

שבת קודש פרשת תרומה | מסכת נדרים דף סט'

לעילוי נשמת ר' שמואל בן ר' אהרן הלוי לאווינגער

INSIGHTS FROM OUR CHABUROS

The option to nullify the vow after having sustained it

בעי רבא יש שאלה בהקם או אין שאלה בהקם וכו'

There are different approaches of the Rishonim in explaining the question of the Gemara, and there are practical outcomes which hinge on these differences. ר"ן and Rosh explain that the question is whether once the father or husband sustains the oath of the girl, can they subsequently retract their having sustained of the oath by going to a wise man and having him nullify the הקמה? Is this case similar to a regular oath which can be released, or is the הקמה different in this regard? The ultimate question is, of course, can the neder of the woman later be nullified after it has already been sustained?

ר"ן notes that the question has to be limited to where the appeal to the חכם is being made on the same day that the vow was made. The reason this is true is that it is only on the same day during which the husband heard the vow that he can nullify it. If, after he sustained the vow, the husband hopes to later retract his הקמה and thereby expect to now be able to nullify the vow, this entire process is only possible while the original timeframe of "the day of hearing the vow" has not yet expired.

Kesef Mishnah citing Tur opines that the husband has the power to reconsider and have his confirmation of the vow rescinded, even at a later date. We can then consider that later date as the day he is hearing the vow anew, as his confirmation of it has just now been removed. At that point, the husband has the option to nullify the vow, as long as it is then on the same day the hakamah is retracted. At that point, when the vow is being reviewed regarding its validity, that day is considered to be, once again, "the day on which it is heard." On the day in which the hakamah is reversed, the husband, once again, has the option of retracting the vow by nullifying it. Kesef Mishnah acknowledges that Ran and Tosafos contend that the husband may only reconsider and retract his confirmation on the very day he originally heard the vow, and that this strict view should followed as the Halacha.

PARSHA CONNECTION

In this week's daf the גמרא discusses whether a father or husband who was מקיים ("confirmed") the נדר of his daughter or wife can undo that הקמה. Although he acknowledged the נדר and was מקיים it, people sometimes change their mind. This same concept can help us understand a seemingly perplexing פסוק in the beginning of the פרשה. When telling משה about the תרומת המשכן the תורה writes: דבר אל בני ישראל ויקחו לי תרומה מאת כל איש אשר ידבנו לבו תקחו את תרומתי ויקחו (and you should take) and not ייתנו which means to give? Further, what does it mean by

"מאת כל איש אשר ידבנו לבו", isn't it obvious that someone who donates has a "giving" heart? Finally, why is it called "תרומתי" before it has even been given? The הקדוש offers the following fascinating explanation: When people donate at an appeal they are often forced or feel forced to donate more than they would otherwise have donated. This can be due to peer pressure, fear of being embarrassed by not giving as much as someone else. In these circumstances the person may pledge a donation by they will regret it later and wish they can undo it, similar to the נשאלים על ההקם. Therefore the תורה is teaching us how to donate in the ideal way. First one should set aside a donation that they are comfortable with at home, before going to the public appeal, once they have set it aside, they should take it and give it to the גבאי. With this we can now explain the פסוק, when it says את תרומתי it refers to the donation which was already made in private, it was made through the נדיב לב and when it is taken from the donor who had previously "given it" it is appropriate to say: תקחו.

STORIES OF THE DAF

Regretted words

יש שאלה בהקם או אין שאלה בהקם

A certain woman had an argument with her husband and made a vow in her anger. Her husband was mekayem the vow. Afterward, both regretted their rash act, but they didn't know what to do. They asked their Rav if he had some way for them to annul their vow. He promised to get back to them and immediately contacted the Ridvaz, ז"ל. The local Rav asked the Ridvaz, "I have two questions. The first is: they didn't tell me if the husband used a language of affirming or merely refrained from annulling. If he was silent, is there any way to annul later on? My second question is: can a חכם annul even a vow that the husband affirmed?"

The Ridvaz replied, "Once the day the vow was made has passed, the vow may no longer be annulled whether the husband used a language that implies affirmation or was silent. As for your second question, it is obvious that a חכם may annul a vow that the husband affirmed even if he did so actively. This is how Rashi in Nedarim 69a explains Rava's question, whether there is שאילה in הקמה or not. Even Rav Eliezer of Metz, ז"ל, who argues with Rashi, agrees that a חכם can certainly annul an affirmation. He argues because he holds that Rava could not have asked regarding such an obvious matter. After all, why shouldn't a חכם be able to annul a vow the husband affirmed; could his affirmation make the vow any worse than it already is? His affirmation merely serves to block his ability to annul his wife's vow." The Ridvaz concluded, "Of course, while the husband can annul any vow that affects their relationship, a חכם annulment has its limitations. Just as with any other vow, the חכם needs to find a פתח an opening, and both must regret their vow so that he can permit it!"

HALACHA HIGHLIGHT

Annulling a vow or cooking during bein hashemashos

בעי רבה קיים ומופר ליכי בבת אחת מהו

Rabbah inquired: [If a man says,] "It is confirmed and revoked for you at the same time." What is the halacha?

Rav Akiva Eiger¹ records the following halacha suggested by a Torah scholar. If a woman makes a vow during bein hashemashos, the husband should not have the ability to annul that vow because of the concern that perhaps when she took the vow it was day and when the husband now wants to annul the vow it is no longer the day upon which he heard the vow. Rav Akiva Eiger rejected this conclusion because even if we were to assume that she took the vow during the day and now when he wants to annul the vow it is night, he should still retain the ability to annul the vow since he did not have time to annul the vow on the day that he heard it. A case where this concern could arise, however, is where the husband heard about the vow during bein hashemashos, was silent for the period of דיבור and then decided that he wanted to annul the vow. In this case since we must be concerned that the vow and his initial silence occurred during the day and now when he wants to annul the vow it may already be night and thus he did not annul the vow on the day that he heard about it. He then expresses hesitation about the matter because maybe the husband should be able to annul the vow with a ספק ספיקא, i.e. perhaps at the time of the annulment it is still day and even if at the time of the annulment it is night maybe she took the vow when it was already night.

This gives rise, notes Rav Akiva Eiger², to the question of whether it is permitted on Yom Tov to cook during bein hashemashos with the intention to eat the food during bein hashemashos because of the possibility that when the food was cooked it was day, but at the time of the eating it is night. To further complicate matters, since the cooking involves a Biblical prohibition and is considered שיש לו שיש, one cannot even rely upon a ספק ספיקא to permit the activity. Similarly, it would be prohibited to light a candle (from an existing flame) during bein hashemashos for the same reason. Rav Akiva Eiger notes that it seems unreasonable that a ruling like this should go unmentioned by earlier Poskim and leaves the matter unresolved. As a matter of practical halacha Poskim³ write that one should avoid activities that involve Biblical prohibitions during the period of bein hashemashos.

1. שו"ת רעק"א מהדורא תליתאה סי' א'
2. גנזי רעק"א סי' כ"א
3. שו"ת רבבות אפרים ח"ו סי' קפ"ד

TALES AND TEACHINGS FROM THE DAF

An Imprudent Agreement

On this daf, we find a discussion about one who affirmed his wife's vow. When one couple's refrigerator stopped working, the husband decided to try to repair the appliance. His wife was afraid that he would make things worse and begged him to desist. "Why must you always try to fix things yourself? Please just get a repairman." This displeased her husband. "You must admit that I often succeed. How about we make the following arrangement? If I manage to repair this today, you must move out for a week. If I don't succeed, I will spend the next week somewhere else."

The wife agreed and the two shook hands on it. After several hours, the husband managed to repair the refrigerator and asked his wife to stick to their agreement. "But where am I to go?" she tearfully asked.

Although the husband was obviously immature, he began to realize that this bet was a very bad idea. If he cruelly forced her to find a place to stay, she may prefer to stay away. But then he realized that since they had shaken hands on it, she may have to go, since shaking hands in an agreement generally counts like an explicit oath. He quickly explained this, concluding that he was happy for her to stay if there was a halachically sound way. When this question was presented to Rav Yitzchok Zilberstein, he ruled that she could remain at home. "There are three reasons she can stay. Firstly, their agreement is an asmachata, since each only agreed because they felt sure they would win and the other would be forced to move out. We hold that an asmachata does not take effect when there is no mitzvah involved. If they had agreed to do some holy action, we could not rely on this rationale. Secondly, even if the handshake counts as a vow, in this case it suffices that the husband is mevater, as is clear from the Shulchan Aruch (Yoreh Deah, siman 239). Thirdly, perhaps handshakes do not take effect except when one agrees to do something for the other party, not to penalize himself" (Chashukei Chemed).

POINT TO PONDER

The Gemara discusses a case whereby the father said

הקמה שואל on the first קיים ליכי and then he was שואל on the first one. The Gemara concludes that it's possible to be שואל on the first one. Since שאלה means that the person has חרטה how can he have חרטה from the first הקמה and not automatically also have חרטה from the second one?

Response to last week's Point to Ponder:

The רי"ן ד"ה תא שמע writes that since the husband heard the נדר and didn't say anything, it must be that he approved of it. Why doesn't he simply say that since he didn't say anything, he forfeited his right to be מייפר?

The רי"ן appears to be explaining why the father can't take over the husband's right. In a case where the husband is מייפר and then he dies the father takes over even though the husband already exercised his right. Therefore he explains that here he was conveying his agreement. The תוספות doesn't appear to agree with the רי"ן. (See also גמרא דף עט which discusses different ways for understanding שתיקה).

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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The shavua matters is published by the Daf a week program under the rabbinical guidance of Harav Meir Stern shlita and Harav Shmuel Kamenetsky shlita

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