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The Chicago Center

OVERVIEW of the Daf

1) MISHNAH (cont.): The Mishnah presents three disputes between Beis Hillel and Beis Shammai related to the leniency to take a vow to protect one's property. An example of the last dispute is presented.

2) Vowing to protect one's property

The ruling that one could take a vow to protect one's property is challenged from Shmuel's ruling that the law of the kingdom is the law.

Two explanations are presented to explain why דינא דמלכותא דינא does not apply.

3) Clarifying the Mishnah

The Gemara clarifies the Mishnah's case of vowing falsely that property belongs to the king.

R' Huna cites a Baraisa featuring the dispute between Beis Shammai and Beis Hillel but deviates from the Mishnah in two ways.

The reason for the two differences is explained.

R' Ashi offers another resolution.

4) MISHNAH: The Mishnah contrasts two similar statements of consecration. In the first statement the items must be redeemed but in the second statement they do not have to be redeemed.

5) Clarifying the Mishnah

The Gemara explains that the language of the first case in the Mishnah was intended to parallel the language of the Mishnah's second case.

The exact language and circumstances of the vows in the Mishnah are explained.

After clarifying the vows the Gemara explains the novelty of these rulings.

6) Clarifying the Mishnah's second case

Bar Pada explains that in the Mishnah's second case the trees can be redeemed but they are immediately consecrated. After they are cut down and redeemed they do not become consecrated again.

Ulla suggests that that Mishnah was teaching that once the trees are cut down they do not need to be redeemed. ■

Distinctive INSIGHT

The validity of the vow to consecrate the trees that survive

הרי נטיעות הללו קרבן אם אינן נקצצות

Rosh (28a, הרי נטיות) explains that the Mishnah is describing a person who sees a fierce storm coming in the direction of his precious trees. He is worried that his trees might all become uprooted, and he declares a neder that the trees will be dedicated as a קרבן if they survive and do not get destroyed by the wind. There is now reason to say that the neder is not binding, as it might be considered a נדר שגגה, an oath taken without intent and awareness that it will be valid. We might have determined that the person is actually convinced that the trees are about to be knocked down, and his statement about their status in case they remain standing was frivolous. The חידוש of the Mishnah is, therefore, that the neder is indeed valid, and we say that the speaker realized that the trees had a chance of surviving the storm. His thinking that they would probably become uprooted remains simply thoughts (דברים שבלב), and no more, and it has no legal impact to stop the oath from being valid.

The חידושי הגרי״ז (to Nazir 11a) distinguishes between two categories of nedarim. One is in our Mishnah, where the wind is coming and might knock down the trees. Here, the neder is valid. The other case is in the Mishnah (25b) where a person sees a group of people eating his figs, and he declares with an oath that the fruit is prohibited to them. He later is apprised that his father was among the group, and he regrets the oath which was obviously made with mistaken intentions. The Mishnah declares that neder as null and void, under the category of נדרי שגגות.

מר״ן הגרי״ז explains that in the case of the trees and the

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REVIEW and Remember

1. What are the two cases when דינא דמלכותא דינא does not apply?
2. What are the two differences between the Mishnah and the Baraisa's version of the dispute between Beis Shammai and Beis Hillel?
3. According to the Gemara's conclusion, what were the circumstances of the vow made regarding the saplings?
4. What is the dispute between Ulla and bar Pada?

HALACHAH Highlight

"Matters of the heart"

ואע"ג דסבירא לן דברים שבלב אינן דברים וכו'

Even though we hold that "matters of the heart are not significant" etc.

The Gemara indicates that under normal conditions when there is a discrepancy between what a person says and what he was thinking, it is his spoken word that will decide matters of halacha. Therefore[1], if a seller sold something for a particular reason (e.g. because he was moving to Eretz Yisroel or he needed cash etc.) but did not express that the sale was conditional on being able to follow through with his plans, the sale is final. The reason is that although in his mind he was selling the object conditionally, since he never expressed that intent verbally, the conditional aspect of the deal is ignored.

Shulchan Aruch[2] rules that if a person accepted upon himself a certain number of fasts in response to an ongoing tragedy that subsequently passed or for a patient who was ill who recovered or passed away, he must nonetheless fulfill his initial commitment. Mishnah Berurah[3] explains that since when he initially made the commitment he did not express any sort of condition, the assumption is that he made the commitment to make his prayers more effective, and we do not assume that the commitment was made conditionally. This ruling was utilized by Teshuvas K'nei Bosem[4] to address the following inquiry. A man once pledged to give, at the end of the summer, one thousand dollars to a kollel for the sake of his mother-in-law who was ill. Before the pledge came due his mother-in-law passed away and the question was whether he must still follow through on his commitment. Teshuvas K'nei Bosem ruled that since he never put a condition on his pledge the assumption, in this type of case, is that it was unconditional and thus he must pay the one thousand dollars to the kollel. Similarly, Teshuvas Riva[5] addressed a case of a wealthy man who gave instructions to distribute large sums of money to the poor while his brother was ill and before all the money was distributed the brother passed away. Teshuvas Riva ruled that the rest of the money should be distributed and the benefactor is not believed to claim that his commitment was conditional because the principle of "matters of the heart are not significant" applies. ■

1. שו"ע חו"מ סי' ר"ז סע' ד'
2. שו"ע או"ח סי' תקס"ט סע' א'
3. מ"ב שם סק"ג
4. שו"ת קנה בשם ח"ב סי' פ"ט
5. שו"ת ריב"א סי' ק"ל ■

(Insight. Continued from page 1)

wind, the neder was made fully aware of the circumstances of the situation. The neder is valid, even though the outcome of the trees' surviving the storm was unexpected. In the case of the father eating the figs, the oath itself was made under false assumptions. The speaker certainly would never had made the oath had he realized that his father was among the eaters. Here, the very essence of the neder is faulty. We are lacking the condition of האדם בשבועה and the oath is not valid, even without a special release. ■

STORIES Off the Daf

"The law of the land is the law!"

דינא דמלכותא דינא

The residents of a certain outlying town owned real estate, businesses, and other property in one of the municipal centers. However, these people didn't share the burden of heavy taxation like the rest of the Jews who actually lived in the big city. At the time, the rule was that the tax was only collected from residents.

This went on for some time. Eventually, the Jews of the municipal center realized that a great deal of the city's profits actually ended up in the pockets of those Jews who lived in the outlying town who were exempt from local taxes. These city-dwelling Jews petitioned the king to distribute the tax more evenly among all property owners, regardless of their residence. The king agreed, and for a while all paid their fair share of the extra tax. After a time, the noan-residents refused to pay the tax on the basis of the old argument that they were not residents.

The king's collectors decided to levy all the back taxes from a certain wealthy man who lived in the rural district but owned a great deal of property in the city. They arrived one day and expropriated the required amount. This man, in turn, took the people of his rural center to Beis Din to recover what had been seized by the king's assessors on their account.

The town's residents who owned property in the city claimed that the whole taxation was unfair since they were not receiving any of the special benefits enjoyed by those who pay the city's tax. The fact that they had agreed and paid previously wasn't proof of their future willingness to pay. They certainly didn't feel they were obligated to compensate the unfortunate man at all!

This question was eventually brought before the Rashbah, zt"l. He ruled that the city must pay the man back what they had owed according to the law. "People in the capital cities pay a higher tax by law. Since the king agreed that non-resident landlords and property owners must pay the tax along with the residents, you must pay. He had every right to take one citizen's lands or goods to cover all of your taxes. As we see in Nedarim 28a, the law of the land is the law!" ■

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