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"Taking Responsibility for Torah"

YISOKHAR vs. ZEVULUN: CORRECTING SOME REVERSIBLE ERRORS

By Rabbi Aryeh Klapper

R. Yosef Caro writes in Shulchan Arukh YD 246:1:

But someone who is unable to learn (Torah), because he doesn't know how to learn at all, or because of his distractions/burdens – he should provide sustenance to others who learn

R. Moshe Isserles in Mapah glosses:

and it will be accounted to him as if he is learning on his own. And a person may make a condition with his fellow that he will engage in Torah and he will produce support for him and he will share with him in his reward.

Rav Simcha Soloveitchik wrote to Rav Moshe Feinstein asking whether Ramo means that **anyone** who provides sustenance to a Torah scholar is considered as if they have learned on their own, or rather only if the learner explicitly accepts the condition that the earner will “share with him in his reward”. Rabbi Shlomo Blumenkrantz sent follow-ups including whether “the earner” also needs to make this condition explicitly, and if so, whether this needs to be done in a written *shtar*.

Last week, I pointed out that a key paragraph in Rav Moshe's response as printed posthumously in Igrot Moshe 4YD:37 contained the apparently nonexistent phrase שטר לברותא (*shtar lBRuTha*). Joshua Skootsky correctly noted that לברותא is used in the Talmud to exclude a text from the canon, or alternatively via Yad Malakhi, that it is always a typo for לברותא (lBRuTha), meaning invented or useless. Perhaps that is what it means here. But my sense is that those terms are used specifically for Talmudic texts, not to describe a legally ineffective *shtar*.

Gemini suggested that it was a typo for לחברותא, but no such *shtar* appears anywhere in Rabbinic literature.

I tended last week to think that it was a typo for לרבותא, lRBuTha, meaning that it is intended to add something even though it is unnecessary.

However, this responsum was first published in 5743 in the journal Am HaTorah and again that year in the journal Moriya, and in each of those versions the text is לברורא (lBRuRa). After further research this week, I concluded that this is almost certainly the correct text, even though the

phrase *shtar lBRuRa* appears nowhere else. The search term “lBRuRa” gets 53 results on the Bar Ilan CD, 30 of which are in Igrot Moshe. It is often paired with a version of “witnesses are only to prevent lying”, meaning that testimony is intended “to clarify the facts” rather than to play a formal role, e.g. as a means of acquisition. Here too, the meaning is that the document/*shtar* has only an evidentiary purpose.

With that realization, I retranslated the preceding sentence, which I got quite wrong last week:

ומה ששאל כתר"ה עוד שם באות א':

אם צריך להתנות אם צריך בכתב דווקא או סגי בדברים לבד?
הנה כתב ודאי לא צריך וגם לא בפני עדים, דלא ניתנו שטר וסהדי אלא לשקרי

...

אבל פשוט שאם ישכר ירצה דווקא בשטר ועדים חתומין כדי שיוכל לתבוע בדינא את זבולון על הזמן שלא שמענו ממנו שחזר בו, משום שלא סמכה דעתו עליו בלא שטר ועדים - שלא יוכל לתובעו בב"ד,

That which your Honor asked in q#1:

if it is necessary to make the condition explicit, must it be in writing, or is an oral statement sufficient?

Certainly writing is not necessary, nor the presence of witnesses, because a *shtar* and witnesses are given only to prevent lying . .

But it is obvious that if Yisokhar wants specifically a *shtar* and signed witnesses so that he can sue Zevulun in beit din (for backpayments of support) regarding the time that Zevulun has not sent notice of withdrawal – because he won't rely on him without a *shtar* and witnesses – that he cannot sue him in beit din.

Having corrected that, I moved on to the sentence containing our problematic phrase:

ואף שהוא רק שטר לברורא,

מ"מ אם נעשה בלא שטר –

כיוון שלא סמכה דעתיה די שכר עליו בלא שטר ועדים – אין להחשיב זה אף לא לדברים להחשיבו מחוסר אמנה . . .

And even though the *shtar* is only evidentiary, nonetheless, if (the agreement) was done without a *shtar* – since Yisokhar did not rely on him without a *shtar* and witnesses – this should not be considered even an oral contract for the purpose of considering (Zevulun's withdrawal) a breach of trust = *mehusar amanah* . . .

The case still made no sense to me – in what case would Yisokhar not rely on Zevulun without a *shtar*, and yet still not make a *shtar*? But now that I was sure the Igrot Mosheh version had a pure typo, I wondered again about the insertion

in the smaller font, which was not in the earlier editions. Maybe a misunderstanding (like mine) had been generated by the typo? So I tried removing it.

And even though the *shtar* is only evidentiary,
since Yisokhar did not rely on him without a *shtar* and
witnesses -

this should not be considered even an oral contract for the
purpose of considering (Zevulun's withdrawal) a breach of trust
= *mechusar amanah* . . .

This seemed to match R. Efraim Sternbuch's interpretation
of Rav Mosheh's position:

At the end of his words, it seems obvious that he comes to make
the creative point that Yisokhar loses by insisting on the *shtar*,
because without a *shtar* there would have been at least an issue
of breach of trust,

but when Yisokhar demands a *shtar* - if so he doesn't trust
Zevulun, and if so, there is no breach of trust from Zevulun's
side.

But the language is not so clear, and also has been slightly
changed by the *ma'atikim*/copyists, so it is hard to understand
his intent with certainty . . .

Last week I dismissed R. Sternbuch's position in harsh terms
("seems nonsensical"), but now I think he is right and I was
wrong. I should have had Bava Metzia 49a in mind.

The sugya opens with Rav Kehana accepting a cash deposit
for linen at the then-current market price. The market rises
before the buyer pays in full. Rav rules that Rav Kehana must
provide the buyer with linen at market value up to the amount
of the deposit, but that he can demand a higher price for the
rest. Why? Because with regard to the rest, there has been no
act of acquisition, and breaching a verbal commitment is not
viewed as a breach of faith (= *mechusar amanah*).

Abbayay explains that Rav holds that *mechusar amanah* requires
conscious dishonesty. Unlike love, a verbal contract may
legitimately be altered when it alteration finds.

The Talmud suggests that Mishnah Bava Metzia 7:1 supports
Rav:

An incident involving Rabbi Yochanan ben Matya, who said to
his son: "Go hire us laborers!" The son agreed with the laborers
as to what they would be fed.

But when he returned to his father, his father said to him:

"My son, even if you made them a meal equivalent to
Solomon's in his glory - you would not fulfill your obligation
toward them, as they are descendants of Avraham, Yitzchak,
and Yaakov. Rather, before they begin working, go out and say
to them: "On condition that you have no claim on me for more
than bread and legumes."

Rabbi Yochanan ben Matya sees no issue with ordering his
son to breach a verbal commitment (so long as the workers
receive food that meets the local standard).

However, the Talmud concludes that the Mishnah's case is
unique, because the workers suspected that the son might
have exceeded his authority. They came to work with no
reliance that they would receive more than standard food.
Breaching a verbal commitment on which another party relied
would be *mechusar amanah*, but in order for there to be a breach
of trust, there must first be trust.

This yields the perhaps somewhat perverse result that known
liars cannot be sued for breach of trust, and on the other
hand, that paranoids cannot sue for breach of trust. Consider
as an analogy the American legal rule that product claims such
as "made from the best stuff on earth" are not subject to suits
for false advertising because a reasonable consumer would
not rely on them as factual.

The question for me then is: Should all Yisokhar-Zevulun
contracts be considered "puffery", because no one really
trusts that G-d will give them a portion of the reward for
someone else's actions? And: How should we relate to
websites that advertise such contracts?

Please stay tuned for further installments. (Hopefully, some
degree of reliance on their accuracy is still reasonable.)

Shabbat shalom!