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Gittin Daf 73

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Daf Notes is currently being dedicated to the neshamot of

Moshe Raphael ben Yehoshua (Morris Stadtmauer) o”h

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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

Withdrawing the Get after Recovering

The *Mishna* had stated: If he says, “This is your *get* from today, if I die from this illness,” and then he recovered and walked in the marketplace, etc.

Rav Huna said: The laws of a *get* are the same as a gift (*with respect to a deathly ill person*). Just as if he recovers (*and does not die*), he can withdraw his gift, so too, if he recovers, he can withdraw his *get* (*for his intention was only to give the get or the gift if he dies*). Similarly, just as in the case of his *get*, even though he did not express himself clearly (*that it should be given*), if he says “write,” even though he does not also say “give,” it is sufficient, so too, with his gift, since he has said “give,” even though no *kinyan* was performed, it is sufficient.

The *Gemora* asks from our *Mishna*, which stated: If he says, “This is your *get* from today, if I die from this illness,” and then he recovered and walked in the marketplace, but then got sick again and died, we evaluate if he died because of the first illness, in which case, the *get* would be valid. If, however, we determine that he did not die as a result of the first illness, it is not a *get*. Now if you say that if he recovers, he can withdraw his *get*, why is an evaluation required? We see that he has recovered?

Mar the son of Rav Yosef said in the name of Rava: The *Mishna* is discussing a case where he has passed from one illness into another (*without recovering in between*).

The *Gemora* asks: But the *Mishna* said that he recovered?

The *Gemora* answers: The *Mishna* meant that he recovered from one illness, but immediately fell into another.

The *Gemora* asks: But it says that he walked in the marketplace?

The *Gemora* answers: It meant that he was walking with a crutch, and the *Mishna* is teaching us that when he goes on a crutch, an evaluation is required, but in another case (*when he remains bedridden*), we do not even require any assessment.

The *Gemora* notes that we may derive from here that the gift of a deathly ill person who passes from one illness to another and dies is valid (*since we have learned that walking with crutches is not considered recovering, and in this case, no evaluation is necessary, for he did not say anything about :this sickness*”).

The *Gemora* states that this is indeed true, for Rabbi Elozar has said in the name of Rav that the gift of a deathly ill person who passes from one illness to another and dies is valid.

Rabbah and Rava did not agree with Rav Huna (*and they hold that if a deathly ill person gives a get and recovers, it is a valid get*), as they were afraid it might lead people to think that a *get* could be given after death.



The *Gemora* asks: Since the *get* is void 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.) (72b – 73a)

Unusual Occurrences

The *Gemora* cites a *braisa*: If a man says, “This is your *get* from today if I die from this illness,” and a house fell on him or a snake bit him (and he died), it is not a *get*. If, however, he said, “This is your *get* if I do not recover from this illness,” and a house fell on him or a snake bit him (and he died), it is a *get*.

The *Gemora* asks: What is the distinction between the first case and the second (in both cases, he specified, “from this illness”)?

They sent from *Eretz Yisroel* to say (in answer to an inquiry regarding a case where the husband said, “This is your *get* from today if I die from this illness,” and a lion killed him) that if a lion ate him, we cannot consider it a *get* (like the initial ruling of the *braisa*; the reason is because the man did not have this in mind, for he did not foresee dying in such a manner).

The *Gemora* relates an incident and a ruling: A certain man sold a field to his neighbor, guaranteeing him against any accident that might happen to it. Eventually (under the king’s orders) they diverted a river through it. The seller consulted Ravina, who said to him, “You must go and settle with him, since you have guaranteed him against any accident which may happen to it.”

Rav Acha bar Tachlifa asked Ravina: But it is an unusual kind of accident (and one that he would not have foreseen)?

The issue rolled on and was at last laid before Rava, who said that it is an unusual kind of accident (and the seller is not responsible to compensate the buyer for it).

Ravina challenged Rava from the *braisa* (mentioned above): If a man said, “This is your *get* if I do not recover from this illness,” and a house fell on him or a snake bit him (and he died), it is a *get* (even though it was an unusual type of death)!?

Rava replied: Why do you not quote from the earlier clause, where it says (if a man says, “This is your *get* from today if I die from this illness,” and a house fell on him or a snake bit him and he died) it is not a *get*?

Rav Acha from Difti said to Ravina: Just because the first clause conflicts with the second, may we not refute Rava's ruling from the latter clause?

He replied: That is so! Since the first clause conflicts with the second, the *braisa* was not discussed in the *Beis Medrash*, and it is not authentic. You must therefore follow your own reasoning (*and assume that one does not foresee the possibility of an unusual occurrence, and that was obviously not included in his stipulation*).

Rav Pappa and Rav Huna the son of Rav Yehoshua bought some sesame seeds on the bank of the Malka River. They hired some sailors to bring it across, with a guarantee from the merchants against any accident that might happen to it. After some time, the river was dammed up. Rav Pappa and Rav Huna said to the merchants, "Hire donkey drivers and deliver the seeds to us, since you have guaranteed us against any accident." They appealed to Rava, who exclaimed, "White geese (*old men*)! You want to strip men of their clothes, since it is an unusual kind of accident." (73a)

Mishna

She (*the wife of a husband who gave her a divorce on condition that he dies*) must not be alone with him (*with her husband between the delivery of the divorce and his death*) unless there are witnesses there (*that they did not engage in relations*). She may be with him in the presence of a slave, and even a maidservant, but not her own maidservant because she is familiar with her own slave (*and will not be embarrassed to cohabit with her husband in front of her own maidservant*)!

What is she during those days? [*The case is where a man gave his wife a get that will be valid "from now" if he dies. The question is what status does she have after the giving of the get but before he died.*] Rabbi Yehudah says: She is like a married woman during the interim (*i.e. she can still eat terumah if her husband is a Kohen*), and when he dies

it is a valid *get*. Rabbi Yosi says: She is divorced and not divorced (*we are uncertain as to her marital status*). (73a – 73b)

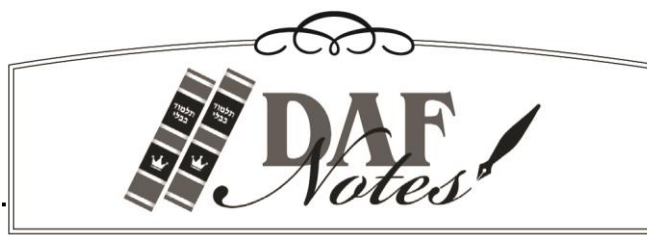
Seclusion

The *Gemora* cites a *braisa*: If people have observed that a divorcee had secluded herself with him (*the ex-husband*) in the dark, or that she slept with him under the feet of the bed, we do not suspect them of having engaged in "something else" (*cohabitation*), but we do suspect them of cohabiting promiscuously, and we do not suspect that he has betrothed her (*through cohabitation, and therefore, she does not need a get*). Rabbi Yosi the son of Rabbi Yehudah, however, says that we do suspect him of having betrothed her.

The *Gemora* asks: What is the meaning of this? [*Do we suspect that they cohabited, or not?*]

Rav Nachman said in the name of Rabbah bar Avuha, The meaning is this: If they saw her cohabiting with him, we suspect that he has done so as a method of betrothing her (*and she would require a get*). If afterwards, he gave her money, we suspect that it was payment for the promiscuous act, but we do not suspect that it was for betrothal. Rabbi Yosi the son of Rabbi Yehudah, however, says that even in this case, we suspect that it may have been for betrothal.

[*In a Mishna below, there is the following dispute: If a man has divorced his wife and she stays in the same inn with him, Beis Hillel requires him to give her a second get, but Beis Shamai disagrees. Rabbah bar Chanah said in the name of Rabbi Yochanan: Their argument applies only in the case where they saw her cohabiting with him, but if they did not see her cohabiting with him, they both agree that she does not need a second get.*] The *Gemora* asks: On which of these views can we justify the statement made by Rabbah bar Chanah in the name of Rabbi Yochanan: Their argument applies only in the case where



they saw her cohabiting with him, but if they did not see her cohabiting with him, they both agree that she does not need a second *get*.

The *Gemora* answers: His statement is justified according to both views (*the Tanna Kamma and Rabbi Yosi the son of Rabbi Yehudah, for they both agree that if we did not see them cohabiting, we do not suspect them for it and a second get is not required, and if we do see them cohabiting, we suspect that it was for the purpose of betrothal and a second get would be required, which is following the viewpoint of Beis Hillel*).

Abaye asked on Rabbah bar bar Chanah's explanation of the *braisa*: Did the *braisa* mention anything about money?

Rather, Abaye explains the *braisa* as follows: If they saw her cohabiting with him, we suspect that they acted promiscuously, and we do not suspect that it was intended for the sake of marriage. Rabbi Yosi the son of Rabbi Yehudah, however, says that even in this case, we suspect that it may have been for betrothal.

The *Gemora* asks: On which of these views can we justify the statement made by Rabbah bar bar Chanah in the name of Rabbi Yochanan: Their argument (*between Beis Shamai and Beis Hillel mentioned above*) applies only in the case where they saw her cohabiting with him, but if they did not see her cohabiting with him, they both agree that she does not need a second *get*.

The *Gemora* answers: His statement is justified according to the opinion of Rabbi Yosi the son of Rabbi Yehudah (*for if we do see them cohabiting, we suspect, according to Rabbi Yosi the son of Rabbi Yehudah, that it was for the purpose of betrothal and a second get would be required; the Tanna Kamma would still hold that it was a promiscuous act and therefore a get would not be necessary*).

Rava asked on Abaye's explanation of the *braisa*: If so, what did Rabbi Yosi the son of Rabbi Yehudah mean by saying "even"?

Rather, says Rava, this is what Rabbi Yosi the son of Rabbi Yehudah means: Even if they did not see her cohabiting with him, we still suspect that he may have betrothed her.

The *Gemora* asks: On which of these views can we justify the statement made by Rabbah bar bar Chanah in the name of Rabbi Yochanan: Their argument (*between Beis Shamai and Beis Hillel mentioned above*) applies only in the case where they saw her cohabiting with him, but if they did not see her cohabiting with him, they both agree that she does not need a second *get*.

The *Gemora* answers: It does not accord with any of their opinions (*for both the Tanna Kamma and Rabbi Yosi do not distinguish between observing their seclusion or observing cohabitation; the Tanna Kamma holds that we always assume that they acted promiscuously, and Rabbi Yosi maintains that we suspect that he betrothed her*). (73b)

INSIGHTS TO THE DAF

Compliance with the Rabbis

Rabbah and Rava did not agree with Rav Huna (*and they hold that if a deathly ill person gives a get and recovers, it is a valid get*), as they were afraid it might lead people to think that a *get* could be given after death.

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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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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.

QUESTIONS AND ANSWERS FROM YESTERDAY'S DAF

to refresh your memory

Q: What is the *halachah* in the following cases, and why? If a man says to his wife, "This is your *get* from this illness," or he says, "This is your *get* if I die," or he says, "This is your *get* after death."

A: The *Mishna* rules that he has said nothing, because he has stipulated that the *get* should be effective after his death and that is impossible.

Q: What is the *halachah* if the husband says, "This is your *get* from today and after death"?

A: According to the *Mishna*, it is a *safek*, and according to Rebbe, it is a valid *get*.

Q: Why does Rabbi Yosi hold that a *chalitzah* is not even required in a case when the husband said, "This is your *get* after death"?

A: His reasoning is because he held that the date of the document is sufficient indication that he wants it to be retroactively effective.