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DAF Notes
Insights into the Daily Daf
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Yevamos Daf 30

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

[The Mishnah had stated: And all of them (*the fifteen women prohibited due to ervah listed above, who exempt their co-wives and their co-wives co-wives from chalitzah and from yibum*) if their marriage or divorce was in doubt, the rivals perform *chalitzah* (*since we suspect that the woman prohibited due to ervah might have been divorced, or that her marriage was not valid, and thus they are not the co-wives of a woman prohibited by ervah*) and are not married by *yibum* (*since the woman prohibited by ervah may have been married, or may have been divorced, and they are indeed the rivals of a woman prohibited by ervah*). What is a doubtful marriage? He threw her *kiddushin,* and it was in doubt whether it lay nearer to him, or nearer to her, this is a doubtful marriage. What is the case of the doubtful divorce? He wrote in his own handwriting but there are no witnesses on it, or there are witnesses on it but there is no date on it, or there is a date on it but there is only one witness on it, this is a doubtful divorce.]

The *Gemora* asks: Why didn't the *Mishnah* state a case of a doubtful divorce where the husband threw the *get* towards the wife, and we are uncertain if the document lay nearer to him or to her?

Rabbah answered: This woman (*the co-wife*) is in a state of permissibility to all men (*the co-wife of an ervah may marry any man since she is not subject to the mitzvah of yibum*), would you forbid her marriage because of a doubt (*based upon the possibility that the forbidden relative's divorce was valid*)? You must not forbid her because of a doubt! (*In the three cases of divorce mentioned in our Mishnah, however, the prohibition is not due to doubtful divorce but to a defect or an irregularity in the document itself.*)

Abaye said to him: If so, let us also in the matter of betrothal say: This woman (*the co-wife*) is in a state of permissibility to the *yavam* (*had her husband died childless before he married the forbidden relative*), would you forbid her (*for yibum*) because of a doubt? You must not forbid her because of a doubt!

The *Gemora* differentiates between the two cases: There (*the case of doubtful betrothal*), it leads to a stringency (*the prohibition to marry the yavam*).

The *Gemora* asks: But it is a stringency which may lead to a leniency? For, sometimes, he would betroth her sister (*the sister of the one whose betrothal was doubtful*) by betrothal that was not uncertain, or it might occur that another man would betroth her also by a betrothal that was not uncertain and, as the master has forbidden her co-wife to be taken in *yibum*, it would be assumed that the betrothal of the first was valid and that that of the latter was not! (*Because, in the first case, he betrothed his wife's sister; and, in the second, he betrothed a married woman. In the latter case, the betrothal being regarded as invalid, the woman might illegally marry another man. In the former case, should he die without issue, his maternal brother might illegally marry her, believing her never to have been the wife of his brother.*)

The *Gemora* answers: Since she is required to perform *chalitzah* it is sufficiently known that it (*the prohibition to take her in yibum*) is a mere stringency (*and is not due to the fact that the betrothal of the forbidden relative was valid*).

The *Gemora* asks: If so, let him, in the case of divorce also, state it (*case of a doubtful divorce where the husband threw the get towards the wife, and we are uncertain if the*

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

document lay nearer to him or to her) and require her to perform *chalitzah*, and it will be sufficiently known that it was a mere stringency?

The *Gemora* answers: Were you to say that she was to perform *chalitzah* it might also be assumed that she may be taken in *yibum* (*and by marrying the co-wife of a forbidden relative one might become subject to the penalty of kares*).

The *Gemora* asks: But here also (*in the case of the doubtful betrothal*), were you to say that she is to perform *chalitzah*, she might also be taken in *yibum*?

The *Gemora* answers: Let her be taken in *yibum* and it will not matter at all since thereby she only retains her former status of being permitted to the *yavam*. (30b4 – 31a1)

Abaye asked on Rabbah from the following *Mishnah*: If a house fell on him and on his brother's daughter, and it is not known which one died first, her co-wife submits to *chalitzah* and is not married by *yibum*. (*If the wife died first, the co-wife falls to yibum, since at the time of her husband's death, he was not married to the ervah; therefore, chalitzah is necessary. If he died first, she would be released because she is the co-wife of an ervah.*) According to you, why should the co-wife submit to *chalitzah*? Let us say that there was a presumption that she would be permitted to any man (*if her husband would die*), how can we prohibit her based on an uncertainty?

If you will answer here also that it's a stringency to require the *chalitzah*, we can ask the following: It is a stringency that may lead to a leniency, for if we require *chalitzah*, she may be taken in *yibum*?

The *Gemora* answers: The case of divorce is a common one and therefore the Rabbbis decreed [that there should be no chalitzah, for it might lead to yibum]; however, regarding the house falling down, which is not a common occurrence, the Rabbis did not feel a necessity to decree [that *chalitzah* should not be performed on the account of being concerned that it will lead to *yibum*].

Alternatively, the Gemora answers that in the case of divorce, where the forbidden relative is before us, which clearly indicates that the other woman is a co-wife of an ervah, were her co-wife be required to perform chalitzah, it might have been thought that the Rabbis had ascertained that the bill of divorce was a valid document, and the co-wife might, therefore, be taken in yibum. In the case of a house that has collapsed, however, could the Rabbis have ascertained who died first in the ruin? (31a1)

The *Gemora* asks from the following *Mishnah* which indicates that *chalitzah* would be required by a case of *get*: Surely we learned: If the wife stood in a public domain, and the husband threw the *get* to her, she is divorced if it fell nearer to her; but if it fell nearer to him, she is not divorced. If it was half and half, she is divorced and not divorced. And when it was asked: In regard to which law do we act as if it was a divorce, the reply was that if he was a *Kohen*, she is forbidden to him; and if she is an *ervah*, her co-wife must perform *chalitzah*. We do not say, however, that were you to rule that she must perform *chalitzah,* she might also be taken in *yibum*.

The *Gemora* answers: Concerning this statement, surely, it was said: Both Rabbah and Rav Yosef maintain that here we are dealing with two groups of witnesses, one of which declare that it was nearer to her and the other declares that it was nearer to him, which creates a Biblical uncertainty (*as two witnesses declare that the letter of divorce was nearer to the woman, and as testimony of two witnesses is Biblically valid, the possibility that her co-wife is no more the co-wife of a forbidden relative must be taken into consideration, and she cannot be permitted to marry a stranger without previous chalitzah with the yavam*). Our *Mishnah*, however, speaks of one group of witnesses, where the doubt involved is only Rabbinical.

The *Gemora* asks: How is it known that our *Mishnah* is discussing a case where there was only one set of witnesses?

The Gemora answers: It is on analogy with (the case of a questionable) betrothal: Just as in betrothal only one group is involved, so also in divorce, only one group could be involved.

The Gemora asks: From where is it known that in betrothal itself only one group is involved? Is it not possible that it involves two groups of witnesses?

The Gemora answers: If two groups of witnesses had been involved, she would have been allowed to be taken in yibum, and no wrong would have been done (for the chazakah of being permitted to the yavam should still be in force).

The Gemora is astounded: Witnesses stand and declare that it (the betrothal to another) was nearer to her, and you say that she may be taken in yibum and no wrong will be done (for it has just been stated that the principle of chazakah is not applicable on a Biblical level in that case)!?

And furthermore: Even where two groups of witnesses are involved, the doubt should only be Rabbinical, since it might be said: Put one pair against the other and let the woman retain her original status, where she would be able to marry without *chalitzah*?

This indeed is similar to the incident with the estate of a certain lunatic, Bar Shatya. For Bar Shatya once sold some property, and a pair of witnesses came and declared that he had effected the sale while in a competent state of mind, and another pair came and declared that the sale was effected while he was in a state of lunacy. Rav Ashi said: Put two against two and let the land remain in the possession of the lunatic!

Rather, said Abaye in explanation of the *Mishnah*: *Its friend sheds light on the other*. That which the *Mishnah* taught in connection with betrothal is also to be applied to divorce, and what was taught in connection with divorce is also to be applied to betrothal.

Rava asked: If '*its friend sheds light on the other*,' what does the Mishnah mean when it says 'this is'?

Rather, said Rava: Whatever is applicable to betrothal is also to be applied to divorce, but certain points are applicable to divorce, which cannot be applied to betrothal. And 'this is' which was mentioned in the case of divorce is not to be taken literally. as 'this is' was used in connection with betrothal only because it was also used in connection with divorce.

What was 'this is' mentioned in connection with betrothal meant to exclude? — To exclude the question of date which is inapplicable to betrothal.

[The *Gemora* wonders why this should be the case.] And why did they not institute the recording of a date with respect of a betrothal document? This may well be satisfactorily explained according to the one who holds that the date is required in a letter of divorce on account of the usufruct (*which the wife is entitled to reclaim from her husband, in respect of her estate, from the date of her letter of divorce, though the document itself may not have been delivered to her until a much later date*). Since a betrothed woman has no need to reclaim usufruct, there is no necessity to write a date on the *kiddushin* document. According to he, however, who holds that it was ordained on account of one's sister's daughter (*who was his wife and had committed adultery; her uncle, in his desire to protect her, might supply her with an undated letter of divorce which would enable her to escape her due punishment by pleading that the offence had been committed after she had been divorced*), the insertion of a date should have been ordained in the case of betrothal also?

The *Gemora* answers: Since some men betroth with money and others betroth with a document, the Rabbis did not ordain the inclusion of a date.

Rav Acha the son of Rav Yosef asked Rav Ashi: Some slaves are purchased with money and others are purchased with a document, and nevertheless, the document requires a date?

The *Gemora* answers: Most slaves are purchased with a document, whereas most betrothals are performed with money, and not with documents. (31a2 - 31b2)

The *Gemora* offers another answer as to why they didn't institute the dating of *kiddushin* documents: It is because it is impossible, for how should one proceed? Were the document to be left with her, she might erase it (*if she would commit adultery*). Were it to be left with him, it might happen that the betrothed might be his sister's daughter and he would shield her. Were it to be left with the witnesses; if they remember the date of the marriage, they could come and tender their evidence, and if they do not, they may sometimes consult the document and then come and tender evidence. This testimony would be disqualified because it is written in the Torah: *Out of their mouths*. Their testimony must come from their mouths, but not out of their writing.

The *Gemora* asks: If so, let the same argument be applied to divorce also?

There, it comes to save her (*unless she produced it, were she ever to be accused of adultery. she would certainly be condemned since she was known as a married woman; the letter of divorce being her sole protection, it being the sole proof that her married state had ended, she should in her own interest carefully preserve it intact for fear that should she tamper with it, the deed may be declared invalid*), here (*by betrothal*), it comes to condemn her (*the document is proof that she had passed out of her unmarried state and that henceforward she is forbidden to all men except her betrothed. She (or any friend of hers) is not anxious to preserve such a document; and, should an accusation of adultery ever be brought against her, she could either destroy it or erase the date and claim her previously confirmed status of an unmarried woman. Hence no date was ordained to be included*). (31b2 – 31b3)

MISHNAH: 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 which states 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. (31b3)

GEMARA: If, however, the zikah with the two deceased brothers is Biblical, even chalitzah should not be required! — But it is only Rabbinical, a preventive measure having been enacted against the possible assumption that two sisters-in-law coming from the same house may both be taken in yibum. Then let one be taken in yibum and the other be required to perform chalitzah! — A preventive measure has been enacted against the possible assumption that one house was partially built and partially pulled down. Well, let the assumption be made! — Had he first contracted the yibum and then participated in the chalitzah, no objection could be raised. — The preventive measure, however, has been enacted against the possibility of his participating in the chalitzah first and contracting the yibum afterwards and thus placing himself under the prohibition of 'that does not build up,' the All Merciful having said: Since he had not built he must never again build.

Rava said: If he gave a letter of divorce in respect of his ma'amar, her co-wife is permitted; but she herself is forbidden, because she might be mistaken for one who is the holder of a letter of divorce. Others say that Rava said: If he gave a letter of divorce in respect of his ma'amar even she herself becomes permitted. What is the reason? — Because what he has done to her he has taken back. (31b3 – 32a1)

INSIGHTS TO THE DAF

FROM THEIR MOUTHS AND NOT FROM THEIR WRITING

The *Gemora* states that testimony is valid only from the mouths of the witnesses, not on the basis of any documents. It is evident that writing is not the same as talking.

The *Gemora* Chagigah (10b) cites Shmuel who states that one who resolves to make a vow must express the vow with his lips; otherwise, it is meaningless.

The Noda b'Yehudah (Y"D I: 66) inquires if an oath that was written down but not expressed would be valid as an oath. His underlying question is: Do we regard his written word as an expression of his lips?

This should be dependent on a dispute between the Rambam and Rabbeinu Tam regarding the validity of testimony from a written document. The Rambam maintains that testimony must be from the mouth of the witnesses and a document will not be Biblically acceptable for testimony. Rabbeinu Tam disagrees and holds that one who is physically capable of testifying may testify through the means of a document.

He concludes, however, that even the Rambam would agree that writing is considered testimony and yet, a written document cannot be accepted by Beis Din. The logic for this is as follows: An act of writing can constitute speech, but only during the time that it is being written. Beis Din will only accept an oral testimony when they hear it directly; hearsay is disqualified. Witnesses who signed a document are testifying, but Beis Din is not present at that time. If they would sign in front of Beis Din, that would be considered valid testimony.

With this principle, you can answer what would seemingly be a contradiction in the Rambam. He rules in Hilchos Eidus (3:7) that testimony must be from the mouth of the witnesses and a document will not be Biblically acceptable for testimony; yet later in Perek 9:11, he writes that one is required to testify with his mouth or at least that he is fitting to testify with his mouth. This would imply that if he is fitting to testify with his mouth, he would be permitted to testify through the means of a document. According to the Noda b'Yehudah's explanation, it can be said that the Rambam allows witnesses to testify through the means of a document, but only if they sign the document when Beis Din is present. Accordingly, we can say that an oath taken through writing will be binding.

Reb Akiva Eiger discusses some other practical applications for this principle.

(http://weeklyshtikle.blogspot.com/2007/05/weekly-shtikle-emor.html) The Weekly Shtikle writes the following: The topic is the discussion as to whether or not writing may qualify as a valid means of fulfilling the mitzvah of Sefiras HaOmer. That is, if one was to write, "Hayom Yom X La'Omer," would that be sufficient to fulfill one's obligation and would this action disallow one from repeating the count with a brachah?

The discussion of this halachic quandary follows an interesting family tree. This issue is first dealt with in Shaalos uTeshuvos of R' Akiva Eiger, siman 29. The teshuvah is actually written by R' Akiva Eiger's uncle, R' Wolf Eiger. Unable to attend his nephew's wedding, he made a simultaneous banquet of his own to celebrate the occasion. He wrote to his nephew about this halachic issue which was discussed at the banquet. He cites a number of related issues which he builds together to try to reach a conclusion. The Gemora (Yevamos 31b, Gittin 71a) teaches that witnesses

may only testify by means of their mouths and not by writing. The Gemora (Shabbos 153b) states that mutes should not separate Terumah because they cannot say the brachah. It is assumed that writing the brachah would not have been sufficient. Also, there is a discussion amongst the commentaries with regards to the validity of a vow that is written and not recited. R' Wolf Eiger concludes that writing is not a sufficient means of fulfilling the mitzvah of Sefiras HaOmer. However, this sparks a debate between him and his nephew which stretches out to siman 32.

This issue is eventually discussed in Shaalos uTeshuvos Kesav Sofer (Yoreh Dei'ah siman 106) by R' Avraham Shmuel Binyomin Sofer, R' Akiva Eiger's grandson who was, in fact, named after R' Wolf Eiger. He covers a host of related topics and eventually discusses the exchange recorded in his grandfather's sefer. The debate, although it encompasses various pertinent issues, never produces any concrete proof directly concerning the act of counting. However, Ksav Sofer quotes his father, Chasam Sofer, in his footnotes to Shaalos uTeshuvos R' Akiva Eiger (his father- in-law) where he provides a more concrete proof. The Gemora (Yoma 22b) teaches that one who counts the number of B'nei Yisroel transgresses a prohibition as it is written (Hoshea 2:1) "And the number of B'nei Yisroel shall be like the sand of the sea that shall not be measured nor counted." The Gemora cites two examples (Shmuel I 11:8, 15:4) where Shaul HaMelech went out of his way to avoid this prohibition by using pieces of clay or rams in order to perform a census. Chasam Sofer suggests that Shaul could simply have counted the men by writing down the numbers and not saying them. Since Shaul went to far greater lengths, we are compelled to say that writing the number of men would still have qualified as counting them and he would not have sufficiently dodged the prohibition. Thus, concludes Chasam Sofer, if one has explicit intention to fulfill the mitzvah, writing is a valid means of performing the mitzvah of Sefiras HaOmer. However, Kesav Sofer suggests that perhaps the brachah should not be recited in this case.

DAILY MASHAL

FROM THEIR MOUTHS AND NOT FROM THEIR WRITING

The Gemora states that Beis Din must hear the testimony directly from the mouths of the witnesses, but they cannot hear it from an interpreter, nor may they accept it through writing.

The Chasam Sofer explains that one who is not accustomed to speak falsehood, when and if he testifies falsely, it will be clearly recognizable on his face, and his manner of speech as well will demonstrate if he is speaking the truth or not. This, however, would not be the case if his testimony would be accepted by means of an interpreter or through his written words.