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Kesuvos Daf 86

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Daf Notes is currently being dedicated to the neshamot of

Moshe Raphael ben Yehoshua (Morris Stadtmauer) o”h
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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* stated above: Shmuel said: If a man sold a loan document to another person and then he (*the seller*) released the debtor, the latter is legally released (*and the buyer cannot collect the debt*); and, moreover, even the creditor’s heir may release the debtor.

Rav Huna the son of Rabbi Yehoshua says: If the buyer is smart, he should offer a little money to the borrower (*before the seller has a chance to forgive the loan*) and he (*the borrower*) should write a new document in his own name (*the buyer’s name; of course, he will now only be able to collect from encumbered properties from the date of the new document*).

Ameimar said: A judge who judges the laws of *garmi* (*one would be liable for causing a loss to another*) would collect from the seller the amount of the debt (*if the seller forgives the debt, since he is causing a loss to the purchaser*). However, a judge who does not judge the laws of *garmi* will not collect anything from the seller.

There was once such an incident and Rafram forced Rav Ashi to collect from the damager (*because of garmi*). (86a1 – 86a2)

Payment of a Kesuvah and a Debt

Ameimar stated in the name of Rav Chama: If a man has against him, the claim of his wife’s *kesuvah* and that of a creditor, and he owns a plot of land and he also has money (*but only enough for one of the debts*), the

creditor’s claim is settled by means of the money while the woman’s claim is settled by means of the land. The *Gemora* explains the reason: The creditor is treated in accordance with his rights (*he lent money, so it is fitting for him to receive money*) and the wife in accordance with her rights (*she entered the marriage relying on the fact that she would collect her kesuvah payment from the husband’s land*).

If, however, he owns only one plot of land and it can only satisfy one of their claims, it is to be given to the creditor, and it is not to be given to the wife. What is the reason? It is because more than the man’s desire to marry is the woman’s desire to be married (*and they will not refuse to be married because of this halachah; this law is applicable only if the documents were written on the same day; otherwise, the earlier document takes precedence*). (86a2)

Repaying a Debt with Money or Land

Rav Pappa asked Rav Chama: Is it a fact that you have stated in the name of Rava that if a man owes another money and he owned a plot of land, and when his creditor approached him with the claim for repayment, he replied, “Collect your loan from the land,” we instruct the debtor: Go yourself and sell the land and bring the proceeds and give it to the creditor (*wasn’t the creditor relying on land in the first place; why should he be compelled to sell the land*)?

Rav Chama responded: No (*Rava never said this*)!

Rav Pappa asked him: Tell me the specifics of the case.

Rav Chama answered him: The debtor (*having money*) alleged that his money belonged to an idolater (*we did not believe his claim since there is a presumption that whatever is in a man's possession belongs to him; we, however, were not able to take that money since the idolater was a powerful person*), and since he acted in an improper manner, he was similarly treated in an improper manner (*by compelling him to sell his land and give the money*). (86a2 – 86a3)

Forcing One to Fulfill a Mitzvah

Rav Kahana asked Rav Pappa: According to you that maintains that the repayment of a debt is merely regarded as a *mitzvah* (*for Biblically, the debtor's properties are not pledged for the debt; it must be repaid because one is obligated to keep his word*), what is the *halachah* if the debtor says, "I do not want to perform the *mitzvah*"?

Rav Pappa responded by citing the following *Baraisa*: When does one receive forty lashes for violating a Biblical law? That is only in regard to a negative commandment; however, with respect to a positive commandment, for example – if we tell someone, "Make a *sukkah*" and he refuses, or we tell him, "Make a *lulav*," and he refuses, we beat him until his soul departs. (86a3 – 86b1)

Divorce After Thirty Days

Rami bar Chama inquired of Rav Chisda: If a husband would tell his wife, "Here is your letter of divorce but it should only take effect after thirty days," and she went and laid it down at the side of a public domain, what is the *halachah* (*is it regarded as if the get is in her possession at the end of thirty days*)?

Rav Chisda responds: She is not divorced, on the basis of the ruling of Rav and Shmuel. For they both have stated that seizure from the orphans will only be valid if the produce was piled up in a public domain, and the sides of a public domain are regarded as the public domain itself (*therefore, she will not be divorced*).

Rami bar Chama counters: On the contrary! She should be deemed divorced by reason of a ruling of Rav Nachman. For Rav Nachman stated in the name of Rabbah bar Avuha: If a man said to another, "Go and pull this cow, but it shall only become your legal possession after thirty days," he legally acquires it after thirty days, even if it is standing at the time (*after thirty days*) in a swamp. Now, a swamp presumably has the same status as the sides of a public domain?

Rav Chisda replies: No! A swamp has a status of its own and the sides of a public domain have a status of their own.

The *Gemora* cites another version of the discussion: Rav Chisda responds: She is divorced by reason of a ruling of Rav Nachman. Now, a swamp presumably has the same status as the sides of a public domain!

Rami bar Chama counters: On the contrary! She should not be divorced, on the basis of the ruling of Rav and Shmuel. Now, the sides of a public domain are presumably regarded as the public domain itself?

Rav Chisda replies: No! A public domain has a status of its own and the sides of a public domain have a status of their own. (86b1)

Mishnah

The *Mishnah* states: If one set up his wife as a shopkeeper, or he appointed her as an administrator, he may impose an oath on her whenever he wishes (*this is*



true regarding any administrator; the Rabbis enacted that whoever suspects his manager of any type of embezzlement even with a doubtful claim, can exact an oath from them). Rabbi Eliezer says: Even on her spindle and on her dough (*normal household chores*). (86b2)

Extension Oath or Directly

They inquired: Does Rabbi Eliezer mean that the oath regarding the spindle or dough is to be imposed by devolving it from her managing duties (*only where the wife is compelled to take an oath in respect of her managing duties may an oath in respect of her normal household chores be added; this is known as a gilgul shevuah, an extension or rollover oath*) or does he mean that it may be imposed directly?

The *Gemora* answers by citing the following Baraisa: They said to Rabbi Eliezer: A person cannot live with a serpent in the same basket (*a wife will find her married life unbearable if she is constantly forced to take an oath*). Now if you will assume that Rabbi Eliezer meant the imposition of a direct oath, one can very well understand the Rabbi's argument; however, if you were to suggest that Rabbi Eliezer meant that the oath should be imposed by devolving it from her other oath, what would this (*other oath*) matter to her (*if she must swear anyway regarding her managing duties*)?

The *Gemora* answers: She might tell him, "Since you are so particular with me, it is unbearable for me to live with you."

The *Gemora* cites a different *Baraisa*: If a man did not exempt his wife from a vow or from an oath and he set her up as a shopkeeper or appointed her as his administrator, he may impose upon her an oath whenever he desires to do so. If, however, he did not set her up as a shopkeeper and did not appoint her as his administrator, he may not impose any oath upon her.

Rabbi Eliezer said: Although he did not set her up as a shopkeeper and did not appoint her as his administrator, he may nevertheless impose upon her an oath wherever he desires to do so, because there is no woman who was not an administrator for at least some moments during the lifetime of her husband in respect of her spindle and her dough. Thereupon, they said to him: No one can live with a serpent in the same basket. It may be inferred from here that Rabbi Eliezer meant that the oath may be imposed directly. This is indeed a conclusive proof. (86b2 – 86b3)

INSIGHTS TO THE DAF

Beat him Until he Dies

The *Gemora* cites a *Baraisa*: When does one receive forty lashes for violating a Biblical law? That is only in regard to a negative commandment; however, with respect to a positive commandment, for example – if we tell someone, "Make a *sukkah*" and he refuses, or we tell him, "Make a *lulav*," and he refuses, we beat him until his soul departs.

The question is asked: Why is there permission to kill one who is not interested in fulfilling a positive commandment; the punishment for not fulfilling a positive commandment is not death?

Reb Tuvia Lisitzin, in his sefer *Kerem Tuvia* answers that permission is granted to beat him until his death because by not fulfilling a positive commandment (*and especially, when people are attempting to persuade him, and he, nevertheless, refuses*), this is tantamount to desecrating the name of Hashem.

This can also explain why Pinchas was allowed to kill the Midyanis woman. He was able to kill Zimri because the *halacha* is that one who cohabits with an idolater, the zealots are permitted to kill him. However, why was he allowed to kill the Midyanis woman; she does not have



any prohibition of cohabiting with a Jew? The answer is: It was due to her that a tremendous desecration of Hashem's name occurred; for this, she was deserving to die.

The Chasam Sofer writes that we are not permitted to strike him with a blow that will kill him; permission is granted to hit him time after time until he eventually agrees to fulfill the *mitzvah*. When do we stop beating him? When he dies from the beatings.

The Chinuch writes that one who does not repay a debt has violated a negative commandment in the Torah. The Minchas Chinuch asks: If so, why does our *Gemora* inquire if a person who refuses to repay a debt should be compelled to do so; of course, we should force him, just like any other negative commandment?

DAILY MASHAL

Thirty Days Before

The *Gemora* cites a *Baraisa*: When does one receive forty lashes for violating a Biblical law? That is only in regard to a negative commandment; however, with respect to a positive commandment, for example – if we tell someone, “Make a *sukkah*” and he refuses, or we tell him, “Make a *lulav*,” and he refuses, we beat him until his soul departs.

The question is asked: At what time are we referring to? If this is occurring before *Sukkos*, why do we beat him; he could say that he has plenty of time to prepare for the *mitzvah*? If it is already *Sukkos*, what benefit will there be from the beating; he cannot construct a *sukkah* now anyway?

Rav Nosson Gishtetner explains that the *Gemora* is referring to thirty days before *Sukkos*. From that time and on, there is an obligation for one to build a *sukkah*; and if he refuses, we can beat him until his soul departs.

The Chidushei HaRim writes that this is true regarding all *mitzvos*. Thirty days prior to the time a *mitzvah* is supposed to be performed, one has an obligation to begin involving himself with the *mitzvah*; it is incumbent upon him to properly prepare himself from that time on in order to fulfill the *mitzvah*. To such an extent that one is obligated to worry about the poor people in his city thirty days prior to *Pesach* and to investigate and see if they have sufficient enough funds for all the *mitzvos* on *Pesach*.