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Kerisus Daf 11

Produced by Rabbi Avrohom Adler, Kollel Boker Beachwood

Daf Notes is currently being dedicated to the neshamot of

## Moshe Raphael ben Yehoshua (Morris Stadtmauer) o”h Tzvi Gershon ben Yoel (Harvey Felsen) o”h

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

MISHNAH: What is the difference between the (*betrothed*) slavewoman and the *arayos* (*forbidden unions punishable by kares*)? They are different both in regard to the punishment and the offering? In the case of all other *arayos*, a *chatas* offering is brought; in that of a slavewoman, it is an *asham*. In the case of the other *arayos*, a female animal is offered; in that of a slavewoman, it is a male. In the case of the other *arayos*, the man and woman are alike in respect of lashes and the sacrifice; in that of the slavewoman, the man is unlike the woman regarding the lashes (*for it is only the woman who receives lashes*), and the woman is unlike the man regarding the sacrifice (*for it is only the man who brings the sacrifice*). In the case of all other *arayos*, the one who begins cohabitation is punishable as well as one who completely cohabited, and one is liable for each act of cohabitation separately (*but these do not apply to one who cohabits with a slavewoman*). And the case of the slavewoman is more stringent in that a deliberate transgression is of the same status as a transgression in error (*for the man is always liable to a sacrifice*).

To which slavewoman does this refer? It is to one who is half slavewoman and half free (*that she initially had two owners, and one of them freed her*), as it is written: *and redeemed she was not redeemed*; these are the words of Rabbi Akiva. Rabbi Yishmael says: It is to a full slavewoman. Rabbi Elozar ben Azaryah says: All other forbidden women it is explicitly stated (*that they are free people*); there is only left the instance of one who is half slavewoman and half free.

The *Gemora* cites the Scriptural source that the slavewoman incurs lashes, but the man does not.

The *Gemora* cites a *braisa*: Whenever the woman is subject to lashes the man is liable to a sacrifice, and when she is exempt

from lashes, he does not bring a sacrifice. [*These exclude the case where the woman was a minor, or if she committed the sin in error, or if she was coerced into the act.*] Rava cites the Scriptural sources for this.

Rabbi Yitzchak said: The man does not incur these punishments unless he cohabits with a non-virgin slavewoman.

[It is written regarding a slavewoman who is married to a Jewish servant and she committed adultery:] *And she was redeemed*: You might have thought that this meant that she was entirely redeemed, therefore it says: *she was not redeemed*. You might have thought that this meant that she was not redeemed at all, therefore it says, *And she was redeemed*. How is this explained? It means that she was partially redeemed, but not completely redeemed. This means she was a half slavewoman and half free and she is betrothed to a Hebrew servant; these are the words of Rabbi Akiva. Rabbi Yishmael said: The verse refers to a Canaanite slavewoman (*who is not free at all*) who is betrothed to a Hebrew servant; while the phrase '*redeemed, she was not redeemed*' is merely the language of people. Rabbi Elozar ben Azaryah says: All other forbidden women it is explicitly stated (*that they are free people*); there is only left the instance of one who is half slavewoman and half free. Others say: *They shall not be put to death, because she has not been freed*. This indicates that the Torah refers to a Canaanite slavewoman (*who is not free at all*) who is betrothed to a Hebrew servant.

The *Gemora* explains how, according to Rabbi Yishmael, it is known from the verse that the case refers to one that she is betrothed to a Hebrew servant.

In the case of all *arayos*, if one partner was an adult and the other was a minor, the minor is exempt (*but the adult is*

liable). If one is awake and the other asleep, the sleeping one is exempted. If one is an inadvertent violator and the other sinned willfully, the one who transgressed inadvertently is liable to a *chatas*, and the deliberate sinner is subject to *kares*.

The *Gemora* asks: And regarding a betrothed slavewoman, is a minor indeed liable (and since the minor is obviously not, what is the difference between this case and all other *arayos*)?

Rav Yehudah explains: This is the meaning of the *Mishna*: In the case of all *arayos*, if one was an adult and the other was a minor, the minor is exempted and the adult is liable; in our instance, even the adult is exempted, because both partners are made similar to each other (through the verses).

The *Gemora* asks: And regarding a betrothed slavewoman, is a person sleeping indeed liable (and since the minor is obviously not, what is the difference between this case and all other *arayos*)?

Rav Yehudah explains in the name of Rav: This is the meaning of the *Mishna*: In the case of all *arayos*, if one was awake and the other was sleeping, the one who was sleeping is exempted and the one who was awake is liable; in our instance, even the one who was awake is exempted, because both partners are made similar to each other (through the verses).

A teacher of *braisos* taught before Rav Sheishes: They have regarded one who completed an act of cohabitation with one who merely began the act, an intentional act of cohabitation with an unintentional one, a natural act of cohabitation with an unnatural one, and one performed while awake with one performed while sleeping.

The *Gemora* asks: This cannot be referring to a betrothed slavewoman, for one who merely begins an act of cohabitation is not liable, and if he does not intend to cohabit, he will not be liable, and he would not be liable if he cohabits with her in an

unnatural manner, and a person who cohabits while sleeping will not be liable either!? And it cannot be referring to other *arayos*, for the *braisa* should have stated the reverse: They have regarded one who merely began the act of cohabitation with one who completed the act!?

Rav Sheishes was asked if he should delete the *braisa*. He responded: No! The explanation is as follows: They have regarded one who completed an unnatural act of cohabitation with a betrothed slavewoman that they are not liable with one who merely began the act. They have also regarded one who intended to perform an unnatural cohabitation with a betrothed slavewoman that they are not liable with one who had not intended to cohabit at all. They have also regarded one who, while awake, cohabits unnaturally with a betrothed woman that they are not liable with one cohabited with her (in a natural manner) while sleeping.

It emerges as follows: One who intends to cohabit with a betrothed slavewoman but ends up only beginning the act with her is regarded as one who did not intend to cohabit with any of the other *arayos* (and he is not liable). One who cohabits while sleeping in a natural manner (with a betrothed slavewoman) is regarded as one who cohabited with any of the other *arayos* while asleep (and he is not liable).

It now emerges that one who, while awake, cohabits in an unnatural way with a betrothed slavewoman is regarded as one who cohabited with any of the other *arayos* while asleep (and he is not liable). (11a – 11b)

WE SHALL RETURN TO YOU, ARBA'AH MECHUSREI KAPPARAH

MISHNAH: If they<sup>1</sup> say to a person, you have eaten cheilev,<sup>2</sup> he is liable to a *chatas*;<sup>3</sup> if one witness says, he has eaten, and another says, he has not eaten, or if one woman<sup>4</sup> says, he has eaten, and another says, he has not eaten, he is liable to a suspensive *asham*; if one witness says, he has eaten, and he himself says, I have not eaten, he is exempted; if two [witnesses]

<sup>1</sup> Viz., two witnesses.

<sup>2</sup> Viz., without being conscious of the transgression.

<sup>3</sup> Provided the person does not deny the charge. Also one witness would suffice in this case.

<sup>4</sup> A woman is as a rule not qualified to act as a witness.

say, he has eaten, and he himself says, I have not eaten, Rabbi Meir declares him liable [to an offering]. Said Rabbi Meir: If two witnesses are capable of inflicting the severe penalty of death, should they not impose the less severe punishment of a sacrifice? They replied: suppose he said, I was a willful transgressor, would he not be exempted? If one ate twice cheilev in one spell of unawareness, he is liable to but one offering; if one ate cheilev, blood, piggul and nossar in one spell of unawareness, he is liable for each kind of food. This is an instance where different kinds [of food] are more stringent than one kind; in the following instance, however, one kind [of food] is more stringent than several kinds: if one ate half an olive-size and then again half an olive-size, both in one spell of unawareness, if of one kind he is liable, if of two kinds, he is exempted.

GEMARA: It is stated: If they say to a person, you have eaten cheilev, he is liable to a chatas. 'They say' implies [at least] two; and what does he maintain? If you assume that he was silent and did not contradict them, it would then follow that only silence in response to two witnesses evokes a chatas, but not in response to one. Now read the middle clause: If one witness says, he has eaten and he himself says, I have not eaten [he is exempted]. Now the reason [that he is exempted] is because he contradicts them, but if he did not deny the charge he would be guilty; and how much more so if there were two witnesses!

Rather you must assume that he contradicts the witness, and the law is in accordance with Rabbi Meir, who holds a contradiction of two witnesses is of no avail; but according to the Rabbis, he would indeed be exempted. But, then, why has this clause at all been mentioned, we know the law from the concluding clause?<sup>5</sup> — This is what he lets us know, that this is a point of dispute between Rabbi Meir and the Rabbis.

<sup>5</sup> Viz., the one wherein R. Meir and the Rabbis differ.

<sup>6</sup> I.e., she has to be divorced from both her husbands.

<sup>7</sup> Since her second marriage was founded upon the evidence of two qualified witnesses, although the court did not give their consent, she is not to be penalized and may therefore return to her first husband. The former clause, where it states that she is punished and has to leave both men, must therefore

Some there are who say: 'They say' may well refer to a single person, as we have learned: If a man has gone overseas and they come and tell his wife that he is dead, whereupon she marries again. If the husband returns alive she has to leave both men.<sup>6</sup> And it has been established that this law refers also to one witness. From where do we infer this? From that which has been stated in the latter clause: If she has married again without authority, she may return to her husband. Now, what does 'without authority' mean? Without the authority of the court but upon the evidence of witnesses;<sup>7</sup> from this we infer that in the former clause it was done with the authority of the court, but upon the evidence of one witness. We thus find that 'they say' is used of one witness; similarly, when it states 'They say' it refers to one witness. And what does he [the offender] say? If he contradicts, he should be exempted; for we have learned in the middle clause: If one witness Says, he has eaten and he himself says, I have not eaten, he is exempted! Again if you say, he is silent; surely we know this law already from the middle clause: If one witness says etc., from which is inferred that he is exempted only when he contradicts, but when he is silent he is indeed liable to an offering! Indeed, he does not contradict, and understand the Mishnah thus: If they say to a person, you have eaten cheilev, he is liable to a chatas, namely if he is silent, but . . . when He himself says, I have not eaten, he is exempted.

Where do we find in the Torah that a person is liable to an offering if he does not contradict the evidence of others? — Our Rabbis taught: If his sin be known to him . . . he shall bring his offering; but not if others make it known to him. I might then think he is exempted even if he does not contradict it is therefore written, 'if it be known to him': in whatever manner. Now to which case does this refer? Shall I say to one in which two witnesses gave evidence? Do we in such a case need a text? It must thus refer to one witness giving evidence; and yet it says that if there is no contradiction his evidence is valid. We have thus proved it.

refer to a case where there were not two witnesses but one only. The court has accepted the evidence of the one witness but with the understanding that she continues her inquiries as to her husband's fate. The fact that her husband has returned alive proves that her inquiries were not satisfactory, and she is therefore penalized.