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Yevamos Daf 119

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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

#### Mishna

The Mishna states: If a woman’s husband and her co-wife went overseas and they informed her that her husband has died (*based on the report, she would be free to remarry, however, it is uncertain if she falls for yibum*), she should not marry or be taken in *yibum* until she determines if she, - her co-wife is pregnant or not.

If the woman had a mother-in-law who went overseas, we do not need to be concerned that the mother-in-law gave birth to a son, and now the woman will be subject to *yibum* to her husband’s new brother. If the mother-in-law went overseas when she was pregnant, we are concerned that she gave birth to a son, and the woman will be subject to *yibum*. Rabbi Yehoshua said: We are still not concerned, and she is permitted to marry anyone. (119a1)

The Gemora asks: What does the Mishna mean when it stated: she – her co-wife (when it could have simply stated: her co-wife)?

The Gemora answers: The Mishna is teaching us that it is for this co-wife that we are concerned (for the possibility that she is pregnant), but we are not concerned for a different co-wife (that perhaps the husband married another woman and she is pregnant). (119a1)

#### Consideration for the Minority

The Gemora asks: It is understandable why she cannot be taken in *yibum*, for perhaps her co-wife is pregnant, and if she will cohabit with her husband’s brother, they would be infringing on the prohibition of cohabiting with a brother’s

wife. But why can’t she marry a stranger? Let us follow the majority of women who conceive and bear children (*we should assume that the co-wife did in fact conceive and gave birth to a child, thus exempting the co-wife from yibum or chalitzah*)? Shall we say that the Mishna is following Rabbi Meir’s opinion, who is concerned on account of the minority?

The Gemora answers: The Mishna can be following the opinion of the Rabbis as well; for they follow a majority only when the majority is “before us,” like in the case of the “nine stores” (*which were selling permitted meat, while one shop in their vicinity was selling forbidden meat; if between these shops a piece of meat was found and it is not known from which shop it came, it is assumed to be permitted meat, since the majority of the shops were selling meat of such a character*) or “Sanhedrin” (*a majority of whom (twelve against eleven) are in favor of a certain decision*). However, in this case, where the majority (*of women in general who are assumed to conceive and bear*) is “not before us,” even the Rabbis do not follow the majority.

The Gemora asks: But in the case of a minor boy or minor girl, where the majority is “not before us,” and nevertheless, we follow the majority? For it was taught in a *braisa*: Rabbi Meir said: A minor boy or girl does not perform *chalitzah* or *yibum*. The Rabbis replied to Rabbi Meir: That which you said that a minor should not perform *chalitzah* is understandable because the Torah uses the term “*ish*,” man in the portion regarding *chalitzah*, and we compare the laws of a man to a woman. However, what is your rationale for saying that a minor should not perform a *yibum*? Rabbi Meir responded: A minor boy should not perform a *yibum* because we are concerned that he might be found to be a *saris* (*he cannot*

father a child due to defects in his body); a minor girl should not perform a *yibum* because we are concerned that she might be found to be an *aylonis*. If they would perform *yibum*, it would be tantamount to cohabiting with an *ervah*. The Rabbis, however, maintain that we follow the majority of minor boys, who are not *sarisim*, and we follow the majority of minor girls, who are not *aylonisos*. (*The majority spoken of here is, surely, one which is not actually present, and the Rabbis are nevertheless guided by it.*)

Rather, it is clear that the *Mishna* is following Rabbi Meir's opinion. (119a1 – 119a3)

### Confirmed Status and Majority

The *Gemora* analyzes the *Mishna's* latter clause. The *Mishna* stated: If the woman had a mother-in-law who went overseas, we do not need to be concerned that the mother-in-law gave birth to a son, and now the woman will be subject to *yibum* to her husband's new brother.

The *Gemora* asks: If our *Mishna* follows Rabbi Meir's viewpoint that we are concerned for the minority, we should be concerned that the mother-in-law gave birth to a son? One should be guided by the majority of women, and the majority of women conceive and bear while a minority miscarry, and, since all those who give birth, half bear males and half bear females, the minority of those who miscarry should be added to the half of those who bear females, and so the males would constitute a minority which should be taken into consideration! (*And, contrary to the ruling in our Mishna, the woman should be forbidden to marry a stranger?*)

The *Gemora* answers: It is possible that since the woman was confirmed (*when her mother-in-law went overseas*) in her status of permissibility to strangers (*since there was no yavam at that time*), the possibility of the birth of a *yavam* does not need to be taken into consideration (*we rely on the chazakah that she was not subject to yibum*).

The *Gemora* asks: But in the former case of the *Mishna*, where she was confirmed in the status of eligibility for *yibum* (*since her husband had no children when he departed*), let her be taken for *yibum* based on the original presumption?

Rav Nachman answers in the name of Rabbah bar Avuha: In the *Mishna's* first case, where a prohibition which is subject to the penalty of *kares* is involved (*cohabiting with a brother's wife*), the possibility of the birth of a son had to be provided against; in the *Mishna's* latter case, however, where a mere prohibition is involved (*a yevamah marrying a stranger*), they were not concerned with the possibility that the mother-in-law gave birth to a son.

Rava asked: Both prohibitions are Biblical; aren't we obligated to avoid all Biblical transgressions, even mere prohibitions?

Rather, Rava explains the *Mishna* as follows: In the *Mishna's* first case, the woman's confirmed status (*it was an established fact that her husband had no children and that a yavam was in existence*) would subject her to *yibum* while the majority principle (*most women bear viable children and her co-wife's child would exempt her from yibum*) would enable her to marry any stranger; and though the confirmed status is not as compelling as a majority, the minority of women who miscarry must be added to the confirmed status so that the factors on either side are equally balanced (*it is a half and a half; her confirmed status plus the minority of miscarriages pointing to her being subject to yibum, while the majority principle points to permissibility to marry any stranger*). Hence, she should not marry or be taken in *yibum* until she determines if her co-wife is pregnant or not. In the *Mishna's* latter case, however, the woman's confirmed status (*as one who has no yavam*) as well as the majority principle (*miscarriages and the births of females constitute a majority against the minority of births of viable males*) points to the permissibility of marriage with any stranger; viable males constitute a minority of a minority (*besides the fact that viable males are in a minority, the possibility of the birth of a viable male is still less to be taken note of in view of the*

*confirmed status of the woman*) and a minority of a minority is not taken into consideration even by Rabbi Meir. (119a3 – 119b1)

### Waiting Forever

The *Mishna* stated: If a woman's husband and her co-wife went overseas and they informed her that her husband has died (*based on the report, she would be free to remarry, however, it is uncertain if she falls for yibum*), she should not marry or be taken in *yibum* until she determines if her co-wife is pregnant or not.

The *Gemora* asks: Is she prohibited from marrying a stranger forever? Let her perform *chalitzah* with the *yavam*, and then she should be permitted to marry anyone?

Ze'iri replied: She must wait on account of herself three months (*just like any other woman whose husband died*), and on account of her co-wife, she must wait nine months (*since her chalitzah will not be valid if the co-wife produced a viable child*), and then she may perform *chalitzah* and marry.

Rabbi Chanina said: She must wait on account of herself three months, but on account of her co-wife, she remains prohibited forever (*until it is definitely ascertained whether her co-wife had given birth to a viable child*).

The *Gemora* repeats its original question: Is she prohibited from marrying a stranger forever? Let her perform *chalitzah* with the *yavam*, and then she should be permitted to marry anyone?

Abaye bar Avin and Rabbi Chanina bar Avin answer: This is a preventive measure against the possibility that the child might be viable as a result of which, we will require an announcement that she is permitted to marry a *Kohen* (*since the chalitzah was unnecessary*).

The *Gemora* asks: So, why don't we make the announcement?

The *Gemora* answers: Perhaps someone will be present by the *chalitzah* and will not hear of the announcement; he will be under the false impression that a *chalutzah* is permitted to a *Kohen*. (119b2)

The *Gemora* challenges this from the *Mishna*, which states: If a wife who was childless returns from overseas and says, "A son was given to me overseas," and then she said, "My son died and afterwards my husband died," she is believed. (*She remains subject to yibum; her statement is accepted because it confirms the status in which she was established prior to her departure.*) If she says, "My husband died, and afterwards my son died," she is not believed. Her words, however, are taken into consideration, and she performs *chalitzah* but does not marry by *yibum*. Why are we not similarly concerned that if she performs *chalitzah*, witnesses will later corroborate her version, and we would then have to notify people that she may marry a *Kohen*?

Rav Pappa says the *Mishna* is referring to a case of a divorcee, who is already prohibited to a *Kohen*.

Rav Chiya, the son of Rav Huna, says it is a case where she says that she was hiding in a cave with her husband (precluding the possibility of any further testimony). (119b3)

### Mishna

The *Mishna* states: If the wives of two brothers returned from overseas, and one says, "My husband died," and that one says, "My husband died," that one is prohibited because of the husband of this one, and this one is prohibited because of the husband of that one. (*A woman is eligible to tender evidence on the death of her husband in so far only as to enable herself to marry again. She is ineligible, however, to give evidence enabling her sister-in-law to marry again.*) If one had witnesses that her husband died, and the other one does not, the one who has witnesses is prohibited (*to marry*

*a stranger, since there are no witnesses to testify to the death of the yavam; the evidence of his wife alone is not sufficient for this purpose), and the one who does not have witnesses is permitted (to marry any stranger, since she herself is believed in respect of the death of her husband while in respect of the death of the yavam, the evidence of the witnesses is available). If this one has sons and that one does not have sons, the one who has sons is permitted, and the one who does not have sons is prohibited. If they were married by yibum, and the yevamim died, they are prohibited from marrying (any stranger; though the evidence of each woman was valid to enable herself to be taken for yibum, it is not valid to exempt her sister-in-law from the zikah-attachment, and the possibility that their absent yavam's (the first husbands) were still alive must be taken into consideration). Rabbi Elozar says: Since they were permitted to the yevamim, they are permitted to any man. (119b3 – 119b4)*

The Gemora cites a braisa: If this one has witnesses (supporting her testimony that her husband died) and children (from her husband), and this one does not have witnesses or children, they are both permitted to marry. [The first one is not subject to yibum, for her husband has children, and the second one is not subject to yibum, for there are witnesses that her yavam has died.] (119b4)

## INSIGHTS TO THE DAF

### Calculation for Determining a “Minority of a Minority”

The Beis Yosef (E”H 128) states that a “ten percent chance” is considered a “minority of a minority,” and even Rabbi Meir would not take that amount into consideration.

Sheorim Mitzuyanim B’halacha asks: Why should this be? According to his calculation, even a “fifteen percent chance” should be regarded as a “minority of a minority”? For sixty percent is considered a legitimate majority; this would result in “forty percent” being the minority. If we would divide the “forty percent-minority” into a majority and a minority, it

would result in twenty-five percent joining the majority and fifteen percent becoming the “minority of a minority.” Why does the Beis Yosef state that ten percent only is a “minority of a minority,” when according to our calculation, even fifteen percent should be regarded as a “minority of a minority”?

Perhaps, it can be explained by saying that a recognizable majority is needed. Rabbeinu Yonah in Brochos states that a recognizable majority is when there is a two to one ratio. Accordingly, the original minority would be thirty-three percent. A minority of that would be a little more than ten percent. This could be the explanation for the Beis Yosef.

## DAILY MASHAL

The Zidichover Rebbe was deathly ill in Levov, and the people standing by his bedside observed that he was almost in a vegetable state. The Rebbe instructed them to give charity to the *tzedakah* of Rabbi Meir ba’al haneis. He explained: The majority of people, who are in a vegetable state will die; most people who are ordinarily sick will survive. Rabbi Meir is the *Tanna*, who is always concerned for the minority; this is why giving charity to a *tzedakah* in Rabbi Meir’s merit can produce a recovery from the locks of death.