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Kiddushin Daf 45

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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

Kiddushin without the Father’s Consent

It was taught: If he died (*the person who betrothed a minor without her father’s knowledge*) and she (the minor) fell before his brothers for *yibum*¹, Rav Huna said in the name of Rav: She requires *mi’un*² if he did *ma’amar*³, but not because she merely fell to *yibum*. What is the case? If the brother did *ma’amar*, she requires a *get*, *chalitzah*⁴, and *mi’un*. She requires a *get*, as perhaps her father agreed to the *kiddushin* (*ma’amar*) of this second person. She requires *chalitzah*, as perhaps the father agreed to the *kiddushin* of the original “husband.” She requires *mi’un*, as perhaps the father did not agree to either (*according to Rashi – it is the fact that the father did not agree to the kiddushin of the second that warrants the mi’un*), but when people see that a *get* was required, they will think that if this person gives *kiddushin* to her sister, it is invalid. [*It is forbidden to marry the sister of one’s ex-wife if the ex-wife is still alive. In fact, the kiddushin in our case would be valid*

(*at least to a certain extent, for she is only the sister of his chalutzah*⁵.)] If he did not do *ma’amar*, she only requires *chalitzah*.

The *Gemora* asks: What would you say? She should require *mi’un* as well (*as perhaps the father did not agree to either*), for when people see that she submitted to *chalitzah*, they will think that if this person (*the yavam who performed chalitzah*) gives *kiddushin* to her sister, it is invalid. Why would people think so? Everyone knows that the sister of one’s *chalutzah* is prohibited to that person only according to Rabbinic law! [*Therefore, kiddushin would clearly be valid.*] This is as Rish Lakish stated: Rebbe has taught us that the sister of a divorcee is a Torah prohibition, while the sister of a *chalutzah* is only a Rabbinic prohibition.

There were two people that were sitting and drinking wine under willow trees in Bavel. One of them took a glass of wine and gave it to his friend, and said, “Your daughter should become betrothed to my son

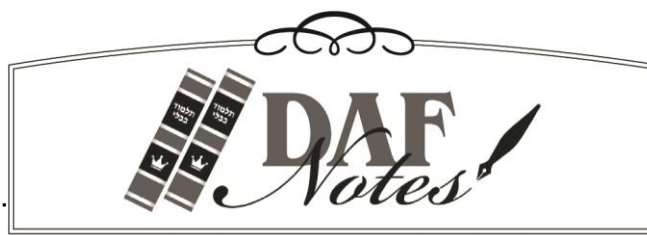
¹ *levirate marriage - the act of the brother-in-law marrying his widowed sister-in-law, when the brother died without children.*

² *A girl whose father had died could be given in marriage while still a minor (under the age of twelve) by her mother or older brother. This marriage is only valid Rabbinically. As long as she has not attained the age of twelve, she may nullify the marriage by refusing to live with her husband. This act of refusal, referred to as *mi’un* nullifies the marriage retroactively.*

³ *when a yavam betroths his yevamah; it is regarded as a Rabbinical kiddushin.*

⁴ *when a man dies childless, his brother has a mitzvah to perform yibum; if he declines, she submits to chalitzah, i.e. she removes her shoe, spits before him and declares that he does not want to marry her.*

⁵ *a woman who submitted to chalitzah*



with this." Ravina says: Even according to the opinion that we suspect that a father agreed, we do not say that perhaps a son agreed. [*Being that the son did not know that his father was going to betroth a woman for him, the kiddushin is invalid, for we assume that the son would be particular as to who he will marry.*]

The *Chachamim* asked Ravina: Perhaps the son had made the father a messenger?

Ravina answered: A son is not so brazen that he would appoint his father a messenger to betroth a woman for him.

The *Gemora* asks: Perhaps the son let the father know how much he liked her and wanted to marry her, and the father went ahead and acted upon this?

Rabbah bar Simi replied: I explicitly heard Ravina state that he does not hold like Rav and Shmuel (*who suspect that the father agreed, and certainly Ravina does not suspect that the son made his father a messenger, or that he had let his father know beforehand that he was interested in marrying her, unless this is clear*).

The *Gemora* cites a related incident: A person betrothed a minor with a bundle of vegetables in the marketplace. Ravina says that even according to those who suspect that the father agreed when he heard about it, they do so only when the *kiddushin* was done in an honorable fashion; not when it was done in a denigrating fashion.

Rav Acha from Difti asked Ravina: What is the denigration here? Is it the bundle of vegetables, or the fact that it was done in the marketplace? The difference would be if the *kiddushin* was done with money in the marketplace, or if it was done with a bundle of vegetables in one's house. What would be the law in these cases?

Ravina answered: All of these cases are denigrating.

There was an incident where a father wanted his daughter to marry one of his relatives, and his wife wanted their daughter to marry one of her relatives. She convinced him to agree that their daughter should marry her relative. While they were eating and drinking in honor of the occasion, his relative went and betrothed the girl in the attic of their house. Abaye says: It is written: *Those left from Israel will not commit a sin, nor will he speak falsely.* [*This means that he clearly did not want to go back on his word.*] Rava says: The assumption is that a person will not bother to prepare a feast (*for his wife's relative*) and then ruin it (*by marrying her off to his relative*). What is the difference between their opinions (*as both hold the kiddushin is invalid*)? The difference is if he himself had not made (*or sponsored*) the meal. [*According to Rava, we should still suspect that the father agrees to this kiddushin.*]

What is the law if her father agreed to her *kiddushin* and then went overseas, and afterwards the husband married her (*nisuin*)? Rav says: She can eat *terumah* (*if her husband is a Kohen*) until her father comes back and protests (*generally, an arusah is Rabbinically forbidden to eat terumah; here, Rav considers her a nesuah*). Rav Assi says: She cannot eat

terumah, as we suspect that her father will come and protest, in which case she would have eaten *terumah* beforehand in sin. An incident like this indeed happened, and Rav was stringent as per the opinion of Rav Assi.

Rav Shmuel bar Rav Yitzchak says: Rav agrees that if she dies, her husband does not inherit her possessions, as the money stays where it is (*by the father*).

What is the law if she had *kiddushin* with her father's knowledge but he did not know about their marriage (*nisuin*) and he is present (*not overseas, and did not comment when he found out about the marriage*)? Rav Huna says: She cannot eat *terumah*. Rav Yirmiyah bar Abba says: She can eat *terumah*. Rav Huna says that even according to Rav (*above*), she cannot eat *terumah*. He stated above that she can eat only when the father went abroad; however, if he is present and does not know about the marriage, it must be that he is keeping quiet because he is upset about it. Rav Yirmiyah bar Abba says that even according to Rav Assi (*above*), she can eat. Rav Assi above said she cannot eat as we suspect that her father will come and protest; however, in this case, where he is present and is quiet, it must be that he agrees.

If the minor accepted *kiddushin* without her father's knowledge and he did not know about their marriage (*nisuin*) and he is present (*not overseas, and did not comment when he found out about the marriage*), Rav Huna says: She can eat *terumah*. Rav Yirmiyah bar Abba says: She cannot eat *terumah*.

Ulla said: That which Rav Huna said is "*like vinegar to the teeth and like smoke to the eyes!*" [*It is illogical!*] If in the case above (*if she had kiddushin with her father's knowledge but he did not know about their marriage and he is present*), where the *kiddushin* was Biblically valid, and yet, Rav Huna ruled that she cannot eat *terumah*; then here, the *halachah* should certainly be that she cannot eat *terumah* (*for even the kiddushin is questionable*)!?

Ulla concludes: It would seem to me that the words of the student (*Rav Yirmiyah*) are correct.

Rava said: Rav Huna's reason is because the father treats her as an orphan in the lifetime of her father (*we cannot assume that he would keep quiet through both the kiddushin and the nisuin*). (45a – 46a)

INSIGHTS TO THE DAF

Everybody Knows

The *Gemora* had stated: Everyone knows that the sister of one's *chalutzah* is only prohibited to that person according to Rabbinic law! Therefore, if the *yavam*, the one who performed *chalitzah*, gives *kiddushin* to her sister, the *kiddushin* would clearly be valid.

Rav Yehudah Assad in teshuvos Yehudah Yaaleh asks the following question: Why do we assume that everyone knows that the *chalutzah's* sister is only a Rabbinical prohibition? Tosfos in Bava Metzia (15b) writes: Shmuel maintains that if someone sells a field during *Yovel*, the money is returned. Shmuel does not say that since everyone knows that a field cannot

be sold during *Yovel*, the money was definitely given as a gift. This is because there is a dispute on this matter, as Rav holds that a field can be sold during *Yovel*. Something that is a topic of dispute is not well-known. If so, perhaps everyone does not know that a *chalutzah's* sister is only a Rabbinical prohibition, for Rabbi Akiva, in fact, holds that she is Biblically forbidden!?

He answers that it is quite possible that Rabbi Akiva holds that the *chalutzah's* sister is Biblically forbidden to the *yavam* only if she was a *nesuah* to her first husband. However, if she was only an *arusah*, like in our case, everyone agrees that she is only Rabbinically forbidden.

Reb Ezriel Hildesheimer answers that Tosfos' logic applied to Shmuel himself, for although the *halachah* is according to Shmuel, Shmuel himself could not say that everyone knows that a field cannot be sold during *Yovel*, because he knew that Rav disagrees with this. However, here, everyone knows that the *halachah* follows Rebbe that the *chalutzah's* sister is only Rabbinically forbidden.

In the gloss to the sefer Yehudah Yaaleh, another distinction between the two cases is pointed out. Firstly, by *Yovel*, we are concerned about one person; namely, the buyer. Perhaps he does not know that a field cannot be sold during *Yovel*. Here, we are worried about the onlookers. We can safely assume that many people will not make a mistake even though there is an argument on the matter.

DAILY MASHAL

The Gemora in Sanhedrin relates: Rabbi Shmuel bar Nachman said in the name of Rabbi Yonasan: The angels of heaven wanted to sing a song of praise when the Egyptians were drowning, and Hashem said to them: My creations are drowning in the sea, and you want to sing songs?

The Be'er Mayim Chaim explains this according to our Gemora: The assumption is that a person will not bother to prepare a feast and then ruin it.