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Yevamos Daf 12

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Daf Notes is currently being dedicated to the neshamah of

**Tzvi Gershon Ben Yoel (Harvey Felsen) o”h**

May the studying of the Daf Notes be a zechus for his neshamah and may his soul find peace in Gan Eden and be bound up in the Bond of life

Rav Lili bar Mammal said in the name of Mar Ukva, who said in the name of Shmuel: The co-wife of a wife who refused the *yavam* is forbidden. *(A girl whose father had died could be given in marriage while still a minor (under the age of twelve) by her mother or older brother. This marriage is only valid Rabbinically. As long as she has not attained the age of twelve, she may nullify the marriage by refusing to live with her husband. This act of refusal, referred to as mi'un nullifies the marriage retroactively. Our Gemora follows the opinion cited later (107a) that a minor, whose husband had died childless, may refuse the yavam, as well, which retroactively nullifies the original brother's marriage.)*

The Gemora asks: To whom is she (the co-wife) forbidden? If you will suggest that she is forbidden to the brothers (of the refused yavam), it may be retorted, as follows: Now that she herself (the one who refused) is permitted (to the other brothers), for Shmuel said: If she refused one brother, she is permitted to marry the other brothers; is there any question then that her co-wife is permitted?

Therefore, it must be referring to himself (the co-wife of the woman who refused is forbidden to the one who was refused).

The Gemora asks: Where, however, does the one who refused differ that she is in consequence permitted to the other brothers? Obviously, in that she had taken no action towards them; but her co-wife as well had taken no action towards them!?

The Gemora answers: It is an enactment made to prevent marriage with the co-wife of one's daughter who refused him. [The Gemora will explain why the co-wife of the

yavam's daughter who refused is forbidden to him. If we would permit the co-wife of an ordinary minor to the yavam, people would become confused, and permit the case of the daughter as well.]

The Gemora asks: Is, however, the co-wife of one's daughter who refused him forbidden? Surely we learned in our Mishnah: However, regarding all these women, if they died, or if they refused .... their co-wives are permitted. Now, against whom was the declaration of refusal made? If you will suggest that she refused the husband, then this case is identical with that of a divorced woman (for in both cases, the marriage was dissolved in the lifetime of the husband and the wife; what would be the necessity to mention both)? Consequently, it must refer to refusal of the yavam (and yet the Mishnah teaches that her co-wife is permitted)!? [This would seem to indicate that any forbidden woman – including one's daughter, who falls to yibum, and then refuses the yavam, her co-wife is permitted to him!?

The Gemora answers: No; it may, in fact, refer to the refusal of a husband, but there are two kinds of divorce (mentioned in the Mishnah).

The Gemora asks: Wherein, however, does the refusal of a husband differ (that her co-wife would then be permitted to the yavam)? Obviously - in that she thereby uproots the original marriage (in a way that when the husband died, the co-wife is not regarded as being the co-wife of a forbidden woman); but when she refused the yavam, she has also uprooted (retroactively) the original marriage (and therefore, the co-wife should be permitted)!?

The Gemora answers: It differs in respect to that which Rami bar Yechezkel taught, for Rami bar Yechezkel taught the following Baraisa: If a woman refuses her husband, she can marry his father (as she essentially was never married to her ex-husband). However, if she refuses her yavam, she cannot marry his father. This is because her falling to yibum creates an appearance that she is actually his daughter-in-law (and therefore forbidden to her yavam's father). So too, the Gemora states, the fact that the co-wife already became a co-wife of his daughter when she fell to yibum (and it gives the appearance that the marriage of the minor who is related to the yavam was indeed an effective marriage). Hence, even if the minor will refuse the yavam, there will still be an appearance of being a co-wife of his daughter, and we cannot allow her to have yibum. (12a1 – 12a3)

Rav Assi rules: The co-wife of an *aylonis* (an adult woman who did not develop any signs of female puberty and is incapable of bearing children) is forbidden to be taken in *yibum*. It is written regarding *yibum* [Devarim 25:6]: It shall be the firstborn – if she can bear. This excludes an *aylonis* since she cannot bear children.

Rav Sheishes asks: The Mishnah (31b) states: There were three brothers who were married to three unrelated women, and one of them, Reuven died. The second brother, Shimon married the *yevamah* by *ma'amar* (Biblically, the *yavam* cohabits with the *yevamah*, thus acquiring her. The Rabbis established *ma'amar*, the betrothal of a *yevamah* as a prelude to *yibum*.), and he died. Reuven's original wife falls for *yibum* to the third remaining brother, Levi. Levi must perform *chalitzah*, but he cannot perform a *yibum*. This is derived from a Scriptural verse which states that a *yevamah* can be taken in *yibum* only if there was a *zikah* (an attachment on the account of *yibum*) from one brother; not when there is a *zikah* from two brothers. (The *yevamah* is doubly subject to *yibum*, on account of her Biblical marriage with Reuven and her Rabbinical marriage with Shimon.)

And it was taught regarding this Mishnah: Rav Yosef said: This is a case where the co-wife of a paternal brother's wife

is exempt from *yibum* only because the wife fell to *yibum* and we do not find anything similar to this in the entire Torah. What is this coming to exclude? Is it not excluding the case of a co-wife of an *aylonis* that she will be permitted to the *yavam*? (These are both examples where a *yevamah* is forbidden because of her falling to *yibum* and not on account of being an *ervah*.)

The Gemora states that the inference is slightly different. No; it is excluding the case of a co-wife of an *aylonis* but the distinction between the two cases is as follows: The co-wife of the double widow requires a *chalitzah*, whereas the co-wife of an *aylonis* does not even require *chalitzah*. What is the reason for this? This is because an *aylonis* is Biblically prohibited, whereas the double widow is only Rabbinically prohibited.

The Gemora challenges Rav Assi from our Mishnah: However, regarding all these women, if they died, or if they refused, or if they were divorced, or if they were found to be an *aylonis* (an adult woman who did not develop any signs of female puberty and is incapable of bearing children), their co-wives are permitted.

The Gemora answers: This is not a difficulty at all, for one (Rav Assi) is referring to a case where he (the deceased husband) knew her defect (at the time that he married her; in that case, the marriage is a legitimate one), while the other (our Mishnah) is referring to a case where he did not know of it (at the time he married her). [Since her defect was unknown to him, the marriage, which had taken place under a misapprehension, is automatically annulled. The woman, therefore, is not his lawful wife, and her co-wife cannot be regarded as a legal co-wife. Therefore, the Mishnah rules that such a co-wife is permitted.]

The Gemora notes: The inference from our Mishnah also proves this; for it was stated: if they were found to be an *aylonis*, and not 'were.' This indeed proves it.

Rava said: The law is that the co-wife of an aylonis is permitted, even though he knew her defect, and even the co-wife of one's own daughter who was an aylonis (is permitted). [Rava maintains that the co-wife of a forbidden relative is forbidden only where the latter would have been subject to the mitzvah of yibum if she had been no relative. In the case of a wife who was an aylonis, however, since she is not subject to yibum even where she is no relative at all, her co-wife, even where she (the wife) is a forbidden relative, is regarded as the co-wife of one in relation to whom the mitzvah of yibum is not applicable at all.] And regarding the expression 'were found' in the Mishnah, read it (as if it said) 'were.' (12a3 – 12b1)

When Ravin arrived, he said in the name of Rabbi Yochanan: The co-wife of a wife who refused the *yavam*, the co-wife of an *aylonis* and the co-wife of an illegally remarried divorcee are all permitted to the *yavam*. (12b1)

Rav Bibi cites the following Baraisa in front of Rav Nachman: Three types of women are permitted to insert a wad into their bodies prior to engaging in marital relations in order to prevent conception. They are: A minor, a pregnant woman and a nursing woman. A minor is permitted because otherwise, she may become pregnant and die. A pregnant woman is permitted because otherwise, she might become pregnant again, and the second fetus will crush the first one. A nursing woman is permitted because otherwise, she might be compelled to wean her child, resulting in his death.

The Baraisa continues: What age minor are we referring to? We are concerned when the minor is between eleven and twelve years old. If she is younger or older than that, she is not permitted to cohabit in that manner; these are the words of Rabbi Meir. The Chachamim disagree with the entire ruling and state that these women should cohabit in the regular manner and Heaven will have compassion on them (*becoming pregnant in these situations is highly unusual and therefore we prohibit them from utilizing and type of contraceptive measures*) as it is written [Tehillim 116:6]: *Hashem protects the fools*.

The Gemora asks on our Mishnah from the Baraisa: The Baraisa stated: A minor is permitted because otherwise, she may become pregnant and die. We can infer that a minor can become pregnant and not die. This would be inconsistent with our Mishnah which stated that you cannot say of his mother-in-law or his mother-in-law's mother or his father-in-law's mother that they refused (*since only a minor can refuse*). Perhaps she is a minor and nevertheless, she can be a mother-in-law because it can happen that a minor will give birth and live?

The Gemora attempts to answer that a minor will certainly die if she becomes pregnant, for Rabbah bar Livai said: A girl is subject to an age limitation (regarding pregnancy). Prior to that period (before her eleventh birthday) she does not conceive at all; during that period (between eleven and twelve) she dies and her fetus dies; after that period (after twelve) both she and her fetus survive.

The Gemora asks: But is it really so? Surely, Rabbah bar Shmuel recited: One cannot say of a man's mother-in-law, his mother-in-law's mother and his father-in-law's mother that they were found to be an aylonis or that they refused, since they have already given birth to children!?

The Gemora concedes: The reading, in fact, is: because she might become pregnant and as a result might die.

The Gemora asks: But then, the previously mentioned difficulty remains! [why should the women who gave birth be unable to refuse their husband, seeing that they are still minors?]

Rav Safra answers that having children is similar to the signs of puberty. [Just as a girl with two pubic hairs after twelve years old indicates that she is an adult, so too, conceiving a child at any age signifies that she is an adult. This is why the Mishnah stated that a mother-in-law cannot refuse her husband any longer. Although a minor can give birth and

survive, she cannot refuse her husband since she is regarded as an adult.]

Others say that children are even superior to signs of puberty.

The Gemora asks: What is the practical difference between them?

The Gemora answers: Even according to Rabbi Yehudah, who says (that a girl who has exhibited signs of puberty may still have a right to refuse) until those hairs give an appearance in that area of more black than white, nevertheless, he agrees that (if she bears) children (are superior, and she may not refuse any longer).

Rav Zevid answers: We assume that a woman who gives birth developed the signs of puberty.

The Gemora asks: Why don't we examine her for signs of puberty?

The Gemora answers: We cannot examine her for the two pubic hairs because there is a legitimate possibility that the hairs fell out.

The Gemora asks: But that is only well according to the opinion who holds that we are concerned for that possibility; what, however, can be said according to the opinion who holds that we are not concerned of such a possibility?

The Gemora answers that even according to the opinion who holds that generally we are not concerned for that possibility, here, due to the pains of childbirth, we are concerned that her pubic hairs fell out. (12b1 – 13a1)

#### INSIGHTS TO THE DAF

#### RELYING ON PIKUACH NEFESH L'CHATCHILAH

Reb Elchanon (Kovetz Hearos 23) discusses whether it is permitted for a person to put themselves into a situation

where they will have to use the permissibility of *pikuach nefesh* (they are in mortal danger) to permit what otherwise would have been regarded as a prohibition.

Reb Avi Lebovitz (<http://www.hearos.blogspot.com/>) explains Reb Elchonon: He proves from the Ba'al Hameor who forbids leaving on a ship within three days of Shabbos because it is likely that you will find yourself in a situation of *pikuach nefesh* and have to be desecrate the Shabbos, that it is only a Rabbinical prohibition, but not Biblical (if it would be an Biblical, it should not matter if it is **within** three days or **more** than three days). Once it is only a Rabbinical prohibition, we can permit it for *shalom bayis* purposes. Therefore, one would be allowed to have relations with a woman for whom it is dangerous to become pregnant, even though after relations she will use a '*moch*' to prevent pregnancy (I am not sure about the statistical success rate associated with this form of birth control).

This explanation would be necessary if we learn the Gemora to be speaking about a *moch* (wad) after relations (Tosfos in the name of Rabbeinu Tam) and would be forbidden if not for *pikuach nefesh*. But, according to Tosfos who explains that these three women must use a *moch*, which implies that others also are allowed to because there is no prohibition for her to remove the *shichvas zerah* (semen) with a *moch* after engaging in relations, we don't need to come onto the permissibility of *pikuach nefesh*.

Reb Elchonon second guesses his proof, that perhaps there is a Biblical prohibition to put oneself into a situation where *pikuach nefesh* will have to override the prohibition and no proof can be brought from the Ba'al Hameor because he may hold that Shabbos specifically is "*hutrah*," (completely permitted) for *pikuach nefesh* (but other prohibitions which are only "*dechuya*," (overridden), there would be a Biblical prohibition to out rightly put oneself into a situation where they will have to rely on the license of *pikuach nefesh*.

At the end he cites a Magen Avrohom (O.C. 248) who questions whether one, who intentionally put themselves



into a situation of *pikuach nefesh* should rely on it to override Shabbos. Reb Elchonon explains that by not relying on this permissibility, it comes out retroactively that he did not do a prohibition by placing himself in that situation. Reb Moshe has a *teshuva* where he adamantly disagrees and says that one must use the permissibility of *pikuach nefesh* to override Shabbos and save their life.

#### DAILY MASHAL

#### HASHEM PROTECTS THE FOOLS IS SMOKING INCLUDED?

The Gemora states: Three types of women are permitted to insert a wad into their bodies prior to engaging in marital relations in order to prevent conception. They are: A minor, a pregnant woman and a nursing woman. A minor is permitted because otherwise, she may become pregnant and die. A pregnant woman is permitted because otherwise, she might become pregnant again, and the second fetus will crush the first one. A nursing woman is permitted because otherwise, she might be compelled to wean her child, resulting in his death.

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The Chachamim disagree with the entire ruling and state that these women should cohabit in the regular manner and Heaven will have compassion on them (*becoming pregnant in these situations is highly unusual and therefore we prohibit them from utilizing and type of contraceptive measures*) as it is written [Tehillim 116:6]: *Hashem protects the fools*.

Rabbi Winston (<http://neveh.org/winston/parsha60/>) discusses the statement of "G-d protects the fools." It is often used in situations of halachically- reasonable risk

(Shabbos 129b; Yevamos 12b). For example, when many people do something that may be somewhat risky for one's health, but statistically, nothing has become conclusive, then halachically, one can continue to perform the act and not worry about the consequences. Even should there be some latent danger in the act, G-d will intercede on the person's behalf and protect the "fool."

For a long time, cigarette smoking fell into this category. Though the Torah is against all kinds of physical addiction for obvious reasons, as long as there wasn't conclusive proof that the risk factor wasn't as great as we now know it to be, and many people smoked without negative results, it remained halachically permissible to do so; G-d protects the fools.

However, cigarette smoking is now known to be the number one man-made killer of human beings, and this consciousness has made its way into the Torah world, albeit somewhat late. We are no longer "fools" with respect to the effects of cigarette smoking, and, the Poskim (those who decide Torah-law) have now posted signs asking those who still smoke to begin weaning themselves from doing so. For years already, however, they have forbid anyone to start smoking.