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May the studying of the Daf Notes be a zechus for their neshamot and may their souls find peace in Gan Eden and be bound up in the Bond of life

### **Amount of Judges**

The *Mishna* had stated: Originally, a husband was allowed to establish a *Beis Din* in any area to nullify the *Get* before them. Rabban Gamliel decreed that this should not be done, in order to benefit the world.

It was stated: In front of how many people (*prior to Rabban Gamliel's decree*) would the husband nullify the *get*? Rav Nachman says: In front of two people. Rav Sheishes says: In front of three people.

The *Gemora* explains: Rav Sheishes holds that three people are necessary, for the *Mishna* had stated that a *Beis Din* was required, and three people are needed for a *Beis Din*. Rav Nachman, however, holds that it is sufficient with two people, for two people are also called a *Beis Din*. [*Rav Nachman agrees that in order for Beis Din to judge a case, they need three people; he argues here because it is only necessary for the husband to make it public knowledge that he is nullifying the get; this can be accomplished with two people as well.*]

Rav Nachman provides proof to his viewpoint from the following *Mishna* which discusses the text that is written in a *pruzbul* document (*after shemita* all debts are cancelled unless the lender wrote a *pruzbul*; a document which transfers all of one's personal loans to the *Beis Din*, and their debts are not cancelled after *shemita*): I hereby give before you So-and-so and So-and-so the judges in Such-and-such a place etc.

[*Evidently, even two people can be referred to as a Beis Din!*]

Rav Sheishes rejects this proof by asking: Is the *Tanna* like a peddler (*advertising his merchandise*) that he should list all the possibilities?

Rav Nachman asserts that he is correct and he cites proof from the end of that *Mishna*, which states: The judges sign below the text or the witnesses may sign. The *Mishna* is comparing the judges to the witnesses. Just as two witnesses sign, so too, two judges may sign!

Rav Sheishes disagrees and says that they are not compared in that manner. Witnesses need two, but judges require three. (32b – 33a)

### **Problem Avoided**

The *Mishna* had stated: Originally, a husband was allowed to establish a *Beis Din* in any area to nullify the *Get* before them. Rabban Gamliel decreed that this should not be done, in order to benefit the world.

The *Gemora* asks: What problem was Rabban Gamliel concerned about?

Rabbi Yochanan said: It is to prevent *mamzeirim* (*product of forbidden relations upon punishment of death or kares*). Rish Lakish said: It is to prevent *agunos* (*women who cannot remarry; usually because they are still legally married to their husbands*).

The *Gemora* explains: Rabbi Yochanan said that is to prevent *mamzeirim* for he held like Rav Nachman who said that a *get* could be nullified before two people and the proceedings of two do not spread quickly. Consequently, the wife, not having heard and not knowing that the *get* was voided might go and marry again, and bear *mamzeirim*.

Rish Lakish said that it is to prevent *agunos* for he held like Rav Sheishes who said that a *get* must be nullified before three people and the proceedings of three spread quickly. The wife, who will hear and know that the *get* was voided, will remain unmarried, and we therefore wish to prevent her from remaining an *agunah*. (33a)

The *Gemora* cites a *braisa*: If a husband annulled his letter of divorce (*that was sent to his wife in the hands of an agent*), it is annulled (*even though he nullified it in front of a Beis Din in the absence of his wife or the agent*); these are the words of Rebbe. Rabbi Shimon ben Gamliel said: He may neither annul it nor add a single condition to it, since, otherwise, of what avail is the authority of the *Beis Din* (*since Rabban Gamliel the Elder ordained that such an annulment must not be made, since the woman in her ignorance of it might marry again and thus unconsciously give birth to illegitimate children*).

The *Gemora* asks: Since the *get* may be annulled in accordance with Biblical law, how can we allow a married woman, owing to the authority of *Beis Din*, to marry anyone in the world?

The *Gemora* answers: Yes! Anyone who betroths a woman does so in implicit compliance with the ordinances of the Rabbis, and the Rabbis have in this

case retroactively revoked the original betrothal. (*They accomplished this by transforming retroactively the money of the betrothal given to the woman at her first marriage into an ordinary gift. Since the hefker of money comes within the authority of Beis Din, they are thus fully empowered to cancel the original betrothal, and the divorcee assumes, in consequence, the status of an unmarried woman who is permitted to marry any stranger.*)

Ravina said to Rav Ashi: This is a satisfactory explanation where betrothal was effected by means of money; what, however, can be said in a case where betrothal was effected by cohabitation?

Rav Ashi replied: The Rabbis have assigned to such cohabitation the character of a promiscuous cohabitation. (*From the moment a divorce is annulled in such a manner, the cohabitation, it was ordained, must assume retroactively the character of a promiscuous cohabitation, and since her original betrothal is thus invalidated, the woman resumes the status of the unmarried and is free to marry whomsoever she desires.*) (33a)

#### **Countermanding Instruction**

The *Gemora* cites a *braisa*: If the husband said to ten people, "Write a *get* for my wife," he can retract his instruction to each of them separately (*even after Rabban Gamliel's decree*); these are the words of Rebbe. Rabban Shimon ben Gamliel, however, says that he can only retract his instruction when they are together.

The *Gemora* explains the point at issue between them? The point at issue is whether if part of a testimony has been nullified the whole of it is nullified. Rebbe was of opinion that if part of a testimony has been nullified,

the whole of it is not nullified. Therefore, if those who did not hear the retraction go and write the *get* and give it to her, their action is quite proper and the *get* is valid (*so there is nothing to be concerned about*). Rabban Shimon ben Gamliel was of the opinion that if part of a testimony is nullified the whole is nullified. Therefore, if those who did not know about his retraction go and write the *get* and give it to her, they then are enabling a married woman to marry anyone in the world!

Alternatively, I can say that both Rebbe and Rabban Shimon ben Gamliel agree that if part of a testimony is nullified the whole is not nullified, and Rabban Shimon ben Gamliel's reason here is that in his opinion, something which is done in the presence of ten can only be rescinded in the presence of ten.

The *Gemora* inquires: What would be the *halacha* if the husband said to ten people, "All of you should write a *get* for my wife"? If Rabban Shimon ben Gamliel's reason is because he holds that if part of a testimony is nullified the whole is nullified, then, it would not apply here. For since he told them all to write the *get*, they cannot anyway write the *get* unless they are all present (*and the two who were told that the husband retracted will not write and give the get to the wife*). However, if Rabban Shimon ben Gamliel's reason is because he holds that something which is done in the presence of ten can only be rescinded in the presence of ten, then, even in this case, he would not be able to retract from his instructions.

The *Gemora* tries to bring a proof from the following *braisa*: If the husband said to two people, "Give a *get* to my wife," he can retract his instruction to each of them separately; these are the words of Rebbe. Rabban Shimon ben Gamliel, however, says that he can only

retract his instruction to both of them together. Now, two people are equivalent to the case of "all of you" (*since both of them obviously are required to sign*) and yet we see that Rebbe and Rabban Shimon disagree!

Rav Ashi rejects the proof: If the two are witnesses to the *get* (*the writing and the signing*), then Rabban Shimon would agree that he may retract his instruction to them separately. Here, however, we are dealing with witnesses for the bringing of the *get*. [*This could lead to problems if the husband rescinds to one of them and the other one will deliver the get to the wife!*]

The *Gemora* comments: This opinion is borne out by the conclusion of the *braisa*: If, initially, the husband told each of them separately, he can retract his instructions to them separately. Now if you say that the *braisa* is discussing witnesses for delivering the *get*, this is understandable (*how he can instruct them separately*). But if you say that the *braisa* is dealing with witnesses to the writing of the *get*, how can these two be joined together? Haven't we learned that two witnesses cannot join together to offer testimony unless they saw the event together?

The *Gemora* counters: Perhaps the *braisa* is following the opinion of Rabbi Yehoshua ben Korchah (*who maintains that two such witnesses may join together*). (33a - 33b)

### Rulings

Rav Shmuel bar Yehudah said: I have heard Rabbi Abba issue rulings on both these points (*the annulling of the get in front of a Beis Din in the absence of his wife or the agent and the retracting of his instructions to one witness not in the presence of the other*). On one, he ruled in accordance with Rebbe, and on the other, he

ruled according to Rabban Shimon ben Gamliel, but I do not know which one follows Rebbe and which Rabban Shimon ben Gamliel.

Rav Yosef said: Perhaps we can resolve this from the following: When Rav Dimi came to Bavel, he reported to us that Rebbe once in an actual case decided according to the ruling of the *Chachamim* (regarding the property sold according to the assessment of the judges who undervalued it by one sixth or added one sixth, their sale is void; Rabban Shimon ben Gamliel disagreed). Rabbi Parta, the son of Rabbi Elozar ben Parta and the grandson of Rabbi Parta the great said to him: If that is so, of what avail is the authority of the *Beis Din*, and Rebbe thereupon reversed his decision and followed the ruling of Rabban Shimon ben Gamliel. [Evidently, Rebbe concedes this point to Rabban Shimon ben Gamliel in all cases, and therefore, he would agree in the case where the husband nullified the *get* before *Beis Din* in the absence of his wife or the agent that it would not be nullified, for otherwise, of what avail is the authority of the *Beis Din*, who ruled that one cannot revoke a *get* in such a manner!] And since the ruling in this case follows Rabban Shimon ben Gamliel, it must be that in the other case (when the husband retracts his instructions to one witness not in the presence of the other) it follows Rebbe.

And Rabbi Yoshiyah from Usha was also of opinion that the ruling in one case followed the opinion of Rebbe and in the other of Rabban Shimon ben Gamliel. For Rabbah bar bar Chanah said: We were five elders sitting before Rabbi Yoshiyah from Usha and a certain man came before him whom he compelled to give a *get* against his will, and he said to them, "Go and conceal yourselves from him and write the *get* for her." Now if you assume that he ruled according to the opinion of Rebbe (that if the husband voided the *get* without the

wife or the agents being present, it is nevertheless voided), even if they did conceal themselves, what difference would it make? Evidently, regarding this matter, he is following Rabban Shimon ben Gamliel.

But should you assume further that in the other point also, he held like Rabban Shimon ben Gamliel, why should they have hidden themselves? It would have been sufficient if they had separated from each other!? Evidently, he held like Rebbe in regard to one point and with Rabban Shimon ben Gamliel in regard to the other.

Rava, however, said in the name of Rav Nachman that the *halachah* follows Rebbe in both points.

The *Gemora* asks: But doesn't Rav Nachman hold that the authority of the *Beis Din* must be upheld? Didn't Rav Nachman say in the name of Shmuel: If a father dies leaving over minor orphans, *Beis Din* sets up for each of them a guardian, and the guardians choose a positive portion for them. When they become adults, they can protest, and claim that they would like to the property to be divided again. Rav Nachman himself states: They cannot protest, for otherwise, it degrades the power of *Beis Din*!?

The *Gemora* answers: There is a distinction between monetary matters and prohibitory matters. (33b – 34a)

## INSIGHTS TO THE DAF

### *Compliance with the Rabbis*

The *Gemora* asks: Since the *get* may be annulled in accordance with Biblical law, how can we allow a married woman, owing to the authority of *Beis Din*, to marry anyone in the world?

The *Gemora* answers: Yes! Anyone who betroths a woman does so in implicit compliance with the ordinances of the Rabbis, and the Rabbis have in this case retroactively revoked the original betrothal. (*They accomplished this by transforming retroactively the money of the betrothal given to the woman at her first marriage into an ordinary gift. Since the hefker of money comes within the authority of Beis Din, they are thus fully empowered to cancel the original betrothal, and the divorcee assumes, in consequence, the status of an unmarried woman who is permitted to marry any stranger.*)

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Rav Ashi replied: The Rabbis have assigned to such cohabitation the character of a promiscuous cohabitation. (*From the moment a divorce is annulled in such a manner, the cohabitation, it was ordained, must assume retroactively the character of a promiscuous cohabitation, and since her original betrothal is thus invalidated, the woman resumes the status of the unmarried and is free to marry whomsoever she desires.*)

The Rashba asks: Why don't we apply this rule in the case in *Yevamos* where a man fell into water that has no end? There, we rule that the wife will remain an *agunah* because the husband might have exited the water from a place that was not visible to us. Why don't we say that the *Chachamim* revoked the original *kiddushin* from him, and she may remarry another man?

He answers: It is only applicable in certain cases. If, for example, there was a *get*, except that it was written with a condition, and an uncertainty arose regarding the condition, the *Chachamim* can revoke his *kiddushin*. Another example where the *Chachamim* would revoke the *kiddushin* is where one witness is testifying on the woman's behalf (*that her husband died*). However, when there is no *get* and no witness, the *Chachamim* did not go ahead and revoke a *kiddushin*.

The *Gemora* in *Yevamos* (110a) records an incident in Narsh where a girl was married off when she was a minor. When she became an adult, they sat her by a *Chupah* (*wedding canopy, in order to validate the first marriage*), and someone else snatched her away before the "wedding" (*and made her his wife*)! Rav Bruna and Rav Chananel, students of Rav, were present when this happened, and they did not even require her to have a *get* from the second "husband" (*as his kiddushin is invalid*).

Rav Ashi explains that being that the wife snatcher acted improperly, the *Chachamim* therefore acted improperly with him and removed the validity of his *kiddushin*. (*This is following the opinion of Rav, who maintains that for the marriage of a minor to become valid, she must have marital relations with her husband when she becomes an adult, and if not the marriage is invalid.*)

The *Chachamim* were empowered to remove the *kiddushin* in this case because he acted improperly in the beginning of the *kiddushin*.

Reb Yosef Engel in *Gilyonei Hashas* cites a *Teshuvos haRashba* who writes that we only apply the principle of "Since he acted improperly, the *Chachamim* acted

improperly with him” in places that are specifically mentioned in Chazal. The Sages did not annul the marriage in every case where one acts with trickery. This can be proven from a *Gemora* in Kiddushin (58b). The *Gemora* states: One who instructs his fellow to marry a woman for him (*as an agent*), and the agent goes ahead and marries her for himself, she is married to the second one. We do not say that since he acted improperly, the *Chachamim* invalidated his marriage.

This can also be proven from the fact that even if one betroths a woman who is subject to a negative prohibition, *kiddushin*, nevertheless takes effect. This is also true if someone marries a woman who is a secondary *ervah* to him. Obviously, sometimes this principle is applied, and sometimes, it isn't.

The Chasam Sofer asks: Why, in these cases (*where he betroths a woman subject to a negative prohibition, or a secondary ervah*) do we not say that the *Chachamim* revoked his *kiddushin*?

He answers, based upon Tosfos, who says that it is for this reason that the groom tells the bride that he is betrothing her according to the laws of Moshe and all of Israel. The *kiddushin* is only effective if Israel, i.e. the *Chachamim* consent to the marriage. However, one who is violating the Torah, or the sages, is obviously not marrying with such a stipulation and therefore, the marriage can still be effective. [*According to the Chasam Sofer, not every marriage has that stipulation attached to it.*]

The Shiltei Giborim states that this principle applies by a *get* as well. Anyone who divorces a woman does so in implicit compliance with the ordinances of the Rabbis, and the Rabbis may, in certain cases retroactively revoke the divorce.

Based upon this, the Taamei Yaakov answers the following famous question on Rabbeinu Gershom's decree: Since the Torah expressly permits one to divorce his wife without her consent, how can this be banned? The Taz lays down a rule that the Rabbis do not have the authority to prohibit something which is explicitly permitted by the Torah!?

He answers that since the Rabbis forbid giving a *get* in such a manner, it is automatically nullified, for one's betrothal and divorce can only be effective if he is compliance with the Rabbis' ordinances. In these cases, the Rabbis did not consent to such a *get*.

[*I am uncertain as to how this answers the question. Granted, the get will be ineffective since it is prohibited to give a get without the woman's consent; but how did the Rabbis have the authority to issue such a decree? If the Torah expressly permits it, they cannot forbid it!?*]

## DAILY MASHAL

### *Path to Sanctity*

The *Gemora* states: Whoever betroths a woman in Jewish marriage, betroths her subject to the will of the Rabbis.

The *baalei mussar* say: One who wants to sanctify and purify himself in his service to his Creator, should do so subject to the will of the Rabbis. He should go to the Rabbis and the righteous people of his generation, and they shall guide him in his quest. One who tries to forge a path himself is apt to stumble and make mistakes; nothing substantive will result from it.