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Yevamos Daf 37

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The Gemora states: There is a dispute between Rav Acha and Rafram regarding a case where one betrothed a woman within three months of being a widow or divorced, and then he ran away. One of them said that we put him in *cheirem* (a *ban*; until he divorces her) and the other one says that running away is sufficient (*he obviously does not intend on consummating the marriage until the proper time*). (37a1 – 37a2)

The Mishnah had stated: One who performs *yibum* with his *yevamah* and she was found to be pregnant and later gave birth; 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*).

Rava asked Rav Nachman: Let us follow according to the majority of women, who give birth after nine months (and the child should be considered as a definite child of the dead brother; accordingly, the *yavam* and the *yevamah* have violated the prohibition of taking one’s brother’s wife, and they should be liable to a *chatas*)?

Rav Nachman replied: The women by us give birth after seven months.

Rava persisted: But the majority of women in the world give birth after nine months?

Rav Nachman explained himself: Most women give birth after nine months, but some give birth after seven months. One who gives birth after nine months; her fetus is recognizable after a third of her pregnancy days (*three months*), and since in this case, it was not recognizable, it weakens the majority and we cannot determine based on it.

The Gemora asks: Let the fact that her fetus was not recognizable after a third of her pregnancy days be a proof that the baby is certainly a seven-month baby to the later one?

The Gemora answers: Most women who give birth after nine months; their fetus is recognizable after a third of her pregnancy days, but some are not. Since in this case, it was not recognizable, it weakens the majority and we cannot determine based on it. (37a2)

The Gemora cites a Baraisa: The first child (*the uncertain one*) is fit to become a Kohen Gadol (*whether he is from the first or the second brother*). The second son (*if they remain married to each other*) is a *mamzer*

out of doubt. Rabbi Eliezer ben Yaakov says: He is not a *mamzer* out of doubt.

The Gemora asks: What is the explanation for Rabbi Eliezer ben Yaakov?

Abaye explains: The Tanna Kamma maintained that the second son is a possible *mamzer* and he would be prohibited from marrying a certain *mamzeres*. Rabbi Eliezer ben Yaakov disagrees and holds that he is treated as a certain *mamzer* and he is permitted to marry a *mamzeres*.

Rava explains: The Tanna Kamma maintained that the second son is treated like a certain *mamzer* and he would be permitted to marrying a certain *mamzeres*. Rabbi Eliezer ben Yaakov disagrees and holds that he is a possible *mamzer* and he is prohibited to marry a *mamzeres*.

The Gemora cites a Tannaic dispute if a possible *mamzer* is permitted to marry a certain *mamzer*. It was taught in a Mishnah: Rabbi Elozar says: The definite ones (those that are certainly forbidden to marry into the congregation) are permitted to marry other definite ones (those who are certainly forbidden to marry into the congregation). [An example of this would be a *mamzer* marrying a *Nesinah*.] Those that are definite are prohibited from marrying uncertain ones (those who are possibly forbidden to marry into the congregation). Those that are uncertain are prohibited from marrying others who are definite. Those that are uncertain are prohibited from marrying others who are uncertain. And these are the uncertain ones: a *shetuki* (someone whose father is unknown), *asufi* (his mother and father are unknown) and a *Cuthean*. And Rav Yehudah said in the name of Rav: The *halachah* is in accordance with Rabbi Elozar, and when

I said this in front of Shmuel, he told me, "Hillel learned that there were ten different genealogical classes that went up from Bavel, and they all are permitted to marry each other (*including those that are possibly forbidden to marry into the congregation; they are permitted to marry others who are certainly forbidden to marry into the congregation*), and you said that the *halachah* follows Rabbi Elozar?"

The Gemora concludes its explanation: Now Abaye upholds the opinion of Shmuel who stated that the *halachah* is in accordance with the ruling of Hillel, and consequently brings the ruling of Rabbi Eliezer ben Yaakov (for the *halachah* is always like him) into harmony with the *halachah*, so that there may be no contradiction between the one *halachah* and the other. [Abaye, who maintains that the *halachah* follows Hillel that permits a marriage between those who are definite and those who are uncertain, therefore explained Rabbi Eliezer ben Yaakov's teaching in a manner that would be in agreement with Hillel. So, when Rabbi Eliezer ben Yaakov stated that he is not a *mamzer* out of doubt, Abaye explained this to mean that a questionable *mamzer* is not required to be concerned of his uncertain status, but rather, he is regarded as a definite *mamzer* and thus, he is permitted to marry a *mamzeres*.] Rava, on the other hand, upholds the opinion of Rav, who stated that the *halachah* is in accordance with the ruling of Rabbi Elozar, and so he brings the ruling of Rabbi Eliezer ben Yaakov into harmony with the *halachah* in order that there may be no contradiction between one *halachah* and the other. [Rava, who maintains that the *halachah* follows Rabbi Elozar that forbids a marriage even between uncertain ones, therefore explained Rabbi Eliezer ben Yaakov's teaching in a manner that would be in agreement with Rabbi Elozar. So, when Rabbi Eliezer ben Yaakov stated that he is not a *mamzer* out

of doubt, Rava explained this to mean that a questionable mamzer is cannot be regarded as a definite mamzer because of the uncertainty status, but rather, he is a regarded as a questionable mamzer, and thus, he is not permitted to marry a mamzeres, for perhaps he is not a mamzer.] (37a2 – 37b1)

Abaye said: From where do I infer that Rabbi Eliezer ben Yaakov treats any doubtful case as a certainty? It is from that which was taught in the following Baraisa: Rabbi Eliezer ben Yaakov said: Behold, when a man has cohabited with many women and does not know with which particular woman he had cohabited, and, similarly, when a woman with whom many men had cohabited, does not know from which particular man she conceived, it will emerge that a father will be marrying his daughter and a brother his sister, and the whole world will be filled with mamzerim, and concerning this it was said: *And the land became full with (zimah) depravity.*

The Gemora notes: And Rava can answer you: The word ‘zimah’ means: What is this (as it is a case of possible mamzerus)?

The Gemora notes: More than that was said by Rabbi Eliezer ben Yaakov: A man shall not marry a wife in one country and then proceed to marry one in another country, since their children might marry one another and it will emerge that a brother would marry his sister (*since they are unaware that they are related*).

The Gemora asks: But Rav, when he would arrive in the city of Dardeshir, he would announce, “Who wants to marry me for one day?” (*This was done in order to protect him from sinning.*) Rav Nachman, when he would arrive in the city of Shechantziv, he would announce, “Who wants to marry me for one day?”

The Gemora answers: The Rabbis are different because their names are famous (*and the children will know who their father was*).

The Gemora asks: But didn’t Rava say: If one proposed to marry a woman and she has consented, she is required to wait seven clean days prior to the consummation of the marriage?

The Gemora answers: The Rabbis informed them before by sending their emissaries seven days prior to their arrival.

Alternatively, you can answer that they would only seclude themselves with the women. This protected them from sin because of the saying, “You cannot compare one who has bread in his basket with one who doesn’t have bread in his basket.” (37b1 – 37b2)

The Gemora cites a Baraisa: Rabbi Eliezer ben Yaakov said: A man must not marry a woman if it is his intention to divorce her, for it is written: *Do not devise evil against your friend, while he dwells securely by you.* (37b2)

The Gemora discusses different inheritance disputes that can emerge when we are uncertain if the child is a nine-month baby from the deceased brother or a seven-month baby from the *yavam*.

The uncertain child and the *yavam* come to inherit the possessions of the deceased (brother). The uncertain one says: “I am the son of the deceased, and I am entitled to the full estate.” The *yavam* counters: “You are my son, and you have no claim on my brother’s estate.” This is a case where the money lies in doubt,

and the halachah is that the estate should be divided amongst them.

The Gemora discusses another case: The uncertain child and the sons of the *yavam* come (*the yavam died before the division of his brother's estate*) to inherit the possessions of the deceased. The uncertain one says: "I am the son of the deceased, and I am entitled to the full estate." The sons of the *yavam* counter: "You are our brother, and you are entitled to a share together with us."

The Rabbis who were studying before Rav Mesharshiya thought to say that this is similar to that which we learned in a Mishnah: [A woman is required to wait three months between marriages (*to different people*) in order to ensure that any child she will have after her second marriage will clearly belong to the second parent. If a woman did not wait three months, and has a child, a mere seven months after marrying her second husband, the identity of the child's father is unclear.] He does not inherit either family (*as each family can claim that he is not their relative*), but both families inherit his possessions. And here, the case is just the reverse. [While in the Mishnah cited, their claim is certain and his is not, in this case, his claim is certain while theirs is not. His claim is certain since either way he is entitled either to all the estate (if he is the son of the deceased) or to a part at least (if he is the son of the *yavam*); their claim, however, is doubtful, since it is possible that he is the son of the deceased and they, as the sons of the *yavam*, have no claim whatsoever upon the estate.] There, they tell him, "Produce proof (that you are our brother) and take your share," while here he tells them, "Produce proof (that you are my brothers) and take your share."

Rav Mesharshiya said to them: Are the two cases indeed comparable? There, their claim is a certainty (that they are entitled to inherit) while his is doubtful; while here, both are doubtful (for although the uncertain one is definitely inheriting, it is not regarded as a definite claim, for it is not clear who he is inheriting from; either he is the son of the deceased or he is his nephew). [The ruling would therefore be that one-third of the estate should go to the uncertain one and the remaining two-thirds should be divided between the uncertain one and the two sons of the *yavam*.] If, however, a case is to be compared to a Mishnah, it is to the following one: That of an uncertain one and the sons of the *yavam* who came to claim shares in the estate of the *yavam* himself, where they can say to him, "Produce proof that you are our brother and take your share."

The Gemora discusses another case: The uncertain child and the sons of the *yavam* come to inherit the possessions of the deceased after the *yavam* has already taken his half of his brother's estate (*according to the ruling above that the yavam and the uncertain one divide the estate equally*). The sons of the *yavam* claim: "Bring a proof that you are our brother and we will divide our father's estate with you." The uncertain one counters: "No matter what, I should certainly receive a portion together with you. If I am your brother, give me a portion, and if I am not your brother (*and I am the son of the deceased*), give me the half that was previously given to your father (*since if the deceased had a son, there was no yibum, and he should not have inherited my father in the first place*).

Rabbi Abba says in the name of Rav: The initial judgment stands (*we cannot reverse the first ruling and the yavam rightfully owns half the estate, and the uncertain one must bring a proof that he is a son of the*

yavam in order to receive a portion). Rabbi Yirmiyah says: We reverse the previous judgment. [The sons of the yavam must either return to the uncertain son the half which their father had received or allow him in their father's estate a share equal to theirs.]

The Gemora suggests that they argue the same point as that which Admon and the Rabbis dispute, as was taught in the following Mishnah: If a man went overseas, and the path to his field was lost (*he had a path that ran through the neighboring fields, and when he returned from overseas, it was no longer recognizable; his neighbors refused to let him enter through their fields*), Admon says: He may force them to give him the shortest route. The *Chachamim* say: He purchases for himself a path even if it will cost him one hundred *manehs*, or let him fly through the air. And we asked there: What is the reasoning of the *Chachamim*? And Rav Yehudah answered in the name of Rav: The *Mishnah* is referring to a case where four different people owned the surrounding fields (*and each one of them can push him away*). If so, the *Gemora* asked, what is Admon's reason? Rava answered: If the four people bought their fields from four different people, or where four people bought their fields from, all would agree that they may push him away (*claiming that his path is in one of the other fields*). They only argue where one person bought all the surrounding fields from four different people. Admon maintains that the claimant can say to that person, "I certainly have a path in your territory." The *Chachamim*, however, hold that the defendant might retort, "If you will keep quiet, all is well, but if not (*and you insist on obtaining a path from my property*), I will return the deeds to their respective original owners, whom you will be unable of lodging a complaint against them (therefore, pay me something, and I will sell you a path to use)." Let us say, then, that Rabbi Abba says his

ruling in accordance with the Rabbis (that the judgment stands, for once he lost his right to the path, it remains that way), while Rabbi Yirmiyah says like Admon (that the judgment is reversed, for his claim is revived now that the surrounding properties belong to a single owner).

The *Gemora* disagrees: Rabbi Abba can tell you: I may even hold the view of Admon, for he made his ruling there only because he (the owner of the surrounded field) can say to him (the owner of the surrounding properties), "Whatever you wish to plead, my only path lies (somewhere) in your fields," but could such a plea be advanced here? And Rabbi Yirmiyah can tell you: I may uphold even the view of the Rabbis, for the Rabbis made their ruling there only because he (the surrounding owner) can tell him, "If you will keep quiet, all is well, and if not, I will return the deeds to their original owners and you will have no chance to state a claim against them," but could such a plea be advanced here? (37b2 – 38a1)

INSIGHTS TO THE DAF

PILEGESH

Rabbi Eliezer ben Yaakov ruled that one should not marry a woman in one place and marry another somewhere else. This might result in the children from these two marriages to encounter one another, and a brother could end up marrying a sister (*since they are unaware that they are related*). The *Gemora* asks: But Rav, when he would arrive in the city of Dardeshir, he would announce, "Who wants to marry me for one day?" (*This was done in order to protect him from sinning.*) Rav Nachman, when he would arrive in the city of Shechantziv, he would announce, "Who wants to marry me for one day?" The *Gemora* answers: The Rabbis are different because their names are famous

(and the children will know who their father was). The Gemora asks: But didn't Rava say: If one proposed to marry a woman and she has consented, she is required to wait seven clean days prior to the consummation of the marriage? The Gemora answers: The Rabbis informed them before by sending their emissaries seven days prior to their arrival. Alternatively, you can answer that they would only seclude themselves with the women. This protected them from sin because of the saying, "You cannot compare one who has bread in his basket with one who doesn't have bread in his basket."

Rabbi Yaakov Emden in Shailos Ya'avetz (2:15) cites this Gemora as support for his opinion that it is permitted for a man to have a *pilegesh* (a woman designated for this man, but without a *kesuvah* or *kiddushin*).

The Rambam in Hilchos Melochim (4:4) and in Hilchos Isus (1:4) rules that only a king is permitted to have a *pilegesh*, but a common person would be prohibited from taking a *pilegesh*. In Sefer HaMitzvos (213), he writes that every man is commanded to marry a woman with a *kesuvah* and *kiddushin*, and one is forbidden from cohabitating with a woman without a *kesuvah* and *kiddushin*.

The Rashba in a teshuva (4:314) and Rabbeinu Yonah in Shaarei Teshuva (3: 94,95) concur with the Rambam that a *pilegesh* is Biblically forbidden on account of the passuk: *lo sihye kedeisha*.

The Ra'avad, Ramban and the Ran disagree and maintain that it is permitted to take a *pilegesh*. They cite proof from Calev and Gideon and many others throughout Tanach, who had *pilagshim*.

The Peri Chadash says that the Rambam would concede that a *pilegesh* is indeed permitted if his intent is to designate her to be exclusively for him.

Reb Yaakov Emden concludes his teshuva that although he holds that one is permitted to take a *pilegesh*, one should only do so if it is endorsed by other scholars of his generation and they should arrange the relationship that it should be done in a manner which is permissible. He then lists the guidelines and restrictions regarding this relationship. (The teshuva goes on to say how having a *pilegesh* will rectify many social problems. It is quoted in the name of Reb Chaim Brisker that this is an example of a *novol b'rshus haftorah*, one who is vile, but nevertheless, it is within the confines of halacha.)

The Rema rules that it is forbidden to take a *pilegesh* nowadays.

DAILY MASHAL

Bread in your Basket

Our Gemora cites the famous saying: "You cannot compare one who has bread in his basket with one who doesn't have bread in his basket."

Rabbi Moshe Newman of Ohr Sameyach writes: These words of wisdom are taught in our *Gemora* to explain that a person is affected for the better, both psychologically and even physiologically, if he has a "security net" of knowing he can access at any time that which he needs. This is a metaphor, and is true not only regarding being less hungry if he already possesses food, but reflects on varied aspects of human nature. A person is less anxious and concerned about satisfying his needs if he knows he already possesses that which he wants and needs.