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Kiddushin Daf 65

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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 said to a woman, “I betrothed you,” and she said, “You did not betroth me,” he is forbidden to marry her relatives, but she is permitted to marry his relatives. If she said to a man, “You betrothed me,” and he said, “I did not betroth you,” he is permitted to marry her relatives, but she is forbidden to marry his relatives.

If a man said to a woman, “I betrothed you,” and she said, “You betrothed my daughter,” he is forbidden to marry her relatives, but she is permitted to marry his relatives. He is permitted to marry the daughter’s relatives, and the daughter is permitted to marry his relatives.

If a man said to a woman, “I betrothed your daughter,” and she said, “You betrothed me,” he is forbidden to marry her daughter’s relatives, but the daughter is permitted to marry his relatives. He is permitted to marry the mother’s relatives, but the mother is forbidden to marry his relatives. (65a)

### **Request a Get**

The *Gemora* explains the necessity for all four cases mentioned in the *Mishna*.

It was stated: Rav said: We force the man to give a *get* to the woman, and Shmuel said: We ask him to give her a *get*.

The *Gemora* asks: Which case of the *Mishna* are they referring to? If it is the first case (*if a man said to a woman, “I betrothed you,” and she said, “You did not betroth me”*), there is no necessity for a *get* whatsoever (*for she claims that she is not married to him, and he has no proof*)! Rather, they are referring to the second case (*if she said to a man, “You betrothed me,” and he said, “I did not betroth you”*). It is understandable why we would ask the man to give a *get* (*for this way, she can get married*), but why would we force him? Couldn’t he claim that he does not want to become forbidden to her relatives (*by giving her a get, which creates the appearance that they were truly married*)?

The *Gemora* explains: Shmuel said: We ask the man to give her a *get*. Rav added (*he was not arguing on Shmuel’s halachah*): If the man gives the *get* willingly (*without being prompted*), we force him to pay her the *kesuvah* as well (*for we view his willingness as an admission to marriage*). (65a)

### **Betrothal in the Presence of One Witness**

Rav Yehudah said: If one betroths a woman before one witness, we are not concerned for his *kiddushin* (*it is not valid at all*).

They inquired of Rav Yehudah: What is the *halachah* if they both (*the man and the woman*) admit that an act of betrothal was done in the presence of one witness (*will a get be required*)? [*Why is a kiddushin performed in the*



presence of one witness not valid? Is it because he is not believed, and in this case, he is believed? Or is it because kiddushin cannot be valid unless two witnesses are present?]

Sometimes Rav Yehudah answered that she is *mekudeshes*; other times, he said that she is not *mekudeshes*. Ultimately, he was uncertain of the *halachah*.

It was stated: Rav Nachman said in the name of Shmuel: If one betroths a woman before one witness, we are not concerned for his *kiddushin*, even when both of them admit.

Rava asked Rav Nachman from our *Mishna*: If a man said to a woman, "I betrothed you," and she said, "You did not betroth me," he is forbidden to marry her relatives, but she is permitted to marry his relatives. The *Gemora* analyzes the case: If there are witnesses, why is she permitted to marry his relatives? If there are no witnesses, why is he forbidden to marry her relatives? Rather, it must be dealing with a case where there was only one witness (*and nevertheless, the man is forbidden to marry her relatives; this contradicts Rav Nachman's ruling*)!?

The *Gemora* answers: The *Mishna* is dealing with a case where he said, "I betrothed you in front of two witnesses, but they have went abroad."

The *Gemora* asks from a *Mishna*: If someone divorces his wife, and then he sleeps with her at an inn overnight, Beis Shamai says that she does not require a second *Get*. Beis Hillel says: She requires another *Get*. The *Gemora* analyzes the case: If there are witnesses, what is Beis Shamai's reasoning? If there are no witnesses, what is Beis Hillel's reasoning? Rather, it must be dealing with a case where there was only one witness (*and nevertheless,*

*the man is forbidden to marry her relatives; this contradicts Rav Nachman's ruling*)!?

The *Gemora* counters: But according to you, let us consider the latter part of that *Mishna*: It applies only when she was divorced from him after *nisuin*. If she was divorced after *erusin*, Beis Hillel agrees a second *Get* is not needed, as he does not feel so at ease with her as if they had been married. And if you will maintain that one witness is believed, what difference would it make whether it was after *erusin* or *nisuin*?

Rather, their argument must be in a case where there are witnesses that they were secluded, but not that they had marital relations. Beis Shamai says that witnesses on the seclusion do not mean that they had relations, while Beis Hillel says that this is equivalent to witnesses that they had relations. Beis Hillel agrees that this principle is inapplicable if they were only betrothed, as he is not at ease with her that we should presume they had relations, just because they had once been betrothed.

The *Gemora* cites other Amoraim who concur with Shmuel that we are not concerned for a *kiddushin* performed in the presence of only one witness.

Rav Achadvoi bar Ami asked from the following *braisa*: If two men come from abroad together with a woman and a package, and each man says, "She is my wife, the other man is my servant and the package is mine." The woman, however, says, "These two men are my servants and the package is mine." The *halachah* is that both men are required to give her a *get*, and she collects her *kesuvah* from the package (*for even if the package is not hers, each man owes her a kesuvah payment according to their own words; the remaining part of the kesuvah will remain in doubt until Eliyahu comes*).

What is the case? If each man has witnesses (*regarding their marriage and the package*), how can the woman say



that they are her servants, and that the package is hers (*for her claim contradicts the witnesses*)?

Rather, the *braisa* must be referring to a case where each of them had one witness (*in which case there would be no proof regarding the package; and since the braisa rules that they are required to give her a get, it would prove that a kiddushin in the presence of one witness is valid*)!?

The *Gemora* counters: Can we believe one witness when he is contradicted by another?

Rather, the *Gemora* concludes that everyone agrees that she is permitted to marry anyone (*even without receiving a get*). The *braisa* means that if they willingly give her a *get*, she can then collect her *kesuvah* from the package (*for, in essence, each one of them is admitting that he was married to her; otherwise, the entire package would remain in doubt*).

The *Gemora* notes that the *braisa* is following the opinion of Rabbi Meir who holds that there exists a lien on a man's movable property to pay his debt for his *kesuvah*.

Rav Kahana said: We are not concerned for a *kiddushin* performed in the presence of only one witness. Rav Pappa said: We are concerned for a *kiddushin* performed in the presence of only one witness.

Rav Ashi asked Rav Kahana: Why do you hold like that? If it is because you learn the *gezeirah shavah* of "*davar davar*" from the *halachos* concerning monetary matters, then you should also say that just as the admission of the litigant (*when it is disadvantageous for him*) is like the testimony of a hundred witnesses, so too, concerning marital matters, the admission of the litigant should be like the testimony of a hundred witnesses (*and if the man and the woman admit that they performed an act of kiddushin, they should be believed even if there were no witnesses present*)!?

The *Gemora* answers: They are not believed here because it is disadvantageous for others (*for now, she becomes prohibited to all other men*). (65a – 65b)

## INSIGHTS TO THE DAF

### *Shavaya A'nafshei*

The *Mishna* stated: If a man said to a woman, "I betrothed you," and she said, "You did not betroth me," he is forbidden to marry her relatives, but she is permitted to marry his relatives.

Rashi explains the man is forbidden to marry her relatives because of the principle of "*shavya anafshei chaticha d'issura*" i.e. she has made for herself a forbidden piece; she is compelled to abide by her declaration.

There are several explanations to this: The *Ketzos Hachoshen* explains that this is based upon "believability." A person is believed with regards to himself, when it is disadvantageous to him. He cites a Rashi on our Daf that this is comparable to the *halachah* of "the admission of the litigant is like the testimony of a hundred witnesses."

The *Terumas Hakeri* says that this is not because he is believed, but rather, it is based upon the following logic: Since he knows that something is forbidden to him, it is incumbent upon him to distance himself from this. Accordingly, *Beis Din* is obligated to ensure that he does not violate any prohibition that according to his words he knows to be forbidden, for *Beis Din* acts with him in the same manner that he acts with himself.

The *Shaar Hamelech* quotes the *Mahari Assad* that the reason why one can render the object forbidden with the principle of "*shavya a'nafshei*" is not because he is believed in respect to himself; rather, it is because it is

regarded as an oath. The witness is taking a vow forbidding himself from this particular object.

The Maharit writes that this cannot be the reason, for if so, he should be able to annul this prohibition in the same manner that one can have his oath annulled!

The Noda Beyehudah writes that "*shavya a'nafshei*" cannot function like an oath because it is obvious that if one says on a Monday that "today is *Shabbos*," it will not be forbidden for him to perform any labor. This is because there is no believability in this case. But, if it would be like an oath, it should be forbidden for him like any other oath!

The Chasam Sofer writes that there would be the following difference in *halachah* based upon the different reasons: If someone would tell *Beis Din* something that he knows to be false. If "*shavya a'nafshei*" is because he is believed in respect to himself, here, where he knows it to be false, he would be able to "transgress" his words in private. However, if it is based upon an oath, it will still be forbidden to him..

#### DAILY MASHAL

When the Chasam Sofer was a young boy, he was studying the laws of Kidushin. When his class reached the law which requires two men to witness the marriage, his Rabbi asked how the marriage of Adam and Chavah could have been valid, if there were no kosher witnesses at the time. The young Moshe Sofer immediately replied that the Gemara (Kidushin 65b) derives the requirement of 2 witnesses for marriage from the fact that 2 witnesses are required to establish a monetary obligation as well. If so, we should also derive that just as where someone admits that he owes money he is believed (without witnesses), so too if a man and a woman "admit" that they married, they should be believed without witnesses. The Gemara distinguishes the two situations, pointing out that where

someone admits to owing money, he is believed only where/because his admission does not cause harm to anyone else. Since a marriage causes "harm" to others, by rendering the betrothed woman forbidden to all her husband's relatives, the "admission" is ineffective. However, he concluded, since there were no relatives when Adam and Chavah married, no one would be harmed by their admission. They therefore did not need witnesses and could freely admit to their marriage.