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Kiddushin Daf 51

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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

### **Mishna**

If a man betroths a woman and her daughter at the same time, or a woman and her sister, neither of them are *mekudeshes*. There was an incident with five women; two of them were sisters, and someone gathered a basket of figs. The figs belonged to the women, and they were from *shemita* (meaning that anyone had a right to take them). The man said to them, “All of you are betrothed to me with this basket,” and one of the women accepted the basket for all of them. The *Chachamim* ruled that the sisters are not *mekudeshes* (but the others are). (50b)

### **Two Sister’s Simultaneously**

The *Gemora* cites the Scriptural source for the *Mishna’s halachah*: It is written: Do not take a woman in addition to her sister, to make them co-wives. The Torah is saying: When two sisters would become co-wives together (such as in our case), he cannot make a marriage with even one of them.

Rava asks: If so, why would he *get kares* for cohabiting with them? If *kiddushin* does not take effect with them, he cannot incur *kares* (for he was not married to them, and therefore, neither of them would be regarded as his wife’s sister)!

Rather, Rava said: The verse is referring to a case where he betrothed one after the other. In the *Mishna’s* case, the *kiddushin* does not take effect, because of Rabbah’s principle. For Rabbah said: Any two things that are not able to take effect one after the other (i.e. making a *kiddushin* with two sisters at the same time) cannot take effect simultaneously (and therefore, neither takes effect).

It was stated: Any two things that are not able to take effect one after the other cannot take effect simultaneously (and therefore, neither takes effect).

Abaye asked from the following *braisa*: If one separates more than the required ten percent for *ma’aser*, his produce may be eaten, but the *ma’aser* is ruined (and it cannot be eaten; the extra produce separated does not attain *ma’aser* status, therefore it is *tevel*, and since we cannot determine which part of the produce is *tevel*, it cannot be eaten). But why should one be permitted to eat the produce? Any two things that are not able to take effect one after the other cannot take effect simultaneously (and therefore, neither takes effect; it would emerge that he did not separate *ma’aser* at all)!

Rabbah answered: *Ma’aser* is different, for half of each grain of wheat can be sanctified as *ma’aser*. [When he separates more than a tenth, a portion of each kernel, totaling a tenth, becomes *ma’aser*.]

The *Gemora* asks: But *ma’aser* of animals, which cannot be done by halves, and yet, Rabbah said: If two animals passed under the staff at the same time, and the owner declared both animals as the “tenth,” the tenth and eleventh animals are mixed up with each other (and one should be brought as *ma’aser* and the other one as a *shelamim*). [Now, since if he would declare one animal the tenth, and then the next animal, he would also declare the tenth, this second designation would not be valid. Accordingly, both designations, in the case mentioned above should remain unconsecrated!]

The *Gemora* answers: *Ma'aser* on animals is different, for it can take effect even by mistake. For we learned in a *Mishna*: If he called the ninth animal "the tenth" by mistake, and the tenth one, he called "the ninth," and the eleventh one, he called "the tenth," all three of them are consecrated. [*The tenth animal is the ma'aser; the ninth and the eleventh are regarded as shelamim, for they were called "the tenth." This is why Rabbah would agree that both animals can become consecrated when they were designated simultaneously.*]

The *Gemora* asks on Rabbah: But a *korban todah*, which cannot be consecrated by mistake, and it will not be effective one after the other (*if he designated a second set of forty loaves with the korban, they will not be consecrated*), and yet, it was stated: If a *korban todah* was slaughtered together with eighty loaves, Chizkiyah said: Forty of them are consecrated. Rabbi Yochanan said: None at all are consecrated. [*Rabbah is not consistent with Chizkiyah's opinion!?*]

The *Gemora* answers: Rabbi Yehoshua ben Levi had stated: If he said, "Forty of the eighty loaves should become consecrated," everyone would agree that forty of them are consecrated. If he said, "Forty should not become consecrated unless all eighty become consecrated," everyone would agree that none of them become consecrated. They only argue in a case where he did not specify anything (*he just brought eighty*). Chizkiyah holds that he intended that the other forty should be used as substitutes (*if the first forty were to become lost*). Rabbi Yochanan, however, maintains that he intended that this should be a large offering of eighty loaves (*and since this is impossible, none of them become consecrated*). (50b – 51a)

### **A Marriage without the Possibility of Cohabitation**

The *Gemora* asks: Why did Rava answer the original question like Rabbah? Couldn't he have answered that the *Mishna's* case (*where he betroths two women simultaneously*) is one

where the marriage does not have the possibility of cohabitation (*and he maintains that such a marriage is not effective*)?

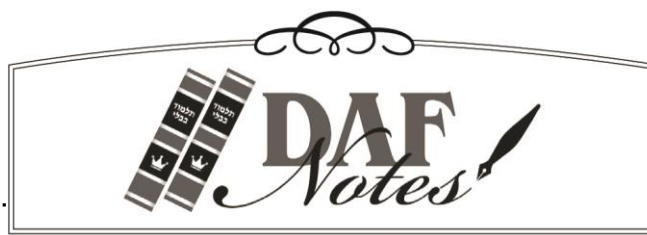
The *Gemora* answers: Rava was only answering according to the opinion of Rami bar Chama.

It was stated: Regarding a marriage which does not have the possibility of cohabitation, Abaye said: the *kiddushin* takes effect. Rava said: It is not valid.

Rava said: Bar Ahina explained to me that this *halachah* is based upon the following verse: "*When a man takes a woman and cohabits with her.*" This teaches us that *kiddushin* is only valid if it is one that has the possibility of cohabitation (*but not in a case where he cannot legally cohabit with her*).

The *Gemora* challenges Rava from our *Mishna*: If a man betroths a woman and her daughter at the same time, or a woman and her sister, neither of them are *mekudeshes*. We can infer from here that if he betrothed one of the two (*without specifying which one*), one of them would be *mekudeshes* to him (*and the halachah would then be that he cannot cohabit with either of them, but they would both require a get*). But why should this be? It is a case where the marriage does not have the possibility of cohabitation. This is a refutation of Rava (*for he holds that such types of kiddushin are not effective*)!?

The *Gemora* answers: Rava would tell you that the latter part of the *Mishna* is a refutation of Abaye's opinion, for the *Mishna* states: There was an incident with five women; two of them were sisters, and someone gathered a basket of figs. The figs belonged to the women, and they were from *shemitah* (*meaning that anyone had a right to take them*). The man said to them, "All of you are betrothed to me with this basket," and one of the women accepted the basket for all of them. The *Chachamim* ruled that the sisters are not *mekudeshes*. We can infer from the *Mishna's* ruling that only the sisters are not *mekudeshes*, but the others, who are not



related are *mekudeshes*. But what exactly is the case? If he said, "All of you (*are betrothed to me*)," this should be comparable to a case where a man said, "You and this donkey (*an unborn fetus*) should acquire these gifts," where the ruling is that the person does not acquire the gifts (*for just as the fetus cannot acquire it, so too, the man cannot; and accordingly, in our case, if the sisters cannot become betrothed, the others should not also not be able to, for one statement like this cannot be divided*). Obviously, the case is where he said, "One of you is betrothed to me," and, nevertheless, the *Mishna* rules that neither of them are *mekudeshes* (*this is a refutation of Abaye*)!?

The *Gemora* notes: The first part of the *Mishna* is a challenge to Rava, and the last part is a challenge to Abaye!?

They each answer by interpreting the *Mishna* according to their own reasoning: Abaye explains the *Mishna* as follows: If a man betroths a woman and her daughter at the same time, or a woman and her sister, neither of them are *mekudeshes*. It can be inferred from here that if he betrothed one of the two (*without specifying which one*), one of them would be *mekudeshes* to him (*and the halachah would then be that he cannot cohabit with either of them, but they would both require a get*). [Abaye adds the following to the *Mishna*.] But, if he would say (*to the two relatives*), "The one of you who I am permitted to cohabit with should be betrothed to me," neither is *mekudeshes* (*since each one of them would be forbidden to him*). [The *Mishna* brings proof to this from the following incident.] There was an incident with five women; two of them were sisters, and someone gathered a basket of figs. The figs belonged to the women, and they were from *shemitah* (*meaning that anyone had a right to take them*). The man said to them, "Those of you who I am permitted to cohabit with are betrothed to me with this basket," and one of the women accepted the basket for all of them. The *Chachamim* ruled that the sisters are not *mekudeshes*.

Rava explains the *Mishna* as follows: If a man betroths one woman out of a woman and her daughter, or one woman

out of a woman and her sister, it is as if he betrothed a woman and her daughter at the same time, or a woman and her sister, and neither of them are *mekudeshes*. There was an incident with five women; two of them were sisters, and someone gathered a basket of figs. The figs belonged to the women, and they were from *shemitah* (*meaning that anyone had a right to take them*). The man said to them, "All of you and one of the two sisters are betrothed to me with this basket," and one of the women accepted the basket for all of them. The *Chachamim* ruled that the sisters are not *mekudeshes*.

The *Gemora* challenges Rava from the following *Mishna*: If one marries off his daughter to a man, but he does not specify which daughter he is giving, the adult daughters are not included (*for the father has no authority over them*). It can be inferred from here that his minor daughters are included (*and they all would require a get*). But why should this be? It is a case where the marriage does not have the possibility of cohabitation. This is a refutation of Rava (*for he holds that such types of kiddushin are not effective*)!?

Rava answers: the *Mishna* is dealing with a case where he only had one adult daughter and one minor daughter (*the key point being that there was only one minor daughter, for she is the only one that the father could have married off*).

The *Gemora* asks: What then is the novelty of this *Mishna*?

The *Gemora* answers: The *Mishna* is referring to a case where the adult daughter appointed her father as her agent to accept *kiddushin* for her. You might have thought, that in this case, the father is accepting *kiddushin* for his adult daughter. The *Mishna* teaches us that the father would not leave something from which he would derive benefit (*the kiddushin money that he receives for marrying off his minor daughter*).

The *Gemora* asks: Are we not referring to a case where the adult daughter told the father that he can keep the *kiddushin* money?

The *Gemora* answers: The father would not leave a *mitzvah* that he is obligated to perform (*marrying off his minor daughter*) and perform a *mitzvah* that is not his obligation (*accepting kiddushin for his adult daughter*).

The *Gemora* challenges Rava from the following *Mishna*: If a man has two sets of daughters by two wives, and he declares, "I have given my elder daughter in betrothal, but I do not know whether it was the eldest of the elder group (*the first marriage*) or the eldest of the younger group (*the second marriage*), or the youngest of the elder group, who is older than the eldest of the younger group," they are all forbidden, except for the youngest of the younger group. This is Rabbi Meir's opinion. [*Isn't this a case where the marriage does not have the possibility of cohabitation, and nevertheless, the ruling is that the kiddushin is valid?*]

The *Gemora* answers: We are discussing a case where they originally knew which one of the daughters the father married and it was only later that the uncertainty arose.

The *Gemora* explains that the novelty of this ruling is to exclude Rabbi Yosi's opinion, for Rabbi Yosi said: A person doesn't put himself into a situation of doubt (*and therefore he rules that they are all permitted except for the eldest of the elder group, for otherwise, he would not have said "elder"*). The *Mishna* teaches us that a person does put himself into a situation of doubt.

The *Gemora* challenges Rava from the following *Mishna*: If someone married one of two sisters, but he does not know which one of them he married; he is required to give two bills of divorce (*because he cannot cohabit with either one of them since she might be his wife's sister*).

The *Gemora* answers this by saying that we are discussing a case where they originally knew which one of the sisters they married and it was only later that the uncertainty arose; if we were uncertain from the onset, the *kiddushin* would not be valid at all.

The *Gemora* explains that the novelty of this *Mishna* is the latter part, which states: If he died childless (*prior to divorcing them*), and he has one brother, he performs a *chalitzah* with each of them. If he has two brothers, one performs a *chalitzah* with one and the other brother can perform a *yibum* with the other sister. If they married the sisters, we cannot force them to issue divorces. [*Each one can claim that he performed a yibum with the correct sister. Even if the first one was the incorrect one, and thus he married the sister of his zekukah, he may remain married to her because once one the other brother performed a yibum with the yevamah, it retroactively removes the zikah from her to the first brother.*] The *Mishna* is teaching us that the second brother can marry her in *yibum* only if the first brother submitted to *chalitzah* first. However, one brother should not perform *yibum* with her before the other brother submits to *chalitzah* first, for the first brother would be violating the Rabbinic prohibition of cohabiting with the sister of his *zekukah* (*the woman who was bound to him for yibum*).

The *Gemora* challenges Rava from the following *Mishna*: If two unrelated men married two sisters, and each one does not know which one of the sisters he married; they both are required to give two bills of divorce (*because they cannot cohabit with either one of them since she might be his wife's sister*).

The *Gemora* answers this by saying that we are discussing a case where they originally knew which one of the sisters they married and it was only later that the uncertainty arose; if we were uncertain from the onset, the *kiddushin* would not be valid at all.

The *Gemora* explains that the novelty of this *Mishna* is the latter part, which states: If they both died childless (*prior to divorcing them*), and each one of them left one brother; each one of the brothers performs a *chalitzah* with each of the widows. If one of the men has one brother and the other man has two brothers; the one brother performs a *chalitzah*

with each of them; and the two brothers, one performs a *chalitzah* with one and the other brother can perform a *yibum* with the other sister. If they married the sisters, we cannot force them to issue divorces. The *Mishna* is teaching us that the second brother can marry her in *yibum* only if the one brother submitted to *chalitzah* first. However, one brother (*from the two*) should not perform *yibum* with her before the one brother submitted to *chalitzah* first, for the brother (*performing yibum*) would be violating the Biblical prohibition which prohibits a *yevamah* to marry someone who is not her *yavam*. (51a – 52a)

### INSIGHTS TO THE DAF

#### ***Marrying off his Minor Daughter***

The *Gemora* challenges Rava from the following *Mishna*: If one marries off his daughter to a man, but he does not specify which daughter he is giving, the adult daughters are not included (*for the father has no authority over them*). It can be inferred from here that his minor daughters are included (*and they all would require a get*). But why should this be? It is a case where the marriage does not have the possibility of cohabitation. This is a refutation of Rava (*for he holds that such types of kiddushin are not effective*)!?

Rava answers: the *Mishna* is dealing with a case where he only had one adult daughter and one minor daughter (*the key point being that there was only one minor daughter, for she is the only one that the father could have married off*).

The *Gemora* asks: What then is the novelty of this *Mishna*?

The *Gemora* answers: The *Mishna* is referring to a case where the adult daughter appointed her father as her agent to accept *kiddushin* for her. You might have thought, that in this case, the father is accepting *kiddushin* for his adult daughter. The *Mishna* teaches us that the father would not leave something from which he would derive benefit (*the kiddushin money that he receives for marrying off his minor daughter*).

The *Gemora* asks: Are we not referring to a case where the adult daughter told the father that he can keep the *kiddushin* money?

The *Gemora* answers: The father would not leave a *mitzvah* that he is obligated to perform (*marrying off his minor daughter*) and perform a *mitzvah* that is not his obligation (*accepting kiddushin for his adult daughter*).

The *Ritva* asks: How can the *Gemora* say that it is a *mitzvah* for a father to give his minor daughter in *kiddushin*? Did we not learn before (41a) that it is forbidden for a man to marry off his minor daughter until she is mature enough to say that she wants to be married to a certain man?

He answers: That *Gemora* is referring to a case where there is a concern that she will not desire that specific man, and eventually, she will perform *mi'un*. (*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.*). However, in cases where there is no such concern, the father certainly has a *mitzvah* to marry her off.

Alternatively, he answers that our *Gemora* can be referring to a *na'arah*, who already is mature enough, but nevertheless, the father can marry her off, and he has a *mitzvah* to do so.