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**Tzvi Gershon Ben Yoel (Harvey Felsen) o"h**

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

Rabbi Elozar said: Is it possible that there should exist [such a ruling as] that of Rish Lakish and that we should not have learned it in a Mishnah? When he went out he carefully considered the matter and found one. The Mishnah (119a) states: If a woman's husband and her co-wife went overseas and they informed her that her husband has died (*based on the report, she would be free to remarry, however, it is uncertain if she falls for yibum*), she should not marry or be taken in *yibum* until she determines if her co-wife is pregnant or not. Rish Lakish asks: It is understandable why we do not permit her to be taken in *yibum* for perhaps the co-wife will have a viable child and the *yavam* will have transgressed the Biblical prohibition of taking his brother's wife (*when there is no mitzvah of yibum*); however, why can't she perform *chalitzah* with the *yavam* during the nine months of her husband's death and get married afterwards? (*By the fact that this option is not permitted, it would indicate that a chalitzah with a pregnant yevamah (or the co-wife) has no legitimacy.*)

The Gemora rejects this proof: Even according to Rish Lakish, why don't we permit her to perform a *chalitzah* after the nine months, which certainly would be valid?

The Gemora states that this Mishnah must be left out of this discussion, for Abaye bar Abba and Rav Chin'na bar Abaye both say that *chalitzah* is not an option, for if the child is viable, we will require an announcement that she is permitted to marry a Kohen (*since the chalitzah was invalid*).

The Gemora asks: So, why don't we make the announcement?

The Gemora answers: Perhaps someone will be present by the *chalitzah* and will not hear of the announcement; he will be under the false impression that a *chalutzah* is permitted to a Kohen.

Abaye said to Rabbi Elozar (as a rejection of his proof): Was it stated (in the Mishnah): She shall neither perform chalitzah, nor be taken in yibum? The statement, surely was: She should not marry or be taken in *yibum* (until she determines if her co-wife is pregnant or not); this means without chalitzah; if chalitzah, however, had been performed, she would indeed have been permitted!

The Gemora cites a Baraisa which supports the ruling of Rish Lakish: One who performed *chalitzah* with his pregnant *yevamah* and subsequently she miscarries; she would require *chalitzah* from the brothers. (36a1 – 36a3)

Rava said: The law is in accordance with Rish Lakish in the following three matters: One of them is the issue we just discussed (that a chalitzah or yibum which was performed with a pregnant yevamah who

subsequently miscarries is valid, but nevertheless, she requires chalitzah from the other brothers).

The second (of the three matters) is as follows: It was taught in a Mishnah: One who orally divides his assets among his sons (*as a gift; not as an inheritance*), and gave more to one and less to another, or he made the firstborn‟s portion equal to them, his words are valid. However, if he said, "As an inheritance," he has said nothing. If he wrote either at the beginning, or in the middle, or at the end, "As a gift," his words are valid. And Rish Lakish said: They (in the cases when the terminology was inheritance) do not acquire unless both terms are mentioned, such as: "So-and-so and So-and-so should inherit such-and-such and such-and-such a field that I have given them as a gift, and they should inherit them." [*In other words, the word "gift" must be in the middle, when it is clearly referring to both fields. Rish Lakish is not addressing the exact case of the Mishnah cited; rather, he is referencing a case mentioned by the Amoraim as an interpretation of the Mishnah; namely, where there were two recipients mentioned by the donor. Rava says that the halachah follows Rish Lakish.*]

The third (of the three matters) is as follows: It was taught in a Mishnah: If someone gives his property to his son, so that it should be his after he dies, both of them (the father and the son) cannot sell the property. The father cannot sell them as they are written to be given to the son, and the son cannot sell them as they are in the possession of the father. If the father does sell them, the sale is only valid until he dies. If the son sells them, the sale is only valid after the father dies. And it was stated regarding this: If the son sold during his father's lifetime, and then the son died during his father's lifetime, Rabbi Yochanan says that the buyer does not even acquire the property when the father dies. Rish Lakish says that he does.

The Gemora explained: Rabbi Yochanan says that he does not acquire, as acquiring the produce is like acquiring the land. [*Being that the father always had the benefits, it was as if he had rights to the land as well. Accordingly, the son's sale was dependent on him inheriting the he benefits. Being that this never happened, the sale is invalid.*] Rish Lakish says that he does acquire, as acquiring the produce is not like acquiring the land. [*Accordingly, the son actually owned the land, and was able to sell it, as his father did not own any part of the land anymore. Once the father's rights to the benefits die along with him, the buyer owns both the land and the benefits. Rava says that the halachah follows Rish Lakish.*] (36a3 – 36b1)

The Mishnah had stated: One who performs *yibum* with his *yevamah* and she was found to be pregnant and later gave birth; if the child is not viable, he may keep her as a wife.

Rabbi Eliezer is cited in a Baraisa: He is required to divorce her. (*Rabbi Eliezer disagrees with the Tanna of the Mishnah and maintains that he must divorce her as a penalty for taking a risk of violating the prohibition against taking one's brother's wife when yibum would not apply.*) (36b1)

Rava says: Rabbi Meir and Rabbi Eliezer said the same thing. Rabbi Eliezer; we mentioned above. Rabbi Meir; it was taught in a Baraisa: (*The Rabbis decreed that one should wait twenty-four months for otherwise she might become pregnant from her new husband and will be compelled to wean her previous child.*) One should not marry a pregnant or nursing woman, and if he did marry her, he must divorce her and he is prohibited

from marrying her again; these are the words of Rabbi Meir. The Chachamim say: He must discharge her (for the time being), but he may remarry her at the appropriate time (*after the twenty-four months*). [*It emerges that both Rabbi Meir and Rabbi Eliezer hold that one who marries a woman prematurely is required to divorce her forever.*]

Abaye asked Rava: Why do you say that the two rulings are similar? Perhaps, Rabbi Eliezer ruled accordingly only because the *yavam* was risking violating a Biblical prohibition of marrying his brother's wife, but in the other case, where he is only violating a Rabbinical decree, he would agree to the Chachamim (*he may remarry her*). Alternatively, perhaps Rabbi Meir issued his ruling only in a case where the man violated a Rabbinical decree, and the Rabbis were stricter and strengthened their enactments more than for those of the Torah; however, here, when a Biblical prohibition is involved, the Chachamim did not find it necessary to penalize the *yavam* because people generally distance themselves from Biblical prohibitions. (36b2)

Rava said: According to the ruling of the Rabbis, he must discharge by means of a bill of divorce (and not just simply separate from her until they are permitted to reunite).

Mar Zutra said: This may also be deduced, since the expression used was 'he must discharge her,' and not 'he shall separate from her.' This indeed proves it. (36b2 – 36b3)

Rav Ashi said to Rav Hoshaya son of Rav Idi: Elsewhere, it was taught in a Baraisa: Rabban Shimon ben Gamliel ruled that any human child that survived for thirty days cannot be regarded as a nonviable child. The inference is: Had he not lived so long, however, he would have been regarded as an uncertain viability. And it was stated: A man died, leaving a baby, who died before thirty days, and his mother went and married another man (without submitting to *chalitzah from the yavam*), Ravina quotes Rava saying that if she is the wife of a Yisroel (her new husband isn't a Kohen), she submits to *chalitzah* (for perhaps the child was not viable; we do not permit her to consummate the marriage with this man before the chalitzah, for the chalitzah will have no effect whatsoever on her new husband), but if she is the wife of a Kohen, she does not submit to chalitzah (in order to avoid rendering her prohibited to her husband). Rav Mesharshiya quotes Rava saying that in any case she must submit to *chalitzah*.
Ravina told Rav Mesharshiya that although Rava ruled at night strictly, as he said, the next morning he changed his mind, and ruled leniently in the case of a *Kohen*. Rav Mesharshiya responded that if you permitted this case, may it be the Divine will that you permit one to eat forbidden fats as well.

Now (Rav Ashi concludes his query to Rav Hoshaya), what is the law here in respect of the pregnant, or nursing wife of another man who was married to a Koehn? Did the Rabbis make any provision for a Kohen or not? [Will he still be required to divorce her? If he divorces her, he will not be permitted to remarry her!]

Rav Hoshaya replied: Now, is this a comparison!? The distinction is well justified there (that we will not require her to submit to chalitzah); since the Rabbis differ from Rabban Shimon ben Gamliel in maintaining that the child is deemed to be viable even though he did not live long enough, we may, in the case of a Kohen's wife, where no other option is available (as if she submits to chalitzah, she will be rendered forbidden to her new husband) act in accordance with the view of the Rabbis. Here, however, in accordance

with whose view could we act? If in accordance with that of Rabbi Meir, he surely stated that he must discharge her out and never remarry her! And if in accordance with the view of the Rabbis, they surely stated that she must be discharged by means of a bill of divorce! (36b3 – 37a1)

**DAILY MASHAL**

**RABBINICAL OFFENSE IS MORE SEVERE**

The Gemora states that the Rabbis were stricter and strengthened their enactments more than for those of the Torah.

The Gemora in Shabbos (110a) cites the verse in Koheles [10:8]: *One who breaks through a stone wall will be bitten by a snake*. This is referring to someone who does not heed the words of the Sages. One is not permitted to scoff at the decrees of the Rabbis. The Gemora in Eruvin states that one who transgresses the words of the Chachamim is liable to death at the hand of Heaven.

Rashi in Avoda Zarah (27b) states that even if he will be given medicine for this snake bite and will be healed, other snakes will come and he will eventually die.

The Maharal explains: The Rabbis goal was to erect a fence to safeguard the commandments of the Torah. One who negates these decrees is causing a breakdown for the mitzvos of the Torah. This is why we deal with him so harshly.

Rabbeinu Yonah explains why one who violates a Rabbinical decree is dealt with in a stricter manner than one who transgressed a Torah commandment. One who violates a Biblical prohibition respects the law, but he is motivated by his physical desires to sin. He is not rebuffing his obligation, rather it can be regarded as a momentary slip in his observance. One who violates a Rabbinical enactment does so because of a lack of regard for their decrees. He belittles them on account that they were not written in the Torah and there is no real necessity to keep them. He is rejecting his obligation and therefore deserving of death.