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Daf Notes is currently being dedicated to the neshamot of

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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 someone divorces his wife and says, “You are permitted to any man besides So-and-so,” Rabbi Eliezer permits this. The *Chachamim* forbid it. What should the person do? He should take the *Get* back, give to her anew, and merely say, “You are permitted to any man.” If the above condition was written in the *Get* itself, even if it was later erased, the *Get* is invalid. (82a2)

### **“Besides” or “On Condition”**

The *Gemora* asks: When the *Mishnah* states “besides So-and-so,” does it indeed mean “besides So-and-so,” or does it mean “on condition that you do not marry So-and-so?” If it means besides So-and-so, is this because the *Chachamim* only argue on Rabbi Eliezer due to him leaving out a person she can marry in the *Get*? This would mean it is possible that they agree that if he just makes this a condition in the *Get*, the condition is valid; just as any condition is valid. Or does the *Mishnah* mean “on condition,” in which case Rabbi Eliezer probably agrees to the *Chachamim* that if he said “besides So-and-so,” the *Get* is invalid?

Ravina attempts to answer this question from a *Baraisa*. The *Baraisa* states: All houses can become impure from *tzaraas* besides those of idolaters. If the word “*ela*” means besides (*as translated*), this statement is understandable. If “*ela*” here would mean

“on condition,” how could it be that the *Baraisa* would say that all houses of Jews are impure from *tzaraas* “on condition” that the house of idolaters are not? This implies that if the idolater’s houses were impure, the Jews houses would not be impure. This also cannot be (*besides that it is nonsensical*), as we know that houses of idolaters do not become impure from *tzaraas*, as derived from the verse, “I will put the blemish of *tzaraas* in the house in the land of your inheritance.” It must be that “*ela*” means “besides.”

Our *Mishnah* is not like the following *Tanna*. The *Baraisa* states: Rabbi Yosi the son of Rabbi Yehudah says that Rabbi Eliezer and the *Chachamim* agree that if one says, “You are permitted to all men besides So-and-so,” that she is not divorced. Their argument was only in a case where he said, “You are permitted to all men on condition that you do not marry So-and-so.” Rabbi Eliezer permits her to all men besides that man, while the *Chachamim* prohibit her from marrying anyone.

The *Gemora* asks: What is Rabbi Eliezer’s reasoning?

The *Gemora* answers: This is no different from any condition that may be made in a *Get*.

The *Gemora* asks: What is the *Chachamim*’s reason?

The *Gemora* answers: Any other condition doesn't impinge on the freedom of the *Get* (to marry anyone), while this condition does.

The *Gemora* asks: According to our *Mishnah* that they argue in a case of "besides So-and-so," what is Rabbi Eliezer's reason?

Rabbi Yannai said in the name of an elder: The verse states, "And she will go out from his house and go and be to another man." This implies that as long as he permitted her to marry another man, she is considered divorced.

The *Gemora* asks: How do the *Chachamim* respond to this reasoning?

The *Gemora* answers: They understand that "to another man," means she has to be permitted to any man besides him.

Rabbi Yochanan says: Rabbi Eliezer's reasoning is from a different verse, "And a woman who is divorced from her husband they (*Kohanim*) should not take." This implies that as long as she is divorced from her husband, *Kohanim* cannot marry her. This implies that such a *Get* (even excluding her from marrying others) is valid.

The *Gemora* asks: How do the *Chachamim* respond to this proof?

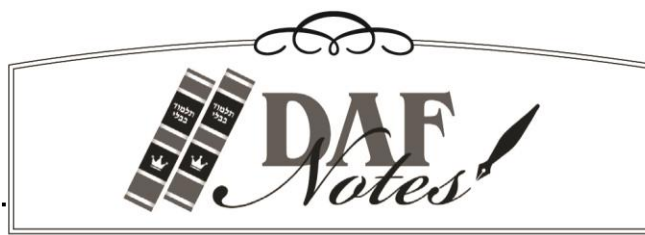
The *Gemora* answers: They hold that the prohibition against *Kohanim* marrying a woman is different (and even though the *Get* was not valid and the husband then died, they would be prohibited from marrying this woman).

Rabbi Abba asked: How does this apply to *kiddushin* (if a person says, "You are betrothed to me, forbidding you to everyone besides So-and-so)? This question can be asked according to both opinions. According to Rabbi Eliezer, it is possible that this law only applies to *gittin* as the aforementioned verses indicate, but not to *kiddushin* where one must make a total *kinyan* (acquiring of the woman). Or perhaps we would say that we compare the laws of *kiddushin* to those of *gittin* as we often do because of the verse, "And she will go out...and she will be (betrothed and married)?"

According to the *Chachamim*, they may say that this is invalid regarding *gittin* because a *Get* must be a "book of cutting off" (where no aspect of marriage, forbidding her to others, may remain). However, regarding *kiddushin* this would possibly be valid, as long as he makes some sort of acquisition. Or do we say that we compare the laws of *kiddushin* to those of *gittin* as we often do because of the verse, "And she will go out...and she will be (betrothed and married)?"

After he asked this question, he answered it. According to both Rabbi Eliezer and the *Chachamim*, we compare the laws of *kiddushin* to those of *gittin* as we often do because of the verse, "And she will go out...and she will be (betrothed and married)."

Abaye said: According to Rabbi Abba's statement above, if Reuven betrothed a woman besides for Shimon (*his brother*), and Shimon then betrothed her besides for Reuven, if they both die, she could have *yibum* done to her by Levi (*their brother*). This would not be considered forbidden as she is like the "wife of two dead people," because only Reuven's *kiddushin* was valid. [This is because Shimon's *kiddushin* was not an act of forbidding her to anyone, and therefore not a valid *kiddushin*, as she was already forbidden to



everyone due to Reuven's *kiddushin*.) However, the law (*being deemed the "wife of two dead people"*) would apply if Shimon betrothed her without saying "besides for Reuven," as his *kiddushin* would then forbid her to Reuven. (82a2 – 82b2)

## INSIGHTS TO THE DAF

### **Concern that She might Marry So-and-so**

Our *Mishnah* is not like the following *Tanna*. The *Baraisa* states: Rabbi Yosi the son of Rabbi Yehudah says that Rabbi Eliezer and the *Chachamim* agree that if one says, "You are permitted to all men besides So-and-so," that she is not divorced. Their argument was only in a case where he said, "You are permitted to all men on condition that you do not marry So-and-so." Rabbi Eliezer permits her to all men besides that man, while the *Chachamim* prohibit her from marrying anyone.

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The *Gemora* answers: Any other condition doesn't impinge on the freedom of the *Get* (*to marry anyone*), while this condition does.

Tosfos writes that even according to Rabbi Eliezer, who holds that she is permitted to marry any man besides So-and-so, she is permitted to marry anyone now even while that man is alive.

Tosfos asks: Why are we not concerned that she will not fulfill the condition (*by marrying that man at a later time*), and consequently, it will emerge that she was never divorced!? This will result in the fact that her second husband violated the prohibition of a married woman!?

Rabbeinu Elchanan answers that we are never concerned that the woman will willingly nullify the condition, thus rendering her a married woman retroactively. It is only in cases where she might be forced to nullify the condition that the concern arises. This is not possibly by marriage, for one cannot marry a woman against her will.

The Chasam Sofer writes that this in fact is the novelty of the *Mishnah* when it says that she is forbidden to that man. Of course she is forbidden to him! That was the husband's condition!?! The *Mishnah* is teaching us that she is permitted to marry any man, even when So-and-so is still alive!

The Rashba rules (*because of this question*) that she cannot get married until So-and-so dies.

## DAILY MASHAL

Divorcee Disqualified from Kehunah

Daf Digest

The Chasam Sofer relates the following incident: There was a certain very wealthy woman who was married to a man who was considered in the category of a person whom the sages can force to divorce. This woman demanded a *get*, and her husband gave her one.

She was not especially committed to Torah observance, so when she found a kohen who seemed suitable and willing to marry her she was very glad. She figured that the prohibition for a divorcée to marry a kohen could somehow be circumvented for a woman as wealthy as herself. To her shock, it turned out that she was wrong. No rabbi would marry the couple. She didn't give up, however. Since money was no object, she managed to have her case reviewed in one government office after another. Always her claim was that it was unfair and that the sages were stringent for their own reasons. Finally, her case was brought to the attention of the highest officials in the land.

The Kaiser and his ministers listened carefully to the kohen eloquently present his case. "It is true that the verse says that a kohen may not take a divorcée but we must consider why this is so. Clearly it is an embarrassment to a priest of G-d to take a woman who has been cast away from another man. In our case, my bride to-be cast off her ex-husband, so this reasoning does not apply. The fact that the Talmud in Gittin 82 and the halachic authorities disagree is a stringency the rabbis dreamed up. Your royal highness and members of this tribunal, I beg you to force the rabbis to marry us."

The Kaiser decided to consult with an irreligious Jewish scholar about the matter. There was just such a philosopher in his court. After being consulted, the Jewish "academic" replied, "I don't think this couple can have it both ways. The verse states that a man has the right to divorce his wife when he doesn't desire her. According to this, a woman can never be divorced unless her husband is no longer interested in her. This woman succeeded in demanding a divorce only because of the rabbi's novel understanding of the verse. It seems to me that if they wish to disagree with

the rabbis in this case, they must also accept the simple meaning of the verse regarding divorce. It would emerge that this woman is still married to her first husband!"