

23 Tammuz 5782  
July 22, 2022



Kesuvos Daf 16

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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

***[We learned previously that the kesuvah of two hundred for a virgin and the kesuvah of one hundred for a widow or a divorced woman is a condition imposed by Beis Din, and even if the husband does not write a kesuvah for his wife, he is nevertheless required to fulfill the statutory obligations. It is obligatory to write the kesuvah at the time of the nisu'in, as Rabbi Meir say: A man is forbidden to live with his wife even for a brief moment without a kesuvah. The Gemora relates that there were locations in which, for some reason, a kesuvah was not written, and nevertheless, it was considered as having been written, for it is a court imposed condition, and a person cannot evade this obligation. If the document or kesuvah was lost, she does not lose her entitlement. Our Mishnah discusses the argument between the husband and his wife concerning the amount of the kesuvah.]***

The *Mishnah* states: If a woman (*in a situation where there is no kesuvah document*) who became a widow or was divorced says, “You wed me as a virgin (*and therefore I am entitled to two hundred zuz*),” and he says, “Not so, but I wed you as a widow (*which only entitles you to a hundred zuz*).” If there are witnesses that she went out in a *hinuma* (which the *Gemora* will explain its meaning), and her head uncovered, her *kesuvah* is two hundred. Rabbi Yochanan ben Berokah says: Even the distribution of parched grain is proof (*since it was customary to distribute such sweets to children at the wedding of a virgin*).

And Rabbi Yehoshua agrees regarding the one who says to his friend, “This field belonged to your father, and I purchased it from him,” that he is believed, for the very mouth that forbade is the mouth that permitted. But if there

are witnesses that it was his father's, and he says, “I purchased it from him,” he is not believed. (15b5 – 16a1)

The *Gemora* states: The reason that she receives two hundred zuz is because there were witnesses testifying on her behalf; otherwise, the husband would be believed.

The *Gemora* asks: Let us say that this anonymous *Mishnah* is not in accordance with Rabban Gamliel, for Rabban Gamliel would say that she is believed (*based on the previous Mishnahyos*).

The *Gemora* answers: Our *Mishnah* could follow Rabban Gamliel's opinion, for he only says that the woman is believed in cases where she is claiming with a certainty and the husband's claim is speculative. Here, in our *Mishnah*, they are both certain regarding their claim.

The *Gemora* asks: And the one who asked the question, why did he ask it? In our *Mishnah*, it is clearly a case where both are making a certain claim (and it is therefore obvious as to what the difference is between the two *Mishnahyos*)?

The *Gemora* answers: He (the one who asked the question) thought that since the majority of women marry when they are still a virgin, it (the *Mishnah's* case) might be more similar to a case where one is making a claim which is certain, whereas the other is making a claim that is only speculative (for her claim is much more likely to be true than his claim). (16a1)

The *Gemora* provides support proving that Rabban Gamliel would admit that, if there were no witnesses testifying on her behalf, the husband would be believed. This can be

proven by the fact that the latter part of the *Mishnah* states: Rabbi Yehoshua admits. If Rabban Gamliel admits to Rabbi Yehoshua in the first part of the *Mishnah*, it is understandable that Rabbi Yehoshua is admitting to Rabban Gamliel in the latter part of the *Mishnah*. However, if, in the first part of the *Mishnah*, Rabban Gamliel was not admitting, who was Rabbi Yehoshua (*in the latter ruling*) admitting to?

The *Gemora* rejects this proof: Perhaps Rabbi Yehoshua is admitting to Rabban Gamliel of the previous chapter, where Rabban Gamliel maintains that we accept a *migu* argument (*believe me what I am saying is true, for if I had wanted to lie, I could have said a much better one*). Rabbi Yehoshua argued there, but agrees here.

The *Gemora* asks: Where in the previous chapter do we find that Rabbi Yehoshua rejects the *migu* argument?

Perhaps it is from the following *Mishnah*: If an unmarried woman was pregnant, and they said to her, "What is the nature of this fetus?" She answered, "It is from the man So-and-So, and he is a *Kohen*." Rabban Gamliel and Rabbi Eliezer say: She is believed (*and she remains fit for Kehunah*). Rabbi Yehoshua says: We do not live from her mouth (*perhaps she is lying*)! Rather, she is presumed to be pregnant from a *nasin* or a *mamzer*, until she brings proof for her words.

The *Gemora* rejects this proposal by stating that there is no *migu* argument here; her stomach is between her teeth (*i.e. she is visibly pregnant, and she doesn't have any better available claim other than to say that the man with whom she cohabited was fit for her*).

The *Gemora* suggests another *Mishnah*: If they saw an unmarried woman talking with a man, and they said to her, "What is the nature of this man?" She responds by saying, "He is So-and-so, and he is a *Kohen*." Rabban Gamliel and Rabbi Eliezer say: She is believed. Rabbi Yehoshua says: We do not live from her mouth (*perhaps she is lying*)! [Rather, she is presumed to have cohabited with a *nasin* or a *mamzer*, until she brings proof for her words.]

The *Gemora* rejects this proposal by stating that there is no *migu* argument here.

The *Gemora* elaborates: It is understandable according to Zeiri, who said that "speaking" means that she secluded with him, for accordingly, she has the following *migu*: If she wanted to lie, she could have said, "I did not cohabit," so believe her when she said, "I did cohabit (but it was with a *Kohen*)." However, according to Rav Assi, who says that "speaking" means that she cohabited, what *migu* is there? Since we know that she cohabited with another man, she doesn't have any better available claim other than to say that the man with whom she cohabited was fit for her!?

The *Gemora* suggests another *Mishnah*: If she says, "I was injured by a piece of wood," and he says, "No, you cohabited with a man"; Rabban Gamliel and Rabbi Eliezer say that she is believed. Rabbi Yehoshua says: We do not live from her mouth (*perhaps she is lying*)! [Rather, she is presumed to have engaged in an illicit relationship before she was betrothed until she brings a proof for her words.]

The *Gemora* rejects this proposal by stating that there is no *migu* argument here since she has no better available claim. The *Gemora* explains: It is understandable according to Rabbi Elozar, who says that the woman's claim is for one hundred *zuz* (*following the opinion of the Chachamim, who state that the kesuvah of a woman who has been injured by a piece of wood is one hundred zuz*), and the husband states that he does not want to give her anything (*because she cohabited with a man prior to the betrothal*). Accordingly, there is a *migu* argument, for she could have claimed that she was injured by a piece of wood after she was betrothed to him, in which case, she would be entitled to two hundred *zuz*, and nevertheless, she is only asking for one hundred. However, according to Rabbi Yochanan, who maintains that the *kesuvah* for a woman injured by a piece of wood is two hundred *zuz*, there is no *migu* argument, for she does not have any better available claim!?

Rather, the *Gemora* suggests another *Mishnah*: If one marries a woman and does not find her to be a virgin, and she says, "After you had betrothed me, I was violated and thus it is as if your field has been inundated," and he says, "It occurred before I betrothed you, and my acquisition is thus a mistaken one"; Rabban Gamliel and Rabbi Eliezer say that she is believed. Rabbi Yehoshua says: We do not live from her mouth (*perhaps she is lying*)! [Rather, she is presumed to have engaged in an illicit relationship before she was betrothed, and she misled him, until she brings a proof for her words.] Here, there is a valid *migu* argument, for she could have claimed that she was injured by a piece of wood after she was betrothed to him, in which case, she would still be fit for *Kehunah*, and nevertheless, she claimed that she had been violated, which would render her unfit for the *Kehunah*.

Rabban Gamliel maintains that she is believed based on the *migu* argument and Rabbi Yehoshua disagrees. However, Rabbi Yehoshua says that he does agree with Rabban Gamliel in the case of the field that the buyer is believed based on the *migu* argument (*believe me that the field belonged to your father and I purchased it from him, for if I had wanted to lie, I would have kept quiet*).

The *Gemora* asks: Why does Rabbi Yehoshua agree by one *migu*, but he disagrees with the other?

The *Gemora* answers: Here (*in the case of the field*), there is no slaughtered ox before you; there (*in the Mishnah which discusses the man who marries a woman and does not find her to be a virgin*) there is a slaughtered ox before you. (*The phrase 'there is a slaughtered ox before you' means that there is a fact which cannot be wiped out or denied. This applies to the Mishnah above. The virginity is not there. This fact remains. According to Rabbi Yehoshua, in such a case a migu is of no avail. But in our Mishnah, the other person would not have known that the field once belonged to his father if the present holder had not told him so. This is meant by the phrase, 'There is no slaughtered ox before you.' There is no fact here if the holder of the field had not stated it. In*

*such a case a migu is applied, because we assume that the holder of the field would not have said it if he had not bought the field from the other man's father.*) (16a1 – 16a3)

The *Gemora* asks on the *Mishnah's* ruling: But since most women get married as virgins, even if no witnesses come (regarding her 'hinuma'), what of it (she should still be assumed as a virgin)?

Ravina said: It is because one can say as follows: The majority of women marry as virgins and a minority as widows. And whenever a virgin gets married, it becomes public knowledge, and since this one did not become public (that she was in fact a virgin), the presumption that she belonged to the majority has weakened.

The *Gemora* asks: But if you maintain that whenever a virgin gets married it becomes public knowledge, then even when witnesses come (that she was wearing a 'hinuma'), what of it (i.e., they should not be believed, for they are testifying against something public)? They should be regarded as false witnesses!

Ravina modifies his initial answer: Most marriages of virgins are matters of public knowledge, and in the case of this one, since it did not become known to the public, the presumption that she belonged to the majority has been weakened. (16a3 – 16b1)

The *Mishnah* had stated: If there are witnesses that she went out in a *hinuma*, and her head uncovered, her *kesuvah* is two hundred.

The *Gemora* asks: Let us be concerned that after collecting her *kesuvah* based on the testimony of these witnesses, she will pull out her *kesuvah* document, and demand payment in a different *Beis Din*?

Rabbi Avahu answers: This *Mishnah* provides support for the opinion who holds that the creditor must supply a receipt after a debt is paid.



Rav Pappa answers: We are referring to a locality where it was customary not to write a *kesuvah* document.

There were some who refer this (discussion) to the following Baraisa: If she lost her *kesuvah* document, or she hid it, or it was burned (and an argument ensues between the husband and the wife if she was a virgin at the time of the wedding or not), then the halachah is as follows: If they danced before her, played before her, passed before her the cup of announcement (that she was found to be a virgin), or the cloth of virginity - if she has witnesses with regard to one of these things, her *kesuvah* is two hundred zuz. Now, let us be concerned that after collecting her *kesuvah* based on the testimony of these witnesses, she will pull out her *kesuvah* document, and demand payment in a different *Beis Din*?

Rabbi Avahu answers: This *Baraisa* provides support for the opinion who holds that the creditor must supply a receipt after a debt is paid.

Rav Pappa answers: We are referring to a locality where it was customary not to write a *kesuvah* document.

The Gemora asks: But doesn't the Baraisa say: If she lost her *kesuvah* document?

The Gemora answers: It so happened that he wrote her one.

The Gemora objects: But may she not after all produce it and get her *kesuvah* paid a second time with it!?

The Gemora answers: The meaning of 'she lost it' is 'she lost it in a fire' (and therefore, there is no possibility of her producing it at a later time).

The Gemora asks: If so, it is the same as 'it was burned'!? And then, what can you say with regard to 'she hid it'? And furthermore, why mention 'she lost it'?

Rather, the Gemora answers, this is what the Baraisa means: A case where she lost it is compared to a case where she had hidden it before us, and we do not give her the *kesuvah* money until witnesses say that her *kesuvah* document has been burned.

The Gemora notes: He who refers this (discussion) to the Baraisa (and Rav Pappa, though he was compelled to interpret the Baraisa in a forced manner, nevertheless does not concede that a receipt is written), all the more so does he refer it to the Mishnah (where we do not even know if a *kesuvah* ever existed – certainly a receipt is not written, and it is referring to a case where a *kesuvah* is not written). But he who refers this to our Mishnah does not (necessarily) refer it to the Baraisa, because of the difficulty (raised above, where it seemed from the language of the Baraisa that a *kesuvah* was in existence). (16b1 – 16b3)

The Mishnah had stated: If there are witnesses that she went out in a *hinuma* (and her head uncovered, her *kesuvah* is two hundred).

The Gemora asks (on Rav Pappa): Should we not be concerned (even if no *kesuvah* exists) that perhaps she might produce witnesses of *hinuma* before this court and get her *kesuvah* paid, and later she might produce other witnesses of *hinuma* before another court and get her *kesuvah* paid a second time?

The Gemora answers: Where it is not possible otherwise (where *kesuvah* documents are not written, and the *kesuvah* is paid thru witnesses), we certainly write a receipt. (16b3)

It was said above in the Baraisa: If they passed before her the cup of announcement.

The Gemora asks: What is the cup of announcement?

Rav Adda the son of Ahavah said: One passes before her a cup of wine of *terumah*, as if to say: This one is worthy of eating *terumah* (for she is a virgin, and can marry a Kohen).



Rav Pappa challenged this: Doesn't a widow eat terumah as well (and she is allowed to marry a Kohen; it is therefore no proof that she is a virgin)?

Rather, said Rav Pappa: It is as if to say: This (cohabitation with her groom) one is "first" (i.e., it is her first cohabitation), as terumah is "first." (16b3)

It has been taught in a Baraisa: Rabbi Yehudah says: One passes before her (a virgin) a barrel of wine.

Rav Adda the son of Ahavah said: If she was a virgin, one passes before her a closed barrel, and If she was not a virgin, one passes before her an open barrel.

The Gemora asks: Why? Let us pass a barrel of wine before a virgin, and let us not pass any barrel at all before one who is not a virgin?

The Gemora answers: It may happen some times that she (one who was not a virgin) has seized two hundred (even though she was only entitled to one hundred), and then she will say, "I was a virgin, and they did not pass a barrel before me because they were prevented by uncontrollable circumstances." [By passing an open barrel before her, we prevent that from happening.] (16b3)

#### DAILY MASHAL

##### *Kallah na'eh v'chasudah*

The Gemora states that there are various customs performed by a wedding in order to provide proof for a later time that the bride was a virgin. There was an announcement cup that was passed before her. Some say that they passed before her a sealed barrel of wine. Others said that a cup terumah was passed before her. A Baraisa was quoted that they would dance or play before her.

When one marries a virgin, the kesuvah is two hundred. If she is a nonvirgin, the kesuvah is one hundred.

The Gemora states: How do we dance before a bride? They would say: *Kallah na'eh v'chasudah* – the bride is beautiful and charming.

The Imrei Emes said that the gimatriya (numerical value of the letters) of *Kallah na'eh v'chasudah* is two hundred.