

14 Adar Sheini 5782  
March 17, 2022



Yevamos Daf 10

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### 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 Adda Karchina said in front of Rav Kahana, in the name of Rava: Rebbe in fact agrees with Rabbi Chiya’s rules, but this is what he answered Levi: Regarding the case where one’s mother was violated by his father will only be in accordance with one of Rabbi Chiya’s rules, but not both.

The Gemora explains: If Yaakov (the father) violated two sisters and had two sons; his two other sons married the two women who were violated by the father, and subsequently, they died childless and the two sisters fall for *yibum* to their sons – the statement of ‘each one of the women is a sister to a *yevamah*’ is accurate, but we cannot say that ‘one who is forbidden to one brother will be permitted to the other brother’ (because they are both prohibited to each of the brothers; one woman is the mother of the brother and the other woman is his aunt).

If the father violated two women who are unrelated to each other, we can say that ‘one who is forbidden to one brother will be permitted to the other brother,’ but we cannot say that ‘they are sisters of a *yevamah*.’ (10a1 – 10a2)

Rav Ashi offers an alternative answer: In truth, Rebbe does not hold of Rabbi Chiya’s rules, and he maintains that the Mishnah does mention cases which are disputed. And what did Rebbe mean when he said, “It appears to me as if you do not have brains in your head”? This is what he was saying: Why didn’t you infer from the exact wording of the Mishnah that it reflects the opinion of Rabbi Yehudah, who maintains that a man is forbidden from marrying a woman who has been violated by his father; for the Mishnah stated: There are six *arayos* where a greater stringency applies than to these (*the fifteen arayos mentioned in the first Mishnah*), because they are married to others (*these arayos cannot be*

*married to the brother either*), their co-wives are permitted. The Mishnah lists them: his mother, and his father’s wife, and his father’s sister, etc. Now, what is the precise case of the Mishnah when it mentions ‘his mother’? It cannot be referring to a case where she (the mother) was married to his father, for that is the same case as ‘his father’s wife.’ Rather, it must be referring to the case of a woman who has been violated by his father, and the Mishnah had taught that she does not exempt her co-wife, for they are married to others. The Gemora infers that they can be married to others, but they are forbidden to the brothers. Who is the Tanna that maintains that this logic (that the brothers are prohibited from the woman violated by their father, even though she is not their mother)? This is the opinion of Rabbi Yehudah, who forbids the woman violated by one’s father. Hence, this case (where one’s mother, a woman violated by his father) is not possible to include in the Mishnah’s listing (of the fifteen women who exempt their co-wives from *yibum* and *chalitzah*, for she cannot be married to any of the brothers, and there will not be a case of a co-wife).

Ravina asked Rav Ashi: Perhaps the Mishnah is referring to a case where the brother transgressed and married the woman who was violated by his father; he then died childless. His widow is then falling for *yibum* to her son. Why didn’t the Mishnah include this case?

Rav Ashi responded: The Mishnah does not want to discuss a case which can only occur “if” there is an illegal marriage.

Rav Ashi said to Rav Kahana: The Mishnah can state a case even without the brother marrying his wife illegally. The case is: Yaakov violated his daughter-in-law, the wife of Reuven and had a son. Reuven dies childless and his wife falls for



*yibum* to Reuven's brothers; they cannot perform a *yibum* with her because she is their father's violated woman. And since she is forbidden to him, her co-wife will be forbidden as well!?

Rav Kahana replied: The Mishnah does not want to deal with cases that involve a prohibition.

The Gemora notes: Although Rebbe rebuked Levi's question, Levi nevertheless included this case in his collection of braisos, for Levi taught: One's mother sometimes exempts her co-wife and sometimes she does not exempt her. If his mother, for instance, was lawfully married to his father, and then she was married to his paternal brother who subsequently died, such a mother does not exempt her co-wife (for since she was forbidden to him under the penalty of *kares*, the marriage is deemed invalid and she does not fall to *yibum* at all). If his mother, however, was a woman that had been violated by his father and was then married to his paternal brother who subsequently died, such a mother does exempt her co-wife. And though the Sages taught in our Mishnah 'fifteen,' we must add a case like this as a sixteenth. (10a2 – 10b1)

Rish Lakish asked Rabbi Yochanan: According to Levi, who includes in the Mishnah cases where the brother had married his wife illegally, let the Mishnah teach the following case: A man performed a *chalitzah* with his *yevamah* and then married her (*this is prohibited*) and then died childless. The *yevamah* will be forbidden to the brothers on account of her being the original brother's wife. She is an *ervah*, subject to the penalty of *kares* and shall thus exempt her co-wife, as well.

Rabbi Yochanan answered: This case is not mentioned because this *yevamah* would not be included in the case of a co-wife's co-wife (*since she is forbidden to each of the brothers*).

The Gemora asks: Why didn't Rabbi Yochanan answer Rish Lakish the following: The *yevamah* is only forbidden to the

brothers by a mere negative commandment and thus would be eligible for *chalitzah* and *yibum*?

The Gemora answers: He was answering according to Rish Lakish's own opinion, and this is what he was saying to him: According to me, it would be a case of someone forbidden to the brothers by a mere negative commandment and thus would be eligible for *chalitzah* and *yibum*, but according to you, who maintains that she is forbidden under penalty of *kares*, it (the reason the Mishnah doesn't mention the case) is because this *yevamah* would not be included in the case of a co-wife's co-wife (*since she is forbidden to each of the brothers*). (10b1 – 10b2)

The Gemora presents a dispute between Rabbi Yochanan and Rish Lakish. It was stated: A man performed a *chalitzah* with his *yevamah* and then married her; Rish Lakish said that he is not liable for *kares* for marrying the *chalutzah* (*the one with whom the chalitzah was performed*), but the brothers will be liable to *kares* for taking her. He (*the one who performed the chalitzah*) and his brothers will be liable to *kares* for taking the co-wife. Rabbi Yochanan says: Both he and the brothers will not be liable to *kares* for taking the *chalutzah* or her co-wife.

What is the reason of Rish Lakish? Scripture stated (regarding someone who performs *chalitzah*): *That does not build*; since he has not built, he must never again build. [This is a mere negative prohibition, but she is not forbidden to him under the penalty of *kares*.] He himself is thus placed under the prohibition of 'building no more,' but his brothers remain in the same position in which they were before (and just as before the *chalitzah*, she was forbidden to them under the penalty of *kares*, on account of being his brother's wife, that prohibition remains even after the *chalitzah*). Furthermore, the prohibition to build no more applies only to herself, her co-wife, however, remains under the same prohibition as before.

And Rabbi Yochanan? Is it inconceivable that at first *chalitzah* should be allowed to be performed by any one of

the brothers and with either of the widows of the deceased brother, and that now, he (the one who performed chalitzah) should be involved in kares (to the other widow, and his brothers should be subject to kares because they didn't perform the chalitzah)!? Rather, he (the one who performed chalitzah) merely acts as agent for the brothers, and she (the widow who submitted to chalitzah) acts as agent for her co-wife (and both women are forbidden to all the brothers on account of a mere negative prohibition).

Rabbi Yochanan pointed out to Rish Lakish the following objection: The Baraisa states: If a yavam performed chalitzah to his yevamah, and later betrothed her and died, she requires chalitzah from the surviving brothers. Now, according to me who maintains that the surviving brothers are subject to the penalty of a mere negative prohibition, one can well understand why she requires chalitzah from the other brothers. According to you, however, why should she require chalitzah?

Rish Lakish responded: Explain then, on the lines of your reasoning, the final clause: If one of the brothers arose and betrothed her, she does not require anything (and she may marry another man without even getting a bill of divorce)! Now, if she is forbidden by a mere negative prohibition, why does she not require anything (the betrothal should be effective, and a bill of divorce should be required)?

Rav Sheishes replied: The final clause represents the opinion of Rabbi Akiva who holds that a betrothal with those who are subject thereby to the penalty of a negative prohibition is of no validity.

The Gemora asks: Should it not then have been stated: according to the view of Rabbi Akiva, she does not require anything?

The Gemora notes that this indeed is a difficulty. (10b2 – 11a1)

#### INSIGHTS TO THE DAF

#### THE STATUS OF THE WIVES AFTER ONE OF THEM PERFORMS CHALITZAH

**Presented by: Kollel Iyun HaDaf**

**QUESTION:** The Gemora discusses the status of the surviving brothers and the wives (Tzaros) of the deceased brother after Chalitzah is performed by one of the brothers with one of the Tzaros. Reish Lakish maintains that all of the brothers are prohibited to all of the Tzaros with an Isur Kares (the Isur of "Eshes Ach"), with the exception of the brother and the woman who did Chalitzah, who are prohibited to each other only with a Lav (the Isur of "Lo Yivneh"). Rebbi Yochanan maintains that they are all prohibited to each other with only a Lav and not with Kares.

The Gemora explains Rebbi Yochanan's reasoning. It does not make sense that one brother (the one who did Chalitzah) should be prohibited to the woman with only a Lav while the other brothers are prohibited to her with an Isur Kares, since they were all equally entitled to do Chalitzah. Rather, the brother who did Chalitzah acted as a Shali'ach on behalf of all the other brothers, and the woman who did Chalitzah acted as a Shali'ach on behalf of all the Tzaros.

It is clear that Rebbi Yochanan maintains that the Isur Kares of "Eshes Ach" disappears completely in a situation of Yibum, when one brother dies and his wives fall to Yibum (or Chalitzah) to the other brothers. According to Rebbi Yochanan, at exactly what point does the Isur Kares of "Eshes Ach" of all the wives disappear? Is it removed as soon as the brother dies or only when a surviving brother performs Chalitzah? The words of the Gemora provide apparently conflicting implications.

The first part of Rebbi Yochanan's reasoning (that the Isur Kares should be removed from all of the brothers because *initially* any one of them could do Chalitzah or Yibum) implies that even before any brother performs Chalitzah, the Isur Kares is removed. On the other hand, the second part of his reasoning (that the Yavam and Yevamah who perform

Chalitzah (or Yibum) act as Shelichim for the others) implies that it is the act of Chalitzah which removes the Isur Kares, and until that act is done the Isur remains in force.

**ANSWERS:**

(a) **TOSFOS** (10b, DH Ihu) implies that the prohibition of "Eshes Ach" remains in force until Chalitzah is performed, at which time the act of Chalitzah removes the prohibition. Rabbi Yochanan -- who says that when the wife falls to Yibum any brother may perform Chalitzah -- does not mean that there is no prohibition of "Eshes Ach," but rather that it is *logical* that the Torah would not give a Mitzvah to the brothers from which they could excuse themselves and pass on to another brother. Rather, the brothers never actually remove themselves from the obligation. Whichever brother performs Chalitzah (or Yibum) does so on behalf of all of the other brothers.

This also seems to be the opinion of **RASHI** (52a, DH Nasan), who calls the Yevamah an "Eshes Ach" even during the period of Zikah.

Support for this approach may be adduced from the opinion of Aba Shaul (39b). Aba Shaul disagrees with the Rabanan and maintains that performing Chalitzah is preferable over performing Yibum, because one who performs Yibum with impure intentions "is considered as though he lives with an Ervah, and the child is virtually a Mamzer." If the prohibition of "Eshes Ach" is removed at the time the woman falls to Yibum and before Yibum is done, there should be no prohibition of Ervah whatsoever and no reason to say that the child is close to being a Mamzer. (See also Insights to Yevamos 7:1:b.)

(b) However, the **RASHBA** (41a, end of DH Shomeres Yavam) writes that Rabbi Yochanan's statement, "If this [brother] wants to do Chalitzah, then he may do it, and if this one wants to do Chalitzah, then he may do it," implies that the prohibition of "Eshes Ach" actually falls away as soon as the brothers become permitted to perform Yibum.

According to the Rashba, why does Rabbi Yochanan add that the brother acts as a Shali'ach on behalf of the other brothers? Even if he does not perform Chalitzah or Yibum on their behalf, the prohibition of "Eshes Ach" has already been removed from them!

Moreover, how does the Rashba understand the opinion of Reish Lakish who says that all of the other brothers are prohibited to the woman with an Isur Kares when one brother performs Yibum with her? The Rashba cannot explain that the Isur Kares falls away and then returns to the other brothers when one brother performs Yibum, because the Rashba himself asserts that once the prohibition of "Eshes Ach" is removed it cannot return.

The Acharonim offer two approaches to answer these questions. The simple approach is that the reason why Rabbi Yochanan says that one brother acts as a Shali'ach for the others is *not* to explain why the prohibition of "Eshes Ach" is removed (because it is not removed when the brother performs Yibum, but earlier, at the time the woman falls to Yibum). Rather, when Rabbi Yochanan says that one brother acts as a Shali'ach for the others his intent is to explain why the prohibition of "Lo Yivneh" takes effect for the other brothers. Although the verse implies that the prohibition of "Lo Yivneh" applies only to the brother who performed Chalitzah (and prohibits him from attempting to "rebuild" his brother's family), Rabbi Yochanan says that the prohibition of "Lo Yivneh" applies to all of the brothers (and Tzaros) because of the Shelichus. (This approach is difficult to read into the words of the Gemora.)

How does the Rashba understand the opinion of Reish Lakish? The Rashba apparently understands that Reish Lakish indeed maintains that the prohibition of "Eshes Ach" *could* return even if it was removed at the time the Yevamah fell to Yibum. Therefore, when one brother performs Chalitzah or Yibum, the prohibition returns to the other brothers. (This also appears to be the intention of the Rashba to 44a, DH v'Nachlotz, as printed in the Mosad ha'Rav Kook edition.)

A second approach is suggested by **RAV ELCHANAN WASSERMAN** Hy'd in **KOVETZ HE'OROS** (4:9 and 1:7). From various sources it seems that when one brother performs Yibum or Chalitzah, his act determines *retroactively* that the other brothers were not involved with the Zikah at all (see Insights to Yevamos 18:1, 24:1, and Imrei Moshe, end of #5). Perhaps this is Reish Lakish's intention when he says that the other brothers are prohibited to the Yevamah with an Isur Kares. Once one brother has performed Yibum, it becomes determined retroactively that he was the only one who was permitted to her. To which brother the Heter applies becomes known only after the Heter is actually utilized by one of the brothers.

Rebbi Yochanan also agrees that, in theory, the Zikah would be retroactively removed from any brothers and Tzaros not involved in the Chalitzah. However, he maintains that because of the Shelichus, they are all considered to be involved in the Zikah even retroactively, and thus the prohibition of "Eshes Ach" is removed from all of them. (According to the proposal that Rebbi Yochanan agrees that Zikah can be removed retroactively, it is not clear what he tries to prove from the words, "If this [brother] wants to do Chalitzah, then he may do it." How does Rebbi Yochanan prove from those words that the Zikah applies *retroactively* to all of them? Also, the Rashba clearly states that even when one brother *can no longer* do Yibum, the Yevamah is still permitted to him. This is contrary to the logic which Rav Elchanan applies to Reish Lakish's opinion.)

Another problem with the opinion of the Rashba is why the Gemora needs a verse to prove that the brother may remarry the Yevamah (with whom Yibum has been performed) after he divorced her (8b). His allowance to remarry her should be obvious if the prohibition of "Eshes Ach" can never return to the Yavam. Perhaps the Rashba maintains that it is only *after* the above verse is expounded that the Gemora understands that the prohibition of "Eshes Ach" is removed permanently once the Yevamah falls to Yibum.

Another possible explanation is that the Rashba accedes that after Yibum (or Chalitzah) is performed, the prohibition of "Eshes Ach" can return. Since the prohibition can return, a verse is necessary to teach that the Yavam may remarry the Yevamah (with whom Yibum was performed) after he divorced her. If this indeed is the view of the Rashba, it also explains why Reish Lakish can posit that the brothers become prohibited to the Yevamah with an Isur Kares, and why Rebbi Yochanan needs to introduce the concept of Shelichus.

As for how the Rashba adduces support for his opinion from the Gemora, perhaps he merely intends to show that there is a logical reason to assume that once the prohibition of "Eshes Ach" is removed, it remains permitted as long as possible (until Yibum according to Reish Lakish, and even after Yibum according to Rebbi Yochanan).

How does the Rashba understand Aba Shaul's statement (that it is better to do Chalitzah than Yibum because Yibum with impure intentions "is considered as though he lives with an Ervah")? The Kovetz He'oros explains that either the Rashba discusses only the opinion of the Rabanan, or he understands that Aba Shaul's statement expresses only a Halachah d'Rabanan and not a Halachah d'Oraisa.

In conclusion, there is a basic difference in understanding among the Rishonim with regard to whether the prohibition of "Eshes Ach" is removed at the moment the woman falls to Yibum (**RASHI** and **TOSFOS**) or whether it is removed only at the time of Chalitzah or Yibum (**RASHBA**). (See also Insights to Yevamos 20:2 and 20:3.)

This dispute may have other Halachic implications. For example, the Gemora (54a) states that if the Yavam *unknowingly* has relations -- before he has performed Yibum -- with his deceased brother's wife (for example, he was asleep during the act), no Kinyan takes effect. According to Rashi and Tosfos, she should become disqualified from eating Terumah since she has had a forbidden relationship



with an Ervah. According to the Rashba, the act was not forbidden at all, and thus she should remain permitted to eat Terumah and to marry a Kohen. (See, however, Insights to Yevamos 35:2.)

#### **DAILY MASHAL**

##### **Missed Opportunity**

The Gemora states: Scripture stated (regarding someone who performs chalitzah): *That does not build*; since he has not built, he must never again build. This is, so to speak, 'a missed opportunity.'

The Chofetz Chaim (quoted in Vertlach) cites the following parable: There was a small city that was mostly comprised of poor people, but there was one wealthy person who was in the diamond business. He wouldn't just go to a wholesaler to buy diamonds; he would travel the world for long intervals. He knew how to dig, cut, polish and sell them. He knew it all, everything from A to Z. On one of his overseas trips home, he put up a letter in the local town square advertising for an assistant. He needed help with his business and was looking to hire a competent individual. There were a lot of applicants who wanted the job, the reason being they wanted to be wealthy, like him. However, none of them liked the travelling schedule. Finally, one man who applied for the job was accepted. After a full year on the job watching his superior tend his affairs, this man picked up the business quite quickly. He could do everything just like the boss. He expanded his boss's business, opened new locations and made the owner even more successful than he already was. He not only became wealthy himself, but he had also made a name for himself as a diamond expert. He was no longer an 'assistant,' he was now his own established person bringing in plenty of money as well.

When he returned home to the town where he originated from, the other people saw him and they realized the missed opportunity they had squandered. The owner - they weren't bothered by; he was already established and he was already a powerful and wealthy businessman. But the assistant, he

was one of them! He was just like them and look what he became! He himself was successful, wealthy and well established now. Look at what we could've become!

One can grow up with another and have all the same qualities and attributes, only to later watch him grow and prosper to become something great. Only then will a person realize and see the opportunity that they too had, to become a great person, and yet, they wasted it away.

Friends and classmates that rise through the ranks, be it in Torah or in any other matter, when a person looks back and says, "We were equal; he was no better than me, look what I could have been had I not wasted and passed up the opportunity back then." Only then will a person realize what he could have become.

Let's not wait for that to happen; each of us should open our eyes and look for the opportunities that are knocking at our doors on a daily basis.