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Yevamos Daf 35

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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 Gemora cites two versions of Shmuel’s rulings regarding the waiting period of a woman before she gets married after cohabitating with a man.

Shmuel, according to the first version states: All women, whose husband’s died or they got divorced, are required to wait three months prior to getting married again (*this is done in order to determine the paternity of the child*), except for a girl who converted as a minor or a slave that was freed as a minor.

The Gemora infers from here that a Jewish girl who is a minor must wait three months. The Gemora says this cannot be referring to a Jewish girl who did *miun – refusal*, since Shmuel says that miun requires a waiting period, and it can’t be one who got divorced, since Shmuel already taught that a divorce requires a waiting period as well. [A Jewish girl who performed a *mi’un (refusal)* to her husband (*she is obviously a minor*) is not required to wait three months until getting married again. A minor who got divorced or one that had an illicit relationship is required to wait three months until getting married again. (*Although minors cannot conceive, this was a precautionary decree because of adult women in a similar situation.*)]

The Gemora therefore concludes that Shmuel is referring to a girl who cohabited illicitly, and he taught that the Sages decreed that she must wait, as an extension of the requirement for an adult woman.

The Gemora challenges such a decree, as the Mishnah says that if the switched wives were minors who cannot conceive, they can immediately return to their true husbands.

Rav Gidal answers in name of Rav that this was an exceptional ruling (i.e., uncommon, and like an exceptional ruling which has no implication for other cases).

Shmuel, according to the second version states: All women, whose husband’s died or they got divorced, are required to wait three months prior to getting married again except for a girl who converted as an adult or a slave that was freed as an adult (*since Shmuel follows the opinion of Rabbi Yosi who permits them to marry immediately because they utilize certain birth-control methods*) and by a Jewish girl who had an illicit relationship as a minor (*since it is uncommon, they didn’t decree on this*).

The Gemora infers from here that a Jewish girl who is a minor must wait three months. The Gemora says this cannot be referring to a Jewish girl who did *miun – refusal*, since Shmuel already taught that she need not wait, nor can it refer to a divorce, since Shmuel taught that she must wait.

Rather, Shmuel is referring to a minor who cohabited illicitly. Since such a case is uncommon, the Sages didn’t extend the decree of an adult to this case.

The Gemora notes: Although such relations are common for the convert and freed slave, Shmuel is ruling like Rabbi Yosi, who disputes Rabbi Yehudah and says that a convert, freed slave, or woman released from captivity can marry immediately.

Rabbah explains that Rabbi Yosi says that a woman having relations will use a contraceptive, and therefore there is no concern that she is currently pregnant.

Abaye says that this is valid for a convert, who was already planning to convert, she is careful in order to distinguish between the child that was conceived in holiness and the seed that which was not conceived in holiness. It is also understandable for a captive woman and a slavewoman, as they will have heard that they were being released, and will therefore protect themselves. [These women therefore had reason to use a contraceptive, to prepare for their next stage.] However, why does Rabbi Yosi not require the wait for that a slave freed because her master knocked out her eye or ear, since she had no reason to think she'd be freed?

And were you to suggest that wherever something unexpected happens Rabbi Yosi admits, surely it was taught: A woman who had been violated or seduced must wait three months; these are the words of Rabbi Yehudah. Rabbi Yosi permits immediate betrothal and marriage! — Rather, said Abaye, a woman cohabiting illicitly will invert herself to easily avoid conception. And the other? - There is the apprehension that she might not have inverted herself sufficiently to avoid conception. (34b3 – 35a2)

The Mishnah had stated regarding the case where the two men inadvertently cohabited with the wrong women that if they were daughters of Kohanim, they are disqualified from *terumah*.

The Gemora asks: This halachah should be the same even if they were not daughters of Kohanim; they will be forbidden to their husbands if they are married to Kohanim?

The Gemora emends the Mishnah to read, “If they were wives of Kohanim.”

The Gemora asks: Is this only if they were wives of Kohanim, and not if they were the wives of Yisraelim? But Rav Amram said that the following matter was told to us by Rav Sheishes: The halachah is that even a wife of a Yisroel who has been violated and is permitted to her husband will nevertheless be forbidden to marry a Kohen in the future!?

Rava answers: The Mishnah is actually discussing the daughters of Kohanim. (*Normally, a daughter of a Kohen who married a Yisroel, will be permitted to eat terumah after her husband dies and she has no children.*) If she has been violated during the marriage, she will be disqualified from eating *terumah* forever. (35a2 – 35a3)

#### **WE SHALL RETURN TO YOU, ARBAAH ACHIN**

The Mishnah states: One who performed *chalitzah* with his *yevamah* and she was found to be pregnant (*there is a decree against performing chalitzah with a yevamah within three months since her husband's death*) and later gave birth; if the child is viable, he will be permitted in her relatives, she will be permitted in his relatives and she is not disqualified from marrying a Kohen (*because the chalitzah was not valid since the brother did not die childless*). If, however, the child is not viable, he will be prohibited in her relatives, she will be prohibited in his relatives and she is disqualified from marrying a Kohen.

One who performs *yibum* with his *yevamah* and she was found to be pregnant and later gave birth; if the child is viable, he must divorce her and they are required to bring

a *chatas* offering. If, however, the child is not viable, he may keep her as a wife. If the child is viable, but we are uncertain if the child is a nine-month-old baby from the first brother or the seven-month-old child of the second brother; he must divorce her, and the child is deemed to be legitimate, and they are required to bring an *asham taluy* (a *korban* that one is required to bring if he is uncertain if he mistakenly committed a transgression). (35b1 – 35b2)

The Gemora states: One who performed *chalitzah* with his pregnant *yevamah* and subsequently she miscarries; Rabbi Yochanan rules that she is not required to have a *chalitzah* from the brothers (*the chalitzah has been retroactively determined to be valid*). Rish Lakish says: She would require *chalitzah* from the brothers.

The Gemora explains their opinions: Rabbi Yochanan maintains that she is not required to have a *chalitzah* from the brothers because the *chalitzah* has been retroactively determined to be valid, and performing a *yibum* with a pregnant *yevamah* who subsequently miscarries is retroactively determined to be valid. Rish Lakish disagrees: He maintains that she would require *chalitzah* from the brothers because a *chalitzah* performed with a pregnant *yevamah* is not valid and a *yibum* performed with a pregnant *yevamah* is not considered a valid *yibum*, even if she later miscarries.

The Gemora elaborates further regarding this dispute: It can be explained that they argue based on the understanding of a verse or it can be explained based on logic.

The dispute based on logic can be explained as follows: Rabbi Yochanan holds that if Eliyahu would have informed us that she is going to miscarry, wouldn't she be regarded as fit for a *chalitzah* or a *yibum*, now too, it is retroactively determined to be valid. Rish Lakish disagrees with this logic.

Alternatively, the dispute can be based on the understanding of the verse [Devarim 25:5]: *And he has no child (then there is an obligation for yibum)*. Rabbi Yochanan says: He died without having a child. Rish Lakish says: Expound the verse to mean "Examine him." (*If he died with any type of child, including a fetus, the yibum or chalitzah is not valid.*) (35b2 – 35b3)

Rabbi Yochanan challenged Rish Lakish: The Mishnah had stated: One who performed *chalitzah* with his *yevamah* and she was found to be pregnant and later gave birth; if the child is not viable, he will be prohibited in her relatives, she will be prohibited in his relatives and she is disqualified from marrying a Kohen. [This indicates that the *chalitzah* was valid, supporting Rabbi Yochanan.] This is quite correct according to my view: Since I maintain that the *chalitzah* of a pregnant woman is a proper *chalitzah* he, consequently, renders her unfit. According to you, however, who maintain that the *chalitzah* of a pregnant woman is not proper *chalitzah*, why does he render her unfit to marry a Kohen? — The other answered him: It is only Rabbinical and it is a mere restriction (because in truth, the *chalitzah* was not valid).

Some say that Rish Lakish cited this Mishnah to support his position (since the Mishnah only lists prohibitions, but doesn't say that she doesn't need a subsequent *chalitzah*). Rish Lakish raised an objection against Rabbi Yochanan: One who performed *chalitzah* with his *yevamah* and she was found to be pregnant and later gave birth; if the child is not viable, he will be prohibited in her relatives, she will be prohibited in his relatives and she is disqualified from marrying a Kohen. This is quite correct according to my view; since I maintain that the *chalitzah* of a pregnant woman is not a proper *chalitzah* it was justly stated as a restriction, that he renders her unfit to marry a Kohen but not that 'she requires no *chalitzah* from the brothers'; according to you, however, it should have been stated that 'she requires no *chalitzah* from the

brothers'! — The other replied: It should have been indeed; only because in the first clause it was stated: he does not render her unfit it was also stated in the latter clause: he renders her unfit.

Rabbi Yochanan challenged Rish Lakish from the Mishnah which says that if she was found pregnant after yibum, and then didn't have a viable baby, he may keep her, implying that he need not do anything further.

Rish Lakish deflects this by saying that "keeping her" means that he must consummate the yibum, and then stay married to her.

Some say Rish Lakish cited this as a support, since the Mishnah says that he keeps her, and not "he may keep her or release her", implying that he must keep her - i.e., consummate the yibum.

Rabbi Yochanan deflects this by saying that the Mishnah only used this term to follow the style of the first case, where the baby was viable, where he *must* release her.

The Gemora asks on Rabbi Yochanan (*who maintains that one who performed chalitzah or yibum with his pregnant yevamah and subsequently she miscarries, she is not required to have a chalitzah from the brothers*) from a Baraisa: One who performed a yibum with his yevamah, and it was found that she was pregnant; the yevamah's co-wife may not marry because the child might be viable.

The Gemora emends the Baraisa to say as follows: One who performed a yibum with his yevamah, and it was found that she was pregnant; the yevamah's co-wife may not marry because the child might not be viable.

According to Rabbi Yochanan that the yibum performed with a pregnant yevamah is considered valid, why don't we allow the co-wife to marry?

Abaye answers: Rabbi Yochanan never meant to dispute that a yibum performed with a pregnant yevamah is considered valid (*since this is a forbidden action, it is deemed to be invalid*); he only argued regarding a chalitzah performed with a pregnant yevamah.

Rava objects to Abaye's answer: If the yibum performed with a pregnant yevamah is not considered valid, the chalitzah cannot be valid either; for we have learned that whoever is subject to yibum is subject to chalitzah and whoever is not subject to yibum is not subject to chalitzah?

Rava answers Rabbi Yochanan's opinion differently: This is what the Baraisa means: One who performed a yibum with his yevamah, and it was found that she was pregnant; the yevamah's co-wife may not marry because the child might be viable, and a yibum or chalitzah with one's yevamah who is pregnant with a viable child is certainly not valid, and the child does not release the co-wife until he enters into the world.

The Gemora cites a Baraisa supporting Rava's position: In a case where a yavam married his yevamah who was found to be pregnant, her co-wife may not be married, because it is possible that the child would be viable, and neither yibum nor chalitzah frees her, but only the child brings exemption; and the child brings exemption only after he is born.

The Gemora asks on Rish Lakish: It may be inferred from the braisa that the reason (why the co-wife may not remarry while the first yevamah is pregnant) then is because it is possible that the child might be viable, but where the child is not viable, her co-wife is exempt. Does this imply a refutation against Rish Lakish?

The Gemora answers: Rish Lakish explains the Baraisa as follows: A yibum or chalitzah performed with a pregnant yevamah is not considered valid, but perhaps the co-wife



can be released because the majority of women give birth to viable children; the Baraisa teaches us that a child does not release the *yevamah* from her attachment to the *yavam* until the child enters into the world. (35b – 36a)

#### INSIGHTS TO THE DAF

#### FOOD FOR THOUGHT

\*\*\* The Gemora states that it is uncommon for a minor to engage in an illicit relationship.

It can be inferred from here that it is common for an adult to engage in an illicit relationship.

This is why the Mishnah in Kesuvos (2a) states that they established that marriages involving a virgin should take place on a Wednesday because of the concern that she engaged in an illicit relationship during the *erusin*.

The Rivash writes that in his times, it was common practice to engage in illicit relationships and they did not heed any rebuke.

The Chasam Sofer (E”H, 133) comments that the unmarried women were promiscuous and they only acted with modesty after they were married. A woman is believed after she is married that she will not cause her humble to stumble since she has “her bread in the basket.”

\*\*\* A woman that has been violated without her consent is forbidden to her Kohen husband. The Mishnah L’melech inquires as to what the halachah is regarding the man who violated her. Do we say that since she is forbidden to her husband, she is forbidden to the adulterer, or perhaps since the Torah writes the word “*tumah*” in relevance to cases of consent, here, where she has been violated by force, there is no verse teaching us that she would be forbidden to him?

The Mishnah L’melech states that he did not find any Rishonim that shed any light on this matter except for Tosfos on our Daf, who seems to hold that she would be forbidden to the adulterer.

\*\*\* Why does the Mishnah say that the *yavam* performs *chalitzah* with the *yevamah*; doesn’t the passuk say that the *yevamah* is the one that performs *chalitzah* by removing the *yavam*’s shoe?

The Nimukei Yosef writes (104b) that throughout Meseches Yevamos, the Gemora states that he is performing the *chalitzah* except for a case of a mute *yavam*.

The Noda B’Yehudah (I, E”H, 94) writes that as a child he would think that Chazal were not diligent in writing with correct grammar (*because they wrote that he performed the chalitzah, when in truth, she is the one that performs the action*), but afterwards he realized that their language is extremely precise.

The Gemora later (102b) states that the term *chalitzah* can mean the putting on of a shoe as well. This is what the Gemora means when it says that he performs the *chalitzah*. The *yavam* puts his shoe on in order to enable the *yevamah* to remove his shoe.