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Gittin Daf 28

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Daf Notes is currently being dedicated to the neshamot of

Moshe Raphael ben Yehoshua (Morris Stadtmauer) o”h

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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

Mishnah

If an agent was bringing a *get* and he left the husband old or sick, he may give the *get* under the assumption that the husband is still alive (*for we assume, based upon the principle of chazakah, that nothing changed from the status quo*). [*If we would be certain that the husband died before the agent delivered the get to the wife, he may not give it any longer.*]

If a daughter of a non-Kohen was married to a Kohen, we do not have to be concerned that her husband might have died when he has traveled abroad, and the woman is permitted to eat *terumah*.

If one sent his *chatas* offering to the Beis Hamikdosh from abroad, the Kohanim may bring his *korban* under the assumption that he is still alive. [*If we would be certain that the sender died beforehand, the korban would not be brought on the Mizbe’ach. Instead, we would have to let the animal die.*] (28a1)

One Hundred Years Old

Rava said (he qualifies the ruling of the *Mishnah*): This (that we may assume that the husband is still alive, and the *get* is valid) was taught only if he was an old man but not yet eighty years old, and only if he was sick (but not dying), because the majority of sick people remain alive. However, if the husband was an old man over eighty years old, or if he was a man in a vegetative state, when a

majority of people in the throes of death die, we do not deliver the *get*.

Abaye asks on Rava from the following *Baraisa*: If an agent was bringing a *get* and he left the husband old, even if he is one hundred years old, he may give the *get* under the assumption that the husband is still alive!?

The *Gemora* notes: This *Baraisa* is a refutation of Rava’s opinion.

And if you want to answer, you can say that once a person has reached such an age (*over one hundred*), he is regarded as an exceptional person, and we assume that he is still alive. [*However, one who is merely eighty years old, there is no such assumption.*] (28a1 – 28a2)

Concern for Death

Abaye asked Rabbah a contradiction from our *Mishnah* and a *Baraisa*. Our *Mishnah* stated: If an agent was bringing a *get* and he left the husband old or sick, he may give the *get* under the assumption that the husband is still alive. Yet we learned in the following *Baraisa*: If a Kohen says to his wife: “Here is your *get* on the condition that it should take effect one moment before my death,” she is forbidden from eating *terumah* immediately (*because we are concerned that he will die the next moment!*)? [*Here we see that we are concerned that the husband may die!*]

Rabbah answered: Can the laws of *terumah* and *gittin* be compared? With respect to *terumah*, it is possible (*for the*

wife to avoid eating *terumah* in such a case). However, with respect to *gittin*, there is no possibility (for no agent could deliver a *get* to the wife out of the concern that the husband died; and without the availability of agents, the women will remain *agunos*).

Abaye asks a contradiction with respect to *terumah*. Our *Mishnah* states: If a daughter of a non-Kohen was married to a Kohen, we do not have to be concerned that her husband might die when he has traveled abroad and the woman is permitted to eat *terumah*. Yet we learned in the *Baraisa*: If a Kohen says to his wife: "Here is your *get* on the condition that it should take effect one moment before my death," she is forbidden from eating *terumah* immediately (because we are concerned that he will die the next moment)!?

Rav Adda the son of Rav Yitzchak answers: The case of the *Baraisa* is different, for there, she becomes forbidden to eat *terumah* a moment before his death. [In truth, we are not concerned that he will die. However, since there is certainly a moment during his lifetime that she will be forbidden from eating *terumah*, we are concerned at any time that perhaps now is that moment!]

Rav Pappa questions this: Who says that he will die first? Perhaps she will die first (and the *get* never took effect)?

Rather, Abaye said: This is not difficult, as our *Mishnah* is in accordance with Rabbi Meir who is concerned for the possibility of death. The *Baraisa*, however, is following the opinion of Rabbi Yehudah who maintains that we are not concerned with the possibility of death.

This is proven from the following *Mishnah*: If someone buys wine from amongst the Cutheans¹ (and he does not

¹ converts to Judaism after an outbreak of wild animals in Eretz Yisroel and their conversion was debated as to its validity; they observed some commandments, but not others

have a vessel to separate the tithes required to allow him to drink the wine in an orderly fashion), he should say the following: "The two *lugin* (a measurement) that I will eventually separate (from the one hundred *lugin* in total) are *terumah* (tithe for the kohen), ten are *ma'aser rishon* (tithe for the Levite), nine are for *ma'aser sheini* (to be eaten in Yerushalyim)," and he redeems the *ma'aser sheini* (with coins, for whatever can be remedied, he does), and he can drink right away; these are the words of Rabbi Meir. Rabbi Yehudah, Rabbi Yosi, and Rabbi Shimon forbid this leniency. [The *Gemora* had explained that Rabbi Yehudah was concerned that the wineskin might break (before the *terumah* and *ma'aser* were actually separated) and it will emerge that he was retroactively eating *tevel* (untithed produce). Rabbi Meir was not concerned for this. The same argument would apply to death. Rabbi Yehudah is concerned, whereas Rabbi Meir is not!]

Rava suggests a different answer (a universally accepted opinion): It is true that there is an assumption that a person is still alive (and that is why the agent may deliver the *get*). However, we are concerned that a person will die (since a person will obviously not live forever, and therefore, in the case of the *Baraisa*, she cannot eat *terumah*; for since the *get* will take effect a moment before he dies, every moment in time, we must be concerned that he will die the next moment).

Rav Adda bar Masnah challenges Rava: But the case of the wineskin is similar to a case where he will die (for we are concerned that the flask will break sometime in the near future), and yet, the *Tannaim* argue (so we see that not all *Tannaim* agree to his logic)!?

Rav Yehudah from Diskarta answered: The wineskin is different, for the owner can give it over to a guardian to watch it (*and therefore, we are not concerned that it will break; regarding death, however, no one can guarantee that he will stay alive*).

Rav Mesharshiya asks: But your guarantor needs a guarantor (*who will watch the guardian; nobody can guarantee that he himself will not be negligent!*)?

Rather, Rava answers that everyone agrees that we are not concerned that a person has died, but with respect to the concern that a person might die, the *Tannaim* do dispute this matter. (28a2 – 28b1)

Chatas

The *Mishnah* had stated: If one sent his *chatas* offering to the Beis Hamikdash from abroad, the *Kohanim* may bring his *korban* under the assumption that he is still alive. [*If we would be certain that the sender died beforehand, the korban would not be brought on the Mizbe'ach. Instead, we would have to let the animal die.*]

The *Gemora* asks: Doesn't the *korban* require *semichah* (*the owner places his hands on the head of the animal before it is slaughtered and leans on it with all his weight*)? [*It is taught in a Baraisa that this must be performed by the owner; not his son or his agent!*]

Rav Yosef answers: The *Mishnah* is referring to the *korban* of a woman (*where there is no semichah requirement*).

Rav Pappa answers: It is referring to a *chatas* bird (*where there is no semichah requirement*).

The *Gemora* explains why it was necessary for the *Mishnah* to cite three examples of the same principal (*that we assume that a person is still alive*). For if the *Mishnah* would have stated only the case of get, (that is)

because it is impossible (otherwise, for an agent would never be able to deliver a get), but *terumah*, where it is possible (to avoid this assumption), I would say (that we do) not (rely on this assumption). And if the *Mishnah* would have stated only the case of *terumah*, (that is) because there are times that is impossible (i.e., if the *Kohen's* wife is extremely poor and must eat *terumah*), but by the *chatas* bird, since there is a doubt (if the sender is alive), we should not bring *Chulin* (the animal) into the Courtyard. Therefore, all the cases are necessary (to be stated). (28b1 – 28b2)

Mishnah

Rabbi Elozar ben Parta made three statements before the *Chachamim*, and they confirmed his words: Regarding a city under siege, a ship that is being tossed (*during a storm*) in the sea, and one who is going to a court to be tried (*for a capital offense*), they are presumed to be alive. But a city that has been conquered by besiegers, a ship that has been lost at sea, and one who is going out to be executed, we place on them the stringencies which apply to the living and the stringencies which apply to the dead. The *Mishnah* cites two examples: The daughter of a *Yisroel* married to a *Kohen*, and the daughter of a *Kohen* married to a *Yisroel* (*and the husband was in one of the above situations*) may not eat *terumah*. (28b2)

Different Courts

[*The Mishnah had stated: If one was going out to be executed, we place on him the stringencies which apply to the living and the stringencies which apply to the dead.*]
Rav Yosef qualifies this ruling: This applies only by a Jewish court; however, with regards to a court of idolaters, once he has been sentenced to death, they will surely kill him (*and therefore, we do not place upon him the stringencies which apply to the living*).

Abaye said to him: But the idolater courts accept bribes (*and therefore there is a legitimate chance that they did not execute him!*)?

Rav Yosef answered him: They accept bribes only before the verdict was signed after the verdict, however, they do not take.

The *Gemora* challenges Rav Yosef's ruling from the following *Mishnah*: Whenever two witnesses come forward and say, "We testify against So-and-so (*who fled from the first Beis Din*) that he was sentenced to death in such-and-such a *Beis Din*, and So-and-so and So-and-so were the witnesses against him," such a man is put to death!? [Evidently, even in a Jewish court, once someone was sentenced to death, the verdict is final and we do not assume that a reason was found to acquit him; why then do we rule that we apply the stringencies of the living to him?]

The *Gemora* answers: Perhaps a sentenced person who ran away is different (*for the convict knows that there is no reason for acquittal*).

The *Gemora* challenges Rav Yosef from the following *Baraisa*: If someone heard a report from a Jewish court that So-and-so died or he was executed, they allow his wife to marry again. If, however, the report came from the executioners in an idolatrous court that he died or he was executed, they do not allow his wife to marry again. Now what is meant when the *Baraisa* says 'died' and 'executed'? If I say that these terms are to be taken literally, then why in the case of the idolatrous courts is the wife not allowed to marry again? The *halachah* has been established that the word of an idolater speaking casually (*without ulterior motive*) is to be accepted (*and we should therefore allow the wife to marry again!*)? Rather, we must therefore understand the words 'died' and 'executed' to mean that he was taken out to die or taken out to be executed. And yet it states that if the

report came from a Jewish court, they allow the wife to marry again!? [*This is contrary to Rav Yosef's ruling!?*]

The *Gemora* answers: Really the words mean that he died or he was executed. And as for your question why in such a case the casual word of the idolater is not believed, the answer is that this applies only to a matter in which they themselves do not relate, but where the matter is one in which they do relate, they are prone to indulge in falsehood (*for they want to boast that their court executed someone although he only went to trial*).

The *Gemora* cites a different version of Rav Yosef's qualification of the *Mishnah*. [*The Mishnah had stated: If one was going out to be executed, we place on him the stringencies which apply to the living and the stringencies which apply to the dead.*] Rav Yosef qualifies this ruling: This applies only by an idolatrous court; however, with regards to a Jewish court, once he has been sentenced to death, they will surely kill him (*and therefore, we do not place upon him the stringencies which apply to the living*).

Abaye asked Rav Yosef: But a Jewish court can also find a reason for acquittal!?

Rav Yosef answers: Finding a reason for acquittal usually happens before the court has reached their verdict; afterwards, it is highly unlikely that they will find a reason for acquittal.

The *Gemora* tries to bring a proof to Rav Yosef from the following *Mishnah*: Whenever two witnesses come forward and say, "We testify against So-and-so (*who fled from the first Beis Din*) that he was sentenced to death in such-and-such a *Beis Din*, and So-and-so and So-and-so were the witnesses against him," such a man is put to death! [Evidently, even in a Jewish court, once someone was sentenced to death, the verdict is final and we do not assume that a reason was found to acquit him; this would explain why we do not apply the stringencies of the living



to him!] The *Gemora* rejects this proof: Perhaps a sentenced person who ran away is different (for the convict knows that there is no reason for acquittal).

The *Gemora* tries to support Rav Yosef from the following *Baraisa*: If someone heard a report from a Jewish court that So-and-so died or he was executed, they allow his wife to marry again. If, however, the report came from the executioners in an idolatrous court that he died or he was executed, they do not allow his wife to marry again. Now what is meant when the *Baraisa* says 'died' and 'executed'? If I say that these terms are to be taken literally, then why in the case of the idolatrous courts is the wife not allowed to marry again? The *halachah* has been established that the word of an idolater speaking casually (*without ulterior motive*) is to be accepted (*and we should therefore allow the wife to marry again*)!? Rather, we must therefore understand the words 'died' and 'executed' to mean that he was taken out to die or taken out to be executed. And yet it states that if the report came from a Jewish court, they allow the wife to marry again!? [This would support Rav Yosef's ruling!]

The *Gemora* rejects the proof: Really the words mean that he died or he was executed. And as for your question why in such a case the casual word of the idolater is not believed, the answer is that this applies only to a matter in which they themselves do not relate, but where the matter is one in which they do relate, they are prone to indulge in falsehood (*for they want to boast that their court executed someone although he only went to trial*). (28b2 – 29a1)

INSIGHTS TO THE DAF

Eighty to One Hundred

The *Mishnah* had stated: If an agent was bringing a *get* and he left the husband old or sick, he may give the *get* under the assumption that the husband is still alive (for

we assume, based upon the principle of chazakah, that nothing changed from the status quo). [If we would be certain that the husband died before the agent delivered the *get* to the wife, he may not give it any longer.]

The Chasam Sofer says: By the fact that the *Mishnah* did not say 'an old and sick person,' we may infer that if in fact the husband was old and sick, the agent would not be allowed to deliver the *get*, for then we can no longer assume that he is still alive.

The Chasam Sofer adds that this would apply for anyone over sixty years old.

The Maharshal in Yam shel Shlomo disagrees and says that even if the husband is old and sick, we nevertheless, assume that he is still alive, and we deliver the *get*. He adds that this is only if he is younger than eighty years old. However, if he is over eighty, it would depend upon his strength.

Reb Akiva Eiger in Shulchan Aruch writes that he is uncertain as to what the *halacha* would be if the husband was old and sick.

The Shiltei Giborim writes that when the *Mishnah* rules that if the husband is sick, we still assume that he is alive, that is only if he is the sickness befell him from the hand of Heaven, such as a sickness which was caused by exposure to the cold or the heat. However, if he was knifed in the stomach or his skull was crushed, we do not assume that he is still alive, and we would not deliver the *get*.

The Yam shel Shlomo rules as follows: If the husband is over the age of one hundred, the agent may deliver the *get* even if he is sick as well. However, if he is over eighty years old, but not yet one hundred, the agent should not deliver the *get* if the husband is sick. The distinction between them is as follows: The *Gemora* refers to



someone alive over eighty as a “*ben gevuros*,” a man of strength. This is true if he is healthy. However, if he took ill, then he is not at full strength, and therefore we cannot assume that he is still alive. Contrast this to someone who is over one hundred years old. Someone so old is always frail and weak, and there should not be any assumption that he will remain alive. However, the *Gemora* applies the logic that once he has reached such an age (*over one hundred*), he is regarded as an exceptional person (*due to his longevity*), and we may therefore assume that he is still alive, even if he is sick.

QUESTIONS AND ANSWERS FROM YESTERDAY’S DAF

to refresh your memory

Q: What are two reasons not to return a lost *get*?

A: The husband changed his mind, or the found *get* is not the same *get* which was lost.

Q: What is considered a *siman muvhak* (*precise distinguishing mark*) by a *get*?

A: A hole next to a certain letter.

Q: When would we believe someone to say that he recognizes the *get*?

A: Only if he is a *talmid chocham*.

DAILY MASHAL

How Old is Old?

The Mishnah states that when an agent is sent to deliver a *get*, and the husband who sent him was old or ill, the agent may deliver the *get* on the assumption that the husband is still alive. The *Gemara* qualifies this, limiting its applicability to a husband under 80 years old. Once the husband has reached the age of eighty, the agent may no

longer deliver the *get*. Abaye questions this limitation, citing a *Baraisa* which states that an agent may assume the husband is still alive, even if when he left him, the husband was a hundred years old. The *Gemara* answers that the *Baraisa* is obviously dealing with a man who has distinguished himself with unusually long life. If he has lived so long – over a hundred years, then the normal rules which apply to those over the age of eighty would not apply to him, and we may assume he is still alive.

Rashi explains that at 100, he is clearly different from other men, but when a man is between the ages of 81 until 90, he is deemed “close to death”, and an agent may not deliver his *get*. Thus, according to Rashi, the *Baraisa* was not speaking only of a man who is 100 years old; the *Baraisa* could have also used an example of a man who had passed the age of 90. Apparently, after the age of 90, a man enters a new phase, having passed beyond the critical age when he is close to death.

R’ Meir Shapiro cites the *Chochmas Shlomo* who states that a woman whose husband died after reaching 80 would not thereby qualify to be deemed a *katlonis* (a woman who ‘kills’ her husbands). R’ Shapiro adds however, that if he died after 90, then his death would count.

The verse quotes Eliezer as saying that Sarah gave birth to a son ‘*acharei ziknasah*’ – “after” her old age. The *Ner LeMeah* states that the word ‘*acharei*’ is used (instead of ‘*b’ziknasah*’) because she had passed the age of 90, and was beyond critical old age, as the *Gemara* implies.