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Arayos and Shniyos

The Gemora cites a Baraisa: All arayos (forbidden relations) and all secondary arayos have no claim to the fine (for being violated) or to the fine (for seduction). A woman who refuses her husband by mi'un (*A girl whose father had died could be given in marriage while still a minor (under the age of twelve) by her mother or older brother. This marriage is only valid Rabbinically. As long as she has not attained the age of twelve, she may nullify the marriage by refusing to live with her husband. This act of refusal, referred to as mi'un nullifies the marriage retroactively.*) has no claim to fine (for being violated) or to the fine (for seduction). [This is because we assume that she is not a virgin any longer, and only virgins are entitled to a fine.] An ayilonis (*a woman incapable of procreating*) has no claim to fine (for being violated) or to the fine (for seduction). [This Tanna maintains that only a na'arah is entitled to a fine, not a minor, and not a bogeres. An ayilonis is regarded as a minor until she reaches the age of twenty; then, she is considered a bogeres.] And a woman who has been divorced on account of a bad name (as the husband claimed that she was not a virgin at the time of nisuin) has no claim to fine (for being violated) or to the fine (for seduction). (35b3 – 35b4)

The Gemora explains the Baraisa: What are 'arayos' and what are 'sheniyyos'? Shall I say that 'arayos' are in the literal sense (those women prohibited by force of kares), and 'sheniyyos' are those women forbidden by Rabbinic

decree? [How can that be?] Why should they (the women forbidden by Rabbinic decree) not receive the fine, since they are (Biblically) fit for him? Rather, 'arayos' are those with regard to which one is liable to the penalty of death at the hand of the Court, and 'sheniyyos' are those with regard to which there is kares, but in the case of prohibitions with regard to which one violates a mere transgression (by cohabiting with them), they receive the fine. The Gemora notes: And whose opinion is it? It is that of Shimon HaTimni (who maintain that the violator only pays a fine if he violates a woman where there is a possibility where she can become his wife; this excludes women for which the violator will be liable to kares or death, for kiddushin is not effective with them; it does not exclude women for whom the violator will be liable for a mere prohibition, for kiddushin is effective with them).

There are those who say that when the Baraisa said 'arayos,' it was referring to women prohibited by the Torah upon punishment of death by the Court and through kares as well. When it said 'sheniyyos,' it was referring to women prohibited by the Torah by a mere transgression. The Gemora notes: And whose opinion is it? It is that of Rabbi Shimon ben Menasya (who holds that the violator only pays a fine if he violates a woman where she would be qualified for him to keep her as a wife, and this would exclude women for whom the violator will be liable for a mere prohibition, for although kiddushin is effective with them, they cannot remain married). (35b4 – 36a1)

Mi'un and an Aylonis

The *Baraisa* stated: A woman who refuses her husband by *mi'un* has no claim to fine (for being violated) or to the fine (for seduction).

The Gemora notes: This implies that a regular minor would be entitled to a fine (*as mi'un is done by minors*). The Gemora asks: Who is the Tanna who would author such a statement? It must be the Rabbis, who say that a minor is entitled to a fine. But let us consider the latter ruling of the *Baraisa*: An *aylonis* (*a woman incapable of procreating*) has no claim to fine (for being violated) or to the fine (for seduction). This must be in accordance with the opinion of Rabbi Meir, who says that a minor girl is entitled to a fine, and this girl goes directly from being a minor to an adult. The Gemora asks: Is it possible, then, that the first part of the *Baraisa* follows the opinion of the Rabbis, while the latter part is accordance with Rabbi Meir?

The Gemora notes that one might want to say that the entire *Baraisa* is according to Rabbi Meir, and with regard to a woman who declares her refusal, he holds like Rabbi Yehudah (that a *na'arah* is eligible to perform *mi'un*). This cannot be; for does Rabbi Meir really hold this way? But it was taught in a *Baraisa*: Until when can a girl perform *mi'un*? Rabbi Meir says until she grows two hairs (*a sign of femininity which gives a regular girl the status of a na'arah*). Rabbi Yehudah says: Until those hairs give an appearance in that area of more black (*the hairs*) than white (*the skin*).

The Gemora answers: It must be that this *Baraisa* is following the opinion of Rabbi Yehudah (that a *na'arah* may perform *mi'un*), and with regard to the fine of a minor girl, he holds like Rabbi Meir (*that they are entitled to a fine*).

The Gemora asks: Is this true (that R' Yehudah holds like R' Meir in this)? But Rav Yehudah said in the name of Rav: These are the words of Rabbi Meir (*that a minor is entitled to a fine*). If Rabbi Yehudah also held this way, shouldn't he have stated: These are the words of Rabbi Meir and of Rabbi Yehudah!?

The Gemora answers: The author of the *Baraisa* must hold like Rabbi Meir in one aspect (*that a minor is entitled to a fine*), and argued regarding another aspect (*and maintains that a na'arah may perform mi'un*).

Rafram said: What does the *Baraisa* mean when it said "a girl who performs *mi'un*"? It meant "a girl who is fit to perform *mi'un*." [*The Baraisa is therefore following the opinion of Rabbi Meir, and is saying that any minor is entitled to a fine.*]

The Gemora asks: This seems difficult, as the *Baraisa* should have just said "minors" (instead of giving a vague description).

The Gemora concludes that this is indeed a difficulty with Rafram's answer. (36a1 – 36a2)

The *Baraisa* continued: An *aylonis* (*a woman incapable of procreating*) has no claim to fine (for being violated) or to the fine (for seduction).

The Gemora notes a contradiction from a different *Baraisa*, which states: A deaf-mute woman, a deranged woman, and an *aylonis* are entitled to a fine, and their husband can claim that they were not found to be a virgin. [*This claim can cause her to receive less money than originally stated in her kesuvah. How can we resolve this contradiction?*]

The Gemora replies: Why is this a contradiction? One *Baraisa* (that an *aylonis* is not entitled to a fine) represents the view of Rabbi Meir (for he holds that only

a na'arah is entitled to a fine), and one Baraisa (which states that a minor girl is also entitled to a fine, and an aylonis – if she is regarded as a minor, may also collect a fine) is in accordance with the Rabbis.

The Gemora asks: And the one who asked this question, why did he even ask it?

The Gemora answers: He asked it because there is another *Baraisa* that directly contradicts this *Baraisa*. The *Baraisa* states: A woman who is a deaf-mute, deranged, a bogeress (whose hymen deteriorates by itself), and one who was injured (and she lost her virginity) through (being hit by) a piece of wood; their husbands cannot make a claim against them that they were not found to be a virgin. Regarding a blind woman and an aylonis, they do have such a claim. Sumchus says in the name of Rabbi Meir: Regarding a blind woman, there is no claim against her. *[This leaves us with an apparently clear contradiction in braisos regarding a deaf-mute and a deranged woman if they can lose their rights to their kesuvah.]*

Rav Sheishes answers: This is not a difficulty, as one *Baraisa* (that a deaf-mute and a deranged woman do not lose the rights to their kesuvah) is according to Rabban Gamliel while one (which rules that they do lose their rights) is according to Rabbi Yehoshua. *[Rabban Gamliel said earlier (12b) that we believe a woman who says she was violated when she was already betrothed, and she does not forfeit her kesuvah. He therefore would hold that in this case the husband has no claim, for the (deaf-mute or deranged) woman could have claimed that it happened after she was betrothed. Rabbi Yehoshua says that this claim wouldn't help anyway, and the husband therefore can make his claim effectively.]*

The Gemora asks: We only know that Rabban Gamliel (12b) states that this type of claim is effective when the woman actually makes the claim, but when she does not

make the claim herself, did you hear (that we would claim it for her)?

The Gemora answers: Yes, he must hold this way. This is the type of case about which the verse states: *Open your mouth on behalf of the mute.* (36a2 – 36a3)

The *Baraisa* stated: A bogeress (whose hymen deteriorates by itself); her husband cannot make a claim against her that she was not found to be a virgin.

The Gemora asks: Didn't Rav say that such a woman is given the entire night (*to cohabit even multiple times, as we assume the blood is from her virginity, and not blood of menstruation, which would render her tamei*)? *[Evidently, a bogeress does have vaginal blood!]*

The Gemora answers: If the husband made a claim that he did not find any blood after cohabiting for the first time, this is certainly a claim. The case here is where he claims that it felt to him like there was an "open entrance" (i.e., there was no obstruction, *but he is unsure if there was blood or not; since she is a bogeress and her vagina naturally expands, his claim is not effective*). (36a3 – 36b1)

The *Baraisa* had stated: Sumchus states in the name of Rabbi Meir: Regarding a blind woman, there is no claim (of lost virginity) against her.

The Gemora asks: What is Sumchus' reason?

Rabbi Zeira explains: It is because she often falls on the ground (*causing her to lose her virginity*).

The Gemora exclaims: Regular girls also fall on the ground (and rupture their hymens)! *[Why should a blind girl be different?]*



The Gemora answers: When other girls fall (*and rupture their hymens, and see that they are bleeding*) they show the wound to their mother (who tells them that they lost their virginity; if they do not tell their husbands, the marriage is regarded as one which was made under a false pretext, and they forfeit their rights to the kesuvah); however, blind girls do not realize (that they are bleeding), and therefore do not show the wound to their mother (and since they know nothing about the loss of vaginal blood, they had no reason to tell their husbands; they are therefore still entitled to the kesuvah). (36b1)

A Girl and a Document with a Bad Name

The *Baraisa* stated: And a woman who has been divorced on account of a bad name (as the husband claimed that she was not a virgin at the time of nisuin) has no claim to fine (for being violated) or to the fine (for seduction).

The Gemora asks: A woman who has been divorced on account of a bad name is stoned. [Why would it be necessary to teach us that she does not receive a fine for being violated or seduced as a virgin? If we are trusting the witnesses that she committed adultery, we certainly trust them that she was not a virgin!?]

Rav Sheishes answers: It refers to a girl who had a bad name in her youth; she does not receive a fine for being violated or seduced (for we assume that she was not a virgin).

Rav Pappa says: We see from this statement that a (loan) document that is rumored to be false cannot be used to collect money. [Just as the woman's bad reputation affects her legal status, so too, the suspicion surrounding this document renders it ineffective.]

The Gemora asks: What is the case? If it is talking about a document rumored to be forged akin to a girl who is rumored to have engaged in premarital relations, how

can this be? Didn't Rava say: If a girl was rumored in a city to be a "promiscuous woman," we do not pay attention to it (and we even allow her to marry a Kohen; so, why should this girl lose out based upon an unfounded rumor)? Rather, it must be that the case is where two witnesses testified that she had propositioned them for an illicit act (but they did not listen to her). Similarly, if two witnesses testify that this person (the holder of the document) approached them to falsify a similar document (and they did not listen to him, the document cannot be used to collect money).

The Gemora asks: It is understandable there (that the girl is no longer regarded as a virgin), as there are always promiscuous people around (and there is a good possibility that one of them accepted her offer); however, here, just because the presenter of the document has been established (as someone who would attempt to forge a document), does that mean that all of Israel (*meaning the witnesses on the document*) have been established as such?

The Gemora answers: In our case as well, since he was trying to forge the document, we assume (that eventually, even if he didn't find any willing accomplices), he must have forged the signatures of the witnesses and wrote the document himself. (36b1 – 36b2)

Mishnah

The following are cases where they (the na'aros) do not receive a fine: Someone who violates a convert, a (former) captive, a Canaanite slave girl, who were redeemed, converted, or freed when they were above the age of three years and one day. [Once a girl over the age of three has cohabited, she loses her virginity; these women are presumed to have had relations before they converted or before they were freed or while they were being held captive.] Rabbi Yehudah says: A captive who

was redeemed still retains her state of purity even if she is older (and therefore she is entitled to the fines).

A man who violates his daughter, the daughter of his daughter, the daughter of his son, the daughter of his wife, the daughter of her son, or the daughter of her wife; these women do not receive a fine, as he (the violator) is liable with his life, since their death sentence is at the hands of the court. And anyone who is liable with his life does not pay money, as the verse states: *[If two men shall quarrel and they hit a pregnant woman and she miscarries] and there shall be no fatality, he shall be punished* (by paying the value of the fetus). [We may infer from there that if there is a fatality, he is not liable to pay.] (36b2)

Rabbi Yochanan said: Rabbi Yehudah and Rabbi Dosa said the same thing (that there is no automatic presumption that a female captive was violated by her captors). Rabbi Yehudah made the statement above (*in the Mishnah*). Rabbi Dosa said the same thing in the following *Baraisa*: A (former) captive (*who is the daughter of a Kohen*) can eat terumah (*as we do not assume that her captor cohabited with her; if he would have, she would be rendered a zonah and would be disqualified from eating terumah*); these are the words of Rabbi Dosa. Rabbi Dosa continued: What did this Arab do to her (that would have prohibited her from eating terumah)? Just because he pushed and rubbed her between her breasts (*but did not cohabit with her*), does he render her unfit to (enjoy the privileges) of the Kehunah? [No, he doesn't!]

Rabbah (some edit to say Rava) said: It is possible that Rabbi Yehudah and Rabbi Dosa do not agree. Rabbi Yehudah only said his law here (that the female captive is still regarded as a virgin and is entitled to receive fines for violation or seduction), so that the sinner (*the violator or seducer*) should not be rewarded (*by exempting him from the fine*); however, there (in the case of the *Baraisa*, with respect of eating terumah), he might agree with the

Rabbis (*that she cannot eat terumah*). Alternatively, it is possible that Rabbi Dosa only said his law regarding Rabbinic terumah, but regarding administering a Torah fine he might hold like the Rabbis of our Mishnah.

Abaye said to Rabbah: Is Rabbi Yehudah's reason so that a sinner should not be rewarded? Didn't Rabbi Yehudah say in a *Baraisa*: If a captive for even ten years maintains her purity and can receive a kesuvah of two hundred (*given to a virgin*)? That has nothing to do with rewarding sinners!

The Gemora answers: There, too, Rabbi Yehudah said she should receive such a kesuvah, so people should not refrain from marrying her.

The Gemora asks: Does Rabbi Yehudah indeed hold her purity is intact? The *Baraisa* states: If someone redeems a captive he should marry her, but if he testifies about her he should not marry her. Rabbi Yehudah states: Either way he should not marry her. This *Baraisa* seems difficult. It says he should marry her, but then says that if he testifies about her he should not marry her. What is the connection?

The Gemora answers: The *Baraisa* means to say the following: If someone redeems a captive and testifies regarding her status he can marry her (as he would not have redeemed her in order to marry her unless he was sure he could). If someone merely testifies in order to marry her (*but did not redeem her*) he may not marry her (as we suspect she simply struck his fancy).

In any case, however, doesn't the contradiction against Rabbi Yehudah remain? — Rav Pappa replied: Read, 'Rabbi Yehudah ruled: In either case he may marry her'.

Rav Huna the son of Rabbi Yehoshua replied: [The reading may] still be as it was originally given, but Rabbi Yehudah was speaking to the Rabbis in accordance with their own

ruling. ‘According to my view [he argued] the man may marry her in either case; but according to your view it should have been laid down that in either case he may not marry her’. - And the Rabbis? — ‘A man who ransoms a captive and gives evidence on her behalf may marry her’ because no one would throw money away for nothing, but ‘he who merely gives evidence on her behalf may not marry her’ because he may have fallen in love with her. (36b2 – 36b4)

DAILY MASHAL

Sorah as an Aylonis

Our Gemora discusses the halachic status of an aylonis:

The Torah relates that Sorah died at the age of 127. Rashi notes that the Torah mentions “years” after each component of her age (“100 years and 20 years and 7 years”) to teach that each of these units of her life had a unique significance. At the age of 100, Sorah was just as free of sin as she had been at 20, as the Heavenly Court doesn’t punish a person for his sins until he turns 20, and she was as beautiful at the age of 20 as she had been at the age of seven. Both of these comparisons are difficult to understand. Although a person doesn’t receive punishment, his transgressions are still considered sins. How can Rashi write that a person who turns 20 is free of all sins? Further, since a woman is typically expected to be prettier at 20 than she was at seven, in what way is the latter comparison complimentary to Sorah?

The Brisker Rov answers that the Gemora in Yevamos (64b) teaches that Sorah was an aylonis – a woman who is unable to have children. Such a woman never develops the physical signs of adulthood. The Gemora in Yevamos (80a) rules that when a woman turns 20 without becoming physically mature, she is declared an aylonis and legally considered an adult from that time onward. Therefore, although sins which are committed before a

person turns 20 are indeed considered sins even if they aren’t punishable at that time by the Heavenly Court, the transgressions of Sorah were not considered sins, as she was legally considered a minor until she turned 20.

Similarly, the Gemora in Yevamos (80b) lists the signs commonly associated with an aylonis, all of which are features traditionally viewed as unattractive. The Gemora in Sanhedrin (69b) teaches that women in these early generations were able to give birth as young as 8. As this was the age at which their bodies began to develop and mature, this was also the age at which an aylonis began to exhibit signs of unattractiveness. Although most women are expected to be prettier at 20 than they were at 7, Sorah became a full-fledged aylonis at age 20, so Rashi notes that she was nevertheless just as beautiful as she had been at age 7 before her condition began to develop.