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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

The Seller and Judge are Believed

The *braisa* continues: A seller is believed to say the following: "I sold it to this person, but I did not sell it to this person." This is true only if he still has the item in his hand *(for then, it is incumbent upon him to know who it is that he is selling to, for if he would give the item to the other person, he would be forced to renege on his deal with the real buyer, and then he would incur a "mi she'para" – retribution for one who does not keep his word*); however, if he does not have the item in his hand (*and rather, both parties are holding onto the item*), he is not believed.

The *Gemora* asks: But let us check to see from whom he has received the money (*for that he would certainly remember*)?

The *Gemora* answers: The *braisa* is referring to a case where he accepted money from both of them. One of them gave him the money with his consent, and the other one gave it to him by force. The seller does not remember as to which one of them he consented to.

The *braisa* continues: A judge is believed to say the following: "I found in favor of this person, and I found against this person." This is only true if the litigants are still standing before him (*for then, he is still responsible to remember how he ruled*); otherwise, he is not believed.

The *Gemora* asks: But let us check to see who is holding the document in which it is written that the verdict was in his favor?

The *Gemora* answers: The *braisa* is referring to a case where the document was ripped up.

The *Gemora* asks: Why don't we just rejudge the case?

The *Gemora* answers: The *braisa* is referring to a case where it was decided based upon "the choice of the judges" (*and we therefore are concerned that he will not reach the same verdict the second time*). (73b – 74a)

Believing that he is a Firstborn

Rav Nachman said: there are three people who are believed regarding a firstborn: the midwife, his father and his mother. The midwife is only believed immediately after the birth. The mother is believed during the first seven days (*for until the circumcision, it is not incumbent upon the father to recognize him*). The father is always believed, as we learned in a *braisa*: It is written: *He shall recognize*. Rabbi Yehudah derives from here that a father is believed to say that this is his firstborn son. And just as a man is believed to say that this is his firstborn son, so too, he is believed to say that his son is a son of a divorcee or a *chalutzah* (*and if he is a Kohen, this will render the son a chalal, and he will be disqualified from the Kehunah*). The *Chachamim* say: He is not believed (*to say that his son is a chalal*). (74a)

Believing the Mother

The *Mishna* had stated: Abba Shaul would call a *shetuki* a *beduki*.

The *Gemora* asks: What is meant by *beduki* (*who do we question*)?

If it means that we ask the mother, and if she says that she cohabited with a genealogically fit person, we believe her, according to which *Tanna* is Abba Shaul following? If it is Rabban Gamliel, we have already learned this in a *Mishna*: If an unmarried woman was pregnant, and they said to her: What is the nature of this fetus? She answered: It is from the man So-and-So, and he is a *Kohen*. Rabban Gamliel and Rabbi Eliezer say: She is believed (*and she remains fit for Kehunah*). Rabbi Yehoshua says: We do not live from her mouth (*perhaps she is lying*)! (*Rather, she is presumed to be pregnant from a nasin or a mamzer, until she brings proof for her words.*) And Rav Yehudah said in the name of Shmuel that the *halachah* follows Rabban Gamliel. [*What was the necessity for Abba Shaul's ruling?*]

The *Gemora* answers: That *Mishna* taught us that she is fit for a *Kohen*, and Abba Shaul is teaching us that her daughter is fit for a *Kohen*.

The *Gemora* asks: This is only necessary according to the one who holds that although Rabban Gamliel rules that the mother is fit, her daughter is not (*and therefore Abba Shaul will be teaching us that her daughter is also fit*). However, according to the one who holds that the daughter is also fit, what is Abba Shaul teaching us?

The *Gemora* answers: Abba Shaul rules that she is believed even if a majority of the men in the city are unfit to have relations with her.

Rava rules: The *halachah* follows Abba Shaul. (74a)

Mishna

Whoever is forbidden to marry into the congregation is permitted to marry each other. Rabbi Yehudah forbids them. Rabbi Elozar says: Those that are certainly forbidden to marry into the congregation are permitted to marry others who are certainly forbidden to marry into the congregation. Those that are certainly forbidden to marry into the congregation are prohibited from marrying others who are possibly forbidden to marry into the congregation. Those that are possibly forbidden to marry into the congregation are prohibited from marrying others who are certainly forbidden to marry into the congregation. Those that are possibly forbidden to marry into the congregation are prohibited from marrying others who are possibly forbidden to marry into the congregation. And these are the uncertain ones: a *shetuki*, *asufi* and a Cuthean. (74a)

Whoever is Forbidden to Marry into the Congregation

The *Gemora* asks: What does the *Mishna* mean when it stated, "Whoever is forbidden to marry into the congregation"? If it was referring to *mamzeirim*, *nesinim*, *shetukim* and *asufim*, we have already learned in a *Mishna* that they are permitted to intermarry with one another!?

And furthermore, what is Rabbi Yehudah forbidding? If you will say that he is referring to those that are certainly forbidden to marry into the congregation with those who are possibly forbidden to marry into the congregation, and Rabbi Yehudah is forbidding them from marrying each other; this cannot be, for Rabbi Elozar ruled in the *Mishna* that those that are certainly forbidden to marry into the congregation are permitted to marry others who are certainly forbidden to marry into the congregation. And he ruled that those that are certainly forbidden to marry into the congregation are prohibited from marrying

others who are possibly forbidden to marry into the congregation, and those that are possibly forbidden to marry into the congregation are prohibited from marrying others who are possibly forbidden to marry into the congregation. Evidently, Rabbi Yehudah does not subscribe to this view!?

And if you will say that he is referring to a convert with a *mamzeres*, does the *Mishna* state this case at all? As a matter of fact, it states: "Whoever is forbidden to marry into the congregation" (*and a convert is permitted to marry into the congregation*)!?

Rav Yehudah explains the *Mishna* as follows: Whoever is forbidden to marry into the congregation of the *Kehunah*. Who is the *Mishna* referring to? It is referring (*even*) to a female who converted when she was less than three years old, and it would not be in accordance with the opinion of Rabbi Shimon ben Yochai (*for he holds that a female who converted when she was less that three years old is permitted to be married to a Kohen, for she is not a zonah, since it is not regarded as bi'ah when she is less than three*). All these people (*converts, mamzeirim, nesinim and shetukim are permitted to intermarry with one another*).

The *Gemora* asks: Why don't we say that the *Mishna* is referring to a female who converted when she was older than three years old, and it would be in accordance with the opinion of Rabbi Shimon ben Yochai?

The *Gemora* shows how that interpretation can be refuted from the *Mishna* itself, for the *Tanna Kamma* certainly holds that a *Kohen* may not marry ant convert, even if she converted when she was less than three years old.

The *Gemora* asks on Rav Yehudah's interpretation of the *Mishna*: Is it truly a rule that whoever is forbidden to marry into the congregation of the *Kehunah* is permitted to marry each other? But there are the cases of a widow, a divorcee, a *chalalah* and a *zonah*, who are forbidden to marry into the congregation of the *Kehunah*, but nevertheless, they are forbidden to marry each other (*mamzeirim and nesinim*)?

And furthermore, we can ask on what would be implicit from the *Mishna's* ruling: We would infer that anyone who is permitted to marry into the congregation of the *Kehunah* will be forbidden to marry each other. But what about a convert, who is permitted to marry into the congregation of the *Kehunah*, but nevertheless, he is permitted to marry a *mamzeres*!?

Rather, Rav Nassan bar Hoshaya explains the *Mishna* as follows: Any person whose daughter cannot be married by a *Kohen*. Who is the *Mishna* referring to? It is referring a convert who married another convert, and it is in accordance with the opinion of Rabbi Eliezer ben Yaakov (*for he maintains that a daughter of a convert cannot be married by a Kohen unless her mother is a Jewess*). The *Mishna* rules that they (*the fathers, whose daughters cannot be married by a Kohen*) are permitted to marry each other (*mamzeirim, nesinim and shetukim*).

The *Gemora* asks on Rav Nassan's interpretation of the *Mishna*: Is it truly a rule that any person whose daughter cannot be married by a *Kohen* is permitted to marry each other? But there is the case of a *chalal* who married a daughter of a *Yisroel*, whose daughter may not be married by a *Kohen*, but nevertheless, they are forbidden to marry each other (*mamzeirim and chalalim*)?

The *Gemora* answers: This is not difficult, for we can say that the *Mishna* is following 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*).

L'zecher Nishmas HaRav Raphael Dov ben HaRav Yosef Yechezkel Marcus O"H

The *Gemora* asks: But what about the case of a *chalal* who married a *chalalah*, whose daughter may not be married by a *Kohen*, but nevertheless, they are forbidden to marry each other (*mamzeirim and chalalim*)?

And furthermore, we can ask on what would be implicit from the *Mishna's* ruling: We would infer that anyone whose daughter is permitted to be married by a *Kohen* will be forbidden to marry a *mamzer*. But what about a convert who married the daughter of a Yisroel, whose daughter is permitted to be married by a *Kohen*, but nevertheless, he is permitted to marry a *mamzeres*!?

Rather, Rav Nachman in the name of Rabbah bar Avuha explains the *Mishna* as follows: The difference between the *Tanna Kamma* and Rabbi Yehudah would be regarding a *mamzer*. The *Tanna Kamma* holds that a child born from a union with one's sister is also a *mamzer* (*even though the prohibition against having relations with one's sister is only kares, and not execution at the hands of Beis Din*). Rabbi Yehudah holds that only a child born from a union with a married woman is a *mamzer*, but a child born from a union with one's sister is not a *mamzer*.

The *Gemora* asks: But isn't this dispute taught in the following *Mishna*: How is a *mamzer* produced? Rabbi Akiva says: Any union with a relative subject to a negative prohibition will produce a *mamzer*. Shimon Hatimni said: A *mamzer* can only be produced from a union which is punishable by *kares* and the *halachah* follows his words. Rabbi Yehoshua said: A *mamzer* can only be produced from a union where one is subject to a court-imposed execution.[*Why would this very same dispute be repeated here?*]

Rather, Rava explains the *Mishna* as follows: The difference between the *Tanna Kamma* and Rabbi Yehudah would be regarding an Ammonite or a Moabite convert. The *Mishna* states: Whoever is forbidden to marry into the congregation. Who is the *Mishna* referring to? It is referring to an Ammonite or a Moabite convert. They are permitted to marry each other.

The *Gemora* asks: If so, why would Rabbi Yehudah forbid an Ammonite or a Moabite convert to marry a *mamzer*?

The *Gemora* explains the *Mishna* as follows: Although Rabbi Yehudah holds that a convert may not marry a *mamzeres*, that is only with respect to a convert who is permitted to marry into the congregation; however, an Ammonite or a Moabite convert, who are forbidden to marry into the congregation, are permitted to marry a *mamzeres*. (74a – 74b)

INSIGHTS TO THE DAF

Choice of the Judges

The *braisa* continues: A judge is believed to say the following: "I found in favor of this person, and I found against this person." This is only true if the litigants are still standing before him (*for then, he is still responsible to remember how he ruled*); otherwise, he is not believed.

The *Gemora* asks: But let us check to see who is holding the document in which it is written that the verdict was in his favor?

The *Gemora* answers: The *braisa* is referring to a case where the document was ripped up.

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The *Gemora* in *Kesuvos* (85a) cites the following dispute: If a person sold the same field to two people on the same day, Rav says they should split the field, and Shmuel says the law is the choice of the judges (*they should decide who to give it to*).

The Rishonim disagree as to the method that the judges should use to give one of the claimants the entire field. Rashi explains that "the choice of the judges" means that the judges choose to whom the property in question should be given by attempting to determine, based on logical considerations, to whom the seller would have preferred to give the field.

Tosfos argues with Rashi and maintains that "the choice of the judges" means that the judges give the field to whomever they please. They need not base their decision on whom they think the seller preferred, but rather, they base their decision on whatever considerations they deem appropriate, such as which of the two claimants needs the property more, or which one is a Torah scholar.

The *Gemora* maintains, at this point, that in general, it is preferable to resolve the case with "the choice of the judges" rather than to split the property, because by using this method, there is at least a possibility that the correct person will receive the entire field. Therefore, according to Shmuel, the judges give the entire field to one of the two claimants.

Kollel Iyun HaDaf discusses why Rav would disagree and hold that the property is divided because of the witnesses' signatures.

DAILY MASHAL

The Law

Even in his youth, the great Rav Yonason Eibeshutz was known for his remarkable diligence in his studies. While his peers idly passed their free time playing games and acting their ages, Rav Yonason utilized every spare moment for the study of Torah. Somebody once asked him about his behavior, questioning whether he wouldn't be happier if he spent at least a portion of his free time engaged in more age-appropriate extracurricular activities.

Rav Yonason, demonstrating the sharp mind for which he later became world-renowned, explained his conduct based on a Gemora in Sanhedrin (7b). One opinion in the Gemora cites our verse as the source of the law that a judge may not listen to the claims of one of the litigants if the other party isn't present to challenge his arguments. This is hinted to by the words ùîò áéï àçéêí – you shall listen between your brothers – which teaches that a judge may only listen to the accusations of one party if the other is present.

The Gemora in Sanhedrin (91b) teaches that a person receives his yetzer hara at birth, whereas his yetzer tov doesn't enter him until his Bar Mitzvah, at which point he is held accountable for his actions. Even a person who never becomes a judge in a Jewish court still serves as a judge every moment of his life, as he must constantly listen to the arguments of the two "litigants" inside of him – his yetzer hara and his yetzer tov – and sort them out to reach a judgment about the proper course of action to choose.

"While closing my books to indulge in the hobbies and games enjoyed by the other boys may seem quite tempting," concluded the wise-beyond-his-years Rav Yonason, "this is the opinion of only one of the litigants – my yetzer hara. As a judge, I am forbidden to listen to his claims until my Bar Mitzvah, at which time the other party will be able to present its counter-claims, and I will be able to reach a judgment regarding the proper course of action. However, until that time, the 'law' gives me no choice but to ignore him and diligently continue with my Torah studies!"

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