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Kiddushin Daf 79

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Mishna

If one authorized his agent to give his daughter in betrothal (*and the agent went and did so*), and he himself went and (*also*) gave her in betrothal, if his betrothal preceded the agent’s, his *kiddushin* is a *kiddushin*; and if that of his agent preceded his, the agent’s *kiddushin* is a *kiddushin*; and if it is not known whose was first, both men must give a *get* (*in order for her to get married again*). And if they want, one gives a *get*, and the other one may marry her. And similarly, a woman who authorized her agent to betroth her (*and the agent went and did so*), and she went and betrothed herself, if her betrothal preceded the agent’s, her *kiddushin* is a *kiddushin*; and if that of her agent preceded hers, his *kiddushin* is a *kiddushin*; and if it is not known whose was first, both men must give her a *get*. And if they want, one gives her a *get*, and the other one may marry her. (78b – 79a)

Uncertain Bogeres

The *Gemora* explains why both cases mentioned in the *Mishna* are necessary.

It was stated: If her father betrothed her on the road, and (*later on that day*), she betrothed herself, and behold now she is found to be a *bogeres*, Rav said:

She is a *bogeres* before us (*and therefore we assume that she was a bogeres the entire day, and her father has no authority to betroth her*). Shmuel said: We are concerned for the *kiddushin* of both of them (*for perhaps she was not a bogeres at the time that her father betrothed her*).

The *Gemora* analyzes the case: Precisely at what stage did this occur? If it transpired during the six months that are in between a *na’arah* and a *bogeres*, why would Rav assume that she became a *bogeres* earlier? We should rule that she only became a *bogeres* now!? And if it occurred after the six months, why would Shmuel be concerned for her father’s *kiddushin*? Did Shmuel not say that there are only six months between the time a girl becomes a *na’arah* until she becomes a *bogeres*?

The *Gemora* answers: They are discussing a case where she became a *bogeres* on the last day of the six months.

The *Gemora* asks on Shmuel: Why is it different than the *halachah* of a *mikvah*, of which we learned about in the following *Mishna*: If a *mikvah* was measured and found to be deficient, all *tahor* items that were prepared on the basis of this *mikvah*, whether it was in a private or a public place are considered *tamei*. [*Since the mikvah is presently deficient, we assume*

that it had the same status earlier as well; so in our case, shouldn't we assume that she was a bogeres beforehand as well?]

The *Gemora* answers: There it is different, for there is a presumption that the *tamei* item remained in that state (and it is for that reason that we assume that he did not immerse in a valid *mikvah*, and he is still *tamei*).

The *Gemora* asks: On the contrary! Shouldn't the *mikvah* remain under the presumption that it was not deficient?

The *Gemora* answers: That cannot be the case, for it is deficient before us!

The *Gemora* asks: But in our case, she is a *bogeres* before us!?

The *Gemora* answers: Perhaps she only became a *bogeres* now.

The *Gemora* asks: Then, perhaps the *mikvah* only became deficient now!?

The *Gemora* answers: The *mikvah* has two disadvantages (it is presently deficient and the item was *tamei* beforehand). Here, by *bogeres*, there is only one weakness (that she is presently a *bogeres*).

The *Gemora* asks on Shmuel: Why is it different than the *halachah* of a barrel, of which we learned about in the following *braisa*: If one examined a wine jug for the purpose of periodically taking from it *terumah* (for wine kept in other barrels) and, subsequently, it

was found to contain vinegar (which cannot be used as *terumah* for wine), all three days it is certain, and after that it is doubtful. [Rabbi Yochanan, in *Bava Basra* 96a, explains that during the first three days after it was found to be wine, the contents of the jug are regarded as being wine because in less than three days wine cannot turn into vinegar. Even if it began to turn sour immediately after the test, it could not be called vinegar until full three days had elapsed. The *terumah* given within those three days must inevitably have been wine and consequently have exempted the wine in the other jugs. After three days, the contents are regarded as doubtful wine, since it is possible that it turned into vinegar three days afterwards. As the *terumah* is accordingly of a doubtful nature, another portion must be set aside for the purpose. Rabbi Yehoshua ben Levi explains that during the last three days prior to the discovery that it had turned into vinegar; it is regarded as certain vinegar because the contents are deemed to be vinegar as soon as the wine begins to deteriorate. Prior to the three days, it is regarded as doubtful because it is unknown when the deterioration had begun.] And we asked a contradiction between this case and that of the *mikvah*; why is the *mikvah* ruled to be definitely deficient (and everything is *tamei*), but here, we rule that the *terumah* is doubtful? And Rav Chanina from Surya answered that the *Tanna* who authored the *braisa* by the barrel is Rabbi Shimon, who, by *mikvah*, rules that it is a matter of uncertainty. For we learned in a *braisa* by the case of a deficient *mikvah*: All *tahor* items that were prepared on the basis of this *mikvah*, whether it was in a private or a public place are considered *tamei*. Rabbi Shimon says: If it was in a public domain, they are ruled to be *tahor*; however, if it was in a private

domain, the items are treated as possible *tamei* and possibly *tahor*. However, the *Gemora* concludes that according to the *Chachamim*, the *terumah* which had been separated is ruled to be definitely *tevel* (so the girl should be ruled to be a *bogeres* as well)!?

The *Gemora* answers: There it is different, for there is a presumption that the *tevel* remained in that state, and it was not fixed (and it is for that reason that we assume that it was vinegar at that time).

The *Gemora* asks: On the contrary! Shouldn't the wine remain under the presumption that it did not become vinegary?

The *Gemora* answers: That cannot be the case, for it is vinegar before us!

The *Gemora* asks: But in our case, she is a *bogeres* before us!?

The *Gemora* answers: Perhaps she only became a *bogeres* now.

The *Gemora* asks: Then, perhaps it only became vinegar now!?

The *Gemora* answers: The wine has two disadvantages (it is presently vinegar and the wine was *tevel* beforehand). Here, by *bogeres*, there is only one weakness (that she is presently a *bogeres*).

The *Gemora* suggests that the argument between Rav and Shmuel is actually a *Tannaic* dispute, for we learned in a *braisa* [regarding the case of a deed

wherein the gift is recorded, but in which it was unknown whether the donor was sick (and then, if he recovered, the gift would be void, for it was only given under the assumption that he would die) or in good health (and the gift would be valid)]: Who takes away from whom (even when the other has possession)? He (the donor) takes away from them without proof (even if they already took possession), but they cannot take away from him without proof; these are the words of Rabbi Yaakov. Rabbi Nassan, however, said: If he was in good health, he is the one who must provide proof that he was lying sick at the time that the gift was made; but if he is presently lying sick, they must provide proof that he was in good health at the time that the gift was made. Let us say that Rav follows Rabbi Nassan and Shmuel follows Rabbi Yaakov?

The *Gemora* rejects this line of reasoning: Rav can say even like Rabbi Yaakov, for Rabbi Yaakov only ruled that we do not determine the donor's state of health based upon his current status because with respect to money, we apply the principle that the money should remain according to its last known status; however, in the case of the girl, can we say that her body should remain according to its last known status (for on this day, she was scheduled to become a *bogeres*)?

And Shmuel can say even like Rabbi Nassan, for Rabbi Nassan only ruled that we determine the donor's state of health based upon his current status because everyone is presumed to be healthy. So the one who is attempting to remove himself from this status must provide the proof. However, in the case of the girl, is she attempting to remove herself from any

presumed status? [No, she is not, for there are many girls that do not become a bogeres when they turn twelve and a half!]

The *Gemora* suggests again that the argument between Rav and Shmuel is actually a *Tannaic* dispute, for we learned in a *braisa*: If her father betrothed her on the road, and (*later on that day*), she betrothed herself in the city, and behold now she is found to be a *bogeres*, one *Tanna* said: She is a *bogeres* before us (*and therefore we assume that she was a bogeres the entire day, and her father has no authority to betroth her*). A different *Tanna* said: We are concerned for the *kiddushin* of both of them (*for perhaps she was not a bogeres at the time that her father betrothed her*). Is not one *Tanna* like Rav and the other like Shmuel?

The *Gemora* rejects this by saying that both *Tannaim* can hold like Shmuel. The reason for the two different rulings is because the first *braisa* is discussing a case where she contradicts him (*and states that she was a bogeres in the morning*), and the second *braisa* is discussing a case where she does not contradict him.

The *Gemora* asks: Perhaps Rav and Shmuel are not arguing either?

The *Gemora* answers: This cannot be, for Rav Yosef the son of Rav Menashya from Devil once ruled according to Rav, and Shmuel became upset at this. Shmuel exclaimed: All others were given wisdom in small amounts, but Rav Yosef apparently was given wisdom in a large measure (*and that gave him the fortitude to rule leniently that the first man is not*

required to give a get)! Now, if they do not argue, why did he become upset?

Mar Zutra said to Rav Ashi: Ameimar said that the *halachah* follows Shmuel. Rav Ashi, however, said: The *halachah* follows Rav.

The *Gemora* rules according to Rav. (79a – 79b)