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Kesuvos Daf 81

Produced by Rabbi Avrohom Adler, Kollel Boker Beachwood

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The Obligation to Bury a Woman Awaiting Yibum

The *Gemora* inquires: Who is obligated to pay for the burial if a woman awaiting *yibum* dies? Is it the responsibility of the husband’s inheritors (namely, the *yavam*) because they inherit her *kesuvah*? Or, is it the responsibility of the father’s inheritors because they inherit her property that enters and leaves with her (*the melog properties*)?

Rav Amram said: Let me bring a proof from the following *Baraisa*: If a woman awaiting *yibum* dies, her inheritors, the inheritors of her *kesuvah* are obligated to bury her (*it is evident that the responsibility rests on the yavam*).

Abaye said: This ruling can be supported from the following *Mishna*: A widow is supported from the property inherited by the orphans and they are entitled to her earnings. They are not obligated in her burial. Her inheritors, the inheritors of her *kesuvah* are obligated to bury her.

Who is a widow that has two sets of inheritors? It must be a woman awaiting *yibum* (*and it is evident that the responsibility rests on the yavam*).

Rava asks: Let the *yavam* say, “I am inheriting my brother (*it was only his brother’s responsibility to bury his wife in return for her kesuvah which he inherits, but not the yavam’s responsibility, since he does not inherit from the widow but from his brother*), I have no responsibility to bury his wife.”?

Abaya responds: It is because we come at him from two sides: If he inherits the brother, he should be obligated to bury his wife; and if he wishes not to be responsible to bury his brother’s wife, then, he should pay for her *kesuvah* (*since after all, the burial is in return for the kesuvah*).

Rava counters: The following is what I meant to ask: Let the *yavam* say, “I am inheriting my brother, I have no responsibility to bury his wife.” And if you will say that this is not a valid claim, for then, he would be obligated to pay for her *kesuvah*, I could answer that a *kesuvah* is not meant to be payable during the husband’s lifetime (*and since he was intending to perform yibum, he stands in the place of his brother; it is therefore regarded as if she died during her husband’s lifetime, where there would be no obligation for the husband to pay her kesuvah*).

Abaye replies: Who is the *Tanna* that holds that we expound the language written in the *kesuvah* (*the exposition being: Since the kesuvah contains the following statement: “When you will be married to another man, you will receive what is prescribed for you,” it may be inferred that, except in the case of divorce, the kesuvah is not payable during the lifetime of the husband, when his wife cannot be married to another man*)? It is the opinion of Beis Shammai (*in a Mishnah in Yevamos, where it deals with a woman who was permitted to be married on the basis of her statement that her husband had died, and Beis Shammai said: She may marry and she takes her kesuvah. Beis Hillel said: She may marry but she does not take her kesuvah; it emerges that Beis Shammai expounds the language of the kesuvah*). And we have heard that

Beis Shammai holds that a contract which awaits collection is regarded as if it has been collected already (so, also regarding the amount of the *kesuvah* which is deemed to be in the virtual possession of the widow; the *yavam* is consequently inheriting it not from his brother but from the widow, in return for which he must incur the obligation of burying her).

The *Gemora* proves that Beis Shammai holds that a contract which awaits collection is regarded as if it has been collected already, for we have learned in the following *Mishnah*: If their husbands died before they drank, Beis Shammai rule that they are to receive their *kesuvah* and that they need not drink, and Beis Hillel rule that they either drink or they do not receive their *kesuvah*. [Now how could it be said,] ‘They either drink’, when the Merciful One said: Then the man shall bring his wife to the Kohen, and he is not there? [The meaning must] consequently be: As they do not drink they are not to receive their *kesuvah*.

Again ‘Beis Shammai rule that they are to receive their *kesuvah* and that they need not drink’, but why [should they receive their *kesuvah*]? Isn’t their claim of a doubtful nature, it being uncertain whether she had committed adultery or not; then how could an uncertainty override a certainty? Beis Shammai [must consequently] hold the view that ‘a note of indebtedness that is due for payment is regarded as repaid’. But is it not required [that the stipulation], ‘When you will be married to another man you will receive what is prescribed for you’ [be complied with], which is not the case here? — Rav Ashi replied: A *yavam* is also regarded as ‘another man’. (80b4 – 81a3)

Yavam Selling Property

Rava sent the following question to Abaye in the hands of Rav Shemayah bar Zeira: Is it indeed true that the *kesuvah* of a *yevamah* was meant to be collected while the *yavam* is alive? But didn’t we learn in the following *Baraisa*: Rabbi Abba said: I asked Sumchus: If a *yavam* (after

performing *yibum*) wishes to sell some of his brother’s properties (something that he is not allowed to do), what should he do? Sumchus responded: If he is a *Kohen* (and he cannot marry his divorcee), he should prepare for her a feast (with some wine) and persuade her to allow him to sell the property (which exceeds the amount of her *kesuvah*). If he is a *Yisroel*, he should divorce her and then, remarry her (he can either sell the properties before the second marriage or afterwards).

Rava concludes his question: If the *kesuvah* of a *yevamah* was meant to be collected while the *yavam* is alive, let the *yavam* designate land for her which equals the amount of the *kesuvah*, and then, he should be permitted to sell the remaining property?

Abaye said to Rava: And according to you that the *kesuvah* of a *yevamah* was not meant to be collected while the *yavam* is alive, why don’t you ask from our *Mishnah* which states that the *yavam* should not say to her, “Your *kesuvah* is lying on the table (designating some of his property for the *kesuvah*),” but rather, all of his properties are indebted to her *kesuvah*. (The fact that he cannot do this should be a proof to Rava.)

Rava responds: The *Mishnah* is not issuing a halachic ruling; rather, it is offering good advice to the *yavam*. He should not designate money for her *kesuvah* (for if the money would get lost, he would be obligated to write for her a new *kesuvah*).

Rava proves this from the latter part of the *Mishnah* which states the same thing regarding an ordinary man, and there, he certainly is permitted to sell some of his own property; it is evident that the *Mishnah* is only offering good advice to the husband.

Abaye answers Rava’s question: Rabbi Abba ruled that one should not designate land for her which equals the amount of the *kesuvah* (and then, he would be permitted to sell the remaining property) because this would

promote hatred between them (*for she would think that he is intending to divorce her; it is therefore preferable for him to divorce her and remarry her, for then, she will realize that he divorced her only as a means to sell the property*). (81a3 – 81b1)

Ruling on an Incident

The *Gemora* relates the following incident: There was a *yevamah* who fell to a *yavam* in Pumbedisa. His (*younger*) brother wanted to disqualify her for *yibum* by giving her a letter of divorce. The elder brother said to him, “What is it that you have in your mind? Are you troubled because of the property that I am destined to inherit, I will share the property with you.”

Rav Yosef, in considering this case said: Since the Rabbis have established that a *yavam* may not sell properties that belonged to the deceased brother; his sale is invalid even if he had already sold it (*and therefore the agreement between the two brothers is not valid*). For it was taught in the following *Baraisa*: If a man died and left a widow who was awaiting *yibum* and he also left property valued at a hundred *maneh*, the *yavam* may not sell the property although the widow's *kesuvah* amounts only to one *maneh*, because all of his property is pledged to her *kesuvah*.

Abaye said to him: Is it true that wherever the Rabbis ruled that one must not sell, the sale is invalid, even after it had taken place? Did we not, in fact, learn in a Mishnah: (*If the properties fell to her after she became an arusah and she is still an arusah*), Beis Shammai said: She may sell them, but Beis Hillel said: She may not sell them. They both agree that if she sold them or if she gave them away, it is valid.?

The case was sent to Rabbi Chanina bar Papi who sent the same reply as that of Rav Yosef. On this Abaye remarked: Has Rabbi Chanina bar Papi hung jewels upon it? (*He has*

not! His ruling is no more supported by proof or reason than that of Rav Yosef, and may he equally disregarded.)

It was then sent to Rav Minyumi the son of Rav Nachumi who sent the same reply as Abaye, but he added: “Should Rav Yosef offer a new reason, report it to me.”

Rav Yosef thereupon went out, investigated, and discovered that it was taught in the following *Baraisa*: If a man who had a monetary claim against his brother died, and left a widow who was awaiting *yibum* (*to the borrower*), the borrower is not entitled to claim, “Since I am the inheritor, I have acquired the amount of the debt,” but it must be taken from the *yavam* and spent on the purchase of land and he is only entitled to its produce (*the debt in this case is similar to a sale ex post facto, and nevertheless it is invalid; which proves the correctness of Rav Yosef's ruling*).

Abaye asked: But perhaps they are just advising him in his own interests (*since land is more secure than money*)?

Rav Yosef replied: The *Tanna* stated that it is taken from the *yavam* and you say that it is merely good advice!

The case was again sent to Rav Minyumi the son of Rav Nachumi who said to them: So said Rav Yosef bar Minyumi in the name of Rav Nachman: This *Baraisa* is not an authentic teaching.

The *Gemora* asks: What is the reason (*that he dismissed this Baraisa as a mistake*)? If you will suggest that it is because the loan is a movable thing and movables are not pledged to a *kesuvah*, is it not possible that the statement represents the view of Rabbi Meir who maintains that movables are pledged to a *kesuvah*. And if you will suggest that it is because he could say to her, “You are not the party I have to deal with (*since he didn't borrow from her; it was from the brother*), is it not possible that the statement represents the view of Rabbi Nosson, since it was taught in a *Baraisa*: Rabbi Nosson said: How do we know that if one has a claim of a *maneh* against his fellow

and that fellow against another fellow, we will take out a *maneh* from this one (*the debtor's debtor*) and give it to that one (*the original creditor*)? It is written: *And he shall give it to the one to whom he is guilty.*

Rather, the *Gemora* concludes, this is the reason: We never find that a Tanna will impose two stringencies in the matter of a *kesuvah*. He might agree either with Rabbi Meir or with Rabbi Nosson (*but not with both of them*).

Rava remarked: If so, I can well understand what Abaye meant when I heard him say, "This *Baraisa* is not an authentic teaching" and until now, I did not understand why he said so. (81b1 – 82a1)

DAILY MASHAL

A Childless Couple Divorcing and Remarrying

A couple who did not merit having children came to Rav Yitzchak Zilberstein with the following inquiry: Should they get divorced and then remarried, for they had heard that this is a *segulah* for having children? The woman, however, was refusing because getting divorced was degrading to her. What should they do?

He cited proof from our *Gemora* that a divorce, even just for a few moments is degrading and therefore, the wife has grounds to refuse the divorce.

The *Gemora* states: Rava sent the following question to Abaye in the hands of Rav Shemayah bar Zeira: Is it indeed true that the *kesuvah* of a *yevamah* was meant to be collected while the *yavam* is alive? But didn't we learn in the following *Baraisa*: Rabbi Abba said: I asked Sumchus: If a *yavam* (*after performing yibum*) wishes to sell some of his brother's properties (*something that he is not allowed to do*), what should he do?

Sumchus responded: If he is a *Kohen* (*and he cannot marry his divorcee*), he should prepare for her a feast (*with some wine*) and persuade her to allow him to sell

the property (*which exceeds the amount of her kesuvah*). If he is a *Yisroel*, he should divorce her and then, remarry her (*he can either sell the properties before the second marriage or afterwards*).

Rava concludes his question: If the *kesuvah* of a *yevamah* was meant to be collected while the *yavam* is alive, let the *yavam* designate land for her which equals the amount of the *kesuvah*, and then, he should be permitted to sell the remaining property? This, explains Rashi is a much more preferable option, for getting divorced is degrading!

The Steipler Gaon, when asked the same question, said that a childless couple may try to divorce and remarry (*and the husband need not be concerned that after the divorce, the wife will refuse to remarry*); however, he personally never heard that this is a valid *segulah* and he has no opinion regarding its veracity.