and half of *מנשה שבט* joined with *ראובן וגד* in getting their share on the other side of the Jordan river (בעבר הירדן). The daughters of *צלפחד* could have asked to join those who got a share outside of *ארץ ישראל*, but they asked for a share amongst their uncles in *ארץ ישראל*, which shows that they loved *ארץ ישראל* and were willing to wait until *בני ישראל* entered *ארץ ישראל* instead of securing an immediate stake in *עבר הירדן*. This is how *חז"ל* knew that they loved *ארץ ישראל*.

HALACHA HIGHLIGHT

Profits generated by an agent

הלכתא דבר שיש לו קצבה חולקין דבר שאין לו קצבה הכל לבעל המעות

The halacha is that if the item has a set price the profit is shared and of the item does not have a set price the profit goes to the owner of the money

A common business question relates to who profits from earnings or benefits that accrue as a result of an employee's efforts. For example, an employee is paid a monthly salary to purchase supplies for his employer. The agreement between the employer and employee is that the employee will pay for the gas out of pocket and at the end of the month he submits receipts to be reimbursed for the expense. The employee prefers to purchase gas at a particular gas station since there are rewards that are given to customers who purchase a lot of gas. The question is who has the right to keep those rewards? Do they belong to the employee since he pays for the gas out of pocket and he chose that gas station specifically to earn those rewards or perhaps the rewards belong to the employer since he reimburses the employee for the gas costs?

The Mishpatei HaTorah¹ presents the following guidelines. Anytime the employee pays for the purchased items with his own money the rewards belong to him even if he is later reimbursed by his employer. On the other hand, when the employee pays with the employer's money or credit card the halacha will change depending on the circumstances. If the reward or the gift is given to every customer who makes a purchase the profit belongs to the employer. The reason is that it is assumed the storeowner wants to provide a gift to those people who spend money in their store. If the employee goes out of his way and travels an extra distance to purchase at a particular store in order to save money or earn extra rewards the profit will accrue to the employer but the employee deserves to be paid extra for his efforts. If the storeowner states that he gave extra because of the relationship he has with the employee, the profits are to be shared by the employer and the employee. The rationale behind this ruling is that on the one hand the storeowner would not give a gift to the employee if he didn't make a purchase but on the other hand he wouldn't give the additional amount had the employer made the purchase himself. Therefore, since both the employer and employee participated in generating this profit it is to be shared by the two of them.

1. ספר משפטי התורה ח"א סי' ע.

MUSSAR FROM THE DAF

Finding Favor in His Eyes

איבעיא להו, אמר ליה: זבין לי ליתבא, ואזל זבין ליה כורא, מאי? מוסיף על דבריו הוא, וליתבא מיהא קני, או דלמא מעביר על דבריו הוא, וליתבא נמי לא קני?

A dilemma was raised before the Sages: If one said to his agent: Sell on my behalf a half-kor, and the agent went and sold for him a kor, what is the halakha? Is he considered to be adding to the words of his employer? In that case, though he also performed an action that he was not assigned to do, part of his action was performing his assigned agency, and the buyer at least acquired a half-kor. Or perhaps he is considered to be disregarding his employer's words, since he did not perform exactly what he was told to do, in which case the entire transaction was performed by his own volition, without the authorization of his employer, and even the half-kor is not acquired by the buyer.

One can understand why it would make sense in the first possibility in which the buyer at least acquires a half kor. However, the second possibility in which the buyer doesn't even acquire anything because the שליח added on to the request needs an explanation.

Let's look at another similar מחלוקת. There is a מחלוקת between the רמב"ם and רמב"ד (Rambam, Hilchos Sukkah 7, 7) in which a person is מוסיף an extra species when he takes a Lulav and Esrog. The Rambam says that since the person is over כל תוסיף, then he also loses even the mitzvah of Lulav and Esrog. While the רמב"ד argues and says that the person still has the mitzvah of taking a Lulav and Esrog, even though he is over on תוסיף. The רמב"ד seems to make sense because the person objectively is fulfilling the mitzvah, however he is simply adding on a bit. What is פשט in the רמב"ם? Perhaps the רמב"ם holds that when a person adds on to a mitzvah, he is conceptually no different than a person who is subtracting from the mitzvah. While it may be true that there is the reality of a theoretical חפצא of the mitzvah. However, the whole concept of halacha is that one performs actions based on the רצון of Hashem. Here the person has changed what the רצון of Hashem is requiring, and therefore the רמב"ם would say it disqualifies the whole mitzvah.

That would also be the פשט in the second צד in our Gemara. Since the שליח changes what the Baal HaBayis asked him to do he is in effect, going against the "spirit" of the request. We have to always remember that we are all messengers sent from Hashem in this world. We should be careful to scrupulously follow his requests.

POINT TO PONDER

The Mishna says that a אלמנה who sold assets of the יתומים to collect her כתובה and she sold a דינר more than she should have, the sale is void. Is a דינר דווקא, meaning that if it was less than a דינר the sale stands, or a דינר is only an example and even if it was less than a דינר the sale is בטל?

Response to last week's Point to Ponder:

The Gemara says that a widow sells every 12 months but the buyer pays her monthly. Why not sell every month, and this way we don't have to rely on the buyer paying her monthly?

The ראשונים explain that since she is selling land, it would be difficult to sell a small piece of land, every month. A buyer would want enough land to plant something worthwhile, and a small piece of land is unsuitable (See שיטה מקובצת).