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Yevamos Daf 91

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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

### **PENALIZE THE DAUGHTER OF A LEVI**

The *Mishna* had stated: If she was the daughter of a *Yisroel*, she is disqualified from the *Kehunah*.

The *Gemora* asks: Isn't this halachah obvious? Any woman who commits adultery is disqualified from the *Kehunah*?

The *Gemora* answers: This ruling was stated only as a means to introduce the next ruling that if she was the daughter of a *Levi*, she is disqualified from *ma'aser*, which is indeed a novel teaching.

The *Gemora* asks: Is this ruling correct? But we learned in the following *braisa*: A daughter of a *Levi* that was held captive or cohabited promiscuously, we provide her with *ma'aser* and she is permitted to eat it.

Rav Sheishes answers: In the case of the *Mishna*, it was a Rabbinic penalty since she was lax and relied on one witness without investigating the matter thoroughly. (*The case of the braisa is relatively uncommon, so the Rabbis did not institute a decree.*) (90b6 – 91a1)

The *Mishna* had stated: If she was the daughter of a *Kohen*, she is disqualified from eating *terumah*.

The *Gemora* explains that she cannot even eat Rabbinic *terumah*. (91a1)

### **KESUVAH FOR THE MALE CHILDREN**

The *Mishna* had stated: And the heirs of neither this one, nor of this one inherit her *kesuvah*.

The *Gemora* asks: Why are we mentioning *kesuvah* here? The *Mishna* had already taught us that she does not receive a *kesuvah*.

Rav Pappa answers: The *Mishna* now is referring to the *kesuvah* conditions for the male children. (*Stipulated in the kesuvah is that her sons are entitled to receive her kesuvah from their father's estate when he dies, even if their mother died first and their father married again and had sons with his second wife. They receive her kesuvah in addition to their shares in their father's estate to which the sons of both the first and the second wife are equally entitled. In the case spoken of in our Mishna, however, the sons of the first wife lose their claim to her kesuvah.*)

The *Gemora* asks: But isn't this also obvious? If there is no *kesuvah*, there are obviously no conditions in the *kesuvah* either?

The *Gemora* answers: If the *Mishna* would not have explicitly taught us this halachah, we would have thought that she forfeits her rights to the *kesuvah* because she transgressed a prohibition; however, her children, who did nothing wrong, perhaps they should be entitled to their portion of the *kesuvah*. The *Mishna* teaches us that they also do not have a claim in the *kesuvah*. (91a1 – 91a2)

The *Mishna* says that if either husband dies childless, his brothers must perform *chalitzah*, but may not perform *yibum*.

The Gemora explains that the first husband's brothers have a Torah obligation to release her, and they are Rabbinically prohibited from yibum, due to the sanctions on her. The second husband's brothers have a Rabbinic requirement of chalitzah, just as he would have to divorce her, but no requirement of yibum. (91a2)

### THREE LENIENT TANNAIM

The *Mishna* had cited three Tannaim who dissent from the *Tanna Kamma* of the *Mishna*. They are more lenient than him regarding the penalties imposed on the woman. The *Mishna* had stated: Rabbi Yosi says: Her first husband's estate is responsible for her *kesuvah*. Rabbi Elozar says: The first husband is entitled to an object she finds and to her earnings, and he is authorized to annul her vows. Rabbi Shimon says: Cohabitation with her or her *chalitzah* to the brother of the first husband exempts her co-wife from *chalitzah* or *yibum*, and the child born from the first husband is not a *mamzer*.

The *Gemora* presents a dispute among two Amoraim in their explanation of these various viewpoints. Rav Huna said: The latter agree with the former (*Rabbi Yosi*), but the former do not agree with the latter. Rav Huna explains: Rabbi Shimon agrees with Rabbi Elozar since he (*Rabbi Shimon*) does not penalize the woman in the case of cohabitation which constitutes the main prohibition, how much more so with respect to being entitled to an object which she finds and to her earnings, which are only monetary matters. Rabbi Elozar, however, does not agree with Rabbi Shimon since it is only in respect to the objects she finds and to her earnings, which are monetary matters, that he does not penalize her, but in respect to cohabitation, which constitutes the main prohibition, he does penalize her. And both of them agree with Rabbi Yosi since they do not penalize the woman in respect of those matters which are applicable while she continues to live with her husband, how much more so with respect of the *kesuvah*, the purpose of which is for the woman to take it and depart, they certainly would not penalize her. Rabbi Yosi, on the other hand, does not agree

with them since it is only in respect of the *kesuvah*, the purpose of which is for the woman to take it and depart that he does not penalize her, but in respect of those matters which are applicable while she continues to live with her husband, he does penalize her.

Rabbi Yochanan disagrees: The former agree with the latter (*Rabbi Shimon*), but the latter do not agree with the former. Rabbi Yochanan explains: Rabbi Yosi agrees with Rabbi Elozar since he does not penalize the woman in respect of the *kesuvah*, which has to be taken from the husband and given to the wife, how much more so with respect to being entitled to an object which she finds and to her earnings, which have to be taken from her and given to him, he certainly would not penalize her. Rabbi Elozar, however, does not agree with him since it is only in respect to an object which she finds and to her earnings, which have to be taken from the woman and given to the husband that he does not penalize her, but in respect of the *kesuvah*, which has to be taken from him and given to her, he does penalize her. And both of them agree with Rabbi Shimon since they do not penalize her in respect of matters which are applicable while her first husband is alive, how much more so with respect of cohabitation with the *yavam*, which takes place after his death. Rabbi Shimon, however, does not agree with them since it is only in respect of cohabitation, which takes place after her husband's death that he does not penalize her, but with respect of those matters which are applicable while he is alive, he does penalize her. (91a2 – 91a3)

### RAV AND RABBI SHIMON

The *Mishna* stated: (*Rabbi Shimon said:*) If she married without permission (*there were two witnesses that her husband died*), she is permitted to return to him (*since she was not expected to investigate and clarify the matter*).

Rav Huna said in the name of Rav: Like so is the halachah.

Rav Nachman said to him: Why do you act surreptitiously? If you hold in accordance with Rabbi Shimon (*even though he is in the minority*), why don't you say overtly that the halachah follows Rabbi Shimon? And if you will respond that if you would say that, it would imply that the halachah is in accordance with Rabbi Shimon even with respect to his first ruling in the *Mishna*, why don't you say that the halachah follows Rabbi Shimon only in regards to his last ruling?

The *Gemora* remains with a difficulty. (91a3)

Rav Sheishes said: It would seem that Rav said this when he was drifting off to sleep (*for otherwise, he would never have said it*). For by stating that the halachah follows Rabbi Shimon, he is implying that the Rabbis disagree with Rabbi Shimon and penalize a woman who remarried on the basis of the testimony of two witnesses that her husband died. Now, how could that be? What should she have done (*there is no better proof than two witnesses*); it is a case of unavoidable circumstance?

And furthermore, Rav Sheishes asks from the following *braisa*: All of the women involved in an incestuous marriages forbidden in the Torah, do not require a letter of divorce from the man who married them except a married woman who remarried in accordance with a decision of a *Beis Din*. This implies that only where she remarried in accordance with a decision of a *Beis Din* does she require a letter of divorce, but where the marriage took place on the basis of the testimony of two witnesses, she would not require a letter of divorce (*since it was unavoidable*).

Now, whose view is represented here? If you would suggest that it is the view of Rabbi Shimon, would he hold that the woman requires a letter of divorce even where her marriage took place in accordance with a decision of the *Beis Din*? Surely it was taught in the following *braisa*: Rabbi Shimon said: If the *Beis Din* acted based on the testimony of one witness, the marriage is regarded like an intentional act of adultery between a man and a married woman (*and she is forbidden to return to her husband if he reappears*). If,

however, they acted on the basis of the testimony of two witnesses, the marriage is regarded as an unintentional act of adultery between a man and a married woman (*and she would be permitted to return to her husband if he reappears*). In both cases, however, a letter of divorce is not required (*Rabbi Shimon did not mention divorce at all*). Evidently, it must represent the view of the Rabbis. (*This proves that they also admit that a divorce is not necessary where the marriage was contracted in reliance on two witnesses.*) Who is it, then, that differs from Rabbi Shimon that it should have been necessary for Rav to declare the *halachah* to be in agreement with his view?

The *Gemora* defends Rav's statement: The first *braisa* actually represents the view of Rabbi Shimon and the second *braisa* should be interpreted as follows: Rabbi Shimon said: If the *Beis Din* acted based on the testimony of one witness, the marriage is regarded like an intentional act of adultery between a man and a married woman, and the woman consequently requires a letter of divorce. If, however, they acted on the basis of the testimony of two witnesses, the marriage is regarded as an unintentional act of adultery between a man and a married woman, and the woman consequently would not require a letter of divorce.

Rav Ashi offers an alternative explanation to the *braisa*: The *braisa* was only concerned with respect to the woman's prohibition to the husband (*and not with respect to whether a letter of divorce is required or not*). The following is what the *braisa* is saying: If the *Beis Din* acted based on the testimony of one witness, the marriage is regarded like an intentional act of adultery between a man and a married woman, and she is forbidden to return to her husband if he reappears. If, however, they acted on the basis of the testimony of two witnesses, the marriage is regarded as an unintentional act of adultery between a man and a married woman, and she would be permitted to return to her husband if he reappears.

Ravina offers an alternative explanation to defend Rav's statement: The *braisa* was concerned only with respect to

liability to a *chatas* offering. The following is what the *braisa* is saying: If the *Beis Din* acted based on the testimony of one witness, the marriage is regarded like an intentional act of adultery between a man and a married woman, and the woman does not bring a *chatas* (*since only inadvertent transgressions are liable for a chatas*). If, however, they acted on the basis of the testimony of two witnesses, the marriage is regarded as an unintentional act of adultery between a man and a married woman, and the woman is required to bring *chatas*.

Alternatively, however, you could say that the first *braisa* represents the view of the Rabbis, and the following is what the *braisa* is saying: All of the women involved in an incestuous marriages forbidden in the Torah, do not require a letter of divorce from the man who married them except a married woman (*who remarried based on the testimony of two witnesses*) and a married woman who remarried in accordance with a decision of a *Beis Din*. (*It emerges that the Rabbis dispute Rabbi Shimon in the case where she remarried based on the testimony of two witnesses, and a letter of divorce is required; she is not considered blameless. This supports Rav's statement that the halachah follows Rabbi Shimon, for in fact, the Rabbis do dispute this.*) (91a3 -91b1)

#### WHAT SHOULD SHE HAVE DONE?

(*Rav Sheishes had questioned Rav's statement that the halachah follows Rabbi Shimon, for he is implying that the Rabbis disagree with Rabbi Shimon and penalize a woman who remarried on the basis of the testimony of two witnesses that her husband died. Now, how could that be? What should she have done, there is no better proof than two witnesses; it is a case of unavoidable circumstance?*)

Ulla asked: Do we indeed say this argument "what should she have done"? But we have learned in the following *Mishna*: If a letter of divorce was dated according to the reign of the Unworthy Kingdom (*the Roman Empire*), according to the Kingdom of Media, or according to the Kingdom of Greece, according to the building of the Beis

Hamikdosh, or the destruction of the Beis hamikdosh, or if he was in the East and he wrote that he was in the West, or he was in the West and he wrote that he was in the East, she must leave her first and her second husband (*if she remarried based on this defective document from her husband*), and all the penalties (*enumerated in the Mishna*) are applicable to her. But why? Let it be argued, "What should she have done?"

The *Gemora* answers: She should have arranged for the letter of divorce to be read by an expert (*to determine its validity*). (91b1 – 91b2)

Rav Simi bar Ashi questions Rav Ashi from a different part of the aforementioned *Mishna*: Come and hear from the following *Mishna*: If a *yavam* married his brother's wife, and her co-wife went and married another man, and then the brother's wife was found to be an *aylonis* (*incapable of procreation*), the co-wife must leave her husband and the *yavam* and all the penalties (*enumerated in the Mishna*) are applicable to her. But why? Let it be argued, "What should she have done?"

The *Gemora* answers: She should have waited (*until it has been definitely determined that the yevamah was not an aylonis*). (91b2)

Abaye questions Rav Ashi from a different part of the aforementioned *Mishna*: Come and hear from the following *Mishna*: If the co-wives of any of the forbidden relatives concerning whom it has been said that they exempt their co-wives from *yibum* and *chalitzah* went and married, and any such forbidden relatives were found to be an *aylonis*, the co-wife must leave her husband and the *yavam* and all the penalties (*enumerated in the Mishna*) are applicable to her. But why? Let it be argued, "What should she have done?"

The *Gemora* answers: She should have waited (*until it has been definitely determined that the ervah was not an aylonis*). (91b2)



Rava challenges it from the case of a scribe who wrote a get and kesuvah receipt, and then switched them. If the husband and wife gave each other the wrong documents, and she remarried, the sanctions apply to her.

The Gemora deflects this by saying that she should have had someone else review the document she received, to ensure it was the get.

Rav Ashi challenges it from the case of a scribe who wrote a get with the wrong name or residence of the husband or wife.

The Gemora deflects this by saying that she should have gotten the get reviewed for accuracy before remarrying.

Ravina challenges it from the case of a woman who got remarried after receiving a bald get, i.e., a sealed one without enough signatures.

The Gemora deflects this by saying that she should have gotten it reviewed before remarrying. (91b2 – 91b3)

Rav Pappa desired to decide a case on the principle of “What should she have done?” (*He permitted a woman who remarried based on the testimony of two witnesses to return to her husband after he reappeared.*) Rav Huna the son of Rabbi Yehoshua asked to Rav Papa: How can you rule like this? But surely all those *Mishnayos* were taught that challenged this ruling?

Rav Pappa replied: Were they not explained?

Rav Huna the son of Rabbi Yehoshua said in return: Shall we then rely on explanations in order to render a lenient decision?

Rav Pappa accepted this argument and retracted his ruling. (91b3 – 91b4)

#### INSIGHTS TO THE DAF

#### ERRONEOUS RULINGS

Rav Pappa desired to decide a case on the principle of “What should she have done?” (*He permitted a woman who remarried based on the testimony of two witnesses to return to her husband after he reappeared.*) Rav Huna the son of Rabbi Yehoshua asked to Rav Papa: How can you rule like this? But surely all those *Mishnayos* were taught that challenged this ruling?

Rav Pappa replied: Were they not explained?

Rav Huna the son of Rabbi Yehoshua said in return: Shall we then rely on explanations in order to render a lenient decision?

Rav Pappa accepted this argument and retracted his ruling.

Shulchan Aruch (E”H 17:26) rules accordingly that a woman who remarried based on the testimony of two witnesses, and then her husband reappears, she must leave both of them.

The Rashba in his teshuvos (Vol. I, 1,189) writes regarding a woman who marries based on the ruling of the *Beis Din*, for example, there was a question regarding the effectiveness of the *kiddushin*, and *Beis Din* ruled that the *kiddushin* did not take effect. She married to another man and then *Beis Din* realized that they had erred in their previous ruling, and she is actually a married woman to the first man. The halachah is that she is permitted to her first husband because it was an unavoidable circumstance. What should she have done? There is no reason to penalize her.

The Rama (E”H, 17:58) rules in accordance with the Rashba.

The Taz (ibid. 71) and the Beis Shmuel (ibid. 172) are bewildered regarding this ruling. Why is this case different than the ruling from our *Gemora* regarding the woman’s remarriage based on two witnesses? It is clearly ruled upon that she is penalized and is forbidden to return to her first husband.



Furthermore, the Beis Shmuel asks: The Rama contradicts himself! He rules (ibid. 31:10) in accordance with the Maharik, who states: A woman who married another man based on a faulty ruling of a Sage regarding her first marriage is prohibited from returning to her initial husband. What is the difference between *Beis Din's* mistake and the Sage's mistake?