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Yevamos Daf 41

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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

The Mishnah states: If one of the brothers (*Shimon*) performed a *chalitzah* with his *yevamah* and a different brother (*Levi*) married her sister and subsequently died, *Shimon* can perform *chalitzah*, but not *yibum* (*since she is the sister of his chalutzah – a Rabbinical prohibition*).

Similarly, if a man divorces his wife and his brother marries her sister and subsequently died, she is exempt from *yibum* and *chalitzah* (*since she is his wife’s sister*).

A woman was awaiting the decision of the *yavam*, and his brother (*who is also a yavam*) betrothed the *yevamah’s* sister; it was said in the name of Rabbi Yehudah ben Beseirah that we should tell him (*the one who married the sister*) to wait (*from consummating the marriage*) until his brother performs a *yibum* or *chalitzah* with the *yevamah*. (*This ruling is based on the concept of zikah; the brother is forbidden to consummate the marriage with the sister of the yevamah because she is prohibited to him on account of her being the sister of his zekukah.*) If the brother performed a *chalitzah* or *yibum*, the other brother can now consummate his marriage. If the *yevamah* died (*prior to any chalitzah or yibum*), the other brother can consummate his marriage (*since even a wife’s sister is permitted after the wife dies, certainly by the zekukah’s sister*). If the *yavam* dies (*prior to any chalitzah or yibum*), he is required to divorce his wife, and he must perform a *chalitzah* with the *yevamah*. (41a2)

The Gemora asks on the first two rulings of the Mishnah: Why does the Mishnah use the term “Similarly,” when in fact the two rulings are opposite of each other?

The Gemora emends the Mishnah; it should say “However.”

Rish Lakish said: Here is where Rebbe stated: The prohibition of taking a divorcee’s sister is Biblical, whereas the prohibition of taking a *chalutzah’s* sister is merely Rabbinical. (41a2 – 41a3)

The Mishnah had stated: A woman was awaiting the decision of the *yavam*. Shmuel said: the halachah is in accordance with Rabbi Yehudah ben Beseirah. (41a3)

The Mishnah had stated a case regarding a woman was awaiting the decision of the *yavam*, and his brother (*who is also a yavam*) betrothed the *yevamah’s* sister. The Gemora inquires: What would be the halachah if his wife died (*can he now perform a yibum with the yevamah*)?

Rav and Rabbi Chanina maintain that he is permitted to take the *yevamah*. Shmuel and Rav Assi hold that he is prohibited from taking the *yevamah*.

Rava explains the reasoning for Rav: This *yevamah* was originally permitted (*when she first fell for yibum*), she then became forbidden (*when the brother married her sister*), and then she became permitted again (*when his wife died*); she should return to her original permitted state. (41a3)

Rav Hamnuna asks on Rav from the following Baraisa: There were three brothers, two of whom were married

two sisters, and one is unmarried. If one of the husbands of the sisters died, and the bachelor performed a *ma'amar*, and afterwards his second brother died. (*Beis Hillel rules that he must release his ma'amar-wife with a get (bill of divorce) and with chalitzah, and his brother's wife with chalitzah. This is what they said, "Woe unto him because of his wife and woe unto him because of his brother's wife."*) If then, the wife of the second brother died, the first *yevamah* requires a *chalitzah*, but cannot be taken in *yibum* (*since she was forbidden to the third brother after the second brother died*). Rav Hamnuna asks: According to Rav, she should be permitted since she was originally permitted (*when she first fell for yibum*), she then became forbidden (*when the other brother died*), and then she became permitted again (*when the second brother's wife died*); why can't he perform a *yibum*?

Rav was initially quiet and then after Rav Hamnuna left, he said: Why didn't I say that the Baraisa is following the opinion of Rabbi Elozar who states that if the woman is prohibited even for one moment, she is forbidden forever?

Rav subsequently said: This would not be an answer since perhaps Rabbi Elozar only holds in this manner when the *yevamah* was forbidden at the time that she fell for *yibum*; however, in our case, she was permitted at that time, and therefore she would be permitted later even according to Rabbi Elozar.

Rav concludes that the Baraisa can in fact be following Rabbi Elozar's opinion for we find in a Baraisa: Rabbi Elozar said: If his *yevamah* dies he is permitted with his wife, if his wife dies, that *yevamah* requires *chalitzah* but he cannot perform *yibum* with her (which indicates that she remains forbidden even in a case where she was permitted at the time that she fell for *yibum*). (41a4 – 41a5)

The Mishnah states: The *yavam* does not perform a *chalitzah* or a *yibum* with the *yevamah* until she has three months (*since her husband's death*). (*This is in order to determine if the yevamah is pregnant.*) And similarly, all other previously married women may not be betrothed (*erusin*), or wed (*nisuin*) until they have three months, whether they are virgins or not, whether divorced or widows, whether wed or betrothed. Rabbi Yehudah said: Women who had *nisuin* may enter into *erusin* (*without waiting*), and women who had *erusin* may enter into *nisuin* (*without waiting*), except for the women in who had *erusin* in Judea, for the groom is presumptuous with her (*and we are concerned that they might have had relations during the erusin*). Rabbi Yosi says: All women may enter into *erusin* except for the widow, because of the mourning (*for thirty days*). (41a5 – 41b1)

The Gemora asks: It is understandable why the *yavam* does not perform a *yibum* with the *yevamah* until she has three months because she might have a viable child, and by cohabitating with her, he would have violated the prohibition against taking his brother's wife (*since there is no obligation for yibum*); however, why can't he perform a *chalitzah* with her?

Perhaps this would be a refutation of Rabbi Yochanan's opinion who maintains that one who performed *chalitzah* with his pregnant *yevamah* and subsequently she miscarries, she is not required to have a *chalitzah* from the brothers (*the chalitzah has been retroactively determined to be valid*). Our Mishnah would be ruling that the *chalitzah* is not valid.

The Gemora challenges the question: Did we not refute Rabbi Yochanan's opinion from another source? – Let us say that this is a refutation as well.

The Gemora answers: Perhaps the Mishnah holds that the *chalitzah* is valid, but we instruct them to wait for a different reason. If she is pregnant and the child is



viable, we will require an announcement that she is permitted to marry a Kohen (*since the chalitzah was unnecessary*).

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*.

The Gemora asks: This answer is satisfactory regarding a woman who is a widow (*for she is in fact still permitted to a Kohen*), but why should we delay the *chalitzah* by a divorcee (*she is forbidden to a Kohen anyway*)?

The Gemora asks: This answer would not explain why we delay the *chalitzah* by a case where the divorcee was only married with *erusin*; she will not be supported from his estate anyway?

The Gemora offers an entirely different explanation for why the *chalitzah* is delayed: It is based on Rabbi Yosi who said: For it was taught: A man once appeared before Rabbi Yosi and said to him; May *chalitzah* be performed within three months? The master replied: She must not perform the *chalitzah*. — Let her perform the *chalitzah*! What would she lose? Thereupon, he recited for him this Scriptural text: If the man does not want, [implying] that if he likes he may perform *yibum*; whoever is subject to *yibum* is subject to *chalitzah* etc.

Rav Chinena raised an objection: In doubtful cases *chalitzah* is performed and no *yibum* may be performed. Now, what is meant by 'doubtful cases'? If it be assumed to mean doubtful betrothal; why, indeed, should no *yibum* be performed? Let the widow be taken in *yibum* since no objection could possibly be raised! Consequently, the doubt must consist in the betrothal of

two sisters when the man is uncertain which of them he betrothed; and yet it was stated that *chalitzah* was to be performed! — How now! There, if Eliyahu were to come and point out the sister that was betrothed, she would be eligible for both *chalitzah* and *yibum*; here, however, were Eliyahu to come and declare that the widow was not pregnant, would anyone heed him and allow her to perform *yibum*? Surely even a minor who is incapable of pregnancy must wait three months! (41b1 – 41b3)

Our Rabbis taught: A *yevamah* is maintained during the first three months out of the estate of her husband. Subsequently, she is not to be maintained either out of the estate of her husband or out of that of the *yavam*. If, however, the *yavam* appeared in court and then absconded, she is maintained out of the estate of the *yavam*. If she became subject to a *yavam* who was a minor she receives nothing from the *yavam*. Does she, however, [receive her maintenance] from her husband's estate? — On this question, Rav Acha and Ravina are in dispute. One holds that she receives and the other holds that she does not. And the law is that she receives nothing; for her penalty comes from heaven. (41b3 – 41b4)

Our Rabbis learned: A *yevamah*, with whom the brothers had participated in *chalitzah* within the three months, must wait three months. If [the *chalitzah* was performed] after the three months, she need not wait three months. Thus it may be inferred that the three months spoken of are [to be dated] from the time of the husband's death and not from the time of the *yavam*'s *chalitzah*.

Why [is the law here] different from that of a letter of divorce where Rav maintains [that the waiting period is to date] from the time of the delivery and Shmuel maintains [that it is to date] from the time of writing? — Rava replied: A *kal vachomer*: if you permitted marriage where a prohibition under the penalty of *kares* is involved, how much more so [should marriage be permitted where only] an ordinary prohibition [is involved]! (41b4 – 42a1)



## DAILY MASHAL

### A SAYING OF OUR RABBIS

Why is the betrothal of a yavam called *ma'amar* and not *kiddushin* like the marriage of any woman?

The Beis Aharon of Karlin answered this question at a *siyum* on Maseches Yevamos.

Firstly, we must explain why marrying a woman is referred to as a *kiddushin*. It is derived from the word '*hekdesh*,' a consecration. The concept of consecrating an object is that something that was permitted to the entire world now becomes forbidden. This is true by *kiddushin*, as well. A woman is permitted to everyone until a man performs a *kiddushin* with her; she now becomes forbidden to the entire world.

A yevamah is different. She was married to a man and prohibited to marry anyone else. When her husband died childless, she is a yevamah awaiting either a yibum or chalitzah. She is still forbidden to marry anyone else. When the yavam betroths her, this cannot be referred to as a *kiddushin* because she was forbidden to everyone beforehand.

Why is the betrothal called *ma'amar*? The essence of yibum is to perpetuate the name of the deceased. Yibum is actually a resurrection for the deceased brother. *Ma'amar* is the word of Hashem that brings the dead back to life as it is written: *mechaye meisim b'ma'amoro*, He resurrects the dead with His words. This explains why the betrothal of a yevamah is called *ma'amar*.

It is well known that Shabbos is a sampling of the World to Come. This is why we say in the *zemiros* of Shabbos: *tehorim yiroshua vikadshua b'ma'amar kol asher asah vayechal Elokim bayom hashivii*.

An alternative explanation is cited in Shulchan Aruch (E.H. 170:1). The expression *ma'amar* means a "saying" of our Rabbis. Biblically, only cohabitation can secure a *yibum*. The Rabbis established a form of betrothal, which they called *ma'amar*.

This explanation fits according to Beis Hillel, who maintains that *ma'amar* is only Rabbinically valid; however, according to Beis Shamai, who holds that *ma'amar* has Biblical ramifications, we must use the first explanation.