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Yevamos Daf 2

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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

Introduction to Tractate Yevamos

It is written [Devarim 25: 5 – 10]: "If brothers dwell together, and one of them dies, and has no child, the wife of the dead shall not be married abroad to one not of his kin; her husband's brother shall go into her, and take her to him to wife, and perform the duty of a husband's brother to her. And it shall be, that the firstborn that she bears shall succeed in the name of his brother that is dead, that his name be not blotted out of Israel. And if the man does not want to marry his brother's wife, then his brother's wife shall go up to the gate to the elders, and say: 'My husband's brother refuses to raise up to his brother a name in Israel; he will not perform the duty of a husband's brother to me.' Then the elders of his city shall call him, and speak to him; and if he stands, and says: 'I do not want to marry her'; then shall his brother's wife go up to him in the presence of the elders, and loose his shoe from off his foot, and spit before him; and she shall answer and say, 'So shall it be done to the man that does not build up his brother's house.' And his name shall be called in Israel, 'The house of him that had his shoe loosened'" (Deut. 25:5-10).

Rav Pinchas Kahati has an introduction to this tractate and to the details regarding the mitzvah of yibum. I present it to you in full.

(1) The mitzvah of *yibum* applies only to brothers by the same father, and not to brothers by only the same mother, for it is written, "When brothers dwell with one another" – i.e., brothers who inherit with one another, thus excluding brothers who have only the same mother (*Yev. 17b*). Another opinion in the Gemara (*ibid.*) learns this law by tradition from the analogous use (*gezerah shavah*) of the word "brothers" referring to the sons of Jacob ("We are twelve *brothers*, sons of our father" – Gen. 42:32): just as the passage in Genesis refers to brothers by a common father and not by one mother, this passage also refers to brothers by the same father but not to brothers by the same mother. According to the Jerusalem Talmud, this law is implicit in the word "together" – "those who dwell in one house, excluding brothers by one mother (but different fathers), of whom one goes to the house of his father, and another goes to the house of his father."

(2) The phrase "and has no child [*ben*, lit., "son"] means, "and has no seed [*zera*]" ; if, however, he does have descendants, even a daughter or a

grandchild, the law of *yibum* does not apply to his widow.

(3) If the brother died without seed and left more than one wife (for formerly a Jew was permitted to be married simultaneously to several wives), one of his brothers marries by *yibum*, or submits to *halitzah* from, one of the wives, and thereby exempts all the rest from either *yibum* or *halitzah*, as it is written, "So shall it be done to the man that does not build up his brother's house," which it was understood to mean, he builds up one house but he does not build up two houses.

(4) Once a wife is exempt from the mitzvah of *yibum*, she becomes forbidden to marry her brother-in law under the prohibition of 'the brother's wife', of which it is written, "You shall not uncover the nakedness of your brother's wife" (Lev. 18:16). A baraita teaches: " 'The nakedness of your brother's wife' and 'her husband's brother shall go in to her' were stated in a single commandment" (Jer. Talmud, *Ned. 3:2; Mekhilta; Sifri*), i.e., the mitzvah of *yibum* alone exempts the *yevamah* from the prohibition of marrying the brother's wife, but the prohibition of the brother's wife applies to any woman who was released from the mitzvah of *yibum*.

(5) If the *yevamah* is prohibited to the *yavam* because of *ervah* (lit. "nakedness," i.e., family relationship), e.g., she is his daughter who had married his brother who died, or she is his wife's sister, then she is exempt from *yibum*. This is because it is written, "And you shall not take a

woman to her sister, to be a rival to her, to uncover her nakedness *beside the other*" [*aleha*] (Lev. 18:18), and in the passage regarding *yibum* it is written, "her husband's brother shall go in to her [*aleha*]" – just as the latter is a case of mitzvah, so too is the former. Therefore the Torah stated, "And you shall not marry", i.e., even in order to perform the mitzvah of *yibum* it is prohibited to marry a woman and her sister; that *yibum* is prohibited in the other prohibited degrees of relationship is derived from the case of the wife's sister (*Yev. 3b; 13a*).

(6) Any woman who is exempted by Torah law from *yibum* is also exempt from *halitzah*, as it is written, "And if the man does not want to marry his brother's wife, then his brother's wife shall go up to the gate... and say : 'My husband's brother refuses to raise up to his brother a name in Israel...' and loose his shoe" (Deut. 25:7-9), from which it was understood that to whomever *yibum* applies, *halitzah* applies, and to whomever *yibum* does not apply, *halitzah* does not apply.

(7) If a man's brother died childless and left more than one wife, and one of them is prohibited to the *yavam* because of *ervah*, then just as the related woman is exempt from *yibum* and from *halitzah*, as was explained above, all the other wives of the dead man, who are called "her rivals" (see I Sam. 1:6), are similarly exempt from *yibum* and from *halitzah*, as it is written, "that does not build up his brother's house" – if he can build up the house in its entirety then he may build up part of a house,

but he may not build up even part of a house which he cannot build up in its entirety.

(8) A widow who is prohibited due to *ervah* exempts not only her rivals from *yibum* and from *halitzah*, but also her rivals' rivals, and so on: e.g., Reuven died childless and left two wives, Leah and Hannah, and he had two brothers, Shimon and Levi, and Leah is the sister of Shimon's wife [Rahel]; in this case both *yevamot*, Leah and Hannah, are prohibited to Shimon: Leah, because she constitutes *ervah* for him, and Hannah, because she is the rival of a woman prohibited by *ervah*, as was explained above. Both of them are dependent upon Levi, however, for they are not related to him, and he must either marry by *yibum* or submit to *halitzah* from whichever one of them he wishes (Chart 1). If Levi married as his *yevamah* Hannah, i.e., the rival of the woman prohibited to his brother Shimon by *ervah*, and he (Levi) had another wife [Yehudit], and Levi also died childless, and his wives came before Shimon for *yibum* or *halitzah* – since Hannah is prohibited to him because of the *ervah* of her rival, then she also exempts her rival, i.e., Levi's second wife [Yehudit], from *yibum* and from *halitzah*. It follows from this that Leah, who is a woman prohibited to Shimon by *ervah* (since she is his wife's sister), exempts her rival and her rival's rival (Chart 2). This is also the law regarding her rival's rival's rival, ad infinitum. One view in the Gemara learns this from the passage, "And you shall not take a woman to her sister, to be a rival [*li-tzror*]" – since "*li-tzror*," and not "*la-tzor*" is written the Torah includes many rivals, i.e., the rival of the woman prohibited due

to *ervah*, her rival's rival, her rival's rival's rival, and so on, all are exempt from *yibum* and from *halitzah*. Other authorities in the Gemara learn this law from other verses (see *Yev.* 8a). *Rambam* explains the reason for this law: in any case in which he has no *zikah* (the tie between a woman requiring *yibum* and the *yavam*) with her, she is prohibited to him forever on account of being his brother's wife; it follows from this that the rival of the woman prohibited by *ervah* is prohibited to him on account of *ervah*, and therefore she also exempts her rival (*Hil. yibum* 6:14-15); see also Rav Ashi's reason in the Gemara, *Yev.* 13a).

The Mishna states: Fifteen women exempt their co-wives and the co-wives of their co-wives from *chalitzah* (a ceremony by which the brother of the deceased man excuses himself from performing levirate marriage on the widow, which permits her to marry someone other than a brother of the deceased) and from *yibum*, until the end of the world. And these are the women: 1) his daughter, 2) and his daughter's daughter, 3) and his son's daughter, 4) his wife's daughter, 5) and her son's daughter, 6) and her daughter's daughter, 7) his mother-in-law, 8) and his mother-in-law's mother, 9) and his father-in-law's mother, 10) his maternal sister, 11) his mother's sister, 12) and his wife's sister, 13) his maternal brother's wife, 14) the wife of his brother who was not in his world (*this brother and the yavam were not alive at the same time*), 15) and his daughter-in-law.

These women exempt their co-wives and the co-wives of their co-wives from *chalitzah* and from *yibum*, until the end of the world.

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However, regarding all these women, if they died, or if they refused (*a woman's annulment of a Rabbinical marriage contracted for her in her minority*), 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. But you cannot say of his mother-in-law or his mother-in-law's mother or his father-in-law's mother that they were found to be an *aylonis* (*since an aylonis cannot bear children*) or that they refused (*since only a minor can refuse*).

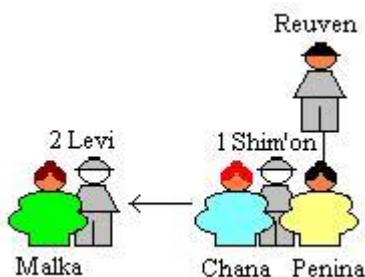
[Reuven, Shimon and Levi are brothers. Reuven has a daughter Penina, born out of wedlock. Shimon marries Penina. He has also married a non-related woman, named Chana. Shimon dies childless and his wives fall for yibum to Reuven and Levi. Reuven cannot perform yibum with Penina since she is his daughter. Chana, the co-wife is also exempt. Levi performs a yibum with Chana. Levi has another wife, named Malka. Levi dies childless and his wives fall for yibum to Reuven. The Mishna teaches us that Reuven cannot perform a yibum with Malka since she is the co-wife's (Chana) co wife.]

How do they exempt their wives and co-wives? If his daughter or one of any of these *arayos* (*a woman who it is prohibited to have relations with*) was married to his brother, who had another wife, and he died childless, just as his daughter is exempt, so is her co-wife exempt.

How is it that if they died or if they refused, or if they were divorced, or if they were found to be an *aylonis*, their co-wives are permitted? If his daughter or any other one of these *arayos* was married to his brother, who had another wife, and his daughter died, or was divorced, and afterwards his brother died childless, her co-wife is permitted.

If the co-wife of his daughter went and married to the second brother, who had another wife, and he died childless, just as his daughter's co-wife is exempt, so is her co wife's co wife exempt, even if they are a hundred.

And whoever could have refused but did not refuse, her co-wife performs *chalitzah* but may not marry him by *yibum*. (2a – 2b)



INSIGHTS TO THE DAF

WHY IS YEVAMOS FIRST?

The *Tosafos Yeshanim* asks why *Seder Nashim* begins with *Masechta Yevamos*, which discusses the marriage laws of a widow whose husband died childless. It would be more appropriate to begin the *Seder* with *Kidushin*, which would be a more positive introduction to the laws of marriage.

Tosafos Yeshanim answers that the previous *Seder* (*Moed*) ended with *Moed Katan*, which deals largely with *aveilus*, and thus leads naturally to *Yevamos* (which deals with the brother who dies childless).

Alternatively, he answers that this *Mishna* teaches us all the women that one would be prohibited from marrying; afterwards, we can learn regarding the *mitzvah* of *kidushin*, marriage.

Also, the *mitzvah* of *yibum* was the first *mitzvah* pertaining to women mentioned in the Torah, as it is written regarding Tamar.

The *Acharonim* point out that the first answer of the *Tosafos Yeshanim* is the opinion of the *Rambam* (*Yibum*1:1) and the *Chinuch* (598), who, as they consider *Yibum* to be a *mitzvah* only for the man (*i.e.* the brother), would not agree with the last answer.

However, the *Pnei Yehoshua* (*Kesubos* 40a) holds that other *Rishonim* consider the widow to be equally obligated in *yibum*. As such, they would agree with the last answer. Consistently, when the *Rambam* (*Sefer HaMitzvos* 217) asks why the *Masechta* is called *Yevamos*, when *Chalitzah* is also

an option; he answers that it is because the *Gemara* (*Yevamos* 39b) states that *yibum* takes precedence over *chalitzah*. However, if, as the *Tosafos Yeshanim's* second answer states, *Seder Nashim* begins with *Yevamos* because *yibum* is the first *mitzvah* to be mentioned for women, then it follows that the *Masechta* had to be called *Yevamos* rather than *Chalitzah*. But since the *Rambam* does not consider the woman's involvement in *yibum* as her *mitzvah*, it was necessary for him to explain the *Masechta's* name as stemming from *yibum's* precedence. [Pleasant Ridge Newsletter Vol. 16 # 33]

The *Rambam* asks the *Tosafos Yeshanim's* question, as well and offers a different answer. He says that *Kesuvos* and *Kidushin* discuss the laws of marriage. Marriage is something that is left up to the willingness of the man and the women; *Beis Din* cannot force a man to marry a woman. *Yibum* is compelling; *Beis Din* informs the *yavam* that he must either perform a *yibum* or a *chalitzah*. It is appropriate to discuss the halachos that are compelling first.

Tosfos Yom Tov cites the *Rambam* in the fifteenth perek of *Hilchos Ishus*, who quotes the *Gemara* in *Kidushin* 29b, that one who reaches twenty years old and has not married is cursed by *Hashem* for he will be thinking about sin. It is implicit that there is no *halacha* that *Beis Din* can force someone to marry.

The *Rosh*, at the end of the sixth perek quotes the *Rif*, who disagrees and maintains that *Beis Din* can

force a man to get married if he did not fulfill his obligation of *peru u'revu* (*procreation*) yet. This applies to a man who has been married for ten years and did not have children or a bachelor over twenty years old.

Sukkas Dovid comments: Perhaps the *Rambam* maintains that we cannot apply force in regards to marriage because this particular woman might not be the one who he was destined to be with and it will be a marriage lacking harmony.

YIBUM WITH A NIDDAH

The *Mishna* lists fifteen women that exempt their co-wives and the co-wives of their co-wives from *chalitzah* and from *yibum*. One of them is his wife's sister.

Tosfos asks: Why didn't the *Mishna* include a case where the *yevamah* was a *niddah* at the time that she fell to *yibum*? She is forbidden to him at that time and he would be subject to the penalty of *kares*; wouldn't there be a prohibition against performing a *yibum* with her even after she purifies herself?

Tosfos compares this case to the case listed in the *Mishna*; his wife's sister. He cannot perform a *yibum* with her even if his wife would die (one is permitted to marry his wife's sister after his wife dies). The explanation is: We consider the situation at the time when she falls to *yibum*; since at that time she was forbidden, she remains prohibited forever. *Tosfos'* question is: Why don't we apply

the same logic to a woman who was a *niddah* at the time that she fell to *yibum* and just as she is forbidden at that time, she should remain prohibited even after she purifies herself?

Tosfos cites a *Gemora* in *Pesachim* (72b) which seems to indicate that a *yavam* who performs a *yibum* with a *niddah* had accomplished a *mitzvah*, and he has acquired her despite the fact that a transgression was committed.

(*Tosfos* answers this question by creating a distinction between his wife's sister, who is only forbidden to him and a *niddah*, who is forbidden to everyone.)

The *Acharonim* ask: How can it be that the *yavam* has fulfilled the *mitzvah* of *yibum* by performing a *yibum* with a *niddah*; shouldn't this be considered a *mitzvah habaah b'aveirah*, a *mitzvah* that is a result of an *aveira* that is performed? The positive commandment of *yibum* cannot override the negative transgression of engaging in relations with a *niddah*; this transgression is subject to the penalty of *kares* and cannot be overridden by a positive commandment. There are many *Rishonim* who maintain that one who performs a *mitzvah* and simultaneously commits an *aveira* does not fulfill the *mitzvah* at all.

Reb Elchonon Wasserman (*Kovetz Heoros* 11:1) answers: One does not fulfill the *mitzvah* by a case of *mitzvah habaah b'aveirah* when the *mitzvah* is merely an action, such as shaking a lulav or blowing a shofar; he cannot be credited with a *mitzvah*.

when that action was an *aveira*, as well. However, when the mitzvah is more than an action, but rather what the action accomplished, this principle is not applicable. If one circumcises a nine-day old baby on *Shabbos*, the *milah* is valid and he has fulfilled a *mitzvah*, despite the fact that a transgression was committed. This is because the *mitzvah* is that the child should be circumcised and that result was attained. The *mitzvah* of *yibum* is the acquisition of the *yevamah* through an act of *yibum*. While one who performs a *yibum* with a *niddah* has violated the prohibition of having relations with a *niddah*, he nevertheless has acquired the *yevamah* and thus has fulfilled the *mitzvah* of *yibum*.

He concludes that perhaps the name of the *Mesechta* is actually *Yivmos*, referring to the halachos of *yibum*. This would explain the Rambam and the Chinuch's question and answer.

DAILY MASHAL

YEVAMOS, YIVUMOS OR YIVMOS

The Rambam in Sefer HaMitzvos (217) and the Chinuch state that this tractate is called *Yevamos* and not *Chalitzos* because the mitzvah of *yibum* takes precedence over the mitzvah of *chalitzah*.

Reb Yaakov Kamenetzky asks: This would be understandable if the name of the *Mesechta* would be *Yivumos*, referring to the act of *yibum*; however, the name is *Yevamos*, meaning the women who are *Yevamos*, in the same manner as the brother who is performing the *yibum* is called the *yavam*.