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Kesuvos Daf 76

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May the studying of the Daf Notes be a zechus for their neshamot and may their souls find peace in Gan Eden and be bound up in the Bond of life

[The Gemora had asked: The reason then (that the husband would be liable to pay the kesuvah) is because the father produced proof (that the defects happened after betrothal), but if he produced no proof, the husband is believed (that the defects happened beforehand, and therefore, he keeps the money that he is holding). Whose view does this represent? Obviously that of Rabbi Yehoshua, who stated (regarding a bride who was found to have been violated; the Mishnah’s case there was as follows: If one marries a woman and does not find her to be a virgin, and she says: After you had betrothed me, I was violated and thus it is as if your field has been inundated, and he says: It occurred before I betrothed you, and my acquisition is thus a mistaken one): We do not live by her mouth (*perhaps she is lying*; rather, she is presumed to have engaged in an illicit relationship before she was betrothed, and she misled him, until she brings a proof for her words). [This ruling is based on the fact that the husband is holding the money for her kesuvah, and therefore, it remains in his possession. This conforms with the principle that if one wants to exact money from his fellow, he must bring a proof that his claim is a correct one. Now here, the woman has a ‘chezkas haguf’ – meaning that there is an assumption that she was a virgin at the time of the betrothal. This is based on the fact that she was born a virgin, and we do not assume that her status has changed until the last possible moment. Nevertheless, R’ Yehoshua is of the opinion that this chazakah is not strong enough to take away money from someone who is a ‘muchzak’ on the money.] Now let us consider the final clause: If, however, she came under the authority of her husband (the defects were found only after the nisuin), the husband must produce proof (that these defects were upon her before she had

been betrothed and that consequently his acquisition was made in error). The reason then (that the husband would not be liable to pay the kesuvah) is because the husband produced proof, but if he produced no proof, the father is believed, a ruling which represents the view of Rabban Gamliel who stated that the woman is believed!?! Evidently, R’ Gamliel maintains that her chazakah that she lost her virginity later is stronger than the chazakah of the husband who has possession of the disputed money.]

Rav Ashi explained: The claim in the first clause (where the defect was discovered while she was still in her father’s house) is analogous to the claim of someone saying, “You owe my father a maneh” (where it is the claim of one person based upon the rights of another; here too, it is the chazakah of the daughter being used to support the claim of her father, for her kesuvah, as she is not yet a bogeres, belongs to her father), but that in the latter clause (where the defect was discovered in the husband’s house after nisuin), it is analogous to the claim of someone saying, “You owe me a maneh” (for in this case, it is her chazakah which is being used to support her claim, for the kesuvah belongs to her).

Rav Acha the son of Rav Avya raised an objection against Rav Ashi from the following Baraisa: Rabbi Meir admits that in respect of bodily defects likely to have come with her from her father’s house, it is the father who must produce the proof. [Now, this is obviously referring to a case where she was fully married and not in her father’s domain, for that is when the husband is the one who would have needed to provide the proof.] But why? Isn’t this analogous to the claim

of someone saying, "You owe me a maneh' (for after nisuin, it is the daughter who receives the kesuvah)?

The Gemora answers: Here we are dealing with the case of a woman who had an extra finger (which was obviously there before the betrothal). [In this case, Rabbi Meir admits that the father must provide the proof.]

The Gemora asks: But if she had an extra finger, what proof could be brought (that it happened afterwards)?

The Gemora answers: He brings proof that the husband has seen it and has been appeased. (76a1 – 76a2)

Rav Yehudah stated in the name of Shmuel: [*Reuven has a donkey and Shimon has a cow. The cow is present before us. The law is that if they agree to exchange the two animals, Reuven needs to make an effective acquisition on the cow, such as pulling it, and Shimon automatically acquires the donkey, which presently, is in Reuven's yard.*] If a man (Shimon) exchanged a cow for another man's donkey, and the owner of the donkey (Reuven) pulled the cow, but the owner of the cow did not manage to pull the donkey before the donkey died (and now Shimon claimed that the donkey died before he pulled the cow, so that the acquisition never took effect), it is for the owner of the donkey (Reuven) to produce proof that his donkey was alive at the time the cow was pulled. And the Tanna (of our Mishnah) who taught about a bride supports this ruling.

The Gemora asks: Which ruling concerning the bride (was he referring to)? If you will say it is the one concerning a bride (who is still) in her father's house (the assumption being that, in agreement with R' Elozar, it represents the view of R' Yehoshua, and that the father must produce the proof - even where the defects were discovered after nisuin, which is that the doubt did not arise until after the bride was outside of his domain, and yet, the father must prove his claim to collect the kesuvah; similarly, in the case of the exchange of the animals, the owner of the donkey must produce proof though the doubt occurred after his pulling of

the cow had transferred the donkey to the responsibility of the other party), the following objection can be raised: Are the two cases alike? There, it is the father who produces the proof and receives (the kesuvah from the husband), while here, it is the owner of the donkey, who produces the proof and retains the cow?

Rabbi Abba replied: It is the ruling concerning a bride in her father-in-law's house. [It is the second clause of our Mishnah which provides the support; the assumption being with R' Elozar, that it represents the view of R' Gamliel and that the husband must produce the proof even where the defects were discovered prior to marriage, while the bride was still in her father's home, and her kesuvah still belonged to her father. The support is adduced as follows: If in this case, where the doubt first arose while the bride was still under her father's authority, it is the husband, who is the defendant, that must produce the proof, how much more so in the case of the exchange of the animals, where the doubt arose in the house of the defendant (the owner of the donkey) that the latter must produce the proof.]

The Gemora asks: But the two cases are still unlike, for there, it is the husband who produces the proof and thereby weakens the presumptive right of the father, while here, it is the owner of the donkey who produces the proof, and thereby upholds his presumptive right!?

Rav Nachman bar Yitzchak replied: The support is derived from the case of the bride in her father's house in respect of the money given to her for betrothal (where it is up to the father to prove that it belongs to him). [*He explains this based upon a question if a man, when giving money to betroth a woman, resolves in his mind that he is prepared to forfeit the money if this will not result in a nisuin:*] And do not say that this applies only in accordance with the one who holds that the money of betrothal is not given irretrievably (and therefore it is quite understandable why she or her father must prove their right to the money, for they are not regarded as being in full possession of the money, for they might need to return it), but it is understandable even

according to the one who maintains that the money of betrothal is given irretrievably, since his ruling relates only to definite betrothal, but not to a betrothal made in error - where the father may retain the betrothal money only if he produces proof (that the betrothal was valid), but if he does not provide proof, he cannot keep the money.

An objection was raised from the following Baraisa: If a needle was found in the thick edge of the reticulum, the animal is kosher if it is only protruding from the inner membrane (*for the outer one will protect it*); if, however, it pierced both membranes, the animal is rendered a *tereifah*. If a spot of blood was found on it, it is certain that the puncture occurred before the *shechitah* (*and it is therefore a tereifah; an animal would not bleed from a puncture which occurred afterwards*); if, however, no spot of blood was found on it, it is certain that the puncture occurred after the *shechitah* (*and therefore it is permitted*). If the top of the wound was covered with a scab, it is certain that the wound occurred at least three days before the *shechitah* (*so if he purchased this animal within the last three days, the transaction is null and void and the purchaser is entitled to a refund of his money*); if it was not covered with a scab, then the burden of proof rests upon the one who is trying to exact money from his fellow. Now, if the butcher had already paid the price (to the seller), he would need to produce the required proof and so obtain the refund (of his money from the seller, who is now in possession of it); but why? Let the owner of the animal (i.e., the seller) produce the proof and retain (the purchase money he received from the butcher)!?

The Gemora answers: The case is where the butcher has not yet given the money.

The Gemora asks: But how can such an absolute assertion be made (for what reason should we assume that they are always buying animals on credit)?

Rami bar Yechezkel said: Do not listen to those rules which my brother Yehudah stated in the name of Shmuel, for the following is what Shmuel said: He in whose domain the

doubt first arose is the one who must produce the proof; and the Tanna (of our Mishnah) who taught about a bride supports this ruling. [Shmuel, according to the present explanation, would hold the same opinion as Rava who stated that the first as well as the second clause of our Mishnah represents the view of R' Gamliel, and the burden of proof rests on the one whose domain it was when the bride's defects were discovered.]

An objection was raised from the following Baraisa: If a needle was found in the thick edge of the reticulum, etc. [and the Baraisa concluded: if it was not covered with a scab, then the burden of proof rests upon the one who is trying to exact money from his fellow]. Now, if the butcher has not yet paid the purchase price (to the seller), it would be the owner of the animal who would need to produce the proof and so obtain the purchase money from the butcher; but why? Hasn't the doubt arisen when the animal was already in the possession of the butcher?

The Gemora answers: The case is where the butcher has already paid the money.

The Gemora asks: But how can such an absolute assertion be made (for what reason should we assume that they are always paying for animals immediately upon taking possession)?

The Gemora answers: It is the usual practice that so long as one man does not pay the price the other does not give his animal. (76a2 – 76b3)

The Mishnah had stated: The Sages, however, said: When do these rulings apply? They apply only to bodily defects found in concealed parts of her body (and therefore possible that he was unaware of them at the time which he betrothed her).

Rav Nachman said: Epilepsy is regarded as one of the bodily defects found in concealed parts of her body.

The Gemora notes: This, however, applies only to attacks which occur at a fixed time, but if they are not fixed, epilepsy is regarded as one of the exposed bodily defects. (76b3 – 77a1)

DAILY MASHAL

The Baal Shem Tov once traveled to the town of Kamenka. As he approached his destination, he heard a heavenly voice: “Yisroel ben Eliezer, Please remove the *shochet* (kosher slaughterer) of Kamenka from his position.”

The Besht pondered the directive he received. He couldn’t fathom why there would be a heavenly decree to discharge the *shochet* from his position. He knew that R. Boruch, the Rabbi of Kamenka, was a wise and respected Rabbi who was meticulous when it came to matters of Jewish Law. He was sure that if there was any *halachic* problem with the town’s *shochet*, the rabbi would know of it and correct it immediately.

“Perhaps,” reasoned the Besht, “the problem is not a *halachic* one. Perhaps the *shochet* has taken a spiritual ‘position’ from which he needs to be removed.”

When he arrived in Kamenka, the Baal Shem Tov went directly to the house of Rabbi Boruch, who was elated and honored to welcome the holy Besht to his town. He was invited to rest there while Rabbi Baruch arranged for a celebration honoring the arrival of the great *tzadik*. He set aside several choice lambs, and sent a request to the local *shochet* to come and slaughter them for the occasion.

After the slaughtering, when inspecting the lambs as Jewish Law requires, the *shochet* found one of the lambs to have a certain lesion that he decided rendered it not kosher. He removed the unfit lamb and hung it on a hook in the passageway behind Rabbi Boruch’s home. Later that day, Rabbi Boruch found the Baal Shem Tov smoking his pipe in that passageway and staring in deep concentration at the slaughtered lamb. After a few minutes,

the Besht turned to the rabbi and said, “Rabbi Boruch, would you be so kind as to cut a piece of meat from this animal and roast it for me.”

Reb Boruch thought the *tzadik* had made a mistake.

“Rebbe, this animal is *treif* (not kosher). That is why the *shochet* hung it here. Let me prepare a piece from one of the other animals that he also just slaughtered.”

“No,” answered the Baal Shem Tov, “I want a piece from this particular animal.”

“But Rebbe, the *shochet* told me personally that this animal is not kosher.”

The Besht turned to him and said, “I understand. But I can hear this animal begging me that it be able to fulfill its purpose in this world; that it be slaughtered by a G-d fearing *shochet* and that a blessing be said by a Jew before it is eaten so its soul-spark can be elevated. We must speak with the *shochet* and find out why he considers it to be not kosher.”

Immediately, Rabbi Boruch sent for the *shochet*. When he arrived, the rabbi asked him in the presence of the Baal Shem Tov why he thought this lamb is *treif*. The *shochet* explained his doubt as to whether the animal was one hundred percent kosher, and his hesitancy to allow any Jew to eat it. Then he continued, “It is true, however, that there are several rabbinic opinions regarding this particular lesion, and that some authorities consider it to be kosher, and some do not.”

The Baal Shem Tov then understood the ‘position’ the *shochet* was in from which he had to be removed. Although the *shochet* was G-d fearing and expert in his profession, he did not understand the spiritual consequences of his perhaps too strict position.

“In that case,” the Besht addressed Rabbi Boruch, “please cut me a piece of meat and roast it for me.” The Rabbi stared at the Baal Shem Tov in shock. On one hand he wanted to fulfill the request of his Rebbe. On the other hand how could he feed the Rebbe *treif* meat, a prohibition directly from the Torah?

The Baal Shem Tov understood the rabbi’s dilemma. So he suggested, “Please send a messenger to Rabbi Shmuel, the Dayan (rabbinical court judge) of the large strictly observant community of Polonnoye, with a letter explaining the doubts the *shochet* has about this animal. Let him be the judge for us.”

The other two agreed. Rabbi Boruch, relieved by the Besht’s suggestion, immediately sent a messenger to Rabbi Shmuel. The messenger returned that same day with rabbinical judge’s reply, which was that the meat was indeed kosher. He also included the *halachic* reasons for his opinion. Thus, the Baal Shem Tov complied with the heavenly decree and succeeded to remove the *shochet* from his ‘position.’ Indeed, he placed him in a much better one in the eyes of Heaven!