

## OVERVIEW of the Daf

1) "My eyes are konam regarding sleep today if I sleep tomorrow" (cont.)

The reason R' Yehudah draws a distinction between the case where he prohibits sleep today if he sleeps tomorrow and prohibiting sleep tomorrow if he sleeps today is explained.

Our Mishnah is cited and after a thorough analysis of the Mishnah the Gemara notes that the Mishnah seems to refute R' Yehudah's position regarding one who declares, "My eyes are konam regarding sleep tomorrow if I sleep today."

A resolution to the challenge is suggested.

Ravina offers another explanation for the Mishnah which would render it irrelevant to the dispute between R' Yehudah and R' Nachman.

Ravina's explanation is unsuccessfully challenged.

Another challenge to R' Yehudah's position from a Mishnah below is presented.

This challenge is rejected.

Another challenge from the end of that Mishnah is recorded.

The challenge is refuted.

Two more unsuccessful challenges to R' Yehudah's position are presented.

2) **A neder concerning תשמיש**

The Mishnah's ruling that a husband can take a vow to prohibit תשמיש with his wife is challenged since תשמיש is a Biblical obligation.

The Gemara explains how the husband must phrase his declaration for it to be valid.

3) **MISHNAH:** The Mishnah presents the halachos for declarations of different oaths and vows. ■

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## Distinctive INSIGHT

*An oath to not eat for thirty days*

שבועה שלא אישן שלשה ימים מלקין אותו וישן לאלתר

Rabbi Yochanan teaches that if a person makes a neder that he will not sleep for three days, he is immediately liable for lashes. He has pronounced a neder that is physically impossible to fulfill, and his words constitute a false utterance. In fact, we do not have to wait for sleep to overtake him, as his statement is false in its very nature, and the person may now even choose to go to sleep. The ר"ן in Shevuos (10a in the pages of the Rif, ד"ה מלקין) inquires regarding a case where a person makes a neder that he will not eat or drink for thirty days, which is a physical impossibility. It is obvious that a person who is deprived of nourishment for thirty days will not survive. Is this comparable to our case where a person declared that he will deprive himself of sleep beyond human endurance? Should we therefore say that in the case of not eating that the person is immediately liable for lashes, and that he may now eat?

The ר"ן feels that the cases are not comparable. In the case of not sleeping, no matter what the person does, he will invariably fall asleep within the next seventy-two hours. Regarding eating though, the person can choose not to eat. If his physical condition deteriorates, and his life becomes in danger, he will be forced to eat due to the life or death situation, which defers the need to maintain his vow. When he eats small amounts in order just to stay alive, he will not be in violation of the vow not to eat. Therefore, the vow not to eat for thirty days is possible to be fulfilled, and the speaker has not stated a vow which is physically impossible to fulfill. The vow is valid, and we must monitor this person's progress as the month unfolds.

Nevertheless, ר"ן concludes that the vow not to eat for thirty days is in direct conflict with the Torah's directive for a person not to kill himself (Bereshis 9:5, from Bava Kamma 91b). Although we will stop the person before he actually dies, the words of his vow indicate a condition which is contrary to Torah law, and, as such, the vow is null and void.

Rambam (Shevuos 1:7 and 5:20) writes that any vow which is physically impossible, for example not to sleep for three days, or not to eat for seven days, is automatically a false oath. The person is liable for lashes, and he may sleep or eat immediately.

Kesef Mishnah explains that Rambam agrees that the person will be fed once his life is in danger, but the emergency feeding is in and of itself a situation to which the person subjected himself. This constitutes a vow which is false, as it cannot be fulfilled.

ר"ן, however, who ruled that this is not a false oath, holds that although the halacha will clearly not allow him to fulfill his words, as he will be forced to eat as the danger sets in, the person himself is not putting food into his mouth. ■

# HALACHAH Highlight

## Following the customs of one's ancestors

דברים המותרין ואחרים נהגו בהן איסור אי אתה רשאי להתירן בפניהם שנא' "לא יחל דברו"

Permitted matters that others treat as prohibited, One may not issue a permitted ruling in front of them as the pasuk says, "He shall not desecrate his words."

Commentators<sup>1</sup> on our Gemara rule that a person who follows a particular custom related to a mitzvah is considered as if he made a vow. Consequently, if he wants to cease the practice he must nullify his vow. Pri Chadash<sup>2</sup> inquires whether a child is automatically bound to follow and practice his father's customs. In his conclusion he distinguishes between customs the father adopted on his own to be more cautious or as an expression of piety and those customs that the father practiced because they were behaviors adopted by the entire town. A child is not obligated to follow the practices his father adopted privately but a child must follow the practices of his father's town and this requirement is derived from the pasuk **אל תטוש תורת אמך**— Do not abandon the Torah of your mother.

Teshuvos Zichron Yosef<sup>3</sup> also addressed this issue and suggested many different guidelines for when a child is obligated to follow his father's customs and when he is not obligated to observe his father's customs. One guideline he suggests is whether the child began to follow his father's practice or not. If the child, upon becoming an adult, followed his father's practices the child must continue to follow those customs but if the child never adopted those practices he is not obligated to follow them

# REVIEW and Remember

1. What is the longest period of time a person can go without sleep?
2. What is an example of a Rabbinic violation of **יחל**?
3. Does the Gemara successfully refute R' Yehudah's position?
4. How does a husband make a vow prohibiting **תשמיש** with his wife?

simply because that was his father's practice.

Teshuvos Divrei Malkiel<sup>4</sup> was asked whether a child is permitted to shave his beard even though it constitutes a deviation from his father's practice. Divrei Malkiel answered that since in their region the practice for centuries was for the men to keep their beards and the Zohar writes very strongly about the matter it is considered as if the community adopted the practice which binds all residents to comply. Granted, he continues, that in those countries where they did not adopt this practice it is permitted to shave but those who come from those countries that did follow this practice must abide by this custom. ■

1. ע' תוס' פסחים נא ד"ה אי אתה והרא"ש שם פ"ד סי' ג'
2. פרי חדש אר"ח סי' תצ"ו דיני מנהגי איסור אות י'
3. שו"ת זכרון יוסף יו"ד סי' י"ד
4. שו"ת דברי מלכאל ח"ד סי' ס"ו וח"ה סי' פ"א ■

# STORIES Off the Daf

## The force of custom

בל יחל דברו מדרבנן

There were many in a certain town in Hungary who were not careful with the prohibition of eating **חלב עכו"ם**. One person tried to justify himself before the Rav of the town, "There are no tamei animals at the non-Jewish farms where we purchase our milk. In any event, even the non-Jews shirk away from drinking milk from a non-kosher animal. Perhaps using unsupervised milk is permitted in such a situation?"

The young Rav of the town didn't know what to do about this question. Many people ate bread made with **חלב**

and if he ruled that eating it is prohibited, those who were more careful could not combine with others to make a **מזומן**. This would certainly lead to strife in his community.

He decided to consult with the Chasam Sofer, zt"l. The great Rav answered, "You must know that this has always been the custom of Ashkenazic Jews, to prohibit even a mixture of milk with non-Jewish milk. Since this is the custom and has a basis in halachah, it seems more than likely that this practice has a status of a neder which is more akin to Torah law than mere custom. Even though **חלב עכו"ם** has the status of a Rabbinic law regarding situations of doubt, this is only because that is the manner in which this was accepted within the communities... Even so, since the Pri Chadash permits this and

prohibiting it entirely would lead to great strife, for the sake of peace you should not prohibit those who are stringent from joining in a **מזומן** with those who use such bread..."

The Levushei Mordechai, zt"l, was astounded by this. "But in Nedarim 15a we see that if people consider something that is really permitted to be forbidden, it is improper to abolish the custom because of Rabbinic law. How does this fit with the Chasam Sofer's principle that if people became accustomed to something it may have the status of a Torah prohibition?"

Rav Dushinsky, zt"l, explained, "The Chasam Sofer is discussing a custom adopted as a true **גדר**. The Gemara in Nedarim is concerned with a custom that mistakenly prohibited that which is really permitted!" ■

