



OVERVIEW of the Daf

1) Clarifying the Mishnah (cont.)

Rav continues to explain the Mishnah according to his explanation that the debtor was the one who set the slave free.

Proof to this explanation is presented.

Ulla asserts that the Mishnah refers to the case where the second owner (i.e. the creditor) freed the slave and he proceeds to explain the Mishnah in that light.

Ulla and Rav explain why they reject the other's explanation.

2) Designating land as an אפותיקי

A disagreement is presented whether a creditor is able to collect other land if the land designated as the אפותיקי becomes flooded.

R' Nachman bar Yitzchok challenges the opinion who asserts that the creditor will not be able to collect and asserts that that opinion must refer to the case where the agreement was that the creditor may only collect from the אפותיקי property.

A Baraisa is cited that supports the distinction drawn by R' Nachman bar Yitzchok.

Another Baraisa is cited that presents a related ruling.

3) MISHNAH: Beis Shammai and Beis Hillel debate what should be done with someone who is half-slave and half-free and ultimately Beis Hillel agreed with Beis Shammai that the slave is set free to permit him to marry.

4) Freeing half a slave

A Baraisa presents a dispute between Rabbi and Chachamim regarding the consequence of freeing half a slave.

Rabbah asserts that the debate relates to the case where the slave was freed with an emancipation document.

The Gemara suggests an explanation of the point of dispute between Rabbi and Chachamim.

This suggestion is rejected in favor of another explanation.

R' Yosef asserts that the debate relates to the case where the slave was freed with money.

R' Yosef's position is challenged and he is forced to admit that the dispute applies in cases where the slave was freed with a document or with money.

A proof to R' Yosef's understanding is suggested.

Two reasons to reject the proof are presented.

It is noted that our Mishnah seems to be consistent with Rabbah rather than with R' Yosef. ■

Distinctive INSIGHT

The mitzvah to populate the world

יבטל! והלא לא נברא העולם אלא לפריה ורביה שנאמר 'לא תהו בראה לשבת יצרה'

The Gemara notes it is important that a slave have the ability to procreate, whether as a full slave, who can have children with a maidservant, or as a freed slave, who is a full Jew and who can marry a Jewish woman. Either way, we acknowledge that it is an essential aspect of a person's task in this world to procreate. The verse cited as the source for this directive is from Yeshayahu 45:18, "He did not create it for emptiness, He fashioned it to be inhabited."

Tosafos (ד"ה לא תהו) wonders why the Gemara does not cite the verse (Bereshis 1:28), "Be fruitful and multiply" as the source for this mitzvah. This is a verse from the Torah, and it would seem to be the more obvious source for this precept, as it is the one where man was commanded to procreate.

Tosafos gives three answers to this question. First, Tosafos notes that the Gemara is dealing with the obligation of a slave to have children. In this context, the master would not have to grant the slave his freedom if the slave could remain with a maidservant and fulfill the lower-level goal of inhabiting the world, even without the slave's becoming a full Jew who would be able to fulfill the mitzvah of פרו ורבו.

Furthermore, Tosafos answers that the mitzvah as it appears in the Torah does not elaborate upon how great this mitzvah really is. It is the verse from Yeshayahu which reveals that this mitzvah is so significant that the entire world was created in order that the world be populated. This is why the verse from Yeshayahu is cited. Finally, Tosafos in Bava Basra (13a, ד"ה שנאמר) combines these two answers, pointing out that a slave is exempt from the mitzvah of פרו ורבו, and

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REVIEW and Remember

1. Why do Ulla and Rav reject one another's explanation of the Mishnah?
2. Why do Beis Shammai feel compelled to free a half-slave half-free man?
3. Which is a stronger principle: גזירה שוה or היקיש?
4. Explain the principle of כח דהיתירה עדיף ליה.

HALACHAH Highlight

Selling a Sefer Torah to marry off an orphan girl

"לא תהו בראה לשבת יצרה"

"He did not create the world to be desolate; He formed it to be inhabited."

Poskim¹ debate whether women are obligated in the mitzvah of populating the world (לשבת יצרה) even though they are exempt from the mitzvah of פרו ורבו. Tosafos² writes that women are obligated in the mitzvah of populating the world even though they are not obligated in the mitzvah of פרו ורבו. Rambam³, on the other hand, writes that a woman has the option to not marry altogether or to marry a man who is sterile. This position clearly indicates that there is no mitzvah for a woman to have children as if a woman had any obligation to have children, it would not be permitted for a woman to not marry or to marry someone who could not have children.

The dispute whether a woman has an obligation to populate the world has a number of ramifications. One practical difference relates to selling a Sefer Torah to marry off an orphan. Shulchan Aruch⁴ rules that it is permitted to sell a Sefer Torah to generate funds needed to marry off an orphan. Chelkas M'chokeik⁵ writes that this ruling is limited to marrying an orphan boy but it is not permitted to sell a Sefer Torah to marry a girl who was orphaned. The reason, he explains, is that women are not commanded in the mitzvah of פרו ורבו and the only allowance to sell a Sefer Torah is to fulfill a mitzvah. The fact that he does not mention the mitzvah of populating the world (לשבת) indicates that women are not obligated in that mitzvah,

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the master is not required to release him in order to allow him to become obligated in this mitzvah. In fact, if there was such an expectation on the part of a master, every slave would demand to be freed. However, if the mitzvah of יצרה cannot be fulfilled, we do demand that the master release the slave.

Finally, Tosafos explains that the obligation of יצרה applies to the enslaved portion of this person as well as to his freed portion, while the mitzvah of פרו ורבו only applies to the freed portion of this person. The Gemara only brings the verse of לשבת because this verse applies to both parts of the slave. ■

in accordance with the position of Rambam. Beis Shmuel⁶ suggests that it is permitted to sell a Sefer Torah to generate funds to marry off an orphan girl because of her obligation to populate the world. This is also the opinion of Magen Avrohom⁷ who notes that the Gemara (Megilla 27a) that rules that it is permitted to sell a Sefer Torah to marry off an orphan invokes the mitzvah of inhabiting the world rather than the mitzvah of פרו ורבו specifically so that the ruling should incorporate women. Mishnah Berurah⁸ rules that it is permitted to sell a Sefer Torah to marry off an orphan girl and cites the reason of Magen Avrohom. ■

1. עי שו"ת יביע אומר ח"ח יו"ד סי' כ"ב אות ב' וגי'.
2. תוס' מ"א : ד"ה לא תהו.
3. רמב"ם פכ"א מהל' איסורי ביאה הכ"ו.
4. שו"ע או"ח סי' קנ"ג סעי' ו'.
5. חלקת מחוקק סי' א' סק"א.
6. בית שמואל שם סק"ב.
7. מג"א או"ח סי' קנ"ג סק"ט.
8. מ"ב שם ס"ק כ"ד. ■

STORIES Off the Daf

The Limits of Liability

"העושה שדהו אפותיקי לאחרים..."

When a certain person wished to invest his savings, he invested heavily in his friend's venture. After several fairly successful years, the company started having severe problems and lost every asset. The investor approached his friend and said, "You convinced me to invest in your company so you are personally responsible to return every penny of my original investment."

"My corporation is not me," his friend blithely replied. "If you had given me the money as a personal loan, I would certainly have repaid you. דינא דמלכותא דינא is the halachah, as everyone knows. The law

is that I have no personal liability for the money my company owes. I have a clear conscience since we invested our assets responsibly. No one could have foreseen what caused our terrible losses. Sadly my misfortune is also yours, and I feel for you. But that does not mean that I am to blame or that I owe you a penny."

The lender disagreed, "That's ridiculous! דינא דמלכותא דינא only applies to taxes and the like not to fiscal law. According to Torah, you must pay me back as if there was no corporation."

"If you think so, you can take me to a din Torah?" replied the ex-CEO serenely.

When this case came before the Minchas Yitzchak, ז"ל, he ruled that the owner of the company was not liable for his company. "In Gittin 41, we find that someone borrowed money and made a certain field

אפותיקי, he designated a specific field to repay the loan. If he also specified that the loan could only be repaid from that designated field the loan may not be collected from any other field. Even if the designated field was flooded and is now valueless, the borrower need not repay the loan from his other assets.

"...Clearly a corporation is the same, since everyone knows that according to the charter of such companies the officers have no personal responsibility to the investors in the company or for the company's debts. This is the rationale of the Mahrshag, ז"ל, who allows one to take interest from a corporation¹ and it also the rationale why a CEO need not pay off his company's debts."² ■

¹ שו"ת מהרש"ג, יו"ד, סימן ג' וה'
² שו"ת מנחת יצחק, חלק י', סימן קמ"ג