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Yevamos Daf 39

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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

Abaye offers a third answer to the apparent contradiction between the two rulings of Beis Shammai in the Mishna. The first part of the Mishna is referring to a case where the *yevamah* inherited the properties while she was already waiting for *yibum*. (*This is why it is considered her property and she is permitted to sell it.*) The latter part of the Mishnah is referring to a case where the *yevamah* inherited the properties while she was married to her initial husband. (*The husband’s rights are one level higher than hers, and when he dies, his right weakens one level, and are now regarded as equal to hers. This is why the property is divided between her family and the yavam’s.*)

Abaye concludes: His hand is like her hand. (*Abaye is explaining Beis Hillel. Beis Hillel maintains that the husband’s rights in her property are equivalent to that of the wife. When the husband dies, his rights weaken one level, and the property would belong to the woman. If she dies, the property goes to her heirs and not to the yavam.*) (38b4 – 39a1)

Rava asks Abaye: If the *yevamah* inherited the properties while she was married to her initial husband, everyone (*including Beis Hillel*) would agree that his hand is stronger than hers. (*Consequently, if he would die, his rights would weaken one level, and the yavam’s rights in her property are equivalent to hers, and they would divide the property.*)

Rava presents another resolution to the contradictory rulings of Beis Shammai. Both cases of the Mishnah are referring to where she inherited the properties while she was already waiting for *yibum*. The first part of the Mishnah is referring to a case where the *yavam* had not performed *ma’amar* with her yet. The latter part of the Mishnah is

referring to a case where the *yavam* performed *ma’amar* with her before she inherited the properties. Beis Shammai maintains that *ma’amar* makes the *yevamah* a definite *arusah*, but only a possible *nesuah*. The Gemora explains: She is a definite *arusah* in the sense that the relatives of the *ma’amar*-wife are forbidden to him. (*This was taught above (29a): There were three brothers, two of whom were married two sisters, and one is unmarried. If one of the husbands of the sisters died, and the bachelor performed a ma'amar, and afterwards his second brother died. Beis Shammai said: His wife stays with him, and the other is released because she is his wife's sister. Beis Shammai maintains that ma'amar is Biblically valid.*) She is a possible *nesuah*, and that is why her heirs divide the property with the *yavam*. (39a1)

The Gemora demonstrates that Abaye and Rava’s opinions were proposed by two earlier Amoraim. Rabbi Elozar said in accordance with Rava’s viewpoint. Rabbi Yosi the son of Rabbi Chanina said in accordance with Abaye’s viewpoint.

The Gemora asks: How can we say that Rabbi Elozar said in accordance with Rava; didn’t Rabbi Elozar say elsewhere (29a): Do not say that a *ma’amar* according to Beis Shammai accomplishes a complete acquisition of the *yevamah*, and if he would want to release her, it would be sufficient for him to give her a *get* (*and not chalitzah*); rather, the *ma’amar* accomplishes that her relatives are now Biblically forbidden to be taken for *yibum*?

The Gemora answers: Let us switch Rabbi Elozar with Rabbi Yosi the son of Rabbi Chanina.

Alternatively, the Gemora answers: Rabbi Elozar was only discussing the acquisition of *ma’amar* in respect to the fact

that the *yavam*, if he would want to release her, it would not be sufficient for him to give her a *get*; he is required to perform *chalitzah* as well. He was not discussing the issue of dividing her property (*and perhaps she is regarded as a possible nesuah*). (39a1 – 39a2)

Rav Pappa said: The inference from our Mishnah is in agreement with the opinion of Abaye (that it is referring to the melog properties that she inherited while she was still married to the first husband), although 'if she died' (the case of the latter section) presents a difficulty.

The Gemora explains: Seeing that it was stated 'property that comes in and goes out with her,' what is meant by 'comes in' and what by 'goes out'? Obviously, '*comes into* the domain of her husband,' and '*goes out* from the possession of her husband (when he dies) into the possession of her father.' [This happens when she dies. The property must consequently have come into her possession when she was still living with her husband, as Abaye maintains.]

Rav Pappa had concluded: Although 'if she died' (the case of the latter section) presents a difficulty. The Gemora explains: Why should they (Beis Shammai and Beis Hillel) dispute regarding the property itself, which can arise only in the event of the woman's death; let them rather dispute regarding the produce which arises even when the woman is still alive (for they are arguing regarding the question of 'his hand being like her hand')!? And there is nothing more to be said on this matter. (39a2)

The Mishnah had stated: If the *yavam* marries her, she is regarded as his wife in every respect.

The Gemora asks: Regarding which laws does this ruling apply to?

Rabbi Yosi the son of Rabbi Chanina said: This teaches us that the *yavam* may divorce her with a *get*, and he also can remarry her afterwards.

The Gemora asks: Isn't it obvious that he may divorce her with a *get*?

The Gemora answers: Since the verse [Devarim 25:5] states: *The yavam shall cohabit with her, and take her to himself as a wife, and perform yibum with her*; one might think that she is always regarded as his *yevamah* even after marrying her, and perhaps she would require a *chalitzah* to be released from him. The Mishnah teaches us that a *get* is sufficient.

The Gemora asks: Isn't it obvious that he may remarry her afterwards?

The Gemora answers: One might have thought that after he fulfilled his *mitzvah* and subsequently divorced her, she should become subject to the prohibition of being a brother's wife and she should be forbidden to him; the Mishnah teaches us that once she becomes permitted to him, she remains that way.

The Gemora asks: Might it not be suggested that the law is so indeed?

The Gemora answers: The Torah stated: *And take her to self as a wife*; as soon as he has taken her, she is deemed to be his wife in every respect. (39a2 – 39a3)

The Mishnah had stated: If the *yavam* marries her, she is regarded as his wife in every respect, except that the obligations stemming from the *kesuvah* rests upon the property of her first husband.

The Gemora asks: What is the reason for this?

The Gemora answers: The *yavam* did not obligate himself to her; the Torah bestowed her upon him. (*He is required to write for her a new kesuvah, but his properties are not encumbered towards this obligation; only the properties of the deceased are encumbered for this obligation.*) But if there are no assets available from the deceased, the Rabbis

established that there should be a *kesuvah* from the *yavam* as well, in order that she should not be so easy to divorce. (39a3)

The Mishnah states: The *mitzvah* is that the eldest brother should be the one to perform the *yibum*. If he does not want, we go to all of the other brothers. If they also refuse, we go back to the eldest and say to him: You have the *mitzvah*; either perform a *chalitzah* or a *yibum*.

If the eldest brother said that they should wait for a minor brother to become an adult, or if the eldest brother was overseas, or he is a deaf-mute or deranged, we do not listen to him. Instead, we tell him: You have the *mitzvah*; either perform a *chalitzah* or a *yibum*. (39a4)

The Gemora presents a dispute between Rabbi Yochanan and Rabbi Yehoshua ben Levi regarding a case where the eldest brother wishes to perform a *chalitzah* and a younger brother wishes to perform *yibum*: One of them says that the *yibum* of the younger one is preferable and the other one says that the *chalitzah* from the eldest brother is preferable.

The Gemora explains: The one who says that the *yibum* of the younger one is preferable is because *yibum* is the primary *mitzvah*, and the one who says that the *chalitzah* from the eldest brother is preferable is in a place where there is an elder brother, the cohabitation of the younger brother is nothing (since the *mitzvah* is incumbent upon the older one).

The Gemora asks on the second opinion: The Mishnah had stated: The *mitzvah* is that the eldest brother should be the one to perform the *yibum*. If he does not want, we go to all of the other brothers. It would seem that the eldest brother did not want to perform a *yibum*, but he would be willing to perform a *chalitzah*, and nevertheless, we go to the younger brothers to perform a *yibum*.

The Gemora explains the Mishnah to be referring to a case where the eldest brother did not want to perform a *chalitzah* or a *yibum*.

The Gemora asks: Similarly, then, in the case of the other brothers, the Mishnah meant that they declined to perform both *chalitzah* and *yibum*; why, then, is the eldest again approached with the object of bringing pressure upon him? Let us compel the younger brothers instead!?

The Gemora answers: As the *mitzvah* is incumbent upon him, pressure also must be used against him.

The Gemora asks on the first opinion: The Mishnah had stated: If the eldest brother said that they should wait for a minor brother to become an adult, we do not listen to him. Instead, we tell him: You have the *mitzvah*; either perform a *chalitzah* or a *yibum*. If the *yibum* of the younger brother is preferable, let us wait until he becomes an adult?

The Gemora counters: According to you, why don't we wait for the eldest brother to return from overseas; it is evident that we apply the principle that we do not delay the performance of a *mitzvah* in expectation of some future, better performance. (39a4 – 39a5)

The Gemora cites an alternative version of the argument: They all agree that the *yibum* of the younger one is preferable; they only differ on the *chalitzah* of a younger brother. And the statement ran as follows: [On the relative importance of] the *chalitzah* of a younger, and the *chalitzah* of an elder brother there is a difference of opinion between Rabbi Yochanan and Rabbi Yehoshua ben Levi. One holds that the *chalitzah* of the elder is preferable, and the other holds that both are of equal importance. One of them maintains that the *chalitzah* from the eldest brother is preferable since the *mitzvah* is incumbent upon him. The other one says that they are equal; the preference for the older one is only in respect to the *mitzvah* of *yibum*, but regarding *chalitzah*, they are equal.

The Gemora asks from our Mishnah on the second opinion: If they do not want, we return to the eldest. It would seem that they did not want to perform a *yibum*, but they would be willing to perform a *chalitzah*, and nevertheless, we go to the eldest brother to perform *chalitzah*. This would indicate that the *chalitzah* of the older brother is preferable to that of a younger brother!?

The Gemora explains the Mishnah to be referring to a case where they did not want to perform a *chalitzah* or a *yibum*.

The Gemora asks: Similarly, then, in the case of the Younger brothers, the Mishnah meant that they declined to perform both *chalitzah* and *yibum*; why, then, is the eldest again approached with the object of bringing pressure upon him? Let us compel the younger brothers instead!?

The Gemora answers: As the *mitzvah* is incumbent upon him, pressure also must be used against him.

The Gemora asks from our Mishnah on the first opinion: If he deferred to the eldest brother who was overseas, we do not listen to him. But if the *chalitzah* of the eldest is preferable, why do we not listen to him? Let us rather wait, since it is possible that when he returns he will perform *chalitzah*!?

The Gemora counters: And according to your view, it might similarly be objected: Why, if he wishes to defer to the minor, do we not listen to him? Let us rather wait, since, on becoming of age, he might perform a *yibum* (which is certainly preferable)? Alternative, perhaps the elder brother will come (from overseas) and perform *yibum*!?! Rather, the fact is that the performance of a *mitzvah* must not be delayed. (39b1)

The Gemora cites a Mishnah in Bechoros (13a): The *mitzvah* of *yibum* takes precedence over the *mitzvah* of *chalitzah*. This was only initially, when the people intended solely for the sake of the *mitzvah*, but now that they have ulterior

motives involved, the *mitzvah* of *chalitzah* takes precedence.

Rav said: We do not force the *yavam* to perform *chalitzah*; he can perform a *yibum* if he so desires. (If the *yevamah* does not want the *yavam* to perform a *yibum*, we compel the *yavam* to perform *chalitzah*.)

When they came before Rav he addressed them thus: 'If you wish, submit to *chalitzah*; if you prefer, perform *yibum*; the All Merciful has given you the choice: And if the man does not wish to take his brother's wife, implying, if he likes he may, whenever he wishes, submit to *chalitzah* or, if he prefers, perform *yibum*.

Rav Yehudah also is of the opinion that no coercion may be applied; since Rav Yehudah has ordained [the following formula] for a deed of *chalitzah*: '[We certify] that So-and-so daughter of So-and-so brought before us into court her brother-in-law So-and-so, and we have ascertained him to be the paternal brother of the deceased. We told him, "If you wish to perform *yibum*, perform it, and if not, incline towards her your right foot". He inclined towards her his right foot and she removed his shoe from off his foot and spat out before him, a spittle which has been seen by the court upon the ground'. Rabbi Chiya bar Ivya in the name of Rav Yehudah concluded as follows: 'And we read before them [the relevant passage] that is written in the Book of the Torah of Moses'.

'We ascertained him'. On this, Rav Acha and Ravina are in dispute. One says: Through [qualified] witnesses. The other says: Even a relative and even a woman [may tender the evidence]. The law is that it is a mere intimation, and that even a relative and even a woman [may tender the evidence]. (39b1 – 39b2)

'At first, when the object was for the sake of the *mitzvah*, the *mitzvah* of *yibum* was preferable to that of *chalitzah*; now, however, when the object is not for the sake of the *mitzvah*, the *mitzvah* of *chalitzah*, it was laid down, is preferable to



that of *yibum*'. [Initially, the *mitzvah* of *yibum* was preferential, but now that that they have ulterior motives involved, the *mitzvah* of *chalitzah* is preferential.]

Rami bar Chama said in the name of Rabbi Yitzchak: The Rabbis retracted later and said that the *mitzvah* of *yibum* takes precedence.

Rav Nachman bar Yitzchak asked him: Have the generations improved?

Rami bar Chama answered: Originally, they held like Abba Shaul who maintains that the *mitzvah* of *chalitzah* takes precedence over the *mitzvah* of *yibum* (*since he might not have pure intentions*); however, later, they reversed their opinion and held like the Rabbis (who hold that *yibum* is always more preferable, regardless of his intentions), for it was taught in a Baraisa: Abba Shaul said: If a yavam marries his sister-in-law on account of her beauty, or in order to gratify his sexual desires or with any other ulterior motive, it is as if he has encountered with an *ervah*; and I am even inclined to think that the child [of such a union] is a *mamzer*. But the Sages said: Her husband's brother shall cohabit with her, whatever the motive. (39b2 – 39b3)

INSIGHTS TO THE DAF

WHICH MITZVAH TAKES PRECEDENCE?

The Gemora states that although it might be preferable for the older brother to perform a *yibum*, we do not wait for him. This is based on the principle that we do not delay the performance of a *mitzvah* in expectation of some future, better performance.

The Terumas Hadeshen (35) comments that the only time you do delay the performance of the *mitzvah* is we are concerned that by delaying, the *mitzvah* will not be fulfilled. Similarly, the Gr"m (O"R 426) rules that this halacha is only applicable if the brother is overseas, but otherwise, we would be required to wait for him.

Sheorim Mitzuyanim B'halacha brings a proof from here to the Rama's ruling regarding Kiddush Levanah. One should wait to recite the blessing for the moon for Motzei Shabbos if it will occur prior to the tenth of the month, but if it is afterwards, one should not wait for Motzei Shabbos, and he should recite the blessing in middle of the week. This is because there might be a few consecutive cloudy days and he will have missed the opportunity for the *mitzvah* this month.

DAILY MASHAL

There is an argument between the Radvaz (187) and the Chacham Tzvi (106) regarding a person who was in jail and he did not have the ability to perform any mitzvos and his captors gave him one day that he can choose to be released and perform the mitzvos of that day, which day should he choose. The Radvaz says he should choose the first opportunity that he has and the Chacham Tzvi disagrees and holds that one should wait until there is a mitzvah of great prominence.

The Gemora in Yoma (34a) discusses the obligation of *nesachim* - the wine libations by the two *temidin* which were brought every day. There is an argument there if we derive the morning *tamid* from the afternoon or vice-versa. Tosfos comments that there would be a difference l'halachah if they would have only enough *nesachim* for one *korban*; which *tamid* should have the *nesachim*. Is the primary *tamid* the morning or the afternoon? Rabeinu Chananel says that there is no difference l'halachah; it's just a matter as to how we expound the *pesukim*. The Sfas Emes asks on Tosfos that the *din* should be clearly that whichever *mitzvah* one is holding by, that is the one he should perform and if one is ready to bring the morning *tamid*, he should bring the *nesachim* with that one, even if the afternoon *tamid* is the primary one.

The Biur Halacha (109) has a *shaila* if one davens normally a long *Shemoneh Esrei* and he will certainly miss *kedushah*, should he daven with the *tzibur* and fulfill the *mitzvah* of *tefilah b'tzibur* or should he wait and fulfill the *mitzvah* of reciting *kedushah*.