

OVERVIEW of the Daf

1) A slave who marries a free woman (cont.)

R' Yochanan challenges the ruling cited in Rebbi's name that a slave who marries a free woman in his owner's presence goes free.

One resolution is suggested and rejected.

A second resolution is suggested by R' Nachman bar Yitzchok and accepted.

2) A slave who puts on tefillin

R' Yehoshua ben Levi rules that a slave who puts on tefillin in his master's presence goes free.

This ruling is unsuccessfully challenged.

3) The emancipation of slaves

R' Dimi in the name of R' Yochanan ruled that if someone declared on his deathbed that his heirs should not enslave his maidservant we will force them to write her an emancipation document.

R' Ami and R' Assi challenged R' Yochanan's ruling.

R' Shmuel bar Yehudah cited a different version of R' Yochanan's ruling.

Ameimar rules that a slave who is declared ownerless is stuck in a circumstance in which he will be unable to marry.

R' Ashi unsuccessfully challenges this ruling.

A second version of the exchange between Ameimar and R' Ashi is recorded.

A related incident is presented in which Ravina ruled that the heirs of slave owners can write an emancipation document for slaves that had been sold to non-Jews.

Ravina's ruling is unsuccessfully challenged.

An incident related to forcing an owner to free his slave is recorded.

A Baraisa presents different phrases that may or may not constitute a declaration that a slave is free.

R' Yochanan adds that the discussion in the Baraisa relates to declarations that were documented.

A similar discussion that relates to land rather than slaves is recorded.

Another Baraisa that discusses phrases that may or may not constitute the emancipation of a slave is presented.

The Gemara presents the comments of R' Chisda and Rabbah about the previously-cited Baraisa and explains that they do not disagree with one another.

4) MISHNAH: The Mishnah discusses a case of a slave who was declared an אפותיקי and then freed by his owner.

5) Clarifying the Mishnah

Rav explains that the Mishnah refers to a case where the first master (i.e. the debtor) releases the slave from slavery and proceeds to explain the different opinions in the Mishnah in this light. ■

Distinctive INSIGHT

To "do what is pleasing" for the maidservant

מי שאמר בשעת מיתתו פלונית שית שפחתי קורת רוח עשתה לי יעשה לה קורת רוח כופין את היורשין ועושין לה קורת רוח

Rav Shmuel bar Yehuda cites a statement of R' Yochanan regarding a declaration of someone who owns a maidservant. If he tells his family as he is about to die that they should acquiesce to whatever the maidservant wants because she pleased him during his lifetime, the family is obliged to honor their father's word. Rashi explains that this means that if the maidservant chooses simply not to work, they should listen to her, and if she is not satisfied unless she is given her release, they should release her. The reason for this ruling is that there is a mitzvah to heed the instructions of a person before he died (מצוה לקיים דברי המת).

Ri"ף understands that the mitzvah to follow the wishes of the maidservant only extend to her request not to do a particular task. The family does not have to release her from total servitude, nor do they have to release her even if she requests this.

Korban Nesanel explains the view of Ri"ף. If the father had informed the family that they should not enslave this woman (שלא ישתעבדו בה), he is telling them that he himself has already released her from slavery. The heirs are not faced with the prohibition of releasing a servant, and presenting her with her documentation (שטר שחרור) is not prohibited. But, here where the father instructed that they "do what is pleasing for her," the father is, in effect, leaving it up to the children to release her, and this would be in violation of the prohibition of תעבדו לעולם בהם תעבדו. Therefore, we interpret the father's words to mean that the children allow her to avoid any particular chore upon her request.

Korban Nesanel continues and explains that Rashi, however, understands that the violation of releasing a servant corresponds with the Torah's directive not to give free gifts to gentiles (לא תחנם). This is the view of Ramban and Rashba (38b). If a slave does not receive his freedom gratis, the precept is not being violated. Therefore, when the father tells his sons to "do what is pleasing," we understand that this maidservant must have either given the father something, or that she must have done some favor for him, thereby earning her release. The sons are therefore allowed to interpret the instructions of the father not to be in violation of the Torah, but simply to mean that the maidservant should be granted her full release, if she so wishes. ■

HALACHAH Highlight

Complying with a parent's wishes after his or her death

כופין את הירושתין וכו' מאי טעמא מצוה לקיים דברי המת

We force the heirs ... what is the reason? There is a mitzvah to comply with the wishes of the deceased.

Rav Akiva Eiger¹ expresses uncertainty whether a child is obligated to fulfill the wishes of a deceased parent as part of the mitzvah of *kibud av v'em*. Some sources in the Gemara indicate that the mitzvah of *kibud av v'em* continues even after a parent has passed away but there are other sources that seem to show that the mitzvah of *kibud av v'em* does not continue after a parent has passed away. To resolve the contradiction R' Akiva suggests that a distinction can be drawn: those acts that accord honor directly to the parent, (e.g. referring to one's father with the title **אבא מארי**—My father, my master) should continue to be performed even after the parent has passed away. The reason is that these acts continue to elevate the prestige of the parent even though the parent may be deceased. On the other hand, a child is not obligated to perform acts that are performed merely to provide contentment and satisfaction (**נחת רוח**) for a parent (e.g. providing food, drinks, honoring a stepparent). The reason is that the parent does not benefit at all from these acts so they can not be categorized as a mitzvah.

In the course of his discussion of this issue Rav Akiva Eiger notes that there are three practical differences whether the obligation to listen to the instructions of a deceased parent is part of the mitzvah of *kibud av v'em* or whether it is part of the general obligation to follow the instructions of the deceased (**ממוה לקיים דברי המת**). One difference arises when a parent commands a child to give some of the money of his inheritance to a third party. *Kibud av*

REVIEW and Remember

1. What happens when a slave puts on tefillin in front of his owner?
2. What legal right does a slave owner possess in addition to the monetary right to the slave?
3. Explain the dispute between Rebbi and Chachamim about the statement that one "will make his slave free"?
4. What is an **אפותיקי**?

v'em obligates the child to comply with the parent's wishes regardless of whether the money was put into a segregated account (**משלשי המעות הצל אחרים**) whereas the mitzvah to comply with the wishes of the deceased applies only if the deceased put the money into a segregated account. A second difference applies when the deceased gave the instruction to an heir that is not his child. *Kibud av v'em* obviously only applies to a child but the mitzvah to comply with the wishes of the deceased applies to heirs that are not the children of the deceased. A third difference is that halacha does not allow a child to be forced to fulfill the mitzvah of *kibud av v'em* whereas it is permitted to force a person to comply with the instructions of the deceased. This is evident from our Gemara where R' Yochanan rules that heirs can be forced to set free the maidservant they inherited from their father as part of the mitzvah to comply with the instructions of the deceased. ■

1. שו"ת רעק"א מהדור"ק סי' ס"ח

STORIES Off the Daf

A poor joke

האומר עשיתי פלוני עבדי בן חורין

A certain young man once owned a ring of considerable value. A widow wished to purchase his ring in exchange for cash plus another ring of lesser value in her possession. The young man was amenable to the sale and the two agreed that in addition to giving the young man her ring, she would pay an extra gold coin in exchange for his ring. They traded rings and the widow placed his ring on her finger. The young man said in a joking manner, "I married her with the ring!"

The widow seemed very amenable to this and said something which showed her

unmistakable willingness to marry the young man. When everyone present began to laugh at the young man who was blushing furiously, the widow said to him, "I am **מוחלת** this."

But they wondered if this wasn't perhaps a marriage since, after all, he had stated they were married and the widow had definitely taken him seriously. They decided to consult with the Shvus Ya'akov, zt"l.

"They are definitely not married," he replied. "Even if we take what he said seriously, he never said, 'You are married to me with this ring,' in the present tense. He only said, 'I married you.'"

"A clear proof to this is in Gittin 40. There we find that one who said 'I freed so-and-so my slave,' or, 'I gave my field to ploni,' is only effective if the owner had a document drawn up... If the owner

claimed to have drawn up a document freeing his slave or giving his field away, and the slave or beneficiary of the field denies this, the transaction does not hold... It seems clear from here that if there are actual witnesses that the master did not write a **גט** or a document to that effect, we would certainly believe them. Our case is no different. Since witnesses saw the whole thing, we need not worry that he married her for we know from the witnesses that he did not. The language here is the same, and so is the law."

He concluded, "However, you should fine and punish the bochur for this to ensure that he never makes a joke like this again. Such a frivolous act can lead to a rumor that a kosher bas Yisrael is actually married!"¹ ■

1. שו"ת שבות יעקב חלק ב' ס' קי"ט

