

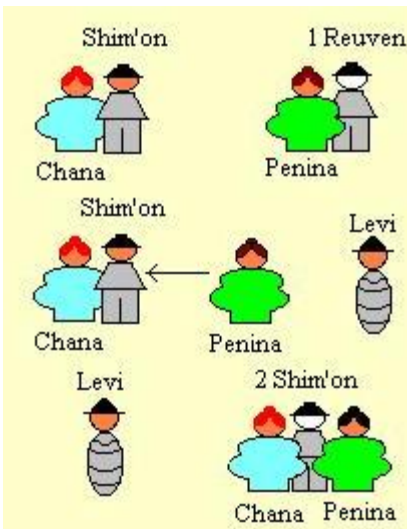
Daf Notes is currently being dedicated to the neshamah of

Tzvi Gershon Ben Yoel (Harvey Felsen) o”h

May the studying of the Daf Notes be a zechus for his neshamah and may his soul find peace in Gan Eden and be bound up in the Bond of life

According to Rabbi Oshaya, Rabbi Shimon disagrees in both cases and allows Levi, the new brother to perform a *yibum* with Reuven’s widow.

The first case (*the Mishnah in the beginning of the chapter*):

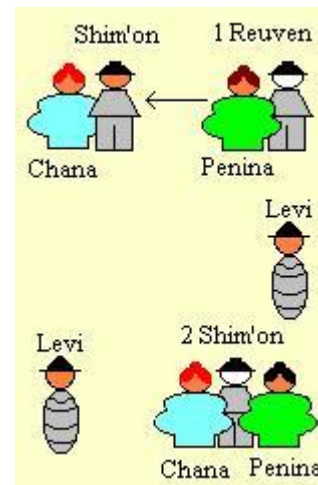


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There are two brothers, Reuven and Shimon; Reuven dies childless and then a third brother, Levi is born to them. The second brother, Shimon performs a *yibum* with Reuven’s wife, Penina, and then, he too, dies childless. Shimon had another wife, Chana, as well. They both (*Penina and Chana*) fall to *yibum* to Levi. Penina is exempt from *yibum* and *chalitzah* because she is the wife of Levi’s brother (*Reuven*) who was not in his world (*Reuven and Levi were not alive together*). Chana is also exempt from *yibum* and *chalitzah* because she is the co-wife of an *ervah*.

Rabbi Shimon would permit Reuven’s wife, Penina to Levi even though Levi was born before Shimon took her in *yibum*.

The second case (our Mishnah):



Courtesy of <http://chavruta.tripod.com/>

There were two brothers, Reuven and Shimon. Reuven died childless and Shimon performed a *yibum* on Reuven’s widow, Penina. A third brother, Levi was born and subsequently Shimon died childless. Shimon’s two widows fall for *yibum* to Levi. Penina is exempt from *yibum* and *chalitzah* because she is the wife of Levi’s brother who was not in his world (*Reuven and Levi were not alive at the same time*.) Chana, Shimon’s original wife, is exempt as well because she is the co-wife of an *ervah*.

Rabbi Shimon disagrees and maintains that Levi may perform *yibum* or *chalitzah* with any one that he desires.

The Gemora asks: It is understandable why in the Rabbi Shimon disagrees in the latter case because when Levi was born, he found Penina (*Reuven's widow*) in a permitted state (*since she was married to Shimon at that time*); however, what is his reasoning in the former case; when Levi was born, Penina was forbidden to him on account of her being the wife of his brother that was not in his world?

The Gemora answers: Rabbi Shimon maintains that there is a *zikah*-attachment between every *yavam* and *yevamah* and this attachment is regarded like his complete wife. (*Therefore, when Reuven dies and his widow, Penina falls for yibum to Shimon, it is as if she is Shimon's full-fledged wife. When Levi was subsequently born, she did not fall for yibum to Levi, thus prohibiting her to Levi on account of her being the wife of his brother that was not in his world; rather, she is Shimon's 'wife' and when Shimon dies, she is falling for yibum to Levi on account of being Shimon's wife, not Reuven's.*)

Rav Yosef asks: We have learned regarding a case where there was a *zikah* and a *ma'amar* that Rabbi Shimon is uncertain if the *zikah*-attachment will result in the *yevamah* being considered a full-fledged wife or not; can there be any question that *zikah* alone (*without a ma'amar*) can certainly not result in the *yevamah* being considered a full-fledged wife?

In which case was Rabbi Shimon uncertain? The Gemora cites the Mishnah (31b): There were three brothers who were married to three unrelated women, and one of them, Reuven died. The second brother, Shimon married the *yevamah* by *ma'amar* (*Biblically, the yavam cohabits with the yevamah, thus acquiring her. The Rabbis established ma'amar, the betrothal of a yevamah as a*

prelude to yibum.), and he died. Reuven's original wife falls for *yibum* to the third remaining brother, Levi. Levi must perform *chalitzah*, but he cannot perform a *yibum*. This is derived from a Scriptural verse: And one of them dies Her *yavam* shall cohabit with her; this means that a *yevamah* can be taken in *yibum* only if there was a *zikah* (*an attachment on the account of yibum*) from one brother; not when there is a *zikah* from two brothers. (*The yevamah is doubly subject to yibum, on account of her Biblical marriage with Reuven and her Rabbinical marriage with Shimon.*)

Rabbi Shimon disagrees and maintains that Levi can perform a *yibum* with whichever one he wishes and he must perform a *chalitzah* with the other one. - He must not take both widows in *yibum* since it is possible that a *zikah* exists and thus the two sisters-in-law would be coming from one house. Nor must he take one in *yibum* and thereby exempt the other, for it is possible that the *zikah* is not as binding as actual marriage, and the two sisters-in-law would thus be coming from two houses. From this it clearly follows that he is in doubt. And should you reply that Biblically one of the widows may indeed be taken in *yibum* and the other is thereby exempt, but that this procedure had Rabbinically been forbidden as a preventive measure against the possibility of the assumption that where two sisters-in-law came from two houses one may be taken in *yibum* and the other is thereby exempt without anything; surely [it may be pointed out] Rabbi Shimon's reason is because of his doubt as to the validity of the *yavam's ma'amar*! For it was taught: Rabbi Shimon said to the Sages: If the *ma'amar* of the second brother is valid he is marrying the wife of the second; and if the *ma'amar* of the second is invalid he is marrying the wife of the first!¹

¹ Rabbi Shimon holds that *ma'amar* is considered a complete marriage or is it entirely ineffective. If *ma'amar* accomplishes that she is now considered Shimon's wife, Levi can perform *yibum* with whichever woman he wishes because they are both Shimon's wives, and not Reuven's. It is for this reason

that he cannot perform *yibum* with both women. If *ma'amar* is entirely ineffective, Reuven's widow is falling for *yibum* only on the account of Reuven and she can still be taken in *yibum*. In any event, it is evident that Rabbi Shimon

Abaye said to him that there is a distinction between the Mishnah's case where there is only one surviving brother and the other cases where there are two remaining brothers. Rabbi Shimon maintains that when there is only one *yavam*, the *zikah*-attachment is regarded as a complete marriage; however, when there are two brothers, he does not say this; only *ma'amar* can accomplish this.

The Gemora objects to this distinction: The Gemora cites a Baraisa: Rabbi Shimon has laid down a general rule that wherever the birth preceded the marriage the widow is neither to perform *chalitzah* nor to be taken in *yibum*. If the marriage preceded the birth she may either perform the *chalitzah* or be taken in *yibum*. Doesn't this apply to one *yavam*? And yet it is stated 'she is neither to perform *chalitzah* nor to be taken in *yibum*'! — No; it applies to two *yavams*. But in the case of one *yavam*, may she in such circumstances also either perform *chalitzah* or contract *yibum*? If so, instead of stating, 'If the marriage preceded the birth she may either perform *chalitzah* or be taken in *yibum*' the distinction should have been drawn in this very case itself, thus: 'This applies only to the case of two brothers in law but with one brother-in-law she may either perform *chalitzah* or be taken in *yibum*'! — The entire passage dealt with two brothers-in-law.

What, then, is meant by the general rule? And a further objection was raised by Rav Oshaya (on Rabbi Oshaya - *two different people*) from a Mishnah (28b): Three were three brothers, Reuven, Shimon and Levi. If two of them (*Reuven and Shimon*) are married to two sisters, or to a woman and her daughter, or to a woman and her daughter's daughter, or to a woman and her son's daughter (*and both Reuven and Shimon die childless*), these two women require *chalitzah*, but they may not be

taken in *yibum* (*since each one of these women is an *ervah* from the other *zekukah**). Rabbi Shimon exempts even from *chalitzah*.

The Gemora asks: If Rabbi Shimon maintains that there is a *zikah*-attachment between every *yavam* and *yevamah* and this attachment is regarded like his complete wife, why can't the third brother Levi perform a *yibum* or *chalitzah* with Reuven's wife and Shimon's wife should be exempt from *yibum* and *chalitzah*? (*Since Reuven died first, there should be a *zikah*-attachment from Reuven's widow to Levi, tantamount to a complete marriage, which should preclude any *zikah* from Shimon's widow to Levi on account that she is an *ervah* to Levi.*)

Rav Amram answers: This is actually what Rabbi Shimon meant to say; he exempts the widow who fell to *yibum* second. (*He may perform a *yibum* or *chalitzah* with the first widow.*)

The Gemora asks: This cannot be the correct interpretation, for we learned in a Baraisa that Rabbi Shimon exempts both widows from *yibum* and *chalitzah*?

Rava answers: When Rabbi Shimon said that both widows are exempt, he meant that the second one from this pair and the second one from that pair is exempt from *yibum* and *chalitzah*. (*Rava's interpretation of the case is as follows: Reuven was married to two women, Sora and Rochel. Shimon was also married to two women, Rivka and Leah. Rivka was Sora's daughter and Leah was Rochel's sister. Reuven died first. Levi can perform *yibum* or *chalitzah* with any one of Reuven's widows. Shimon's widows are exempt from *yibum* and *chalitzah*. The reasoning is as follows: When Reuven dies childless; one of his wives is considered a full-fledged wife to Levi on account of the *zikah*-attachment. Whichever one this*

is uncertain if a *zikah*-attachment and *ma'amar* will result in the *tevamah* being regarded as a full-fledged wife.

turns out to be has a relative who is married to Shimon, either a daughter or a sister. It emerges that when Shimon also dies childless, one of his wives is exempt from *yibum* and *chalitzah* because she is a relative of Levi's *zikhah*-wife and the other one is exempt because she is a co-wife of an *ervah*.)

The Gemora states that Rava's interpretation is flawed: Firstly, the Mishnah states that the cases independently of one another. One case is with two sisters and another case is referring to a woman and her daughter; Rava explained that they are all one case.

Secondly, the Mishnah lists four cases; two sisters, a woman and her daughter, a woman and her daughter's daughter, or a woman and her son's daughter. According to Rava that each brother had four wives, the Mishnah should have stated that Rabbi Shimon exempts all four from *yibum* and *chalitzah*?

Furthermore, it was taught explicitly in a Baraisa that Rabbi Shimon exempts the widow from each brother from *chalitzah* and *yibum*, as it is said: And you shall not take a woman to her sister, to be a rival to her, when they become rivals to one another you may not marry even one of them!

Rather, Rav Ashi answers: If they had become subject [to the *yavam*] one after the other, the law would indeed have been so; the Mishnah, however, is dealing with a case that both brothers died precisely at the same moment;² and Rabbi Shimon shares the view of Rabbi Yosi haGelili who stated: It is possible to for an occurrence to be absolutely exact. (18b3 - 19a5)

The Gemora cites a dissenting opinion: Rav Pappa disagrees with Rabbi Oshaya in his interpretation of Rabbi

Shimon's opinion. Rav Pappa said: Rabbi Shimon maintains that Levi can perform a *yibum* with Shimon's widow only when Shimon performed a *yibum* with Reuven's widow and then Levi was born. If, however, Levi was born and then Shimon performed a *yibum* with Reuven's widow, she will always remain forbidden to Levi, and both these cases are required on account of the Rabbis, and [a stronger case is given after a weaker] 'not only this but also that'.

The Gemora quotes a Baraisa that supports Rav Pappa's understanding of Rabbi Shimon's opinion and refutes Rabbi Oshaya's explanation: Reuven and Shimon were contemporary brothers and Reuven died childless. Shimon planned to perform a *ma'amar* to his *yevamah*, but before he managed to perform a *ma'amar* to her, a third brother, Levi was born and subsequently Shimon died childless. The first (*Reuven's wife*) is exempt from *yibum* and *chalitzah* on account that she is the wife of his brother who was not in his world, whereas the second (*Shimon's wife*) can be taken for *yibum* or *chalitzah*.

If, however, he performed a *ma'amar* to the widow and subsequently a third brother was born, or if a third brother was born first and he performed the *ma'amar* to the widow subsequently, and died, the first widow is exempt as 'the wife of his brother who was not his contemporary' while the second must perform the *chalitzah*, though she may not be taken in *yibum*. Rabbi Shimon said: Cohabitation or *chalitzah* with the one of them exempts her co-wife. If, however, he participated in *chalitzah* with her to whom [the second brother had] performed the *ma'amar*, her co-wife is not exempt.

If he married her and died, and a [third] brother was subsequently born, or if a [third] brother was born, and

² each widow will be exempt from *yibum* and *chalitzah* because each one of them is an *ervah* from the *zikhah*-wife. If Reuven would have died first, Levi

would be permitted to perform *yibum* with his widow and Shimon's widow would be released without *yibum* or *chalitzah*.

subsequently he married her and died, both [widows] are exempt from the chalitzah and the yibum.

If he married her and [after that a third] brother was born and then he himself died, both widows are exempt from the chalitzah and the yibum; this is the opinion of Rabbi Meir. Rabbi Shimon, however, said: Since, when he came [into the world] he found her permitted to him, and she was never forbidden to him even for one moment, he may take in yibum whichever of them he desires or he may participate in the chalitzah with whichever of them he desires. - Now, in accordance with whose view was the case in the latter clause taught? If it be suggested that it was taught in accordance with the view of Rabbi Meir, it might be observed that, as Rabbi Meir draws no distinction between marriage that was followed by birth and birth that was followed by marriage, all these cases should have been combined in one statement! Consequently, it must have been in accordance with the view of Rabbi Shimon who thus differs only in the case where the yibum was followed by birth but does not differ where birth was followed by yibum. Our point is thus proved. (19a5 - 19b2)

The master said (in the first clause): Reuven and Shimon were contemporary brothers and Reuven died childless. Shimon planned to perform a *ma'amar* to his *yevamah*, but before he managed to perform a *ma'amar* to her, a third brother, Levi was born and subsequently Shimon died childless. The first (*Reuven's wife*) is exempt from *yibum* and *chalitzah* on account that she is the wife of his brother who was not in his world, whereas the second (*Shimon's wife*) can be taken for *yibum* or *chalitzah*.

The Gemora asks: What is the meaning of "he planned to perform a *ma'amar*," and what is the meaning of "but before he managed to perform a *ma'amar* to her"? If he performed it, he performed it, and if he did not perform

it, he did not perform it!? [Why should it make a difference if he wanted to perform *ma'amar*?]

The Gemora answers: We are referring to a case where he wanted to perform a *ma'amar* with her consent, but at the end, he performed it against her will. This does not follow Rebbe's opinion, for it was taught in a Baraisa: One who performs *ma'amar* with his *yevamah* against her will, Rebbe holds that he acquires her, and the Chachamim hold that he has not acquired her.

What is the reason of Rebbe? Rebbe compares *ma'amar* to *yibum*. Just like, one may perform a *yibum* without the consent of the *yevamah*, so too, a *ma'amar* without her consent is valid. The Chachamim compare *ma'amar* to a regular betrothal between a man and a woman. Just like a betrothal is only effective if the woman agrees, so too, *ma'amar* will only be valid with the consent of the *yevamah*. - In what principle do they disagree? - One master is of the opinion that matters relating to a *yevamah* should be inferred from matters relating to a *yevamah* and the masters are of the opinion that matters of betrothal should be inferred from matters of betrothal. (19b2 - 19b3)

[The second clause from above:] If, however, he performed a *ma'amar* to the widow, and subsequently a third brother was born, or if a third brother was born first and he performed the *ma'amar* to the widow subsequently and died, the first widow is exempt as "the wife of his brother who was not his contemporary" while the second must perform the chalitzah, though she may not be taken in yibum. Rabbi Shimon said: Cohabitation or chalitzah with the one of them exempts her co-wife. What is Rabbi Shimon referring to? If it should be suggested: To the case where the third brother was born first and he performed the *ma'amar* subsequently, surely it has been stated, that where birth preceded marriage

Rabbi Shimon does not differ from the Rabbis!³ — But [the reference is] to the case where the ma'amar was performed first and the third brother was born subsequently. Hence, 'if he participated in chalitzah with her to whom [the second brother had] performed the ma'amar, her co-wife is not exempt', because the [subjection of the] co-wife is a certainty while [the subjection of her] to whom the ma'amar had been performed is doubtful, and no doubt may over-ride a certainty. (19b3 – 19b4)

Rav Menasheh bar Zevid sat in the presence of Rav Huna, and in the course of the session he said: What is Rabbi Shimon's reason? — 'What is Rabbi Shimon's reason!' [Surely it is] as it has been stated: The reason is 'because when he was born he found her permitted to him, and she was never forbidden him even for one moment'! But [the question rather is] what is the reason of the Rabbis? - Scripture said: And he shall take her to himself as a wife, and perform yibum with her, the former yibum status still remains with her. - But then what of the following where we learned: If he married her she is regarded as his wife in every respect, and [in connection with this] Rabbi Yosi bar Chanina said: This teaches us that he may divorce her with a letter of divorce and that he may remarry her, let it there also be said: and perform yibum with her, the former yibum status still remains with her' and, consequently, she should require chalitzah [also]! — There the case is different; since Scripture stated, 'And take her to him as a wife', as soon as he married her she becomes his wife in every respect. If so, [the same deduction should be applied] here also! — Surely the All Merciful has written, 'And perform yibum with her'. And why the differentiation? - It stands to reason that permission should be applied to that which is [also otherwise] permitted, and that prohibition should be

applied to that which is [also otherwise] prohibited. According to Rabbi Shimon, however, who stated, 'Because when he was born he found her permitted, and she was never forbidden to him even for one moment', a brother, if this reason is tenable, should be allowed to take in yibum his maternal sister whom his paternal brother had married prior to his birth, dying subsequently, since, when he was born, he found her permitted. — Where did the 'prohibition of sister' vanish? — Here, also, where did the prohibition of 'the wife of the brother who was not his contemporary' vanish! — The one is a prohibition which can never be lifted; the other is a prohibition which may be lifted. (19b4 – 20a2)

DAILY MASHAL

The Sfas Emes zt'l says that Potiphar's wife shared what she saw in the stars with Yosef. She explained to him that it is a mitzvah, destined from heaven, and this factor made the test so much greater. Because the yetzer hara can't convince tzaddikim to perform aveiros, so he tries to convince them that the aveirah is a mitzvah. Nevertheless (39:8) וימאן, Yosef refused to sin. It also states וימאן by the mitzvah of yibum, because a person may refuse to perform the mitzvah of yibum, as it states (Devarim 25:7), יבמי מאן. The Midrash (87:5) says that Yosef told eshes Potiphar, "If a person can refuse to do the mitzvah yibum, certainly one can refrain from an aveirah!" The Sfas Emes explains that Yosef was telling her, "Even if you are correct, and it is a mitzvah, I may refrain, just as one is permitted to refrain from the mitzvah of yibum. When one refuses to do yibum, another path is opened up – the path of chalitzah. Similarly, Yosef told her, even if it is a mitzvah, and he turns it down, Hashem will arrange some other way. (And indeed, Yosef married eshes Potiphar's daughter, who bore Efraim and Menasheh.)

³ But agrees that the first widow in relation to the third brother is to be regarded as 'the wife of his brother who was not his contemporary'. Now, since it is possible that the ma'amar is as valid as actual marriage, how could Rabbi Shimon have permitted the rival of a forbidden relative? Furthermore, the

expression 'she exempts her rival' would be unsuitable, since her rival has all the time been exempt as the 'wife of the brother who was not his contemporary'.