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Yevamos Daf 20

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The Mishnah states: They stated a general rule concerning the *yevamah*: Whoever is prohibited to the *yavam* because of an *ervah* is exempt from *chalitzah* and *yibum*. If her prohibition is because of *mitzvah* or because of sanctity, she would require *chalitzah* but she is not taken for *yibum*.

Her sister who is her fellow *yevamah* would require *chalitzah* or *yibum*. (*The case is as follows: Two brothers (Reuven and Shimon) married two sisters Rochel and Leah, and the two husbands died childless. The sisters fall for yibum to a third brother Levi, and one of the sisters is prohibited to Levi because she is an ervah (a former daughter-in-law). The ervah’s sister requires chalitzah or is married by yibum. Normally, if two sisters fall before the yavam for yibum, both are prohibited from marrying him as his yevamah, since each is the sister of a zekukah, and she has the status of his wife’s sister. In this case, however, in which one of the women is prohibited to the yavam by a prohibition of ervah, and therefore there is no zikah between her and the yavam, he is permitted to marry her sister by yibum, because she is not the sister of a zekukah.*)

The Mishnah explains the term “*mitzvah* prohibition”: Secondary *arayos*, who are Rabbinically forbidden. A “sanctity prohibition” is a widow to the Kohen Gadol, a divorcee and a *chalutzah* to a common Kohen, a *mamzeres* or a Nesinite woman to an Israelite, and the

daughter of an Israelite to a Nesinite or to a *mamzer*. (20a2 – 20a3)

What was the general rule meant to include? — Rafram bar Pappa replied: To include the co-wife of an aylonis, and it is in agreement with the view of Rav Assi.¹ There are those who say: Whenever her prohibition is that of a forbidden relative then only is her co-wife forbidden; when, however, her prohibition is not that of a forbidden relative, her co-wife is not forbidden’. What was this meant to exclude? — Rafram replied: To exclude the co-wife of an aylonis, contrary to the view of Rav Assi. (20a3)

The Mishnah stated: Her sister who is her fellow *yevamah*. Whose sister? If you will say it refers to the sister of she who is forbidden by virtue of *mitzvah*, it may be objected, since, Biblically she is subject to the *yavam*, he would come in contact with the sister of his Biblical *zekukah*! — It means the sister of her who is prohibited to him as a forbidden relative. (20a3 – 20a4)

The Mishnah had explained the term “*mitzvah* prohibition” to be referring to secondary *arayos*, who are Rabbinically forbidden.

The Gemora asks: Why is a Rabbinical *ervah* referred to as a prohibition because of *mitzvah*.

¹ The co-wife of an *aylonis* (*an adult woman who did not develop any signs of female puberty and is incapable of bearing children*) is forbidden to be taken in *yibum*. It is written regarding *yibum*

[Devarim 25:6]: It shall be the firstborn – if she can bear. This excludes an *aylonis* since she cannot bear children.



Abaye said: It is because there is a Biblical *mitzvah* to heed the words of the Rabbis. (20a4)

The Mishnah had explained the term “sanctity prohibition” to be referring to a widow to the Kohen Gadol, a divorcee and a *chalutzah* to a common Kohen.

The Gemora asks: Why are they referred to as a “sanctity prohibition”? It is because it is written regarding the Kohanim [Vayikra 21:6]: *They shall be sanctified unto their God.* (20a4)

We learned in a Baraisa: Rabbi Yehudah switched the terminologies. A “*mitzvah* prohibition” is referring to a widow to the Kohen Gadol and a divorcee and a *chalutzah* to a common Kohen. These are referred to as *mitzvos* prohibitions because it is written regarding the Kohanim [Vayikra 27:34]: *These are the mitzvos.*

Rabbi Yehudah continues: A “sanctity prohibition” is referring to the secondary *arayos*. Abaye explains why they are so called: it is because one who upholds the instructions of the Sages is considered “sanctified.”

Rava said to him: Then he who does not act in accordance with the rulings of the Rabbis is not called a holy man; nor is he called a wicked man either?

Rather, Rava offers another explanation: There is a concept that one should sanctify himself by refraining from doing things that actually are permitted. (20a4)

The Mishnah had stated: If a widow falls for *yibum* to a Kohen Gadol, she requires *chalitzah*, but may not be taken in *yibum*.

The Gemora asks: An unqualified ruling is laid down making no distinction between a nissu'in widow and an erusin widow. Now, one can well understand the reason the case of a nissu'in widow [since marriage with her is

forbidden by] a positive and a negative commandment, and no positive commandment may override both a negative and a positive commandment. In the case, however, of an erusin widow [marriage with whom is forbidden by] a negative commandment only, let the positive commandment override the negative one? — Rav Gidel answered in the name of Rav: Scripture stated: Then his brother's wife shall go up to the gate, where there was no need to state his brother's wife; why then was ‘his brother's wife’ specified? [To indicate that] there is a case of another brother's wife who goes up for *chalitzah* but does not go up for *yibum*. And who is she? One of those prohibited by a negative commandment. - Might it not be said [to include also] such as are subject to the penalty of *kares*? — Scripture said: If the man shall not wish to take, if he likes, however, he may take her in *yibum*, [hence it is to be inferred that] whoever may go up to enter into *yibum* may also go up to perform *chalitzah* and whoever may not go up to enter into *yibum* may not go up to perform *chalitzah* either. If so, the same should apply also to those forbidden by a negative commandment! — But, surely, the All Merciful has included them [by the expression] ‘His brother's wife’. What ground is there for such differentiation? - The Gemora explains: When faced with a choice of how to expound the verses (*which women should be subject to chalitzah and which should not be*), it is reasonable that the women who are subject to the *kares* penalty are not obligated in *chalitzah* because these are women that *kiddushin* cannot be effected with them; women that are only subject to a negative prohibition, *kiddushin* can be effected with them; thus, they require a *chalitzah*. (20a4 – 20b1)

Rava challenges Rav's explanation and proves from a Baraisa that women who are prohibited to the *yavam* because of a negative commandment are Biblically subject to *yibum* (*unlike Rav who said that there is a Scriptural verse excluding them*). The Baraisa states: In the case of a *yevamah* forbidden by *mitzvah* (Rabbinically) or

by virtue of sanctity (a negative commandment), with whom the yavam cohabited or participated in chalitzah, her co-wife is thereby exempt. Now, if one is to assume that those forbidden by a negative commandment are Biblically subject to chalitzah but not to yibum, why should her co-wife be exempt when he cohabited with her? He raised the objection and he also supplied the answer: This is to be understood respectively; 'he cohabited with her' refers to one prohibited by virtue of mitzvah, 'participated in chalitzah with her' refers to the one forbidden by virtue of sanctity. (20b1)

Rava raised an objection: A man with crushed testicles or a severed organ, a man-made saris (sterile) and an old man, may either participate in chalitzah, or perform yibum. How? If these died and were survived by brothers and by wives, and those brothers arose and performed a ma'amar to the widows, or gave them letters of divorce, or participated with them in chalitzah, their actions are legally valid; if they cohabited with them, the widows become their lawful wives. If the brothers died and they arose and performed a ma'amar to their wives, or gave them a divorce, or participated with them in chalitzah, their actions are valid, and if they cohabited with them, the widows become their lawful wives but they may not retain them, because it is said in the Scriptures — A man with crushed testicles or a severed organ shall not enter [into the assembly of Hashem]. Now, if it could be assumed that those forbidden by a negative commandment are Biblically subject to chalitzah and not to yibum, why should the widows become their lawful wives if they cohabited with them?

Rather, said Rava, [say rather that] an erusin widow is forbidden by both a positive and a negative commandment, for it is written in the Scriptures: They shall be sanctified to their God. What, however, can be said in respect of a mamzer or a nesinah? — It is written, And sanctify yourselves.¹⁷ If so,¹⁸ all

the [negative commandments of the] Torah should be regarded as positive and negative since it is written in the Scriptures: And sanctify yourselves!

Rather, said Rava, [the fact is that] a widow from erusin is forbidden as a preventive measure against the marriage of a widow from nissu'in. What, however, can be replied in respect of a mamzer and a nesinah? — [The prohibition in] the case where a commandment is applicable is a preventive measure against [a marriage] where no commandment is applicable. If so, let one's paternal brother's wife not be allowed yibum as a preventive measure against marriage with the wife of his maternal brother! — The All Merciful made yibum dependent on inheritance [and the relationship] is, therefore, well known. - A woman, then, who has no children should not be taken in yibum as a preventive measure against the marriage of a woman who has children! — The All Merciful made yibum dependent on [the absence of] children, [and the fact would be] well known. - The wife of one's contemporary brother should not be taken in yibum as a preventive measure against marriage with the wife of one's brother who was not one's contemporary! — The All Merciful has made it dependent on dwelling together [and the fact] is well known. - All women should not be taken in yibum as a preventive measure against the marriage of an ayilonis! — This is unusual. A mamzer and a nesinah also are unusual! —

Rather, said Rava, [this is the reason]: The first act of cohabitation is forbidden as a preventive measure against a second act of cohabitation.

It has been taught likewise: If they cohabited [with any of the forbidden women] they acquire [her as wife] by the first act of cohabitation, but may not keep her for a second act of cohabitation.

Subsequently, Rava, and others say Rav Ashi, said: The statement I made is incorrect, for Rish Lakish said:



Wherever you come upon a combination of a positive and a negative commandment and you are able to act in conformity with both, well and good; but if not, the positive commandment must override the negative. Similarly here, it is possible to perform chalitzah, whereby one is enabled to keep the positive as well as the negative commandment.

An objection was raised: If they cohabited [with any of the forbidden women] they acquire [her as wife]! — This is indeed a refutation. (20b1 – 20b5)

INSIGHTS TO THE DAF

A POSITIVE COMMANDMENT OVERRIDING TWO PROHIBITIONS

Reb Moshe Rozmerin in Dvar Moshe states that the Rambam maintains that one who rounds the corners of his head has violated two prohibitions; one for cutting his payos (corners), and another for following in the statutes of the non-Jews.

Our Gemora states that the positive commandment for the metzora to remove all his hair overrides the prohibition of rounding the corners on one's head.

According to the Rambam, it is actually overriding two prohibitions.

Tosfos above (3b) discussed this issue and did not cite our Gemora as a proof. Other Rishonim maintain that a positive commandment cannot override two prohibitions.

A question is brought in the name of the Lubliner Gaon: The Gemora (20b) states regarding a widow falling to yibum to a Kohen Gadol that it is a situation where the positive commandment of yibum can possibly override the prohibition of a Kohen Gadol marrying a widow. He

asks: There are two prohibitions for a Kohen Gadol to marry a widow; one is lo yikach (he shall not take her), and the other is lo yechallel (he shall not desecrate the kehuna). How can the positive commandment of yibum override two prohibitions?

Reb Chaim Ozer in Achiezer (Even Ezer, 4) answers: The Rishonim concede when the two prohibitions are dependent on each other, that the positive commandment can override both prohibitions. The basis for the prohibition of desecrating the kehuna is because it is an illicit relationship; once the mitzvah of yibum overrides the prohibition of lo yikach, it becomes a permitted relationship and there will be no prohibition of lo yechallel.

[It would seem to me that this is dependent on how we understand that a positive commandment cannot override two prohibitions. We can explain that each prohibition strengthens one another and the positive commandment cannot override any of them; or perhaps the positive commandment does override one of the prohibitions, but it does not have the capabilities to override the second one. Reb Chaim Ozer would be in accordance with the latter explanation.]

According to the Achiezer, we can answer the Dvar Moshe's question. The positive commandment for the metzora to cut his hair overrides the prohibition against rounding the corners of one's head, and consequently, there will be no prohibition of following in the statutes of the non-Jews.

DAILY MASHAL

The Gemora states that a positive commandment can override a prohibition that carries with it a standard punishment.

Rabbeinu Nisim Gaon writes the following: Many people cast doubt on this precept, as we know that a negative commandment is more stringent than a positive commandment, so why should a positive commandment supersede a negative commandment? Rabbeinu Nisim answers that a positive commandment is set, and if there is a negative commandment, the negative commandment only functions if there is no contradiction to the positive commandment. This is what Hashem decreed, that the positive commandments remain in place, and the negative commandment only functions if there is no contradiction to the positive commandment. The Ramban, however, writes that the reason a positive commandment supersedes a negative commandment is because in reality, a positive commandment is greater than a negative commandment. A positive commandment is a reflection of the love Hashem has for us, because one who fulfills the instructions of his master is beloved by his master and the master will have compassion on him. A negative commandment, however, is a reflection of Hashem's Attribute of Judgment, and stems from fear. Since love is greater than fear, the Torah states that a positive commandment supersedes a negative commandment.

Based on this premise, the Meshech Chochmah explains that one who violates a negative commandment deserves a greater punishment than one who does not fulfill the will of Hashem. Nonetheless, since it is the will of Hashem that one observes both positive and negative commandments, one who fulfills a positive commandment demonstrates his love for Hashem. One who does not violate a negative commandment, however, merely demonstrates that he is afraid and nothing more. For this reason, the Torah states that a positive commandment supersedes a negative commandment. An example of this is one can wear Tzitzis with Techeiles on a garment of linen, as the positive commandment of wearing Tzitzis supersedes the negative commandment of shaatnez. The reason for this

is that one who wears shaatnez does not transgress the will of Hashem. In fact, the opposite is true, as by donning Tzitzis, he is fulfilling the will of Hashem.

In regards to the question: Why is it that a positive commandment overrides a prohibition and yet the punishment for transgressing a prohibition is much more severe than the punishment for not fulfilling a positive commandment?, Reb Yossie Schonkopf said over a parable from his Rebbe: A trucker is hired to transport a load across the country and the owner warns him not to go beyond the speed limit, not to crash the vehicle and to follow all the road instructions. If the trucker does everything perfectly but doesn't unload the goods at his destination; rather, he arrives at the destined location and immediately turns around carrying the same load, what is accomplished by the fact that the trucker obeyed the speed limit and followed all the rules?

The meaning is as follows: Our mission in life is to accomplish in this world and 'build the love towards HaShem,' therefore, this building overrides the transgressions. The prohibitions are only there to protect what has been built and not to suffocate the building.

This concept is elucidated by the Ramban in Parshas Yisro. He states that the fulfillment of a positive commandment is based on ahavas HaShem, loving HaShem and refraining from committing a transgression is based on yiras HaShem fearing HaShem. It is a higher level to serve HaShem through love, but it is worse to violate a prohibition, which is based upon fearing HaShem.