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Kiddushin Daf 69

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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**

Rabbi Tarfon said: There is a manner in which *mamzeirim* can be purified. How is this? If a *mamzer* marries a slavewoman, the child is classified as a slave (and not a *mamzer*). If the child is freed, he is regarded as a free man, and is permitted to marry into the congregation. Rabbi Eliezer says: The child is a slave who is a *mamzer*. (69a)

### **Purifying a Mamzer**

The *Gemora* inquires: Is Rabbi Tarfon saying that this solution should be practiced, or that once it is done, the child would not be a *mamzer*?

The *Gemora* attempts to resolve this from the following *braisa*. The *braisa* states that they said to Rabbi Tarfon: You have solved the problem for the males (*mamzeirim*), but not for the females. [This is because only a male would go somewhere far away, claim he is a slave, and then marry a slavewoman. A woman would never do this.] If this was his advice, why wouldn't this be a solution for females as well (as they could openly marry a slave)?

The *Gemora* answers: A Canaanite slave has no (*halachic*) lineage. [Accordingly, the child would be a Jewish *mamzer* from the time it is born, as opposed to a slavewoman's child that is not really Jewish at all until it is freed.]

The *Gemora* attempts to resolve this from the following incident. Rabbi Simlai's host was a *mamzer*. He said to his host: If I would have known you before you got married, I

would have made sure your children were not *mamzeirim*. If Rabbi Tarfon was giving advice, this statement of Rabbi Simlai is understandable. If not, would Rabbi Simlai have told him to go marry a slavewoman (*i.e. have relations and make sure she is not with others, as halachic marriage does not apply to a slavewoman*) when he is not permitted to do so?

The *Gemora* answers: He meant that he would have told him to steal and thereby be sold as an Jewish servant who is permitted to marry a slavewoman.

The *Gemora* asks: Was there even such a concept as a Jewish servant in the days of Rabbi Simlai? Didn't Mar say: There is no concept of being sold as a Jewish servant when *Yovel* does not exist?

The *Gemora* answers: This is therefore a proof that Rabbi Tarfon advised that this should be done. Rav Yehudah rules in the name of Shmuel that the law follows Rabbi Tarfon. (69a)

### **Rabbi Eliezer's Disagreement**

The *Mishna* had stated: Rabbi Eliezer says: The child is a slave who is a *mamzer*.

Rabbi Elozar explains the reasoning for this. The verse states, "to him." This implies that we look at the blemished status of the male and apply it to the child.

The *Gemora* asks: What do the *Chachamim* do with this verse?

The *Gemora* answers: They understand it to mean that if a regular Yisroel marries a *mamzeres*, one might have thought that the verse, “*according to their families and the house of their fathers*,” tells us that the child should follow the kosher status of the father. The verse “*to him*,” tells us this is untrue.

The *Gemora* asks: What is Rabbi Eliezer’s source for the *Chachamim*’s law?

The *Gemora* answers: He holds that just as the *Chachamim* agree that the verse “*to him*,” excludes what we would have thought from the verse, “*the house of their fathers*,” so too, it excludes the verse, “*the woman and her children should be to their master*.” [This is one of the ways we see that the father’s status has no bearing on the child.]

The *Gemora* asks: How do the *Chachamim* respond?

The *Gemora* answers: It is clear that any child in the womb of a slavewoman is like a child in the womb of an animal (and has no status based on Jewish lineage). (69a)

WE SHAL RETURN TO YOU, HA’OMER

### **Mishna**

Ten different genealogical classes went up from Bavel (in the times of Ezra): *Kohanim*, *Leviim*, *Yisroelim*, *chalalim*, converts, and freed Canaanite slaves, *mamzeirim*, *nesinim*, *shetukim* (someone whose father is unknown) and *asufim* (his mother and father are unknown). *Kohanim*, *Leviim* and *Yisroelim* may intermarry with one another. *Leviim*, *Yisroelim*, *chalalim*, converts, and freed Canaanite slaves may intermarry with one another. Converts, freed Canaanite slaves, *mamzeirim*, *nesinim*, *shetukim* and *asufim* are permitted to intermarry with

one another. A *shetuki* is someone who recognizes his mother, but not his father. An *asufi* is someone who was gathered from the marketplace and does not know the identity of his father or his mother. Abba Shaul used to call a *shetuki* a “*beduki*.” (69a)

### **Explaining the Mishna’s Wording**

The *Gemora* asks: Why does it say, “They came up from Bavel”? It should have said, “They went to *Eretz Yisroel*”!?

The *Gemora* answers: It is teaching us a point in passing. This is as the *braisa* states: “*And you will arise and ascend to the place that Hashem, your God, will choose*.” This teaches us that the Beis Hamikdash is higher than the rest of *Eretz Yisroel*, and that *Eretz Yisroel* is higher than all other lands.

The *Gemora* asks: It is understandable that the Beis Hamikdash is higher than all other lands as the verse states, “*Words of arguing in your gates, and you will arise and ascend (to the place etc.)*.”

However, how do we know that *Eretz Yisroel* is higher than all other lands?

The *Gemora* answers: The verse states, “*Therefore, days are coming, says Hashem, where it will not be said any longer, ‘Live Hashem who has taken Bnei Yisroel up out of Egypt,’ but rather, ‘Live Hashem who has taken Bnei Yisroel from the land in the north and from all of the lands that He pushed them to.’*”

The *Gemora* asks: Why does it say, “They went up from Bavel?” Why doesn’t it say, “They went up to *Eretz Yisroel*?” [This will still teach us the side point stated above.]

The *Gemora* answers: This is a proof to Rabbi Elozar. Rabbi Elozar says: Ezra did not go up from Bavel until he



made it (*the lineage of the people from Bavel*) like fine, sifted flour. (69a – 69b)

### **The Groups Went Up**

The following argument was taught. Abaye says: The *Mishna* means that they went up on their own. Rava says: Ezra made them go up. They argue regarding Rabbi Elozar's statement. Rabbi Elozar says: Ezra did not go up from Babylon until he made it (*the lineage of the people*) like fine flour. Abaye argues with Rabbi Elozar, while Rava agrees with him.

Alternatively, everyone agrees with his statement. The argument is regarding whether he separated them (*those that were unfit*) and they went up to *Eretz Yisroel* willingly, or they were separated and forced to go to *Eretz Yisroel*.

The *Gemora* asks: The opinion that they went up by themselves is understandable, as this is what Rav Yehudah means when he says in the name of Shmuel that all of the lands are considered "dough" (*meaning a mixture of different types of lineage*) compared to *Eretz Yisroel*, and *Eretz Yisroel* is considered "dough" when compared to Bavel. However, according to the opinion that they were forced to go up, this means that everyone knew who they were! [*They would therefore stay away from the people that they were not supposed to marry. Why, then, would Shmuel say that it is not as good as Bavel for lineage?*]

The *Gemora* answers: Even though the people who had lineage problems were known to the people of that generation, they were not known to the next generation.

The *Gemora* asks: According to the opinion that they went up voluntarily, the following verse is understandable. The verse states: "*And I gathered them by the river that was Ahava (the name of the river), and we camped there for three days. And I investigated the people and the*

*Kohanim, and I did not find any Levites (those that were fit to play the musical instruments) there.*" However, according to the opinion that they were forced to go, it would seem that he already knew who was going!?

The *Gemora* answers: He knew the identity of those with problematic lineage, but he did not know the identity of those whose lineage was fit (*which is the subject of this verse*). (69b)

### **Kohanim, Leviim, Yisroelim and Chalalim**

The *Mishna* had stated: Ten different genealogical classes went up from Bavel (*in the times of Ezra*): *Kohanim, Leviim, Yisroelim* etc.

The *Gemora* asks: How do we know that some of the *Kohanim, Leviim* and *Yisroelim* went up?

The *Gemora* answers: The verse states, "*And the Kohanim, Leviim, and some from the nation, and the singers, and the gatekeepers, and the nesinim settled in their cities, and all of Israel in their cities.*"

The *Gemora* asks: How do we know that the *chalalim* went up?

The *braisa* states: Rabbi Yosi says that *chazakah* (*presumption that a person's status did not change unless it was proven otherwise*) is a strong thing. This is indicated by the verse, "*And from the sons of the Kohanim, the sons of Chavyah, the sons of Hakotz, the sons of Barzilai who took wives from the daughters of Barzilai from Gilad and it was called under their name. These sought the bill of their lineage but could not find it, and they were rejected from the Kehunah (for some of them had married gentile women). Hatarshasa (Nechemiah) said to them that they should not eat from the kodshei kodoshim (korbanos) until a Kohen arrives with the urim v'tumim (meaning until*



*moshiach comes, as there was no urim v'tumim in the second Beis Hamikdash)." He said to them: You have your chazakah! What did you eat until now in the exile? Thekodsheiha'gvul (i.e terumah). Here (in Eretz Yisroel) too, you may (only) eat kodshei ha'gvul. [It is evident from these verses that chalalim came up from Bavel to Eretz Yisroel.]*

The *Gemora* asks: According to the opinion that we elevate a *Kohen* who eats *terumah* to be considered a genealogically fit *Kohen*, how could we let them eat *terumah*?

The *Gemora* answers: Their status has already been lessened (and people will know that they are not full fledged *kohanim* because they do not eat *korbanos*).

The *Gemora* asks: Why did Rabbi Yosi remark that *chazakah* is "so strong?"

The *Gemora* answers: This is because while their *chazakah* had previously only permitted them to eat Rabbinical *terumah* (regular fruits and vegetables), it permitted them in *Eretz Yisroel* to eat *terumah* according to Torah law (grain, olives, and grapes).

Alternatively, the *Gemora* answers: Here, too, they were only eating Rabbinical *terumah*. We only assume someone to be considered a full fledged *Kohen* if he eats Biblical *terumah*, and not just Rabbinical *terumah*.

The *Gemora* asks: If so, what is "so strong" about their *chazakah*?

The *Gemora* answers: Originally, there was no need to make a decree regarding allowing them to eat Rabbinical *terumah* because they might eat Biblical *terumah* (since it wasn't available). However, even when such a suspicion arose (in *Bavel*), it was negated because *chazakah* is "so strong."

The *Gemora* asks that it seems from the verses that they were permitted to eat Biblical *terumah*!?

The *Gemora* answers: The verse meant that they cannot eat that which is referred to as "holy," which is *terumah*, and that they cannot eat that which is called "holies," which is the meat from the *korbanos*. (69b – 70a)

## DAILY MASHAL

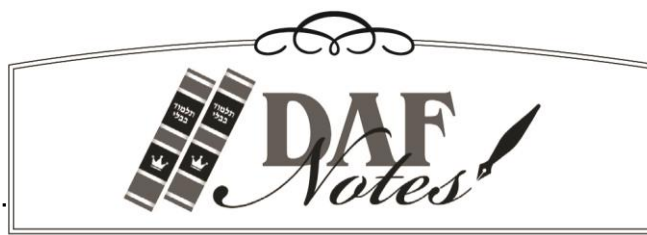
### ***Eretz Yisroel and the Beis HaMikdash is Higher than all other Places***

#### ***Does High and Low Apply to Spherical Objects?***

(From Meoros Daf HaYomi)

In our *sugya* the Gemara cites a verse in *Yirmiyahu* (23:7) "...Who brought Bnei Yisrael up from the land of Egypt" and a verse in *Devarim* (17:8) "...then you shall arise and go up unto the place which the Lord thy G-d shall choose" to demonstrate that *Eretz Yisrael* is higher than any other land, and that the *Beis HaMikdash* is the highest point in *Eretz Yisrael*. The wording of the Gemara seems to indicate that *Eretz Yisrael* is physically higher. In fact, the *Yam Shel Shlomo* (on our *sugya*, *Kiddushin* Chap. 4, 1) goes so far as to say that if someone standing in *Eretz Yisrael* says, "I vow to go up to *Chutz La'aretz*," the vow is considered to be made in vain and is invalid. Leaving *Yerushalayim* or *Eretz Yisrael* is always referred to as "going down."

Many commentators maintain that our Gemara should not be interpreted literally. The Chasam Sofer (*Responsa, Part II, Y.D. §234*) stresses this point, writing, "...in fact, those who are somewhat familiar with the world map can see otherwise...actually the world is round, and high and low do not apply to spherical objects; from any given point one sees the skies high overhead and low on the



horizon, forming a dome. Someone who approaches from a point on the horizon appears as if he emerged from a deep pit, and high and low do not apply.”

Furthermore the Maharal of Prague (in his book on Talmudic Aggados and in *Tiferes Yosef*, Chagiga 3b, s.v. Eizehu) writes that the Gemara is referring to the spiritual loftiness of Eretz Yisrael, and not to its physical height.

It is interesting to note that the Chasam Sofer (ibid) writes that Eretz Yisrael is said to be “higher than all other lands” because Creation began from the *even shesiyah* [foundation stone] located on *Har HaBayis* (see Rashi, Sanhedrin 26b, s.v. *veshesiya*). Thus all eyes are raised to Eretz Yisrael and *Har HaBayis* because mankind lifts its gaze to the spot where the ground beneath its feet was first created.

#### INSIGHTS TO THE DAF

##### ***A Jewish Waiter in a Non-Jewish Restaurant***

Our Gemara quotes the words of Nechemiya ben Chachalya, who is referred to in Ezra (2:63) as “*Hatirshasa*.” His job was to attend to King Nebuchadnezzar and to serve him his wine. Based on the *Talmud Yerushalmi*, Rashi (s.v. *Hatirshasa*) explains that part of Nechemiya’s task was to taste the wine before serving it as a security measure to prove that he was not trying to poison the king. As such, *chachamim* granted Nechemiya a special dispensation [*heter*] to drink [*shasa*] wine made by non-Jews, and therefore was given the name “*Hatirshasa*.”

**Source of the prohibition against non-Jewish wine:** Since Nebuchadnezzar was not an idol-worshipper, his wine was not considered libation wine, which is forbidden by the Torah (Avoda Zara 29b). Still, the Sages had to grant Nechemiya explicit permission to drink his wine because

when Daniel was exiled to the Babylonian king’s palace, he pledged not to defile himself by drinking the king’s wine, even if it was not used for libation offerings (Daniel 1:8). This decree was enacted once again for *Klal Yisrael* by the *talmidim* of Beis Shammai and Beis Hillel (Shabbos 17b), who prohibited drinking non-Jews’ wine, even in a Jewish home (see *Beis Yosef*, Y.D. 123, Os 1; see also *Encyclopedia Talmudis*, “*Yayin shel goyim*” p. 335).

A man who made his living as a waiter asked the Radvaz (Part IV §22) whether he would be allowed to work in a non-Jewish restaurant and serve wine there. The Radvaz replied that although Nechemiya ben Chachalya served wine to Nebuchadnezzar, this should not be used as an example, for he had no alternative. Had he tried to disobey the king’s standing orders, he would have placed his life in danger. But a Jew may not engage in this profession of his own volition, and he should be rebuked and, if possible, prevented from doing so. Furthermore, said the Radvaz, a Jew should not set foot at non-Jewish parties to prevent him from learning their ways.

The *Kol Eliyahu* (Responsa II §27) adds that if a waiter is involved in warming or preparing the food, he is liable to come to taste it and to transgress a Torah prohibition.