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**Cases that the Mishnah is Including and Excluding**

The *Mishnah* had stated: Whenever the *kiddushin* is valid and there is no sin done, the child follows the male (*and is not a mamzer*).

Rabbi Shimon (*ben Lakish*) asked Rabbi Yochanan: Is this indeed a rule? But behold, if a convert would marry a *mamzeres*, where there is *kiddushin* and there is no sin (*for according to Rabbi Yosi, the congregation of converts are not part of the congregation, and therefore, a mamzer, who cannot marry into the congregation, can marry a convert*), but nevertheless, the child receives the status of the parent with a blemish!? For we learned in a *Baraisa*: If a convert marries a *mamzeres*, the child is a *mamzer*; these are the words of Rabbi Yosi.

Rabbi Yochanan replied: Do you think that the *Mishnah* is following Rabbi Yosi’s opinion (*that a convert is permitted to marry a mamzeres*)? In truth, our *Mishnah* is in accordance with Rabbi Yehudah, who holds that a convert cannot marry a *mamzeres*, and this is a case where the *kiddushin* is valid but there is a sin involved, and the child receives the status of the parent with a blemish (*and the child is a mamzer*).

The *Gemora* asks: If so, why didn’t the *Mishnah* mention this case as an example of the *Mishnah*’s second rule?

The *Gemora* answers: When the *Mishnah* says “whenever,” it is coming to include that case.

Alternatively, we can answer (*to the initial question*) that the *Mishnah* is following Rabbi Yosi’s opinion (*that a convert may marry a mamzeres*), and when the *Mishnah* said “what is the case,” it is coming to exclude this case.

The *Gemora* asks: But does the *Mishnah* list all cases in that category (*where there is kiddushin and no sin that the child follows the male*)? Why there is a case when a *chalal* marries an ordinary Jewish woman, where there is *kiddushin* and no sin, and the child follows the male!? [*Why is that case not mentioned?*]

The *Gemora* answers: This is not difficult, as the *Tanna* of the *Mishnah* holds like the opinion of Rabbi Dostai the son of Yehudah (*who holds that a Jewish woman is a mikvah of purity for a chalal; he holds that the daughter of a chalal is not disqualified from the Kehunah*).

The *Gemora* asks: But there is another case where a *Yisroel* marries a *chalalah*, where there is *kiddushin* and no sin, and the child follows the male (*the daughter will be qualified for Kehunah; why didn’t the Mishnah mention that*)? The *Gemora* answers: When the *Mishnah* says “whenever,” it is coming to include that case.

The *Gemora* asks: Why didn’t the *Mishnah* state this case specifically? The *Gemora* answers: It is because the *Tanna* could not find a short way to include this case with the others. What should he have said? The cases are where the daughter of a *Kohen*, *Levi*, *Yisroel* or *chalalah* were married to a *Kohen*, *Levi*, or *Yisroel*. This cannot be, for a *chalalah* is not permitted to a *Kohen*. [*This is why the chalalah case is included in the Mishnah when it says “whenever.”*]

The *Gemora* asks: But there is the case of Rabbah bar Chanah, for Rabbah bar Chanah said in the name of Rabbi Yochanan: If a second-generation male Egyptian convert marries a first-generation female Egyptian convert,

her son is regarded as a third-generation Egyptian convert. *[We see that the child follows the father and not the mother; why wasn't this case mentioned?]*

The Gemora answers: When the Mishnah says "whenever," it is coming to include that case. And according to Rav Dimi, who holds that the son is regarded as a second-generation Egyptian convert, when the Mishnah said "what is the case," it is coming to exclude this case.

The Gemora asks: But there is the case which Ravin said in the name of Rabbi Yochanan when he came from Eretz Yisroel to Bavel: Concerning other nations, we follow the male; and if they convert, we follow the one who is more tainted. *[The Gemora will explain this to be referring to a case where there is kiddushin and no sin, and the child does not follow the male. This is against the ruling of the Mishnah!]*

The Gemora answers: When the Mishnah said "what is the case," it is coming to exclude this case.

*[The Gemora returns to its original question where we find that if a convert would marry a mamzeres, where there is kiddushin and there is no sin, the child is a mamzer!?* The Gemora's first answer was that Mishnah is in accordance with Rabbi Yehudah, who holds that a convert cannot marry a mamzeres, and this is a case where the kiddushin is valid but there is a sin involved, and the child receives the status of the parent with a blemish and the child is a mamzer. The Gemora's second answer is that the Mishnah is in accordance with Rabbi Yosi and there is no sin, and the Tanna wrote "what is the case," to exclude this case.] The Gemora asks: How can the Mishnah be explained? If you will say (like the first answer) that the Mishnah follows Rabbi Yehudah (that a convert is forbidden to marry a mamzeres, and there is a sin and the child follows the tainted one), then, when the Mishnah in the first ruling states "whenever" (there is kiddushin and no sin), it is coming to include the case where a Yisroel marries a chalalah (where the child follows the male and the daughter will be qualified for

*Kehunah*). And it will also be including the case of Rabbah bar bar Chanah (where a second-generation male Egyptian convert marries a first-generation female Egyptian convert, for there is kiddushin and no sin and the child is regarded as a third-generation Egyptian convert, for the child follows the father). And when the Mishnah says "what is the case," it is coming to exclude the case of Rav Dimi (where a second-generation male Egyptian convert marries a first-generation female Egyptian convert, for there is kiddushin and no sin and the child is regarded as a second-generation Egyptian convert, for the child does not follow the father even though there is no sin). And it is also excluding the case of Ravin (if two converts from other nations marry, the child follows the one who is more tainted even though there was no sin in the marriage). *[The Gemora is saying that we either include Rabbah bar bar Chanah's halachah, or we exclude Rav Dimi's halachah, for it cannot be both, for they are opposite of each other!]* And, when the Mishnah in the second ruling states "whenever" (there is kiddushin and there is a sin), it is coming to include the case where a convert marries a mamzeres (where according to Rabbi Yehudah, there is a sin in the marriage, and we follow the tainted one). However, if you will say (like the second answer) that the Mishnah follows Rabbi Yosi (that a convert is permitted to marry a mamzeres), then, when the the Mishnah in the first ruling states "whenever" (there is kiddushin and no sin), it is coming to include the case where a Yisroel marries a chalalah (where the child follows the male and the daughter will be qualified for Kehunah). And it will also be including the case of Rabbah bar bar Chanah (where a second-generation male Egyptian convert marries a first-generation female Egyptian convert, for there is kiddushin and no sin and the child is regarded as a third-generation Egyptian convert, for the child follows the father). And when the Mishnah says "what is the case," it is coming to exclude the case of Rav Dimi (where a second-generation male Egyptian convert marries a first-generation female Egyptian convert, for there is kiddushin and no sin and the child is regarded as a second-generation Egyptian convert, for the child does not follow the father even though there is no sin, and it is also excluding the case of Ravin where two converts from other

nations marry, the child follows the one who is more tainted even though there was no sin in the marriage). But when the *Mishnah* in the second ruling states “whenever” (*there is kiddushin and there is a sin*), what is it coming to include (*where is there another case that there is kiddushin and there is a sin where the child follows the tainted one, and it is not mentioned in the Mishnah, for according to Rabbi Yosi, there is no sin for a convert to marry a mamzeres*)?

The *Gemora* counters: And according to Rabbi Yehudah, what is the *Mishnah* excluding in the second ruling when it says “what is the case? Rather, we are compelled to say that just as the first ruling states “what is the case” (*to exclude that which we said before*), so too, the second ruling uses the same language. If so, we can say the same thing according to Rabbi Yosi. Since it was necessary for the *Mishnah* in the first ruling to say “whenever” (*to include that which we said before*), so too, the second ruling uses the same language. (66b4 – 67b1)

### **Other Nations**

The *Gemora* stated above: Ravin said in the name of Rabbi Yochanan when he came from *Eretz Yisroel* to Bavel: Concerning other nations, we follow the male; and if they convert, we follow the one who is more tainted.

What does it mean when he said that concerning other nations, we follow the male? His source was the following *Baraisa*: How do we know that if a male from any nation (*other than the seven nations of Canaan, where by the other nations, the prohibition of “you shall not spare the life of any soul” does not apply*) cohabited with a Canaanite woman (*where the prohibition of “you shall not spare the life of any soul” does apply*) and had a child; one is permitted to purchase that child as a slave (*for he follows the father’s nationality and we are not obligated to kill him*)? The *Baraisa* answers: It is written [Vayikra 25:44]: *And also from among the children of the residents who live with you, from among them you may purchase slaves*. One might have thought that even if a Canaanite male cohabited with a woman from any of the other nations and had a child; one would be permitted

to purchase that child as a slave. It is therefore written [ibid.]: *...whom they begot in your land*. The Torah teaches us that one may purchase slaves only from those who were born in your land to Canaanite mothers from non-Canaanite fathers, but not from among those children who were born abroad to non-Canaanite mothers from Canaanite fathers, and who later returned to reside in your land with their fathers. (*Women, generally remain in the lands of their birth, and that is why, when the Torah states “born in your land,” it is referring to the children of Canaanite mothers. These verses establish that in respect to other nations, we follow the father’s status.*)

Ravin said: And if they convert, we follow the one who is more tainted. What is this case? If he is referring to a male Egyptian convert who married a female Ammonite convert (*and we cast the child after the one who is more tainted, namely, the Egyptian, and hence, the child will be ineligible to marry into the congregation regardless of its gender*); I will ask the following: The mother is not regarded as tainted at all, since she is permitted to marry into the congregation.

Rather, he must be referring to a case where a male Ammonite convert married a female Egyptian convert. If the child is a male, we cast him after his Ammonite father (*and he and his sons will be ineligible to marry into the congregation*). If the child is a female, we cast her after her Egyptian mother (*and she would be ineligible to marry into the congregation*). (67b1 – 67b2)

### **Source that Kiddushin does not Take Effect by Forbidden Relations**

The *Mishnah* had stated: And in a case where the woman cannot have *kiddushin* with a specific man, but she could validly be *mekudeshes* to others, the child is a *mamzer*.

The *Gemora* asks: What is the source for this (*that kiddushin is not effective with a woman forbidden to a man by a pain of kares*)?

The *Gemora* answers: Rabbi Chiya bar Abba said in the name of Rabbi Yochanan, and others said that it was in the name of Rabbi Yannai, and Rav Acha the son of Rava said that it was in the name of Rabbi Yosi HaGelili: It is written: *And she leaves his house and goes and becomes a wife to another man*. This teaches us that she can become a wife to another man, but not to her relatives.

Rabbi Abba asks: Perhaps the Torah is excluding only a marriage to the son of her former husband (*for he is the closest from all the relatives*)?

The *Gemora* answers: Regarding a son, there is an explicit verse (that *kiddushin* cannot take effect between a man and his father's wife): A man shall not take his father's wife; why do I need the other verse? Evidently it teaches us that she can become married to strangers but not to relatives.

The *Gemora* asks: Perhaps both verses are necessary for the son, as one verse forbids such a marriage, and the other verse invalidates it?

The *Gemora* answers: It would not be necessary for a verse to teach us that the son should *l'chatchilah* not marry his father's wife, for this would be derived from the prohibition against marrying your wife's sister. If someone's wife's sister, where the punishment is only *kares*, yet there is a prohibition against marrying her; so, it would certainly be prohibited to marry a woman who is prohibited to you by a pain of death by execution!

The *Gemora* asks: Perhaps both verses are necessary, for one verse forbids a marriage with one's wife's sister, and the other verse invalidates it?

The *Gemora* concedes this point and asks: How do we know that the Torah invalidates a *kiddushin* performed with any of the other relatives forbidden by a pain of *kares*?

The *Gemora* answers: It is derived from the prohibition of a wife's sister: Just as a wife's sister is singular, for she is an

*ervah* (to the brother-in-law), and they will receive *kares* (if they intentionally violate this prohibition), and they are liable to bring a *korban chatas* (if they inadvertently violate this prohibition), and *kiddushin* would not be effective with her, so too, in any case where the woman is an *ervah*, and they will receive *kares* (if they intentionally violate this prohibition), and they are liable to bring a *korban chatas* (if they inadvertently violate this prohibition), *kiddushin* will also not be effective with her!

The *Gemora* asks: We can derive from there all forbidden relations, but with respect to another man's wife and a brother's wife, we can refute the comparison as follows: The prohibition against marrying one's wife's sister is not permitted in the case of a *mitzvah* (by *yibum*); however, the prohibition against marrying a brother's wife is permitted in a case of *yibum*! And the prohibition against marrying one's wife's sister is not permitted in the wife's lifetime; however, the prohibition against marrying another man's wife is permitted during the lifetime of the one who prohibits her (if he divorces her).

Rather, Rabbi Yonah says, and others say that it was Rav Huna the son of Rav Yehoshua: It is written: *Whoever commits any of these abominations will be cut off*. We compare all forbidden relations to the case of the wife's sister. Just as *kiddushin* is not effective with a wife's sister, so too, *kiddushin* will not be effective with any of the forbidden relations.

The *Gemora* asks: If so, this law should apply with a *niddah* as well (for *niddah* is also mentioned in the passages dealing with the forbidden relations)! So why did Abaye say that everyone agrees that one who cohabits with a *niddah* (menstruant) or a husband who cohabits with his *sotah* (adulterous wife) that the children born from them will not be *mamzeirim* (which shows that *kiddushin* is effective)!?

Chizkiyah answers: There is a special verse written by *niddah* which teaches us that *kiddushin* takes effect with a *niddah*: Her state of *nidus* shall be on him; even at the time of her

niddah status, “becoming” shall be possible with her. (67b2 – 68a1)

## INSIGHTS TO THE DAF

### **Follow the Father**

The *Baraisa* states: How do we know that if a male from any nation (*other than the seven nations of Canaan, where by the other nations, the prohibition of “you shall not spare the life of any soul” does not apply*) cohabited with a Canaanite woman (*where the prohibition of “you shall not spare the life of any soul” does apply*) and had a child; one is permitted to purchase that child as a slave (*for he follows the father’s nationality and we are not obligated to kill him*)? The *Baraisa* answers: It is written [Vayikra 25:44]: *And also from among the children of the residents who live with you, from among them you may purchase slaves*. One might have thought that even if a Canaanite male cohabited with a woman from any of the other nations and had a child; one would be permitted to purchase that child as a slave. It is therefore written [ibid.]: *....whom they begot in your land*. The Torah teaches us that one may purchase slaves only from those who were born in your land to Canaanite mothers from non-Canaanite fathers, but not from among those children who were born abroad to non-Canaanite mothers from Canaanite fathers, and who later returned to reside in your land with their fathers.

The *Minchas Chinuch* writes that the *halachah* of following the male by the other nations is only if the child was born from an idolater woman; however, if she converted while she was pregnant, the child is legitimate and he does not follow the father, provided that the mother is permitted to join the congregation. He adds that even according to those who hold that the fetus is not regarded as the “thigh of the mother,” nevertheless, the lineage of idolaters is determined only after their birth, but as a fetus, they are not accorded the status of the father. And therefore, in this case, the child was born as a Jew, and therefore he follows the mother.

This *halachah* is applicable even in a case which causes us to rule stringently. If the father would be from a nationality which is permitted to join the congregation and the mother was an Egyptian woman, and she converted while she was pregnant, the child will be accorded the status of its mother and would therefore be ruled to be a second-generation Egyptian.

## DAILY MASHAL

The *Rishonim* ask: How was Avraham permitted to marry Hagar? Why behold, she was an Egyptian, and the Torah writes: An Egyptian cannot enter the Congregation of Hashem!?

They answer: Our forefather Avraham was a convert, and the *Gemora* in *Yevamos* (57a) states: the congregation of converts is not regarded as a congregation. Accordingly, there was no prohibition against Avraham marrying Hagar.

It is said over in the name of Rav Yosef miShilo that Hagar was a freed slavewoman, and the *halachah* is that a convert and a freed slavewoman are permitted to marry each other.

The *Makneh* asks on the first answer: That which we stated that the congregation of converts is not regarded as a congregation is a matter of dispute; according to those who maintain that the congregation of converts is regarded as a congregation, what would you say?

He answers according to the *Rambam* who holds that the prohibition applies only in a case of *kiddushin*; Avraham, however, took Hagar as a *pilegsh*, and therefore there was no prohibition.