

18 Shevat 5776  
Jan. 28, 2016



Gittin Daf 46

Produced by Rabbi Avrohom Adler, Kollel Boker Beachwood

Daf Notes is currently being dedicated to the neshamot of

**Moshe Raphael ben Yehoshua (Morris Stadtmauer) o”h**

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

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

### **Mishna**

If one divorces his wife because of a bad name (*it was rumored that she committed adultery*), he may not take her back. If he divorced her because of a vow, he may not take her back. (*The reason for this halacha is as follows: According to one opinion, it is possible that after the woman had obtained from a Chacham the disallowance of her vow and had married another man, her first husband might regret his action in divorcing her and he might claim that he would not have divorced her had he known that her vow could be disallowed. Consequently, this might impair the validity of her second marriage. By the enactment that “he may not remarry her,” a husband is naturally induced to institute all the necessary enquiries and to consider very carefully his course before he decides upon divorce, and should he nevertheless divorce her and then claim that he was unaware that her vow could be disallowed, his plea might well be disregarded. According to another opinion, the prohibition to marry a woman in the circumstances mentioned is a penalty, and a warning to women to abstain from making vows.*) Rabbi Yehudah says: If the vow was known to many, he may not take her back, but for one that was not known publicly, he may take her back. Rabbi Meir says: If it is a vow which requires examination by a Chacham (*and the husband cannot annul it by himself*), he may not take her back (*Rabbi Meir maintains that a husband does not mind his wife’s being exposed to a court of law and therefore forbids remarriage on account of the first reason mentioned above, since the first husband might claim that if he had known that the vow could be disallowed by a Chacham,*

*he would not have consented to give a divorce*), but for one which does not require examination by a Chacham (*the husband can annul it himself*), he may take her back (*because in this case, the husband cannot advance the claim that the divorce was due to a misunderstanding*). Rabbi Elozar said: They prohibited him to remarry in the case where the vow required examination by a Chacham to annul it only on account of the case where the vow did not require examination by a Chacham to annul it (*since in the latter case, the husband might claim that he was not aware that he had the right to disallow the vow; in the former case, however, no such claim can be advanced because no man would consent that his wife should be exposed to a court of law*). Rabbi Yosi the son of Rabbi Yehudah said: There was once an incident in Tzidon where a man said the following to his wife, “Konam, if I do not divorce you,” and he then divorced her. The Chachamim permitted him to marry her for the benefit of the world. (45b)

### **Reason for the Decree**

Rav Yosef bar Minyumi said in the name of Rav Nachman: The Mishna’s ruling (*that he may not remarry her*) is only applicable in a case where the husband said to her (*as he was giving her the get*), “It is on account of your bad name that I am divorcing you,” or, “It is because of your vow that I am divorcing you.”

The Gemora explains the reason for this: Rav Nachman holds that the reason he cannot take her back is because he might impair the validity of her second marriage. [It is

possible that after the woman had obtained from a Chacham the disallowance of her vow, or after it has been found out that her bad name was a false rumor, and had married another man, her first husband might regret his action in divorcing her and he might claim that he would not have divorced her had he known this information beforehand. Consequently, this might impair the validity of her second marriage, and her children from that marriage would be rumored to be mamzeirim.] It is only if he declares at the time of the divorce that this is the reason he is divorcing her. Otherwise, he cannot ruin her (for he cannot make the claim that “had he known etc.”).

The Gemora cites a different version: Rav Yosef bar Minyumi said in the name of Rav Nachman: The husband is required to tell her (as he was giving her the get), “It is on account of your bad name that I am divorcing you,” or, “It is because of your vow that I am divorcing you.”

The Gemora explains the reason for this: Rav Nachman holds that the prohibition to marry a woman in the circumstances mentioned is a penalty, and a warning to women to abstain from making vows. He therefore informs her of this at the time of the divorce.

The Gemora cites one braisa which supports the first way Rav Nachman is quoted, while another braisa supports the second way he is quoted.

The braisa that supports the first way he is quoted states as follows. Rabbi Meir says: Why did the Rabbis say that if someone divorces his wife because he claimed she was unfaithful or because she made a vow (and he did not want to be married to a woman who makes vows) that he can never remarry her? The reason is that perhaps she will go marry someone else and then his accusation will be found to be false. Her first husband will then say that if he had known that his accusation was false, he would not have divorced her even if he would have been paid one hundred maneh to do so! This would cause his get to

be invalid, and additionally it will render any children that she had from her second “marriage” into mamzeirim! This is why they tell him that he should know in advance that if he is going to divorce his wife for these reasons that he should know the divorce is final (no matter if the accusations are found to be false or not). [This is in accordance with the first version of Rav Nachman, as the reason for the decree is that he should not ruin her.]

The braisa that supports the second way Rav Nachman is quoted states as follows. Rabbi Elozar the son of Rabbi Yosi says: Why did the Rabbis say that if someone divorces his wife because he claimed she was unfaithful or because she made a vow that he can never remarry her? This is in order that Jewish girls should not be promiscuous regarding forbidden relationships and reckless in making vows. We therefore tell him: “You should tell her that she should know that you are divorcing her because of her being unfaithful or making vows.” [This is like the second version of Rav Nachman’s statement, that he should explicitly tell her why he is divorcing her.] (45b – 46a)

### Vow Taken in Public

The Mishna had stated: Rabbi Yehudah says: A If the vow was known to many, he may not take her back, but for one that was not known publicly, he may take her back.

Rabbi Yehoshua ben Levi says: What is the source of Rabbi Yehudah’s law? The verse states, “Bnei Yisroel did not slay them (the Givonim), because the princes of the congregation had sworn to them.” [The Givonim pretended to affiliate themselves with Israel in order not to be killed by the Jewish people while they were conquering Eretz Yisroel. They pretended to be from a faraway land, and they convinced Yehoshua to swear that they would not be harmed. Even after the truth was discovered, the Jewish people did not annul the oath. Our Gemora is explaining that it was because the oath was taken in public.]

The *Gemora* asks: What do the *Chachamim* (who hold that a *neder* made in public can be annulled) do with this teaching?

The *Gemora* answers: The *Chachamim* hold that the oath that they took was certainly not valid. Being that the *Givonim* lied that they had come from a faraway land and the oath was based on this false premise, the oath was not binding. The only reason that they did not kill the *Givonim* was because of the desecration of Hashem's name that would result from them doing so.

The *Gemora* asks: How many people are considered "public" regarding this law? Rav Nachman says: Three. Rav Yitzchak says: Ten. Rav Nachman says three, because the verse says "days," which Chazal understand as meaning two, and "many" (same word as "public") which Chazal understand to mean three. Rav Yitzchak says ten, as a congregation is deemed to have ten people, as derived from the incident with the evil spies (who numbered ten and were called a congregation). (46a)

### **Rabbi Meir and Rabbi Elozar**

The *Mishna* had stated: Rabbi Meir says: If it is a vow which requires examination by a *Chacham* (and the husband cannot annul it by himself), he may not take her back, but for one which does not require examination by a *Chacham* (the husband can annul it himself), he may take her back (because in this case, the husband cannot advance the claim that the divorce was due to a misunderstanding). Rabbi Elozar said: They prohibited him to remarry in the case where the vow required examination by a *Chacham* to annul it only on account of the case where the vow did not require examination by a *Chacham* to annul it (since in the latter case, the husband might claim that he was not aware that he had the right to disallow the vow; in the former case, however, no such

claim can be advanced because no man would consent that his wife should be exposed to a court of law).

The *Gemora* asks: What is the core of their argument? Rabbi Meir maintains that a husband does not mind his wife's being exposed to a court of law and therefore forbids remarriage on account of the first reason mentioned above, since the first husband might claim that if he had known that the vow could be disallowed by a *Chacham*, he would not have consented to give a divorce. Rabbi Elozar holds that no man would consent that his wife should be exposed to a court of law. (46a)

### **Husband's Vow**

The *Mishna* had stated: Rabbi Yosi the son of Rabbi Yehudah said: There was once an incident in Tzidon where a man said the following to his wife, "Konam, if I do not divorce you," and he then divorced her. The *Chachamim* permitted him to marry her for the benefit of the world.

The *Gemora* asks: What was mentioned regarding a husband's vows that made Rabbi Yosi mention an incident regarding the vows of a husband (until now we have only dealt with a wife's vows)?

The *Gemora* answers: It is as if the *Mishna* is missing words, and it means to say the following: This all true when she makes a vow. However, if he makes a vow, he can remarry her. Rabbi Yosi the son of Rabbi Yehudah said: There was once an incident in Tzidon where a man said the following to his wife, "Konam, if I do not divorce you," and he then divorced her. The *Chachamim* permitted him to marry her for the benefit of the world.

The *Gemora* asks: How does the usage of the word "konam" apply in the incident above? ["Konam" is usually a term used to mean one is making something *hekdesch* or set aside from him.]

The *Gemora* answers: The case is where he is essentially saying that all of the fruits in the world should be forbidden to him if he does not divorce her.

The *Gemora* asks: It is obvious that in the above case he should be able to remarry her!? [The reasons of the *Mishna* only apply when the wife makes the vow; not the husband; why should we think that he cannot remarry her?]

The *Gemora* answers: One might think that we should make a decree in this case due to the words of Rabbi Nosson. The *braisa* states: Rabbi Nosson says that someone who makes a vow is as if he has built a private altar (at a time when such altars are forbidden to be used to offer sacrifices). Someone who upholds his vow is as if he sacrificed a *korban* on that altar. [Therefore, perhaps we would think that this person should be given a fine for making and upholding this vow.] The *Mishna* therefore teaches us that no fine is given.

The *Gemora* asks: What “fixing of the world” is involved in this case?

Rav Sheishes answers: This statement is said regarding the first part of the *Mishna* (that he may not remarry her so that he should not later claim he would not have divorced her or in order that Jewish girls should not be involved in promiscuity).

Ravina says: This statement is indeed referring to the latter case is the *Mishna*. It simply means that there is no reason to forbid them from remarrying. (46a – 46b)

### **Mishna**

If someone divorces his wife because he claims she is an *aylonis* (a woman who does not exhibit signs of femininity, see *Yevamos 80b*), Rabbi Yehudah says that he cannot remarry her. The *Chachamim* say that he may remarry

her. If she married someone else and had children from him, and then she then demands her *kesuvah* from her first husband (for we see now that she was capable of having children), Rabbi Yehudah says: We tell her that it would be better for her to stay quiet than talk (about claiming her *kesuvah*; this is because he will say that if he would have known, he would never have divorced her). (46b)

### **Problematic Situation**

The *Gemora* asks: This implies that Rabbi Yehuda is worried about her entering a problematic situation (where her husband will say that if he knew she was not an *aylonis* he would not have divorced her), and the *Chachamim* are not. Don't we see that the opposite is true? The *Mishna* states: If one divorces his wife because of a bad name (it was rumored that she committed adultery), he may not take her back. If he divorced her because of a vow, he may not take her back. Rabbi Yehudah says: If the vow was known to many, he may not take her back, but for one that was not known publicly, he may take her back. This implies that while the *Chachamim* (*Tanna Kamma*) are worried about her entering such a predicament, Rabbi Yehudah is not!?

Shmuel answers: It must be that the opinions in our *Mishna* are stated in the opposite fashion (Rabbi Yehudah's opinion was ascribed to the *Chachamim*, and *visa versa*).

The *Gemora* asks: Doesn't the second part of the *Mishna* say that if she married someone else and had children from him, and she then demands her *kesuvah* from her first husband, Rabbi Yehudah says: We tell her that it would be better for her to stay quiet than talk? This implies Rabbi Yehudah does worry about her entering such a predicament!





The *Gemora* answers: It must be that here, as well, we should reverse the authorship of the opinion.

Abaye says: The authorship should not be reversed. Rabbi Yehudah in one case holds like Rabbi Meir, and in one case like Rabbi Elozar. He holds like Rabbi Elozar's (*logic*) regarding the case where a *Chacham* is necessary, and like Rabbi Meir when a *Chacham* is not necessary. [Although he is generally careful that a woman should not enter a problematic situation, he concluded that that in both of these cases there is no possibility that she will enter a problematic situation.]

Rava says: While this addresses the contradiction in Rabbi Yehudah, how do we answer the contradiction in the position of the *Chachamim*?

Rava answers: The answer given regarding Rabbi Yehudah is correct. Who are the *Chachamim* (in our *Mishna* who say that if someone divorces a woman because she is an *aylonis* they can remarry)? They are in fact Rabbi Meir, who holds that one requires a double condition in order for a condition to be valid (he must stipulate that if the condition is met, the *gat* will be valid; otherwise, it will not), and in this case the husband did not do so. (46b)

### **Mishna**

If someone sells himself and his children to idolaters as slaves, we do not redeem them. However, we do redeem the children after he dies. (46b)

### **Habitual Sellers**

Rav Assi says: This is true (*we do not redeem him*) if he sold himself (*and his children*) three times.

There were people from Michsi who borrowed money from idolaters and did not have money to pay them back. The idolaters therefore started seizing them as slaves.

They came before Rav Huna. He said to them: What can I do for you? The *Mishna* states: If someone sells himself and his children to idolaters as slaves, we do not redeem them.

Rabbi Abba asked him: Didn't you teach us that this is only if they did this three times?

He answered: They are used to doing this. (46b)

### **DAILY MASHAL**

#### ***Neder is like Building a Bamah***

The Sefas Emes and Noam Elimelech teach us that the word *neder*, vow is related to the word *dira*, dwelling. What does an oath have to do with a dwelling?

Reb Chaim from Divrei Chaim cites the Shem m'Shmu'el who questions the entire essence of *nedarim*: How is it that a person has the power through his verbal declaration to create prohibitions (in the case of *nidrei bituei*) and create a status of *hekdesch* (*nidrei hekdesch*)? This power goes so far that the *Gemora* is uncertain whether the object of a *neder* is subject to the laws of *me'ilah* for violating a *neder*!

He suggests the following: In essence no new *kedushah* is being created. The concept of *neder* is a recognition that beyond what meets the eye, there is a level of *kedushah* already inherent in the reality around us - the *Shechinah* already dwells immanently in the world.

Sefas Emes notes that the first person in the Torah to take a *neder* is Yaakov Avinu. While the other Avos revealed Hashem's presence as similar to a mountain or a field, Chazal tell us that Yaakov revealed Hashem's presence as the *bayis*, a dwelling. Chazal tell us that taking a *neder* is like building a *bamah*, an altar used outside the *Mikdash*. Hashem metaphorically "dwells" in the Bais haMikdash –

to create a sanctified space for him - outside those confines is a task fraught with challenge.

### INSIGHTS TO THE DAF *Husband's Knowledge*

The *Mishna* had stated: Rabbi Meir says: If it is a vow which requires examination by a *Chacham* (and the husband cannot annul it by himself), he may not take her back, but for one which does not require examination by a *Chacham* (the husband can annul it himself), he may take her back (because in this case, the husband cannot advance the claim that the divorce was due to a *misunderstanding*). Rabbi Elozar said: They prohibited him to remarry in the case where the vow required examination by a *Chacham* to annul it only on account of the case where the vow did not require examination by a *Chacham* to annul it (since in the latter case, the husband might claim that he was not aware that he had the right to disallow the vow; in the former case, however, no such claim can be advanced because no man would consent that his wife should be exposed to a court of law).

The *Gemora* asks: What is the core of their argument? Rabbi Meir maintains that a husband does not mind his wife's being exposed to a court of law and therefore forbids remarriage on account of the first reason mentioned above, since the first husband might claim that if he had known that the vow could be disallowed by a *Chacham*, he would not have consented to give a divorce. Rabbi Elozar holds that no man would consent that his wife should be exposed to a court of law.

The *Tosfos Rid* explains the argument in the following manner. If the vow required a *Chacham* to permit it, he may not remarry her. This is because we are scared that he will say that if I merely knew that a *Chacham* could permit it, I would never have divorced her. He would have had her go before a *Beis Din* to have her vow permitted, despite the fact that this is embarrassing. However, if it is a vow that he could have nullified as her husband, there

is no suspicion. This is because everyone knows that they can nullify certain vows that their wives make. The fact that he did not do so shows that he clearly wanted to divorce her; regardless of whether or not the vow was actually made. Rabbi Elozar holds that a husband does not always realize that he can nullify his wife's vows. Therefore, they cannot remarry if he divorced her because of such a vow, as he will later claim that if he had known he could have done so, he would not have divorced her. Furthermore, Rabbi Elozar says that a vow that requires a *Chacham* or *Beis Din* is not really cause for them not to remarry. This is because he would not have taken his wife to a *Chacham* or *beis din* anyway, because it is denigrating. However, in this case as well they are forbidden to remarry because of the similarity to the case where a *Chacham* is not required.

### QUESTIONS AND ANSWERS FROM YESTERDAY'S DAF to refresh your memory

Q: Why is that we penalize the buyer of the slave (he must release the slave and he loses his money); let us penalize the seller (for he was the one who sold the slave outside of *Eretz Yisroel*)?

A: It is logical that wherever the prohibited item is, that is where we impose the penalty.

Q: Why do not redeem captives for more than their true value?

A: Either it is because of the burden which may be imposed on the community (they will all become impoverished), or to the possibility that the bandits will take more captives.

Q: What is the *halachah* regarding a Sefer Torah written by a gentile?

A: *Machlokes* – either it should be stored away, or it should be burned, or it may be read from.