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Kesuvos Daf 74

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Daf Notes is currently being dedicated to the neshamot of

**Moshe Raphael ben Yehoshua (Morris Stadtmauer) o”h**  
**Tzvi Gershon ben Yoel (Harvey Felsen) o”h**

May the studying of the Daf Notes be a zechus for their neshamot and may their souls find peace in Gan Eden and be bound up in the Bond of life

**Conditions**

It has also been stated (like Rabbah): Rav Acha bar Yaakov said in the name of Rabbi Yochanan: If a person betrothed a woman on a condition (*that she had no current vows*), and he later cohabited with her (*and she was later found to be in violation of that condition*), there is no argument between Rav and Shmuel; they both agree that she does not require a divorce (*since the marriage is completely void*).

Rav Acha (Rav Acha bar Yaakov’s sister’s son) the son of Rav Ika questioned Rav Acha bar Yaakov from the following *Baraisa*: If one mistakenly performed *chalitzah*, it is nonetheless valid. The *Gemora* explains: What is the case of the “mistaken” *chalitzah*? Rish Lakish said: It is referring to a case where they told the *yavam* to perform *chalitzah*, and with that, he will be marrying her (*when in fact, chalitzah accomplishes the exact opposite*). Rabbi Yochanan challenged Rish Lakish: I learned in another *Baraisa*: Whether the *yavam* had the intention of performing the commandment of *chalitzah* and she had no such intention, or whether she had such intention and he did not, *chalitzah* is invalid. In order for the *chalitzah* to be valid, they both are required to have such intention. How can you say that the *chalitzah* is valid? Rather, Rabbi Yochanan explains the *Baraisa* differently: It is referring to a case where they told the *yavam* to perform *chalitzah* on the condition that the *yevamah* will give him two hundred *zuz*. The *halachah* is that the *chalitzah* is valid even if she does not end up giving him the money.

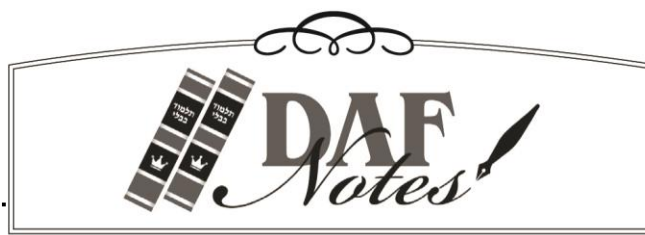
Rav Acha the son of Rav Ika explains Rabbi Yochanan’s viewpoint and then concludes his challenge. The *chalitzah* is

valid in this case because he performed the action of *chalitzah* (*without repeating the condition at that time – Tosfos*), therefore, we may assume that he has dispensed with his stipulation (*regarding the money*). Here too, let us say, since he cohabited with her (*without repeating the condition at that time*), he has obviously dispensed with the stipulation (*regarding her vows*) and the marriage should take effect! (*Why does Rav Acha bar Yaakov rule in the name of Rabbi Yochanan that the marriage is void?*)

Rav Acha bar Yaakov replies: Torah scholar! Are you in fact saying the correct reason for that *halachah*? (*I will explain to you the real reason that the chalitzah is valid.*) All conditions are learned out from the stipulation that Moshe made with the tribes of Gad and Reuven. (*For any condition to be valid, it must be similar to that condition.*) A condition that may be executed by an agent, as Moshe did there (*Moshe instructed Yehoshua to act, so to speak, as his agent to give the east bank of the Jordan to them*), is a valid condition. However, any stipulation that cannot be executed by an agent is not regarded as a valid condition. (*Chalitzah cannot be accomplished through an agent and therefore, a stipulation cannot be attached to it.*)

The *Gemora* asks: But a *kiddushin* through cohabitation, which cannot be executed by an agent, and nevertheless, a stipulation attached to it is a valid one!?

The *Gemora* answers: That is because we compare the different methods of betrothal to each other. (74a1 – 74a2)



### ***Betrothal by a Loan, Stipulation or with Less than a Perutah***

Rav Ulla bar Abba said in the name of Ulla, who said in the name of Rabbi Elozar: If a man betrothed a woman by a loan (*which he lent to her; such a betrothal is invalid because loaned money is given to be spent, while a betrothal cannot be valid unless money or its equivalent was actually given to the woman at the time of the betrothal*) and then he cohabited with her, or if he betrothed her on a certain condition and then he cohabited with her (*and the conditions were not met*), or if he betrothed her with less than the value of a *perutah* and then he cohabited with her, she requires a *get* from him according to all opinions (*because a man does not want his cohabitation to be rendered promiscuous*).

Rav Yosef bar Abba said in the name of Rabbi Menachem, who said it in the name of Rabbi Ami: If a man betrothed a woman with less than the value of a *perutah* and then he cohabited with her, she requires a *get* from him. (*Seemingly, he disagrees with Rabbi Elozar regarding one who betrothed a woman by a loan or with a condition that was not fulfilled, and he holds that a get would not be required.*)

The *Gemora* explains Rabbi Ami's opinion: People do not make a mistake regarding the laws of betrothing with less than a value of a *perutah*; everyone knows that such a *kiddushin* is not valid and the man, obviously, cohabited with her for the sake of *kiddushin*; therefore, a *get* would be required. By the other two cases (*one who betrothed a woman by a loan or with a condition that was not fulfilled*), people make a mistake (*and the man might assume that a kiddushin can be valid even through a loan, or even if the conditions weren't met; therefore, the cohabitation might not have been with the proper intent for kiddushin*).

Rav Kahana said in the name of Ulla: If a man betrothed a woman on a certain condition and then he cohabited with her (*and the conditions were not met*), she requires a *get* from him. There was once such an incident, and the Rabbis did not have the strength to discharge her without a *get*.

The *Gemora* notes: This ruling excludes the opinion of the following *Tanna*: Rav Yehudah quoted Shmuel as saying in the name of Rabbi Yishmael that when the verse states (*regarding a married woman who consents to having an affair*) "*and she was not forced*," it is saying that she is therefore forbidden to her husband. This implies that if she was violated, she is permitted to her (*Yisrael*) husband. Rabbi Yishmael derives from the word "and she" that there is a case where a different woman was not forced, and is still permitted to her husband. What is this case? It must be where her *kiddushin* was mistaken (*such as our case; a man betrothed a woman on a certain condition and then he cohabited with her and the conditions were not met; if she would subsequently cohabit with another man, she would still be permitted to return to the first man because her first marriage was not valid*) and even if her son is riding on her shoulder, she can pick herself up and walk away from the marriage. (74a2 – 74b1)

### ***Distinction between a Chacham and a Doctor***

The *Gemora* cites a *Baraisa*: If a man betrothed a woman on the condition that she was not under any vows and she subsequently went to a Chacham (Sage) who released her from the vow, she is betrothed. If however, he betrothed her on the condition that she did not have any defects and she subsequently went to a doctor who cured her from these defects, she is nevertheless, not betrothed.

The *Gemora* asks: What is the difference between a Chacham and a doctor?

The *Gemora* answers: The Chacham annuls the vow retroactively (*and it is regarded as if she never pronounced the vow*), whereas the doctor only cures the defects from that moment onward.

The *Gemora* asks from a different *Baraisa* that states the following: If a man betrothed a woman on the condition that she was not under any vows and she subsequently went to a Chacham who released her from the vow, or if he

betrothed her on the condition that she did not have any defects and she subsequently went to a doctor who cured her from these defects, she is nevertheless, not betrothed. *(This contradicts the previous Baraisa regarding the Chacham releasing her from her vow.)*

Rabbah answers: the first *Baraisa* is following the opinion of Rabbi Meir and the second *Baraisa* follows the opinion of Rabbi Elozar. Rabbah explains: Rabbi Meir holds that a man does not mind his wife's being exposed to a court of law *(by applying in person to the Chacham for the annulment of her vow; it is assumed, therefore, that a man has no objection to betrothing a woman who is under a vow, since she may subsequently apply to a Chacham for a disallowance)*. Rabbi Elozar maintains that no man wants his wife to be exposed to a court of law *(consequently, if he had known that she was under a vow, he would not have betrothed her; therefore, her betrothal is invalid)*.

The *Gemora* asks: What is the source for these opinions? The *Gemora* answers: We learned in a *Mishnah* (Gittin 45b): If one divorces his wife because of a vow, he may not take her back. If he divorced her because of a bad name *(it was rumored that she committed adultery)*, he may not take her back. *(The reason for this halachah is as follows: According to one opinion, it is possible that after the woman had obtained from a Chacham the disallowance of her vow and had married another man, her first husband might regret his action in divorcing her and he might claim that he would not have divorced her had he known that her vow could be disallowed. Consequently, this might impair the validity of her second marriage. By the enactment that "he may not remarry her," a husband is naturally induced to institute all the necessary enquiries and to consider very carefully his course before he decides upon divorce, and should he nevertheless divorce her and then claim that he was unaware that her vow could be disallowed, his plea might well be disregarded. According to another opinion, the prohibition to marry a woman in the circumstances mentioned is a penalty, and a warning to women to abstain from making vows.)* Rabbi Yehudah says: If the vow was known to many, he may

not take her back, but for one that was not known publicly, he may take her back. Rabbi Meir says: If it is a vow which requires examination by a Chacham *(and the husband cannot annul it by himself)*, he may not take her back *(Rabbi Meir maintains that a husband does not mind his wife's being exposed to a court of law and therefore forbids remarriage on account of the first reason mentioned above, since the first husband might claim that if he had known that the vow could be disallowed by a Chacham, he would not have consented to give a divorce)*, but for one which does not require examination by a Chacham *(the husband can annul it himself)*, he may take her back *(because in this case, the husband cannot advance the claim that the divorce was due to a misunderstanding)*. Rabbi Elozar said: They prohibited him to remarry in the case where the vow required examination by a Chacham to annul it only on account of the case where the vow did not require examination by a Chacham to annul it *(since in the latter case, the husband might claim that he was not aware that he had the right to disallow the vow; in the former case, however, no such claim can be advanced because no man would consent that his wife should be exposed to a court of law)*.

The *Gemora* cites a Scriptural source for Rabbi Yehudah's opinion. It is written: *And the Israelites did not slay them because the leaders of the congregation had sworn to them.*

The *Gemora* asks: How many people is considered public *(that a vow pronounced in public may not be annulled)*? Rav Nachman bar Yitzchak said: Three people. "Days" denotes two, and "many" denotes three. Rav Yitzchak said: Ten people. "congregation" is written regarding them. (74b1 – 75a1)

## INSIGHTS TO THE DAF

### **Moshe as a King**

The *Gemora* had stated: All conditions are learned out from the stipulation that Moshe made with the tribes of Gad and Reuven. *(For any condition to be valid, it must be similar to*

*that condition.*) A condition that may be executed by an agent, as Moshe did there (*Moshe instructed Yehoshua to act, so to speak, as his agent to give the east bank of the Jordan to them*), is a valid condition. However, any stipulation that cannot be executed by an agent is not regarded as a valid condition. (*Chalitzah cannot be accomplished through an agent and therefore, a stipulation cannot be attached to it.*)

The Pnei Yehoshua asks: If Moshe would be giving the tribes of Gad and Reuven something that belonged to him, and he would instruct Yehoshua to act on his behalf, Yehoshua would be regarded as an agent. However, Moshe was only distributing to them land that was an inheritance to them; why should Yehoshua be considered an agent? He answers that the land of Sichon and Og was not included in *Klal Yisroel's* inheritance. Their land belonged to Moshe since it was captured by Moshe and he had the status of a king. As a king, he was allowed to take possession of this land. Moshe, out of his good-heartedness decided to give away this land to the tribes of Gad and Reuven. It emerges that the instructions to Yehoshua rendered him as an agent of Moshe.

Incidentally, I noticed an interesting Makneh in his explanation of a *Gemora* in *Kiddushin* (32b). The *Gemora* relates that Rabban Gamliel was serving his guests by the wedding feast for his son. The *Gemora* explains that a *Nasi* is permitted to renounce the honor that should be given to him. The Makneh asks from the Medrash in Parshas Yisro and the other guests at the feast. Why was it permissible for Moshe, who had the status of a king, to forego the honor that one is required to give to a king? The *halachah* is that a king is not allowed to waive this honor! He answers by citing the source for this *halachah*. The *Gemora* (Kesuvos 17a) states that it is written [Devarim 17:15]: Surely you shall appoint a king over you. This (*the double expression of som tasim*) means that his awe shall be over you at all times. The Makneh explains that at the moment a king chooses to waive his honor, it is tantamount to resigning from royalty

and this is not allowed, for we are commanded to enthrone a king over us continually. This is only applicable after the Jewish people entered *Eretz Yisroel* and were commanded to enthrone a king; however, in the Desert, although Moshe was regarded as a king, he was permitted to waive his honor and serve his guests.

## DAILY MASHAL

### True Healing

The *Gemora* cites a *Baraisa*: If a man betrothed a woman on the condition that she was not under any vows and she subsequently went to a Chacham (Sage) who released her from the vow, she is betrothed. If however, he betrothed her on the condition that she did not have any defects and she subsequently went to a doctor who cured her from these defects, she is nevertheless, not betrothed. The *Gemora* asks: What is the difference between a Chacham and a doctor? The *Gemora* answers: The Chacham annuls the vow retroactively (*and it is regarded as if she never pronounced the vow*), whereas the doctor only cures the defects from that moment onward.

The Tiferes Shlomo explains this *Gemora* according to 'remez,' based upon the Zohar Chadash, which states: All healings in this world are under the auspices of the Holy One, Blessed be He. Some, He delivered to the hands of the doctors, and some remained in His Hand alone. The healings and the medicine which was given over to human hands – sometimes such a sickness – even after it is healed, may return. Those sicknesses, however, which were healed by Hashem Himself, cannot return – ever! This is how the *Gemora* can be understood: If someone went to a doctor who cured him from certain defects, there is no kiddushin, for we are still not secure that the person is healthy, for the sickness may return; however, if someone went to a Sage and was healed by Heaven, this is a complete healing, and the kiddushin is therefore effective, for the sickness will never return.