

19 Tammuz 5782
July 18, 2022



Kesuvos Daf 12

Produced by Rabbi Avrohom Adler, Kollel Boker Beachwood

Daf Notes is currently being dedicated to the neshamah of
Tzvi Gershon Ben Yoel (Harvey Felsen) o”h

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Marrying a woman assumed to be a virgin

[We have learned that a husband may make a claim concerning the virginity of his wife, and she would forfeit her kesuvah. This is only if it is to be assumed that she is indeed a virgin. If, however, she was widowed or divorced, no such assumption should be made, and she receives a kesuvah of a maneh. Our Gemora discusses a case where the husband presumed that she was a virgin, but found out that she was not.] The Baraisa states: If one married a woman for the purposes of *nisuin* – *consummation*, even if there are witnesses testifying that they were never secluded, or that they were secluded for less time than is necessary for cohabitation, a subsequent husband may not make a claim if he found that she was not a virgin, since he should assume she isn’t (a virgin), once *nisuin* were performed.

Rabbah says: This teaches us that if one married a woman on the assumption that she is a virgin, but finds that she isn’t, she receives a kesuvah of a maneh, like a previously married woman.

Rav Ashi objects: The Baraisa is different, as he should assume she isn’t a virgin, since she previously had *nisuin*, but in a normal case, she would have no kesuvah, as the marriage was under false pretenses.

The Gemora asks: Why don’t we worry (in the Baraisa’s case) that she lost her virginity while married to the second husband? Rav Shraviva answers: It is a case where

he consummated the marriage with cohabitation immediately after *kiddushin* – *marriage*.

Some record the same discussion on the Mishnah, which says that a virgin who is a widow, divorcee, or chaltzah from a previous marriage which reached *nisuin*, only receives a kesuvah of a maneh, and the husband has no claim if he finds her to not be a virgin. The Gemora explains that this is a case where she entered the chuppah, but had no relations.

Rabbah says that we can learn from here that if one married a woman on the assumption that she was a virgin, and finds she is not one, she receives a kesuvah of a maneh.

Rav Ashi objects: The Mishnah is different, since she already had entered a chuppah, which breaks the assumption of virginity.

The Gemora asks: Why don’t we worry that she lost her virginity while married to her second husband? Rav Shraviva says: The case is where he consummated the marriage with relations immediately after *kiddushin*.

The Gemora notes: The version which says that the conversation was about the Baraisa would definitely apply it to the Mishnah, but not vice versa, since the second husband has more of a claim of mistaken marriage in the Baraisa, where he had witnesses claiming that she was still a virgin. (11b4 – 12a2)

Mishnah

The *Mishnah* states: One who eats at his father-in-law's house (*between the time of betrothal and the time of marriage*) in Judaea (*where this was common practice*) without witnesses, cannot raise the claim (*after the marriage*) regarding his bride's virginity, because he has secluded himself with her (*and we suspect that he might have had intimate relations with his bride*). (12a2)

Different Customs

The *Mishnah* states: One who eats. It can be inferred from there that there are places also in Judaea where one does not eat and seclude himself with his wife after betrothal.

Abaye said: Conclude from this that in Judaea, too, the places differ in their custom, as it was taught in the following Baraisa: Rabbi Yehudah said: Originally, in Judaea they would leave the groom and the bride alone one hour before their entry into the bridal chamber, so that he may become intimate with her, but in Galilee, they did not do so. Originally, in Judaea they would put up two witnesses, one for him and one for her, in order to examine the groom and the bride when they enter the bridal chamber (*so that they should not deceive one another regarding the signs of virginity*), but in Galilee they did not do so. (***That would be in such localities in Judaea where the young people were not allowed to be alone before the entry into the bridal chamber, for otherwise, he would not be believed to cause the loss of her kesuvah even if she was proven not to be a virgin, for he himself was secluded with her beforehand. This shows that customs varied in Judaea itself.***) Originally, in Judaea, the groomsmen used to sleep in the house in which the groom and the bride slept, but in Galilee, they did not do so.

The *Baraisa* concludes: And he who did not act according to this custom could not claim that his wife was not a virgin.

The *Gemora* asks: To which case does this refer? Shall I say that it refers to the first clause (*they would leave the groom and the bride alone*)? If so, it should read: He who acted according to this custom could not claim that his wife was not a virgin. Rather, it must be referring to the last clause (*they would put up two witnesses, one for him and one for her, in order to examine the groom and the bride when they enter the bridal chamber*), it should read: He who was not examined according to this custom could not claim that his wife was not a virgin.

Abaye said: Indeed it refers to the first clause, and let us revise the *Baraisa* to read: He who acted according to this custom could not claim that his wife was not a virgin.

Rava said to him: But it reads: He who did not act? Rather, Rava said: This is what the *Baraisa* means: He who did not act according to the custom of Galilee in Galilee but acted according to the custom of Judaea in Galilee cannot raise the claim of virginity.

Rav Ashi said: Indeed it refers to the last clause, and let us revise the *Baraisa* to read: He who was not examined according to this custom could not claim that his wife was not a virgin. (12a2 – 12a3)

Mishnah

The *Mishnah* states: The *kesuvah* of both an Israelite widow and a priestly widow, is a *maneh*. The Court of *kohanim* would collect for a virgin four hundred zuz, and the Sages did not protest against it. (12a3)

A Priestly Widow

It was taught in a Baraisa: And the priestly widow, her *kesuvah* is two hundred zuz. The *Gemora* asks: But we have learned in our *Mishnah*: The *kesuvah* of both an Israelite widow and a priestly widow, is a *maneh*?

Rav Ashi said: There were two ordinances for a daughter of a *Kohen*. At first they ordained for a virgin four hundred

zuz and for a widow a *maneh*. When they saw that they (*the husbands who married a widow*) treated them lightly, they ordained for them (*the widows*) two hundred zuz. When they saw again that men were not marrying these widows, for they were saying: Instead of marrying a priestly widow, we shall rather marry the virgin-daughter of an Israelite (*since the kesuvah is identical*), they restored their former ordinance (*that these widows shall receive one hundred*). (12a3 – 12b1)

Noble Families

The *Mishnah* had stated: The Court of *kohanim* would collect for a virgin four hundred zuz, and the Sages did not protest against it. Rav Yehudah said in the name of Shmuel: They did not say it only regarding the court of the *Kohanim*, but even regarding the noble families in Israel; if they want to do as the *Kohanim* do, they may do so.

The *Gemora* asks on this from a Baraisa: If one wants to do as the *Kohanim* do (and establish a kesuvah of four hundred zuz), for instance if the daughter of an Israelite gets married to a Kohen, or the daughter of a Kohen gets married to an Israelite, one may do so. We would infer from this that only if the daughter of an Israelite gets married to a Kohen, or the daughter of a Kohen gets married to an Israelite, it is allowed to do as the *Kohanim* do, because there is then (at least) one side of Kehunah, but if the daughter of an Israelite gets married to an Israelite, it is not allowed to do as the *Kohanim* do!?

The *Gemora* answers: The *Mishnah* states here a style of 'it is not necessary to be stated'; it is not necessary to be stated (that an increased kesuvah may be established) in the case of the daughter of an Israelite getting married to an Israelite, who (the husband) cannot say to her 'I raised you (to a higher status),' (for they are both ordinary families); but in the case of the daughter of an Israelite getting married to a Kohen, who (the husband) can say to her, 'I raised you (to a higher status),' I might think that it

(the increased kesuvah) is not allowed; therefore, the Baraisa informs us that this is not so. (12b1)

Mishnah

[*Up until now, we were discussing cases where the husband claims that his wife was found not to be a virgin, and the wife disputed the claim; now the Mishnahyos will discuss cases where the wife concedes the claim, but provides an explanation for the absence of blood; if her claim would be substantiated, she may be entitled to her full kesuvah.*] The *Mishnah* states: If one marries a woman and does not find her to be a virgin, and she says: After you had betrothed me, I was violated and thus it is as if your field has been inundated, and he says: It occurred before I betrothed you, and my acquisition is thus a mistaken one; Rabban Gamliel and Rabbi Eliezer say that she is believed. Rabbi Yehoshua says: We do not live from her mouth (*perhaps she is lying*)! Rather, she is presumed to have engaged in an illicit relationship before she was betrothed, and she misled him, until she brings a proof for her words. (12b1 – 12b2)

A Certain Claim vs. an Uncertain One

It was stated: If one person says to another person: A *maneh* of mine is in your hand, and the latter responds by saying: I do not know. Rav Yehudah and Rav Huna say: He is obligated to pay. Rav Nachman and Rabbi Yochanan say: He is exempt from paying.

The *Gemora* explains the dispute: Rav Huna and Rav Yehudah say: He is obligated to pay because they hold that in the case of "a certainty and a doubt" (*one person has a certain claim and the other is uncertain*), the judgment is given to the litigant who is certain. Rav Nachman and Rabbi Yochanan say: He is exempt from paying because they by the following principle: Leave the money in the possession of its present owner (*since he is presumed to be the rightful owner*).

Abaye said to Rav Yosef: The opinion of Rav Huna and Rav Yehudah corresponds with the view of Shmuel, for we have learned in the following *Mishnah*: 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*). Rav Yehudah said in the name of Shmuel: The *halachah* is according to Rabban Gamliel. And Rav Shmuel bar Yehudah said to Rav Yehudah: Sharpwitted one! You said to us in the name of Shmuel that the *halachah* is according to Rabban Gamliel also in the first *Mishnah*. What was the novelty in ruling according to Rabban Gamliel “also in the first one”? Assuredly it must mean that although one could apply the principle of “leave the money in the possession of its present owner,” still Rabban Gamliel ruled: The woman is believed for she is claiming with a certainty.

The *Gemora* asks: Let us say that Rav Yehudah and Rav Huna follow the opinion of Rabban Gamliel, and Rav Nachman and Rabbi Yochanan follow the opinion of Rabbi Yehoshua?

The *Gemora* answers: Rav Nachman can answer you: I can even follow the opinion of Rabban Gamliel, for Rabban Gamliel says over there (*in our Mishnah*) only because there is a *miggo* (*if the person had intended to tell a lie, they would have invented one more advantageous to their case; the miggo here is as follows: Instead of saying that she was violated, she could have said that she was injured by a piece of wood; this would be a more advantageous plea since it does not disqualify her from marrying a Kohen as does the plea that she had been violated*), but what *miggo* is there here (*by a manah of mine is in your hand*)? Alternatively, Rabban Gamliel says only there, because we say: leave her in her presumptive state of innocence, but here what presumptive state has the claimant got?

It is also evident that our answer is correct that Rav Nachman can follow the opinion of Rabban Gamliel, for otherwise, there would be a contradiction in halachic rulings, for we hold in accordance of Rav Nachman in monetary matters and Rav Yehudah states in the name of Shmuel that the *halachah* is in accordance with Rabban Gamliel. (12b2 – 13a1)

DAILY MASHAL

We can never be Certain

Our *Gemora* discusses cases where one of the litigants, or one of the claimants is ‘definite,’ or ‘certain’ regarding his particular claim. One needs to be reminded how ‘certain’ we, as humans, can truly be.

The Baal Shem Tov once sent two of his disciples abroad to procure wine for the upcoming Pesach. The disciples found an appropriate vineyard, arranged with the owner to be present during the harvesting and pressing of the grapes, and zealously guarded the wine as it was produced from both chametz and from the eyes of the gentiles. They were extremely protective and careful on the return trip home, never leaving their precious cargo out of their sight – even for a moment. Finally, after depositing the wine into the cellar, they were dismayed to discover that a gentile cleaning lady entered, and rendered all the wine into ‘yayin nesech’ – wine that is prohibited from being used. When, with a heavy heart, they informed the Baal Shem Tov of that which transpired, he told them, “You have taken such great care of the wine; you were ‘certain’ that under your protection, nothing can possibly happen – that you had forgotten to ask Hashem for His help, without which you cannot be successful.”