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Yevamos Daf 120

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

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### Rabbi Elozar's Reasoning

The Mishna had stated: [Two women testified that their husband's died; the halachah is that they are permitted for yibum, for even though one woman cannot rely on the testimony of the other, the death of the other husband is irrelevant, for she still is permitted in yibum to the other brothers.] If they (the two brothers' wives) were married by *yibum* (by the two surviving brothers), and the *yevamim* died, they are prohibited from marrying (*any stranger; though the evidence of each woman was valid to enable herself to be taken for yibum, it is not valid to exempt her sister-in-law- from the zikah-attachment, and the possibility that their absent yavam's (the first husbands) were still alive must be taken into consideration*). Rabbi Elozar says: Since they were permitted to the *yevamim*, they are permitted to any man.

Rava inquires: What is Rabbi Elozar's reason? Is it because he is of the opinion that a co-wife is eligible to tender evidence for her counterpart? Or, is it because he maintains that she would not ruin herself (*for the sake of ruining her counterpart*)?

The *Gemora* asks: What is the practical difference between the two reasons?

The *Gemora* answers: The practical difference between the two reasons would be if we would allow her co-wife to marry before herself. If it is granted that a co-wife is eligible to tender evidence for her counterpart, her co-wife may be permitted to marry even if she herself did not remarry. If, however, it be maintained that the reason is because she would not ruin herself, the co-wife would be permitted to

marry only if she herself had married again, but if she herself did not remarry, her co-wife also would not be permitted to remarry.

The *Gemora* asks: So, what is his reason?

The *Gemora* says: Come and hear from our *Mishna*. Rabbi Elozar said: Since they were permitted to the *yevamim*, they are permitted to any man. Now, if it be granted that the reason is because she would not ruin herself, one can well see the reason why only when the one married again is the other permitted to remarry. If it be maintained, however, that the reason is because a co-wife is eligible to tender evidence for her counterpart, the co-wife should be permitted to marry again even if the co-wife did not remarry. Consequently, it must be concluded that Rabbi Elozar's reason is because she herself had married again and she would not ruin herself!

The *Gemora* deflects this proof: Rabbi Elozar is not offering his own opinion in the *Mishna*, but rather, he was arguing even in accordance with the Rabbi's opinion. This is what he was saying: According to me, a co-wife is eligible to tender evidence for her counterpart, and even if she herself did not remarry, the other may be allowed to marry again. According to your view (*that a co-wife is disqualified to testify for her counterpart, even when the counterpart's permit emerges incidentally*), however, you must at least agree with me that where she herself remarried, the other also should be allowed to marry again, since she (*the woman who testified*) would naturally not ruin herself!

And would the Rabbis respond to this argument? She might be acting in the spirit of *let me die with the Philistines (in*

order to inflict injury upon her counterpart, she is willing to ruin herself).

The *Gemora* attempts to resolve the inquiry from the following *braisa*: If a woman went with her husband overseas, and she came and said, “My husband died,” she may marry and she takes her *kesuvah*, but her co-wife is forbidden. Rabbi Elozar says: Since she is permitted to remarry, her co-wife may also remarry. (*This proves that, on the evidence of a co-wife, her counterpart is always permitted to marry again whether the co-wife who gave the evidence did or did not herself marry again.*)

The *Gemora* rejects the proof: The *braisa* should be emended to say the following: Rabbi Elozar says: Since she is permitted to remarry and she married, her co-wife may also remarry.

The *Gemora* asks: But let us be concerned that she may have returned from overseas with a letter of divorce and that the reason why she made her statement (*that her husband was dead*) is because it was her intention to ruin her co-wife (*but she herself would not be ruined since she is in any case divorced from her husband*)?

The *Gemora* answers: We are referring to a case where she married a *Kohen* (*which she may not do if she was indeed divorced*). (119b4 – 120a2)

### Mishna

The *Mishnayos* from here until the end discuss the laws of testimony regarding death.

The *Mishna* states: One may only testify to the identity of a dead man on the basis of the face with the nose, even though there are identifying marks on his body and on his garments. One may not testify unless his soul has actually departed, and even if they saw him mortally wounded, or hanging from the gallows, or being devoured by a beast. One may testify only if he observed the corpse within three days

of the man’s death. Rabbi Yehudah ben Bava says: Not every man, and not all places, and not all times are alike. (120a2 – 120a3)

### Gemora

The Rabbis taught in a *braisa*: Evidence of identification may be tendered if the witnesses see the corpse’s forehead without the form of his face or the form of his face without the forehead. Both together with the nose must be present.

Abaye, and according to others – Rav Kahana, cites a Scriptural proof for this. What is the verse? *The recognition of their faces testified to their identity.*

The *Gemora* records a related incident: Abba bar Marta, who is known as Abba bar Manyumi, owed money to the people of the Exilarch's house. Taking some wax, he smeared it on a piece of rag and stuck it upon his forehead. He passed before them and they did not recognize him. (120a3)

### Identifying Marks

The *Mishna* had stated: One may only testify to the identity of a dead man on the basis of the face with the nose, even though there are identifying marks on his body and on his garments.

The *Gemora* asks: Does this imply that identification marks are not Biblically valid? A contradiction, certainly, may be pointed out from the following *braisa*: If he (*an agent who was carrying a letter of divorce from a husband to his wife*) found it tied to his bag, purse or a signet ring, or if it was found among his utensils, even after a long time, it is valid! (*This is provided that he is able to identify the bag, or any of the other objects mentioned, as the original object to which the letter of divorce had been tied. Though the assumed validity of the document affects a Biblical law (permitting a married woman to marry a stranger) it is nevertheless permitted to rely upon the identification marks, contrary to the implication of our Mishna.*)

Abaye responded: This is no difficulty. The *braisa* is reflecting the viewpoint of Rabbi Eliezer ben Mahavai while the Mishna is reflecting the opinion of the Rabbis. For it was taught in the following braisa: No evidence of identification by a mole (*on the same limb where the husband had one*) may he legally tendered. Rabbi Eliezer ben Mahavai says: Such evidence may be legally tendered. Do they not disagree regarding the following point; Rabbi Eliezer ben Mahavai is of the opinion that identification marks are Biblically valid, while the Rabbis hold that identification marks are only Rabbinically valid?

Rava objects to this explanation: All agree that identification marks are Biblically valid, but here they disagree regarding whether it is common for the same kind of mole to be found on persons of simultaneous birth (*persons born at the same hour of the day are assumed to be physically and morally subject to the same planetary influences for good and for evil*). The Rabbis hold that it is common for the same kind of mole to be found on persons of simultaneous birth, and Rabbi Eliezer ben Mahavai is of the opinion that it is not common for the same kind of mole to be found on persons of simultaneous birth (*and therefore a mole could be used as an identifying mark*).

Others explain Rava as follows: They argue whether a mole usually undergoes a change after one's death. The Rabbis are of the opinion that it usually undergoes a change after one's death and Rabbi Eliezer ben Mahavai is of the opinion that it does not usually undergo a change after one's death.

Others maintain that Rava said: All agree that identification marks are only Rabbinically valid, but here they argue whether a mole constitutes a distinct identification mark. Rabbi Eliezer ben Mahavai is of the opinion that it constitutes a distinct identification mark, and the Rabbis maintain that it does not constitute a distinct identification mark. (120a3 – 120b1)

### The Consideration for Borrowing

The *Gemora* asks: According to the version which Rava stated that everyone agrees that identification marks are Biblically valid, wasn't the following taught in our *Mishna*: One may only testify to the identity of a dead man on the basis of the face with the nose, even though there are identifying marks on his body and on his garments?

The *Gemora* answers: As to the body, the marks indicated by the witnesses were only that the corpse was long or short (*which cannot be regarded as reliable marks of identification*) and as to one's garments, no reliability can be placed upon their identification since we are concerned that one man borrowed someone else's clothing.

The *Gemora* asks: If, however, borrowing is to be taken into consideration, how could we allow the return of a lost donkey on one providing the identification marks of a saddle?

The *Gemora* answers: People do not borrow a saddle because it makes the back of the donkey sore (*due to the incorrect size*).

The *Gemora* asks: Where one found it tied to his bag, purse or a signet ring, or if it was found among his utensils, how do we allow its return?

The *Gemora* answers: As to a signet ring, one is afraid of forgery (*and he will not lend it out*). And as to one's bag and purse, people are superstitious and do not lend such objects.

Alternatively, you can answer the original question by saying that the identification marks of the garments mentioned in the *Mishna* is referring to their color, if they were white or red (*many people wear garments of red and white, and the colors therefore, cannot be regarded as a reliable mark of identification*). (120b1 – 120b2)

### Mortally Wounded

The *Mishna* had stated: One may not testify unless his soul has actually departed, and even if they saw him mortally wounded, or hanging from the gallows, or being devoured by a beast.

The *Gemora* states: This implies that a man whose arteries have been cut may live; but this is apparently inconsistent with the following *Mishna*: A person does not transmit corpse-tumah before his soul has departed, even though his arteries had been cut and even though he is in a dying condition. The *Mishna* seems to indicate that it is only *tumah* that he does not cause, but he certainly will not live in such a situation?

Abaye answered: This is no difficulty. Our *Mishna* represents the opinion of Rabbi Shimon ben Elozar; the other *Mishna* follows the opinion of the Rabbis. For it was taught in the following *braisa*: Evidence may be legally tendered regarding the death of a person whose arteries were cut, but no such evidence may be tendered concerning one who was hung. Rabbi Shimon ben Elozar said: No such evidence may be legally tendered even concerning one whose arteries were cut, because the wounds might be cauterized and the man may survive.

The *Gemora* asks: Can our *Mishna* be following the opinion of Rabbi Shimon ben Elozar? But the latter part of our *Mishna* states: It once happened at Asya that a man was lowered into the sea and only his leg was brought up, and the Rabbis ruled: If the recovered leg contained the part above the knee, the man's wife may marry again, but if it contained only the part below the knee, she may not remarry (*because a man may survive even in such circumstances; the drowning also cannot be regarded as a certainty since the waters may have thrown the body up on another shore where the man's life may have been saved*)? (Now, if our *Mishna* represents the view of Rabbi Shimon ben Elozar, remarriage should be forbidden even in the case where the part above the knee was also torn away?)

The *Gemora* answers: Waters are different since they irritate the wound.

The *Gemora* asks: But, surely, Rabbah bar bar Chanah related: I myself have seen an Arab merchant who took hold of a sword and cut open the leg of his camel above his knee, but this did not cause it to cease its cry until it died?

Abaye replied: That camel was a weak animal.

Rava replied: Our *Mishna* is discussing a case where the person was wounded with a glowing hot knife, and this is in agreement with everyone (*that he will not survive*). (120b2 – 120b3)

## INSIGHTS TO THE DAF

### HALACHAH: IDENTIFYING A DEAD BODY OPINIONS:

The Mishnah states that a witness may not identify a corpse unless he recognizes the forehead and nose of the dead person.

RABEINU TAM (in Sefer ha'Yashar, Teshuvah 92, cited by TOSFOS DH Ein and by other Rishonim here) asserts that it does not make sense that a dead person can only be recognized through his facial features. Certainly, a person can be recognized by his bodily features as well if the witness is familiar with the dead person's bodily features, and thus the witness should also be able to identify a corpse if he recognizes the body! Rabeinu Tam therefore explains that our Mishnah is discussing a head without a body. The Mishnah is saying that a corpse cannot be identified when the witness only saw its head (since its body has been truncated) -- unless the witnesses recognizes the forehead and the nose. If the whole body is there and one recognizes the Simanim of the body, then one may certainly testify to positively identify the dead person.

The RASHBA and Rishonim (121a) reject Rabeinu Tam's explanation. They argue that the Mishnah makes no mention of the body, implying that whether the body is there or not, one may only identify the corpse based on recognition of the forehead and nose.

The ARUCH LA'NER answers this question by pointing out that Rabeinu Tam in Sefer ha'Yashar explains that our Mishnah is discussing recognition based on Simanim, specific features, rather than recognition based on Tevi'us Ayin, general recognition. Accordingly, the reason our Mishnah says that one must recognize the forehead and the nose is because even if the body is attached to the head, one cannot testify based on specific signs on the body. Only when one testifies to the identity of the corpse based on Tevi'us Ayin (general recognition) may he testify based on recognition of the body. Our Mishnah is discussing recognition based on signs (Simanim), and that is why it does not mention Rabeinu Tam's testimony.

HALACHAH: The SHULCHAN ARUCH (EH 17:25) cites the opinion of Rabeinu Tam and writes that other Rishonim disagree. However, if a person recognizes the body or the head through Simanim Muvhakim -- clear signs that were unique to this person, then his testimony is accepted, because whether one holds that testimony based on normal Simanim is accepted d'Oraisa or d'Rabanan, Simanim Muvhakim are certainly accepted mid'Oraisa as testimony.

The RAMBAM (Hilchos Nachalos 7:3) writes that if a person was killed and witnesses did not recognize the face but testified about Simanim Muvhakim that they found on his body, we may not permit his wife to remarry. It seems that the Rambam is saying that even Simanim Muvhakim are not accepted as testimony! This also seems to be the ruling of the SEFER HA'ITUR (as cited by the Beis Yosef).

The BEIS YOSEF (EH 17:40) and the KESEF MISHNAH (Hilchos Gerushin 13:21) ask that our Gemara seems to make it clear that even if normal Simanim are d'Rabanan, a mole that is a Siman Muvhak is certainly accepted as testimony

mid'Oraisa! Moreover, the Rambam himself (Hilchos Gezeilah 13:5) writes that Simanim Muvhakim are accepted for all testimony mid'Oraisa, and in accordance with this he rules (Hilchos Gerushin 3:11) that one may return a Get based on a Siman Muvhak (such as a hole next to a certain letter).

The Kesef Mishnah therefore concludes that when the Rambam in Hilchos Nachalos says that a "Siman Muvhak" is not accepted, he is referring to what our Gemara calls a regular Siman, and not an actual Siman Muvhak. A Siman Muvhak that is accepted, even according to the Rambam, is a Siman that is very unique and singular to this person. Everyone agrees that we may rely upon such a Siman Muvhak. He concludes that this must be the intention of the Itur as well.

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#### DAILY MASHAL

##### Brothers Sent Specifically the "Coat of many Colors"

It is written [Breishis 37:32]: And they sent the coat of many colors, and they brought it to their father; and said: "This have we found. Know now whether it is your son's coat or not."

The question is asked: Why did the brothers feel the necessity to destroy specifically his fine woolen coat; this was a very special garment and valuable? Why didn't they rip one of Yosef's other garments and send it to their father?

The simple answer would be that Yaakov would not recognize Yosef's other garments; it was the special garment that he gave to Yosef that he would indeed recognize.

Rabbi Aharon Kroll offers another answer based on our *Gemora*. The *Mishna* had stated: One may only testify to the identity of a dead man on the basis of the face with the nose, even though there are identifying marks on his body and on his garments. The *Gemora* explains that we cannot rely on the identifying marks of his garments because we are concerned that the clothes may be borrowed.

Accordingly, one may ask: How could Yaakov be certain that Yosef was killed based on the blood found on Yosef's clothing; perhaps someone had borrowed Yosef's garments?

The Be'er Heitev (E"H, 17, 71) cites from the Ra'anach that if it is customary for only one person in the community to wear a certain garment, we do not take "borrowing" into consideration.

The Keli Yakar explains that the *k'sones passim* that Yaakov gave to Yosef represented the firstborn right that Yaakov took away from Reuven and granted to Yosef. The service in the Beis HaMikdosh required that the *Kohen* would wear special clothing, and Yosef was given this garment as a sign of honor and glory. This coat was obviously worn only by Yosef, and he would never lend it out.

This explains why the brothers sent to their father Yaakov the fine woolen coat of many colors, and not any other of Yosef's garments. Yaakov would recognize that this was Yosef's coat, and only he would be wearing it. This was a clear indicator that Yosef was indeed devoured.