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Yevamos Daf 94

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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

Rav Mordechai said to Rav Ashi, and others say that Rav Acha said to Rav Ashi: Come and hear (a proof regarding the question of whether we believe one witness (when he testifies that a husband has died) and allow the yevamah to marry anyone) from the following Mishnah: A woman is not believed when she says “My yavam died,” so that she may marry, and she is not believed to say, “My sister died,” so that she may enter her sister’s husband’s house. It may be inferred from here that only she is not believed, but one witness would be believed!

The Gemora counters: According to your argument, however, read the latter clause: A man is not believed to say, “My brother died,” so that he might marry his wife by *yibum*, and he is not believed to say, “My wife died,” so that he might marry her sister. Is it only he who is not believed, but one witness is believed? In the case of a woman, one can well understand that in order to prevent her becoming an *agunah* (a woman who cannot get married), the Rabbis have relaxed the law in her favor. What, however, can be said in the case of a man?

The Gemora explains the Mishnah: This statement must be required in accordance with the view of Rabbi Akiva. It might have entered your mind, that since Rabbi Akiva stated that the offspring of a union between those who are subject to the penalty of negative commandments is a mamzer, she may be presumed to be desirous of avoiding ruin, and she therefore will be extremely careful (before saying that her yavam has died, and she therefore should be believed); therefore, we were taught that she is not to be believed. (94a1 – 94a2)

Rava said: We can derive that one witness be believed in regards to a *yevamah* from the following *kal vachomer* (literally translated as *light and heavy, or lenient and stringent; an a fortiori argument; it is one of the thirteen principles of biblical hermeneutics; it employs the following reasoning: if a specific stringency applies in a usually lenient case, it must certainly apply in a more serious case*): If you have permitted a woman to remarry on the basis of the testimony from one witness, which involves a *kares* prohibition, how much more so, when it only involves a mere prohibitory law.

One of the Rabbis said to Rava: The laws concerning the woman testifying herself proves the contrary: When we are dealing with a prohibition involving *kares*, you have permitted her to remarry (based on her own testimony), whereas in a case that only involves a mere prohibitory law, you have not permitted her (to testify that her yavam died). (This disproves Rava’s *kal vachomer*.) What is in fact the reason that she is not believed? It is because she may sometimes hate the *yavam*, she might marry another man without thoroughly investigating the matter, so too, in the case of one witness, she may sometimes hate the *yavam*, she might marry another man without thoroughly investigating the matter. (94a3)

THE SCENT OF A DIVORCE

The *Mishnah* had stated: If they said to her, “Your husband died,” and she became betrothed to another man, and afterwards her husband came back, she is permitted to return to him. Even though the latter one gave her a bill of divorce, he did not disqualify her from the *Kehunah*. This was expounded by Rabbi Elozar ben Masya: It is written [Vayikra 21:7]: *And nor shall the Kohanim take in marriage a woman*

divorced from her husband. This teaches us that a woman who is divorced from her legal husband is forbidden to be married to a *Kohen*, but a woman divorced from a man who is not her husband will not disqualify her.

Rav Yehudah said in the name of Rav: Rabbi Elozar could have expounded from this verse a pearl, but instead, he expounded from it only a shard (*it is obvious that a letter of divorce received from a man to whom the woman is not married to is pointless, and it would not render her ineligible to marry a Kohen*).

What is the pearl that he could have expounded? He could have expounded that which we learned in the following *Baraisa*: It is written [Vayikra 21:7]: *Nor shall the Kohanim take a woman divorced from her husband*. This teaches us that even if she was divorced from her husband alone (*if the husband inserted in the letter of divorce a clause forbidding her to marry anyone else*), she becomes disqualified from marrying a *Kohen*. And this is what is meant when it is stated: The scent of the divorce can disqualify a woman from marrying a *Kohen*. (94a3)

THE WIFE WENT OVERSEAS

The *Mishnah* states: If one's wife went overseas, and they came and said to him, "Your wife died," and he married her sister, and afterwards his wife returned, she is permitted to return to him. He is permitted to marry the relatives of the second one, and the second one is permitted to his relatives. And if the first one died, he is permitted to marry the second.

If they said to him, "Your wife died," and he married her sister, and afterwards they said to him, "She was alive (*when you married the sister*), and she died (*since then*)," the first child (*the one conceived prior to his wife's death*) is a *mamzer*, and the last one (*the one conceived after his wife's death*) is not a *mamzer*.

Rabbi Yosi says: Whoever disqualifies others, disqualifies himself as well, and whoever does not disqualify others,

does not disqualify himself either. (*This statement will be explained on Daf 95b.*) (94a4 – 94b1)

HIS WIFE AND BROTHER-IN-LAW WENT OVERSEAS

The *Mishnah* had stated: If one's wife went overseas, and they came and said to him, "Your wife died," and he married her sister, and afterwards his wife returned, she is permitted to return to him.

The *Gemora* comments: This halachah would be correct even if his wife and his wife's sister's husband both went overseas. He heard that they died (*through two witnesses*), and married his wife's sister. They both subsequently returned. The halacha is as follows: His wife's sister is forbidden to remain with her previous husband (*as we previously learned, that a woman who marries on the basis of testimony that her husband died, and then he returns, she cannot return to her husband*), but his own wife is permitted to him. We do not say that since his wife's sister is forbidden to remain with her husband, his wife should be prohibited to him. (94b1 – 94b2)

RABBI AKIVA'S ADDITIONS

The *Mishnah* had stated: If one's wife went overseas, and they came and said to him, "Your wife died," and he married her sister, and afterwards his wife returned, she is permitted to return to him.

The *Gemora* comments: It would seem that our *Mishnah* is not in accordance with Rabbi Akiva's opinion, for if the *Mishnah* would be following Rabbi Akiva's opinion, the wife should be forbidden to him on account of being the sister of his divorcee. For it was taught in the following *Baraisa*: All of the women involved in an incestuous marriages forbidden in the Torah, do not require a letter of divorce from the man who married them except a married woman who remarried in accordance with a decision of a *Beis Din*. Rabbi Akiva adds: Even a brother's wife and his wife's sister. And since Rabbi Akiva has stated that one who marries his wife's sister will require a letter of divorce, his wife should be forbidden to him because his wife is now the sister of his divorcee. (*This*

proves that the Mishnah does not follow Rabbi Akiva's opinion. The Tanna of the Mishnah would maintain that one who marries his wife's sister does not require a letter of divorce.)

The Gemora objects to this proof: Did we not learn the Rav Gidel said in the name of Rav Chiya bar Yosef in the name of Rav: What is Rabbi Akiva's case of his brother's wife? It is where a man's brother, betrothed (*but did not consummate the marriage with nisuin*) a woman and went overseas, and the husband, upon hearing that his brother died, married his brother's wife. If the brother should return, Rabbi Akiva rules that the husband is required to issue a letter of divorce to his brother's wife. The reason that this is required is because people might say that the brother had attached a certain unfulfilled condition to the betrothal and that the husband had lawfully married her. (*And so, in order that it should not be suspected that a lawful marriage had been dissolved without a letter of divorce, it was enacted, as a preventive measure, that a letter of divorce be issued.*) And what is the case of the wife's sister? It is where a man betrothed a woman and she went overseas, and the husband, upon hearing that his wife died, married her sister. If the wife should return, Rabbi Akiva rules that the husband is required to issue a letter of divorce to his wife's sister. The reason that this is required is because people might say that the husband had attached a certain unfulfilled condition to the betrothal of his original wife and that the husband had lawfully married her sister. (*And so, in order that it should not be suspected that a lawful marriage had been dissolved without a letter of divorce, it was enacted, as a preventive measure, that a letter of divorce be issued.*)

However, in respect to our Mishnah's case, which is dealing with a nisuin, there is no such concern. (*It is highly unlikely that a person will attach a condition to a nisuin because nisuin involves marital relations between the husband and the wife. If the condition was not fulfilled, all of their cohabitations would be retroactively rendered illicit.*) Even Rabbi Akiva would admit that a letter of divorce is not

required. (*Our Mishnah can therefore be in accordance with Rabbi Akiva.*) (94b2 – 94b4)

Rav Ashi said to Rav Kahana: If our Mishnah represents the view of Rabbi Akiva, one's mother-in-law should also be mentioned, since Rabbi Akiva was heard to state: Cohabiting with a man's mother-in law after the death of his wife is not punishable by burning (implying that it would be permitted)! For it was taught in a Baraisa (*regarding a person who cohabits with his mother-in-law*): *In fire shall they burn him and them (es-hen)*. This means him and one of them; these are the words of Rabbi Yishmael. Rabbi Akiva says: Him and both of them. Now, according to Abaye who says that they argue regarding the implication of the verse - that Rabbi Yishmael says: *Him and them* means him and one of the women are written in the verse (as in Greek, the word "*hina*" means one, and the verse here uses the word *es-hen*); and Rabbi Akiva holds that the verse means him and both of them; - accordingly, it is understandable (that the Mishnah does not include this case, for everyone agrees – even R' Akiva – that cohabiting with one's mother-in-law after his wife's death is forbidden). But, according to Rava, who says that they argue regarding whether or not cohabiting with one's mother-in-law after his wife's death is punishable by burning (where Rabbi Yishmael holds he is liable to be burned, while Rabbi Akiva seemingly says that this is permitted); then the case of marriage of a man's mother-in-law (after his wife's death) should also have been mentioned!?

Rav Kahana replied: Granted that the verse has excluded her from the penalty of burning, but has the verse, however, excluded her from the prohibition? [Of course not! They both agree that it is forbidden. Omitting this case does not demonstrate that the Mishnah is in disagreement with R' Akiva.] (94b4 – 94b5)

DISTINCTION BETWEEN THE WIFE TRANSGRESSING AND THE HUSBAND

The Mishnah had stated: If one's wife went overseas, and they came and said to him, "Your wife died," and he married



her sister, and afterwards his wife returned, she is permitted to return to him.

The *Gemora* asks: Shouldn't the wife become forbidden to the husband because he engaged in cohabitation with her sister, in the same manner that a woman whose husband went overseas becomes forbidden to him if she had cohabitation with another man?

The *Gemora* answers: The two cases are not comparable. If one's wife willingly commits adultery, she is Biblically forbidden to her husband; therefore, if she transgresses inadvertently, the Rabbis decreed that she is also forbidden to her husband. However, regarding the case of one's wife's sister, where his wife is not Biblically forbidden to him even if he willingly cohabits with her sister, the Rabbis did not decree that his wife should be prohibited to him in a case where he transgresses inadvertently. (94b5 – 95a1)

INSIGHTS TO THE DAF

ONE WITNESS IS BELIEVED TO PERMIT THE HUSBAND TO MARRY HIS WIFE'S SISTER

The *Gemora* states: If one's wife and his wife's sister's husband both went overseas and he heard that they died, and he went and married his wife's sister. They both subsequently returned. The halachah is as follows: His wife's sister is forbidden to remain with her previous husband (*as we previously learned, that a woman who marries on the basis of testimony that her husband died, and then he returns, she cannot return to her husband*), but his own wife is permitted to him. We do not say that since his wife's sister is forbidden to remain with her husband, his wife should be prohibited to him.

Rashi learns that the wife's death became known through the testimony of one witness. Tosfos Rid and Maharsha ask that a single witness is only believed to permit a woman to remarry because we do not want her to remain an *agunah*;

how can Rashi write that the husband married the sister on the basis of the testimony of a single witness?

The Maharsha answers that the husband erroneously thought that a single witness is believed that his wife died, and he is therefore permitted to marry her sister.

Additionally, he suggests that Rashi maintains that just as a single witness is believed to permit a married woman to marry because we do not want her to remain an *agunah*, so too, the Rabbis permitted the prohibition of a wife's sister because of *agunah*.

The Netziv disagrees and says that in general, a single witness would not be believed to permit the prohibition of a wife's sister; however, in a case where he is believed that the husband died for the purpose of allowing the wife to remarry, he is also believed that the wife died, thus permitting the husband to marry her sister.

Tosfos s.v. *v'af al gav* states that there were two witnesses that his wife died because otherwise, he would not be permitted to marry her sister. He does cite two opinions regarding how many witnesses there were testifying that his brother-in-law died. This would depend on the dispute between the Chachamim and Rabbi Shimon regarding the permission granted to the wife to return to her husband if there were two witnesses testifying. Since the *Gemora* rules that the wife is forbidden to remain with her husband, the *Gemora* is either referring to a case that two witnesses testified, and the *Gemora* is following the opinion which maintains that the Rabbis dispute Rabbi Shimon and hold that she would still be forbidden; or the case of the *Gemora* is where there was only one witness.

DAILY MASHAL

SHARDS AND PEARLS

Rav Yehudah said in the name of Rav: Rabbi Elozar could have expounded from this verse a pearl, but instead, he

expounded from it only a shard (*it is obvious that a letter of divorce received from a man to whom the woman is not married to is pointless, and it would not render her ineligible to marry a Kohen*).

(The Mishnah had stated: If they said to her, "Your husband died," and she became betrothed to another man, and afterwards her husband came back, she is permitted to return to him. Even though the latter one gave her a bill of divorce, he did not disqualify her from the Kehunah. This was expounded by Rabbi Elozar ben Masya: It is written [Vayikra 21:7]: And nor shall the Kohanim take in marriage a woman divorced from her husband. This teaches us that a woman who is divorced from her legal husband is forbidden to be married to a Kohen, but a woman divorced from a man who is not her husband will not disqualify her.

What is the pearl that he could have expounded? He could have expounded that which we learned in the following Baraisa: It is written [Vayikra 21:7]: Nor shall the Kohanim take a woman divorced from her husband. This teaches us that even if she was divorced from her husband alone (if the husband inserted in the letter of divorce a clause forbidding her to marry anyone else), she becomes disqualified from marrying a Kohen. And this is what is meant when it is stated: The scent of the divorce can disqualify a woman from marrying a Kohen.)

How could Rav refer to Rabbi Elozar's exposition of the verse as a shard? His exposition is also halachically correct. Just because it is not as novel of a ruling, is that grounds to degrade it? Furthermore, the *Gemora* states elsewhere that one should not say that this teaching he likes, and this one he does not; one who does say that is discarding the glory of the Torah.

Ohel Moshe explains that Rav meant to say like the *Gemora* Bava Metzia (17b) states: If I had not lifted the shard for you, you would not have found the pearl underneath. Rav was saying that Rabbi Elozar could have expounded the second exposition, which is a deeper one and more novel of a ruling,

but Rabbi Elozar was compelled to initially "lift the shard," by expounding the verse according to its simple interpretation, and only afterwards could we "find the pearl," and expound the verse with a more novel ruling.