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Yevamos Daf 44

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Daf Notes is currently being dedicated to the neshamah of
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

The Mishnah states: There were four brothers married to four women and then they all died childless; the eldest (*surviving brother*) has permission to perform *yibum* with all of them.

One who was married to two women and he died childless; the *yibum* or *chalitzah* with one of them releases her co-wife from any obligation.

If one of the women was qualified to marry a *Kohen*, and one was unfit to a *Kohen*; if the *yavam* will be performing *chalitzah*, he should do so with the one who is unfit, and if he is performing *yibum*, he should do so with the one who is qualified. (43b4 – 44a1)

The Mishnah had stated: There were four brothers (and they all died).

The Gemora asks: Can there only have been four brothers (then if they all died, who would be left to perform *yibum*)?

The Gemora answers: Rather, say: If there were four brothers among other brothers (and four of them died). (44a1)

The Mishnah had stated: There were four brothers married to four women and then they all died childless; the eldest (*surviving brother*) has permission to perform *yibum* with all of them.

The Gemora asks: We have learned in a Baraisa: *And they shall call him (the yavam)*, but not their representative; *And they shall speak unto him* teaches that the *Beis Din* gives him suitable advice. If the *yavam*, for instance, was young and

the *yevamah* old, or if he was old and she was young, he is told: “What would you have in common with a young woman”? Or, “What would you have in common with an old woman”? “Go find someone who is of similar age as yourself, and do not bring any quarrels into your home.” [Wouldn’t they persuade him not to perform *yibum* with all four widows because he will not be able to provide for them?]

The Gemora answers: We are referring to a case where he has the means to provide for them.

The Gemora asks: If so, why does the Mishnah mention only four *yevamos*; he should be permitted to take even more?

The Gemora answers: It is good advice not to take more than four; this way, he will be able to engage in marital relations with each wife once every month. (44a1)

The Mishnah had stated: One who was married to two women and he died childless; the *yibum* or *chalitzah* with one of them releases her co-wife from any obligation.

The Gemora asks: Let him perform *yibum* with both of them?

Rabbi Chiya bar Abba answers in the name of Rabbi Yochanan: It is written: *so that he shall not build his brother’s house*. We derive from here that one may build only one house for his brother, not two.

The Gemora asks: Let him perform *chalitzah* with both of them?

Mar Zutra bar Tuvia answers: It is written: *the house of the one whose shoe was removed*. We derive from here that one



may perform *chalitzah* with only one house of his brother, not two.

The Gemora asks: Let him perform a *yibum* with one and a *chalitzah* with the other?

The Gemora answers: It is written: *if the man will not wish*. This implies that if he wishes, he could perform a *yibum*. Therefore, we derive the principle: Whoever is subject to *yibum* is subject to *chalitzah* and whoever is not subject to *yibum* is not subject to *chalitzah*.

Additionally, we didn't want people to say (if *chalitzah* was performed after *yibum*) that the house of the deceased was partially rebuilt through *yibum* and partially through *chalitzah*.

The Gemora asks: Let them say that (what is the concern)?

The Gemora answers: If one would perform *yibum* with one widow and then perform *chalitzah* with the other one, it would be so (that there is no concern); however, perhaps one will perform *chalitzah* with one widow and then perform *yibum* with the other one, and he will be violating the prohibition of 'shall not build.'

The Gemora asks: Perhaps there is only a *mitzvah* of *yibum* if there is one widow; however, when there are two widows, there is no *mitzvah* altogether?

The Gemora counters: If that would be the case, why would it be necessary to forbid the co-wife of a forbidden woman; seeing that if there are two ordinary women, you say that they are not eligible for *chalitzah* or *yibum*, would it be necessary to exclude the case of the co-wife of an *ervah*!?

The Gemora explains its question: Why would it not be necessary? It is necessary for the following: I might have thought that the *ervah* is standing on the outside (as she is not eligible at all), and her co-wife may be taken in *yibum*; the Torah therefore teaches us that she is forbidden.

The Gemora answers: We derive from the fact that the Torah repeats the word "his *yevamah*," "his *yevamah*" that there is an obligation even when there are two widows. (44a1 – 44a3)

The Mishnah had stated: If one of the women was qualified to marry a *Kohen*, and one was unfit to a *Kohen*; if the *yavam* will be performing *chalitzah*, he should do so with the one who is unfit, and if he is performing *yibum*, he should do so with the one who is qualified.

Rav Yosef said: Here is where Rebbe taught that a person should not spill out the extra waters from his pit when others may have a need for it. (*If he is performing chalitzah anyway, which will render her forbidden to a Kohen, he should perform the chalitzah with the widow who is anyway disqualified to marry a Kohen.*) (44a3)

The Mishnah states: One who remarries his divorcee, or one who marries his *chalutzah*, or one who marries the relative of his *chalutzah* is required to divorce her, and a child from that marriage will be a *mamzer*; these are the words of Rabbi Akiva. The Chachamim say that the child is not a *mamzer* (*since he only violated a negative prohibition, and not a kares prohibition*).

The Chachamim admit that one who marries the relative of his divorcee that the child will be a *mamzer* (*there would be kares in this situation*). (44a3)

The Gemora asks: Does Rabbi Akiva actually hold that one who marries the relative of his *chalutzah* the child is a *mamzer*? Didn't Rish Lakish state: 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. How can a Rabbinical prohibition produce a *mamzer*?

The Gemora emends the Mishnah to be referring to the relative of his divorcee.

The Gemora provides support for this answer by the fact that the Mishnah concluded by stating that the Chachamim admit that one who marries the relative of his divorcee that the child will be a *mamzer*. If Rabbi Akiva mentioned this case, it is understandable that the Mishnah would say that the Chachamim admit regarding this case; but if Rabbi Akiva never discussed this case, why did the Chachamim discuss it?

The Gemora rejects this proof: Perhaps the Chachamim are informing us that a *mamzer* can be produced from a marriage which is punishable by *kares* (unlike Rabbi Yehoshua's opinion that only a marriage punishable by a court-imposed execution can produce a *mamzer*).

The Gemora answers: This cannot be the point of our Mishnah because there is a Mishnah (49a) that discusses this explicitly. The Mishnah states: How is a *mamzer* produced? Rabbi Akiva says: Any union with a relative subject to a negative prohibition will produce a *mamzer*. Shimon Hatimni said: A *mamzer* can only be produced from a marriage which is punishable by *kares* and the halachah follows his words.

The Gemora asks: Perhaps our Mishnah is stating his view anonymously (to indicate that the halachah follows this opinion)?

The Gemora answers: If so, the Mishnah should have listed other examples of unions that are punishable by *kares*; by the fact that the Mishnah only mentioned the relative of his divorcee is a proof that Rabbi Akiva was discussing this case as well.

The Gemora objects to this proof: Perhaps the Mishnah mentioned the case of one who marries the relative of his divorcee because Rabbi Akiva discussed similar cases, namely, one who remarries his divorcee, or one who marries his *chalutzah*, or one who marries the relative of his *chalutzah*?

The Gemora reverts to the original reading of the Mishnah: Rabbi Akiva maintains that one who marries the relative of his *chalutzah*, the child is indeed a *mamzer*.

Rabbi Chiya bar Abba in the name of Rabbi Yochanan provides for Rabbi Akiva the Scriptural source indicating that the relatives of one's *chalutzah* is forbidden by Biblical law. It is written: *the house of the one whose shoe was removed*. The Torah refers to his *chalutzah* as 'his house' (i.e., his wife). (44a3 – 44a5)

Rav Yosef said in the name of Rabbi Shimon bar Rebbe: everyone admits regarding one who marries his divorcee that the child born from that union will be tainted in respect to the *Kehunah* (she would not be allowed to marry a Kohen).

Who is everyone who admits? The Gemora explains: Even Shimon Hatimni, who maintains that a marriage which is subject to a negative prohibition will not produce a *mamzer*, but the child will be tainted for the *Kehunah*.

This is derived through a *kal vachomer* from the prohibition of a widow to a *Kohen Gadol*. The prohibition regarding a widow is not applicable to all men, only to a *Kohen Gadol*, and nevertheless, a child from such a union will be tainted for the *Kehunah*; then certainly regarding a divorcee, where every man is prohibited from remarriage, the child should be tainted for the *Kehunah*.

The Gemora asks on this *kal vachomer*: We cannot bring proof from a widow because we rule strictly there; a widow who cohabitates with a *Kohen Gadol* becomes disqualified herself. Perhaps that is the reason that the child will be tainted for the *Kehunah*. A divorcee, who is remarried by her husband does not become disqualified for *Kehunah*; perhaps the child is not tainted either.

Furthermore, we have learned previously regarding one who remarries his divorcee that only she is an abomination, but her children are not.

Furthermore, the Gemora cites a Baraisa: One who remarries his divorcee, or one who marries his *chalutzah*, or one who marries the relative of his *chalutzah*, Rabbi Akiva said: The *kiddushin* does not take effect and a *get* is not required. She is disqualified, and her child is disqualified. We force him to send her away. The Chachamim maintain that the *kiddushin* does take effect and a *get* is required. She is qualified, and her child is qualified.

The Gemora assumes that the child is qualified for *Kehunah*, which would prove that the *kal vachomer* is incorrect. The Gemora deflects this question and explains that the Baraisa means that the child is not a *mamzer*, and thus qualified to marry into the congregation. [This is in contrast to Rabbi Akiva's viewpoint that the child born from a union with a woman who is subject to a negative prohibition is indeed a *mamzer*.]

If so, in respect of whom is she fit? If it be suggested 'in respect of entering the congregation', isn't this [it may be retorted] obvious? Has she become ineligible to enter the congregation because she cohabited illicitly? Consequently, it must mean in respect of the *Kehunah*. Now, since she is [untainted] in respect of the *Kehunah*, her child also must be [untainted] in respect of the *Kehunah*! — Is this an argument? The same term may bear different interpretations in harmony with its respective subjects.¹ This is also logically sound. For in the first clause it was stated: She is disqualified and her child is disqualified. Now, in respect of what is 'she disqualified'? If it be suggested, 'in respect of entry into the congregation', does she [it may be retorted] become disqualified for entry into the congregation because she cohabited illicitly! Consequently, it must mean 'in respect of the *Kehunah*! Now, again, in respect of what is 'her child disqualified'? If it be suggested, 'in respect of the *Kehunah*' thus implying that he is

¹ The term 'untainted' in the case of the woman may have reference to *Kehunah*, but in the case of the child it may refer to entry into the congregation; while in respect of the *Kehunah*, the child may well be regarded as tainted.

² The Gemora deflects the second question by stating that the verse is not teaching us that only she is an abomination, but her children are

permitted to enter the congregation, surely [it may be objected] Rabbi Akiva stated that the child is a *mamzer*! Obviously then 'in respect of entry into the congregation'. And, as in the first clause the same term bears different interpretations in harmony with its respective subjects, so may the same term in the final clause bear different interpretations in agreement with its respective subjects. Also as to the expression: This is an abomination, it [may be interpreted]: She is an abomination but her co-wife is no abomination. Her children, however, are an abomination.²

The objection, however, from the 'widow' [still remains, thus]: 'A widow's case may well be different because she herself becomes desecrated! — But [the fact is that] if any statement was made, it was as follows:³ Rav Yosef said in the name of Rabbi Shimon bar Rebbe: Everyone admits regarding one who marries a woman subject to the penalty of *kares* that the child born from that union will be tainted in respect to the *Kehunah*. Who [is referred to by] 'Everyone admits'? — Rabbi Yehoshua. For although Rabbi Yehoshua stated that the offspring of a union forbidden under the penalty of *kares* is not a *mamzer*, he agrees that, though he is no *mamzer*, he is nevertheless tainted.

This is derived through a *kal vachomer* from the prohibition of a widow to a *Kohen Gadol*. The prohibition regarding a widow is not applicable to all men, only to a *Kohen Gadol*, and nevertheless, a child from such a union will be tainted for the *Kehunah*; then certainly regarding a woman subject to the penalty of *kares*, where every man is prohibited from marrying such a woman, the child should be tainted for the *Kehunah*.

If you will ask that a widow is different because she herself becomes disqualified, we can answer that a man who cohabits with a woman subject to the penalty of *kares*

not; rather it is teaching us that her co-wife is not an abomination, and can be taken for *yibum*; the child is tainted.

³ The first question on the *kal vachomer* remains, and therefore the Gemora emends the original ruling.

renders her a *zonah*, and she too becomes desecrated and thus forbidden to marry a *Kohen*. (44a5 – 44b2)

INSIGHTS TO THE DAF

TECHNICAL DIFFICULTY

The Gemora states: Whoever is subject to *yibum* is subject to *chalitzah* and whoever is not subject to *yibum* is not subject to *chalitzah*.

Tosfos asks: The halachah is that if the *yavam* or *yevamah* are deaf, they cannot perform *chalitzah*, but nonetheless are obligated to perform *yibum*. Shouldn't we say that one who is not subject to *chalitzah* should not be subject for *yibum* either?

Tosfos answers: They in fact are fit for *yibum*; there is just a technical difficulty that *chalitzah* cannot be performed. In such cases, the principle does not apply.

Divrei Chaim (E" H I, 100) explains similarly regarding a *yevamah* who falls for *yibum* to a lame *yavam*. He cannot perform *chalitzah*, but nonetheless, there is an obligation for him to perform *yibum*. This is because there is no prohibition against performing a *chalitzah*, but rather, he is merely not fit to perform a *yibum*. In these cases, the principle does not apply.

Magen Avraham (O" C 39:5) cites our Tosfos and therefore rules that one whose left hand was cut off, and therefore cannot put *tefillin* on, is nevertheless qualified to write *tefillin*. Although we have a principle that whoever is included in the obligation of putting on *tefillin* is qualified to write *tefillin*, and one who is not obligated to wear *tefillin* cannot write *tefillin*; this person is permitted to write *tefillin*. He is included in the *mitzvah*; there is just a technical difficulty that he cannot wear *tefillin*.

Chikrei Leiv (E" H 46) comments that although most men do not have the capabilities to write their own *get*, they are nevertheless allowed to appoint an agent to write the *get* for

them. Although there exists a principle that you cannot appoint an agent to perform something for you if you cannot do it yourself, that is only applicable where you are halachically disqualified from performing that task. Every person is halachically fit to write a *get*; he is just missing the expertise to accomplish it. This will not disqualify him from appointing an agent to write it on his behalf.

Sheorim Mitzuyanim B'halacha

DAILY MASHAL

The Gemora states: Here is where Rebbe taught that a person should not spill out the extra waters from his pit when others may have a need for it. (*If he is performing chalitzah anyway, which will render her forbidden to a Kohen, he should perform the chalitzah with the widow who is anyway disqualified to marry a Kohen.*)

Rabbeinu Yonah in Shaarei Teshuvah writes that we are warned against scattering money for no purpose whatsoever.

Our Sages (B" K 91b) say: Rabbi Elozar said: I heard that if one rends his garments too much (*more than required*) for a dead person he receives lashes for violating the commandment of "*You shall not destroy.*" And certainly, this would be the case if one breaks utensils on account of his anger, for he is destroying his possessions and he permitting his anger to cause him to transgress the words of the Torah. For from that moment on, he enters into battle with the instincts of anger, which impels him to violate his principles.

This is as the Gemora (Shabbos 105b) says: if you see a person breaking utensils in his anger, regard him as a worshipper of idols. For such is the way of the Evil Inclination: Today it tells him, "Do so," and tomorrow it tells him, "Serve other gods."