

21 Adar Sheini 5782
March 24, 2022



Yevamos Daf 17

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Daf Notes is currently being dedicated to the neshamah of

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May the studying of the Daf Notes be a zechus for his neshamah and may his soul find peace in Gan Eden and be bound up in the Bond of life

Rav Yehudah said in the name of Rav Assi: If at the present time an idolater betroths a Jewish girl, we suspect that the *kiddushin* (betrothal) since it may be that he is from the Ten Tribes (*Sancheriv* exiled them prior to the destruction of the first *Beis Hamikdosh*. Rav Assi maintains that a child born from a Jewish man and a gentile woman is a Jewish *mamzer*).

The Gemora asks: Why don't we apply the rule that anything that separates is assumed to have been separated from the majority; and the majority of idolaters are not descendants from the Ten Tribes?

The Gemora answers: Rav Assi's statement is referring to places where the Ten Tribes have settled [and any doubt which is related to something "in its place" is regarded as having a probability of fifty-fifty. In the place where the Ten Tribes settled, we don't apply the principle of majority]. For Rabbi Abba bar Kahana said: And he [the King of Assyria] put them [the Ten Tribes] in Halah and in Habor, on the river of Gozan, and the cities of the Medes; Halah is Halzon, and Habor is Hadayab, the river Gozan is Ginzak, and the cities of the Medes are Hamadan and its neighboring towns; others say, Nihar and its neighboring towns. Which are its neighboring towns? — Shmuel replied: Kerech, Mushchei, Chidkei and Dumakya. Rabbi Yochanan said: All these [were enumerated] in order to declare them as being unfit. (16b2 – 17a1)

Rav Yehudah said: When I said the statement before Shmuel (*if at the present time an idolater betroths a Jewish girl, we suspect that the kiddushin (betrothal) since it may be that he is from the Ten Tribes*), he told me: Your son who comes from a Jewish woman is called your son (*he is considered Jewish*), however, your son who comes from an idolatrous woman is not called your son, but rather he is called her son. (*Accordingly, he is disagreeing with Rav Assi. He maintains that there is no reason to be concerned for an idolater's betrothal being valid since the children born from a marriage between a Jewish man and a gentile woman are gentiles.*)

The Gemora asks: Weren't there Jewish women in the Ten Tribes, as well? And Ravina had said: From this it may be inferred that thy daughter's son born from [a union with] an idolater is called your son.¹

The Gemora answers: There is a tradition that the Jewish women of that generation could not bear children (*their wombs were torn due to the anguish of the journey into exile*).

Others read: When I mentioned the matter in the presence of Shmuel he said to me: They did not move from there until they had declared them to be perfect idolaters; as it is said in the Scriptures: They have dealt treacherously against Hashem, for they have begotten alien children. (17a1 – 17a2)

¹ If a gentile man married the Jewish woman, their children would be Jewish; there should be a concern for an idolater's betrothal to a Jewish woman since his mother might have been

Jewish, in which case he would be a Jew and his *kiddushin* would be valid.

Rav Yosef sat behind Rav Kahana while Rav Kahana sat before Rav Yehudah, and while sitting he made the following statement: The Jewish people will make a festival when Tarmod will have been destroyed. - But, surely, it was destroyed! — That was Tammod.

Rav Ashi said: Tarmod and Tammod are identical, but the city was rebuilt; when it was destroyed on one side it was settled on the other side, and when the other side was destroyed it was settled on the first side. (17a2)

Rav Hamnuna sat before Ulla and was engaged in discussing a traditional law when the latter remarked: What a man! What a man! And how much more important would he have been had Harpania not been his [native] town! As the other was embarrassed, he said to him: To which town do you pay your poll tax? — To Pum Nahara, the other replied. If so, Ulla said, You belong to Pum Nahara.

What [is the meaning of] Harpania? — Rabbi Zeira replied: A mountain where everybody² turns. In a Baraisa it was taught: Whoever did not know his family and his tribe made his way there. Rava said: And it was deeper than Sheol, for in the Scripture it is said: I shall ransom them from the clutches of Sheol; I shall redeem them from death, but for the unfitness of these, there is no remedy at all.

The unfit of Harpania stem from the unfit of Meishan, and the unfit of Meishan stem from the unfit of Tarmod, and the unfit of Tarmod stem from the slaves of Shlomo. Thus it is that people say: The small kav and the big kav roll down to Sheol, from Sheol to Tarmod, from Tarmod to Meishan, and from Meishan to Harpania. (17a2 – 17a3)

WE SHALL RETURN TO YOU, CHAMESH ESREI NASHIM

The Mishnah asks: What is the case of the wife of his brother who was not in his world (*this brother and the yavam were not alive at the same time*)? There are two brothers, Reuven

and Shimon; Reuven dies childless and then a third brother, Levi is born to them. The second brother, Shimon performs a *yibum* with Reuven's wife, Sora, and then, he too, dies childless. Shimon had another wife, Chana, as well. They both (*Sora and Chana*) fall to *yibum* to Levi. Sora is exempt from *yibum* and *chalitzah* because she is the wife of Levi's brother (*Reuven*) who was not in his world (*Reuven and Levi were not alive together*). Chana is also exempt from *yibum* and *chalitzah* because she is the co-wife of an *ervah*.

If Shimon had performed a *ma'amar* (*Biblically, the yavam cohabits with the yevamah, thus acquiring her. The Rabbis established ma'amar, the betrothal of a yevamah as a prelude to yibum.*) with Sora instead of *yibum* and then he dies childless, Chana would require *chalitzah*, but not *yibum*. (17a5)

Rav Nachman states: There are two versions in the Mishnah. One refers to Sora as "the first one," and one refers to her as "the second one." Both versions are not mistaken, for she can understandably be called the "first" or the "second." She can be called the "first" because she was the first to fall for *yibum*. She can be called the "second" because she was the second one married to Shimon.

The Gemora asks: Wouldn't the halachah be the same if Shimon first performed a *yibum* with Sora and then married Chana (*and then Sora was married first, not second*)?

The Gemora answers: Rather, the "second" is referring to the fact that it is her second time falling for *yibum* (*once on account of being Reuven's wife and once because of Shimon*). (17a5 – 17b1)

Where [in the Scriptures] is [the prohibition of marrying] 'the wife of his brother who was not his contemporary' written? — Rav Yehudah replied in the name of Rav: Scripture states: If brethren dwell together, i.e., dwell in the world at the same time; the wife of one's brother who was not his

² Of spurious or tainted descent who cannot obtain a wife anywhere else.

contemporary is consequently excluded; 'together' implies who are together in respect of inheritance, a maternal brother is, therefore, excluded.

Rabbah said: [That legal] brothers [are only those who are descended] from the same father is deduced by a gezeirah shavah of this 'brotherhood' with the 'brotherhood' of the sons of Jacob; as there [the brotherhood was derived] from the father and not from the mother, so here also [the brotherhood spoken of is that] from the father and not from the mother.

Let him rather deduce this 'brotherhood' from the 'brotherhood' of forbidden relatives! — Brethren may be deduced from brethren, but not brethren from thy brother. What practical difference is there [between the two expressions]? Surely the School of Rabbi Yishmael taught: And the Kohen shall return, and the Kohen shall come, 'returning' and 'coming' are the same thing!³ — Such an analogy is drawn only where there is no other identical word; when, however, there occurs another word which is identical, the analogy is made only with that which is identical.

Let him, then, deduce this 'brotherhood' from the 'brotherhood' in the case of Lot, since it is written in the Scriptures: For we are brethren! - It stands to reason that the deduction should be made from the sons of Jacob, because the [analogous expression] is available for the purpose; for it could have been written: your servants are twelve sons of one man and yet 'brethren' also was written. Hence it must be inferred that the word was made available for the deduction.

It was necessary for Scripture to write brethren, and it was also necessary to write together. For had the All Merciful written 'brethren' only, it might have been suggested that this 'brotherhood' should be deduced from the

³ And a gezeirah shavah between them may be drawn. Though in that case the expressions veshav and uba, are derived from different roots they are nevertheless, owing to their similarity in

'brotherhood' in the case of Lot. And were you to reply that [the analogous word] is not available for deduction, your statement would be negated, [the analogous word] being indeed available; for whereas he could have written 'friends' and yet wrote 'brethren', the inference must be that the object was to render it available for analogous deduction; hence the All Merciful has written 'together', implying only those who are together in respect of inheritance. If, [on the other hand,] the All Merciful had only written 'together', it might have been said to refer to such as have the same father and mother; [hence both expressions were] required.

But how could you have arrived at such an opinion? The All Merciful has, surely, made the yibum dependent on inheritance, and inheritance is derived from the father and not from the mother! - It was necessary. For it might have been assumed that whereas this is an anomaly, a forbidden relative having been permitted, the brotherhood must, therefore, be both paternal and maternal; [hence it was] necessary [to teach us that the law was not so]. (17b1 – 17b3)

INSIGHTS TO THE DAF

THE BRILLIANT WISDOM OF KING SOLOMON

Baruch

Cohen

(<http://www.jlaw.com/Commentary/solomon.html>)

quotes the famous Chazal regarding Shlomo Hamelech, and explains it with a brilliant and original answer from Rabbi Mordechai Kornfeld from Kollel Iyun HaDaf. This is worthy of reading from beginning to end.

The Book of Kings [*Melachim* 1 3:12] states that Israel's great King Solomon was twelve years old when God promised him that he would be granted great wisdom. He turned out to be the wisest man ever to live. As an illustration of the fulfillment of this blessing of wisdom, the Book of Kings reports the following account of a case that was brought before King Solomon's court in Jerusalem.

meaning. employed for the purposes of a gezeirah shavah, how much more so should an analogy be justified between the same nouns which differ only in their suffixes!

Two women came to King Solomon and stood before him. One woman (#1) said: *"My Lord, this woman and I dwell in the same house, and I gave birth to a child while with her in the house. On the third day after I gave birth, she also gave birth. We live together; there is no outsider with us in the house; only the two of us were there. The son of this woman died during the night because she lay upon him. She arose during the night and took my son from my side while I was asleep, and lay him in her bosom, and her dead son she laid in my bosom. when I got up in the morning to nurse my son, behold, he was dead! But when I observed him (later on) in the morning, I realized that he was not my son to whom I had given birth!"*

The other woman (#2) replied: *"It is not so! My son is the live one and your son is the dead one!"*

The first woman (#1) responded: *"It is not so! Your son is the dead one and my son is the living one!"*

They argued before King Solomon.

King Solomon said: *"this woman (#2) claims 'My son is the live one and your son is the dead one, 'and this woman (#1) claims 'Your son is the dead one and my son is the living one!'"*

King Solomon said, *"Bring me a sword!"* So they brought a sword before the King. The King said, *"Cut the living child in two, and give half to one and half to the other"*

The woman (#2) turned to the King, because her compassion was aroused for her son, and said: *"Please my Lord, give her the living child and do not kill it!"*

But the other woman (#1) said: *"Neither mine nor yours shall he be. Cut!"*

The King spoke up and said: *"Give her (#2) the living child, and do not kill it, for she is his mother!"* All of Israel heard the judgment that the King had judged. They had great awe for the King, for they saw that the wisdom of God was within him to do justice. [I Melachim 3:16 - 27]. The woman was rightfully awarded custody of her son.

It should be noted, that King Solomon's was the first major recorded and published decision in the history of legal jurisprudence, and I believe that with the help of the commentaries, one can begin to appreciate the magnificent depth of his wisdom.

OBSERVATIONS

Some say that King Solomon truly knew who was the real mother as soon as he saw the two women. This was the nature of the special divine wisdom that God gave him. As King Solomon was able to understand the speech of the animals and the birds, so he could see the truth in someone's face. His knowledge was of Divine origin. It was infallible.

According to the Abarbanel and Metzudas David, King Solomon studied the countenance of each woman as they presented their claims and counter-claims, and by means of his penetrating and heavenly wisdom, understood which of the two women was telling the truth.

Still, to prove this to the people, he had to demonstrate it in a way that everyone would acknowledge. Perhaps that is why he pretended not to know who said what, and repeated their arguments in reverse order, by repeating Woman #2's argument first, and Woman #1's argument second.

He even pretended to apply the well-known law of dividing disputed property. If two people come to court holding on to the ends of a piece of clothing, and each claims it to be his, the court divides it and gives each one half. King Solomon seemed to pretend to be ignorant of the many complicated details of this law, and to think that it applied to babies as well, which would have been ridiculously simpleminded. No judge would ever make such a foolish mistake. Yet, he succeeded in convincing the two women that he was serious.

Nonetheless, he was careful not to let the trick go too far. He specifically commanded his servants to bring the sword to him, not to give it to one of the guards. They too, were no doubt fooled and he did not want them to divide the baby before he had a chance to stop them. In fact, the King's ministers said *"Woe to you Oh Land, whose king is but a boy!"* They thought *"what has God done to us to give us such a king? How long will we have to suffer with such foolish judgments?"* But afterwards, when they saw the women's reactions they knew that he had recently received Divine inspiration and rejoiced saying *"Happy are you, oh Land, whose king is a free man!"* - i.e., one who studies Torah (Koheles - Ecclesiastes 10:16-17).

King Solomon's trick succeeded. The imposter revealed herself by her heartless cruelty. After all, no mother would have let her own child be killed just to spite another woman. But how could King Solomon have been sure the other woman would not also have mercy on the child? Wouldn't most people break down in such a situation and relinquish their claims? What sort of person would want to be responsible for the death of an innocent child, even if it were not her own?

Perhaps this was an aspect of the depth of King Solomon's insight - he knew that no normal mother lies on her own child and crushes him in her sleep. Babies always sleep with their mothers and fathers, yet this never happens, for perhaps God implants within a human being an innate sensitivity that prevents her from doing such a thing. A woman who lies on her child must be lacking basic human feeling, and such a person would certainly have no mercy on the child of another. According to the Abarbanel, perhaps such a woman developed a blood lust and possessed a cruel desire to see another life snuffed out.

And what of the compassionate one? Was it not possible that she was acting cunningly to impress the King with a false sense of motherly commiseration?

WHO HAD THE BETTER ARGUMENT?

Notwithstanding the outcome, many believe that Woman #1 still made a convincing and persuasive argument. She made it clear that there were no witnesses because they lived alone. Perhaps she suspected that Solomon would be able to tell how old the baby was and identify the mother. According to the Radak and the Metsudas David, her argument was bolstered by the claim that no one else knew the identities of the babies, nor had one been sick, that the neighbors might remember whose baby it was. When she first got up, it was still dark. She could not recognize the baby, so she did not suspect that it was not hers. All she knew was that it was dead. But when it got light, she saw it and realized what had happened. She asserted that her baby boy was born three days earlier, and therefore there was *some* reliable distinction available.

Woman #2 had only a brief presentation and did not claim to have any proof. She simply said that the child was hers. All she did was state her case.

Based on the first round of oral arguments, it would appear that Woman #1 had the better claim, and that she was the real mother.

It is noteworthy, that the women did not bring the corpse of the dead child for further identification. Perhaps the child was buried already, or its features were already changed making recognition difficult.

SUBTLE TRUTHS BEGIN TO UNRAVEL

Yet, as the women's dispute continued, their respective positions seemed to change ever so slightly. There was something disturbing and disingenuous about the way in which Woman #1 continued arguing her case, in that she subsequently seemed less concerned with having a live child and focused more on the other having the dead one. The fact that she mentioned the dead child first, in itself, was an indication of this (*"It is not so! Your son is the dead one and my son is the living one!"*).

Woman #2, by contrast, always spoke of her own son first (*"No. my son is the living one and your son is the dead one"*). It seemed as if her heart was with her son. She spoke out of love and was apparently heartbroken at the thought of potentially losing her child.

According to the Devorim Rabah, King Solomon then repeated the arguments of both women, verbatim, without adding anything, making sure that he properly understood the arguments of both sides, listening carefully, and if there was anything that he misunderstood, the women had an opportunity to correct him.

ODD DEVELOPMENTS IN THE STORY

King Solomon's wisdom surely gave him the insight to foresee that the real mother (#2) would recoil in terror when she heard of his intention to kill the infant, nevertheless, could his wisdom have possibly predicted the liar (#1)'s response - to comply with this grotesque compromise?

Second, the woman who was lying (#1) was initially interested in taking the living child for herself, otherwise she never would have asserted such a bold and aggressive claim.

As soon as the real mother offered to let the liar keep the child in order to spare its life, the liar should have accepted the real mother offer's and kept the child. She could have played up her victory by saying: "Aha! She admits that the baby was truly mine all along! She is a kidnapper but not a murderer. The baby is mine." Instead, she did something totally unpredictable. She refused saying "Neither mine nor yours shall he be. Cut."

I have always wondered what made her suddenly lose interest in having the child for herself?

A brilliant and original answer to these questions is offered by Rabbi Mordechai Kornfeld of Har Nof Jerusalem, of the Shmayisroel Torah Network (www.shemayisroel.co.il), who cited two 13th century commentators: Rav Yehoshua Ibn Shu'ib in his Drasha for Parshas Mishpatim, and Rav Menachem HaMeiri in his commentary to Yevamos 17a; and another 14th century commentator, the author of Shemen Rokeach and Sha'arHachazokas. They believe that in order to understand the real story behind King Solomon's decision, an understanding of the laws of Yibbum is necessary.

THE LAWS OF YIBBUM

The Torah describes the practice of Yibbum in the Parsha of Ki Setzei (Devarim 25:5,7,9):

"If there are brothers, and one of them dies without children, the wife of the deceased man may not marry out to another man. Her brother-in-law (her deceased husband's brother) must marry her and thus perform Yibbum on her ... If the man does not want to marry her, she shall approach the elders and declare 'My brother-in-law refuses to establish his brother's name in Israel; he does not consent to perform Yibbum on me'

... Then she shall approach him in the presence of the elders and remove his shoe from his foot, and spit in front of him and proclaim "Such should be done to a man who would not build up his brother's house!"

Yibbum is a Halachic rite which must be performed when a man who has a living brother dies childless. If this uncommon situation occurs, the widow must not remarry unless one of two actions are taken - either she must marry the brother of the deceased or she must be released from

the obligation of marrying her brother-in-law by having him perform the Chalitzah ("removing" of the shoe) ceremony. It is obviously uncomfortable for a woman to be trapped in this situation, wherein she would be subject to the will of another man. Her brother-in-law may not be locatable, compliant or appealing.

There are several fundamental laws concerning the childless nature of the deceased and the age of the bother that control whether Yibbum applies:

LAWS CONCERNING THE CHILDLESS NATURE OF THE DECEASED

1. Rule **The man must die childless.** According to the #1: Talmud Yevamos 87b, Dying childless includes instances where a man once had children, but these children were already dead at the time of his own death.
2. Rule **Grandchildren:** According to the Talmud Yevamos #2: 70a, if the deceased man has no living children but he does have living grandchildren, he is not considered to be childless, and therefore, there is no Yibbum obligation.
3. Rule **Offspring:** According to Talmud Yevamos 11 lb and #3: Shabbos 136a, if the deceased left behind any offspring at all, there is no Yibbum - even if the offspring is only one day old. Even if the offspring is still a viable fetus at the time of the husband's death, its mother is exempted from being bound to the living brother. If the fetus is a stillborn or is aborted, or dies, or is killed before it lived for thirty days, it is not considered to have ever been a viable offspring, and Yibbum would be required.

LAWS CONCERNING THE AGE OF THE DECEASED'S BROTHER

4. Rule **Brother-In-Law:** According to the Talmud Yevamos #4: 17b, the widow is obligated to marry her deceased husband's brother. If the deceased husband does not leave a living brother, his wife is free to marry whoever she pleases.
5. Rule **Minor:** According to the Talmud Yevamos 1 05b, if #5: the brother of the deceased is a minor, the widow

is still bound to him, and does not have the option of freeing herself through Chalitzah since a minor lacks capacity to perform the ceremony. Instead she must wait until the brother reaches the age of majority (Bar Mitzvah 13) in order for him to render Chalitzah at that time. Only then may she remarry. According to the Talmud Niddah 45a if she wants to marry him, she must wait until he reaches 9 years of age.

APPLICATION & CONCLUSION

We now return to King Solomon's judgment.

The Midrash (Koheles Rabah 10:16) tells us that the reason both of these women were so desperate to have the living child declared theirs was that they were both potential Yevamos (widows subject to Yibbum). Neither of the two had any other offspring. Whoever would be judged to be the childless woman would not only lose the infant, but would also be trapped in the unpleasant status of Yevamah, being dependent upon her brother-in-law's good will.

The Midrash (Yalknt Shimoni 2:175) asserts that the husbands of the two women were father and son, making the two women, mother-in-law and daughter-in-law to each other.

According to the Meiri in his commentary to Yevamos 17a, the two Midrashim may be complementing each other - thanks to our 5-rule Yibbum analysis.

The two women - mother-in-law and daughter-in-law - had just lost their husbands, and needed a live child to exempt them from the status of a Yevamah. Both women gave birth to babies. However, these two babies were still less than 30 days old at the time that one of them died. The mother of the dead child would therefore be subject to the laws of Yibbum (Rule #3). This was the lying mother's motivation for taking the other woman's child.

If it were the mother-in-law's child who had died, she would have no incentive to kidnap her daughter-in-law's child. Even though her son (the deceased husband of her daughter-in-law) had passed away before her own husband had, and therefore he would not exempt her from Yibbum (Rule #1), nevertheless, she would be exempt from Yibbum for another

reason. The living child was her son's child, and a grandchild exempts one from Yibbum (Rule #2).

Only the daughter-in-law had the motive to lie and try to claim that the child was hers. If it was her baby who had died within 30 days of its birth, leaving her childless, she would have been bound to her husband's brother as a Yevamah (Rule #4) - and that brother would have been -none other than the living baby (who was in fact her mother-in-law's child - i.e., her deceased husband's brother)! Since her brother-in-law was a newborn, the daughter-in-law would have had to wait 13 years before this baby would be able to perform Chalitzah on her and free her to remarry (Rule #5). King Solomon realized all of this and suspected that since the only one with a strong motive to lie was the daughter-in-law, the child must really belong to the mother-in-law.

Perhaps this also explains why King Solomon ordered that the child be cut in half.

If the remaining child were to be killed, this too would free the daughter-in-law from her Yevamah status - since the living baby was her only brother-in-law (Rule #3). From the daughter-in-law's perspective, in fact, killing the child would result in a better solution for her. By just kidnaping the child she might have convinced the earthly court that she was not a Yevamah. However, she herself would know that the child was not really hers and that she really was not permitted to remarry, until Chalitzah was performed. By having the baby killed, though, she would truthfully be released from the bonds of Yibbum.

This is the reason the daughter-in-law suddenly lost interest in keeping the child when she saw that King Solomon was ready to cut the child in half. This would serve her interests even more if she took the child for herself. Therefore she insisted: "*Cut!*"

Young King Solomon guessed that this would be the woman's reaction. By tricking her into making a seemingly ludicrous statement, he revealed her true motives and that she was lying.

This is why, "*All of Israel heard the judgment that the King had judged. They had great awe for the King, for they saw that the wisdom of God was within him to do justice.*"