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Kesuvos Daf 56

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May the studying of the Daf Notes be a zechus for their neshamot and may their souls find peace in Gan Eden and be bound up in the Bond of life

Does the Law Follow Rabbi Elozar ben Azaryah?

[The *Mishnah* had stated: Rabbi Elozar ben Azaryah ruled: Only a woman widowed or divorced after *nisuin* collects everything, but if it is only after her betrothal, a virgin collects only two hundred *zuz* and a widow only one *maneh*, for the husband wrote the addition for her with the sole objective of marrying her (*and since he did not marry her, she may not claim it*).] Rabbi Chanina sat before Rabbi Yannai and stated: The law follows Rabbi Elozar ben Azaryah. Rabbi Yannai told him, “Go and read your (incorrect) statement outside,” as the law does not follow Rabbi Elozar ben Azaryah.

Rav Yitzchak bar Avdimi said in the name of our master (Rav): The law follows Rabbi Elozar ben Azaryah. Rav Nachman said in the name of Shmuel: The law follows Rabbi Elozar ben Azaryah. Rav Nachman himself, however, said: It does not follow Rabbi Elozar ben Azaryah. The Nehardeans, however, said in the name of Rav Nachman: The law does follow Rabbi Elozar ben Azaryah. Even though Rav Nachman cursed and said, “Any judge who judges like Rabbi Elozar ben Azaryah, such-and-such should befall him,” even so, the law is in fact like Rabbi Elozar ben Azaryah. The Gemora concludes: The law is in accordance with the ruling of Rabbi Elozar ben Azaryah. (56a1)

What is the Fondness that Creates Marriage?

Ravin inquired: If a woman entered the wedding canopy but did not yet cohabit (with her husband), what is her status? Is the fondness shown by having her enter the chuppah (the intimacy of the husband’s domain) that acquires it (the additional amount of the kesuvah for her), or is it the fondness shown by cohabitation?

The Gemora suggests that we can prove this from Rav Yosef’s teaching of a Baraisa (which explains R’ Elozar ben Azaryah’s reasoning): It is because he wrote her the (additional amount in the) kesuvah based on the fondness shown on the first night. Now, if Rav Yosef is talking about her being taken into the wedding canopy, this is understandable, as this only happens on the first night of their marriage. However, if it is the fondness of cohabitation that he is referring to, this is difficult, as the question can be asked: Is there cohabitation only on the first night, but not afterwards? He therefore must be referring to the fondness of her being taken into the wedding canopy.

The Gemora asks: Why then does he state the first night? Is this ceremony only applicable at night and not during the day?

The *Gemora* counters: According to the other reason, this would also be difficult, as cohabitation is not necessarily performed only at night and not during the day! This is apparent from Rava’s statement: In a darkened house, it is permitted (*to cohabit during the day*).

The Gemora answers that the possibility that Rav Yosef is referring to marital relations is not difficult, as Rav Yosef could be teaching us that marital relations should normally be done at night. However, the question regarding the fact that the wedding ceremony is not always at night still stands.

The Gemora answers: This is not difficult. The Baraisa was teaching the usual manner, and cohabitation is usually

performed at night. But if the Baraisa was referring to chuppah, it is difficult (that night was mentioned)!?

The Gemora answers: Chuppah is not difficult as well, for since chuppah leads to cohabitation, it is usual to perform it at night.

Rav Ashi inquired: If the bride entered the chuppah and then became a niddah, what is the law (regarding the additional amount of the kesuvah)? If we say that the fondness displayed by her husband taking her into the wedding canopy is what acquires it (the additional amount of the kesuvah for her), perhaps it is only a chuppah which may lead to cohabitation that accomplishes this, but taking her into a chuppah which does not yet allow cohabitation is not considered enough of an acquisition (*due to the lack of fondness*), or perhaps there is no difference (*whether or not he can now cohabit with her or not*). The Gemora leaves this question unresolved. (56a1 – 56a2)

The Mishnah had stated: Rabbi Yehudah says: The husband may write for his virgin wife [a *kesuvah* of two hundred and she writes to him a receipt which states, "I received from you a hundred" (*she is forfeiting a portion of the kesuvah*)].

The Gemora asks: Does Rabbi Yehudah indeed hold that one can write a receipt (for a debt that is partially paid)? But we learned in a Mishnah: If someone pays back a partial amount of a debt, Rabbi Yehudah states that a new document should be written with the new amount and exchanged for the old one (for if a receipt would be written, it will emerge that the debtor must guard it from mice or a different loss; this will allow the creditor to collect the debt again). Rabbi Yosi says: A receipt should be written.

Rabbi Yirmiyah answered: The case of our Mishnah is when the receipt is written within the text of the kesuvah itself (and therefore there is no concern of collecting with the kesuvah without the receipt).

Abaye says: The Mishnah is referring to a case even when the text is not written within the kesuvah. It is understandable there (that R' Yehudah is concerned for writing a receipt) - in a regular case of a loan, where the borrower definitely paid back part of it, we are concerned that he might lose his receipt and the lender will take out the loan document (which states the entire amount) and collect again, a second time. However, here (*in the case of a kesuvah*), did he actually give her anything? She is merely telling him something (*that she received half the amount*). If he decides to guard her receipt, he does, and if he doesn't, it is he who causes himself to lose.

The Gemora asks: It is understandable that Abaye does not want to give Rabbi Yirmiyah's explanation, as Rabbi Yehudah never mentioned that this receipt is actually written in the text of the kesuvah. However, why doesn't Rabbi Yirmiyah agree with Abaye?

The Gemora answers: He decreed that here too it should not be done (*despite the reasoning of Abaye*), for this will lead to the writing of a receipt in general cases (of a loan, and there, the borrower might end up paying again). (56a2 – 56a3)

The Gemora asks: The reason Rabbi Yehudah says this (the reduction) is effective is because she wrote for him a receipt. This implies that if she merely says so (orally), it is not valid. Why would that be the case? It is a monetary matter, and Rabbi Yehudah said that regarding a monetary matter, a condition is valid (*even when it is contrary to an obligation stated by the Torah*). This is evident from that which was taught in the following Baraisa: A man tells a woman, "You are hereby betrothed to me on the condition that you do not claim food support, clothes, and marital relations." [*These things are mentioned in the Torah as things that must be provided by a husband to his wife.*] She is betrothed, and the condition is null and void. These are the words of Rabbi Meir. Rabbi Yehudah says: Monetary conditions are upheld.

The Gemora answers: Rabbi Yehudah holds that kesuvah is Rabbinic in nature, and the Rabbis strengthened their words

more than Torah law (*and therefore stated that such a condition will only be valid when written*).

The Gemora asks: The rights of usufruct (a husband's right to benefit from his wife's possessions, such as eating the produce from his wife's melog properties) are Rabbinic, and even so the Rabbis did not strengthen their words in that case. For it was taught in a Mishnah: Rabbi Yehudah says: He always has the right of eating the produce of the produce unless he writes to her, "I have no claim or rights to your property and its produce and the produce of the produce forever." And we have established that "write" doesn't really mean write, but even if he agrees to this orally. *[Accordingly, why by kesuvah could she not make this stipulation orally?]*

Abaye answers: For everyone there is a kesuvah, but there is not usufruct for everyone (for not every wife brings in properties to the marriage that are not recorded in the kesuvah). Regarding a common occurrence (such as a kesuvah), the Rabbis strengthened (and decreed that a stipulation is not effective), but regarding an uncommon occurrence (such as usufruct), the Rabbis did not strengthen.

The Gemora asks: But donkey drivers (middlemen who are buying and selling produce; they are ignorant people and not trusted that they separated the required tithes; the produce is therefore classified as demai) are common, and yet we find that the Rabbis (according to Rabbi Yehudah) did not strengthen the Rabbinic law in that case? For it was taught in a Mishnah: If donkey drivers come into a city and one says, "My grain is *chadash* (*new grain forbidden until after the bringing of the korban omer*) and my friend's grain is *yashan* (*permitted grain*)", or if he says, "My grain has not been tithed but my friend's grain has been," they are not believed. Rabbi Yehudah says: They are believed. *[This clearly indicates that Rabbi Yehudah does not maintain that the Rabbis strengthened their Rabbinic enactments to a greater level than Biblical laws.]*

Abaye answers: A definite Rabbinic law (such as the enactment of a kesuvah, so that a husband will not divorce his wife upon an impulse), the Rabbis strengthened, a doubtful Rabbinic law (*such as the unclear status of the donkey driver's produce*), the Rabbis did not strengthen.

Rava answers: Regarding demai, the Rabbis were lenient (for most people – even those who are ignorant, separate their required tithes). (56a3 – 56b1)

The Mishnah had stated: Rabbi Meir says: Anyone who undertakes to give his virgin wife less [than two hundred zuz or for his widow less than a *maneh*, it is regarded as if the husband is cohabiting promiscuously].

The Gemora infers: Anyone who undertakes to give his virgin wife less; this implies even through a condition. Evidently, his condition is invalid and she is entitled to collect the standard amount she should have received in a kesuvah. However, because the groom told her that she will not receive that amount, she is not confident that she will ever collect it, and that is why it is regarded as a promiscuous cohabitation.

The Gemora asks: But we have learned that Rabbi Meir holds that if one makes a condition contrary to that which is written in the Torah, his condition is invalid, implying that if it is contrary to a Rabbinic law, it is valid!?

The Gemora answers: Rabbi Meir indeed holds that kesuvah is a Biblical obligation. (56b1 – 56b2)

The Gemora cites a Baraisa: Rabbi Meir says: Anyone who lessens the standard amount of a kesuvah, from a virgin two hundred and from a widow one hundred, it is regarded as a promiscuous cohabitation. Rabbi Yosi says: One is allowed to do so. Rabbi Yehuda says: If the husband wants, he may write for his wife a *kesuvah* of two hundred and she writes to him a receipt which states, "I received from you a hundred" (*she is forfeiting a portion of the kesuvah*), or he



writes to a widow a *kesuvah* of one hundred and she writes to him a receipt which states, "I received from you fifty."

The Gemora asks: Does Rabbi Yosi really hold this is permitted? But let us contrast this with that which we learned in a Baraisa: One cannot make a kesuvah from movable objects in order to "benefit society" (as they might lose their value). Rabbi Yosi said: What kind of "benefit for society" is this? It is because their value is not set and they devalue!

The Gemora asks: The Tanna Kamma also said that we do not make a kesuvah from movable objects (so what is Rabbi Yosi adding)!?

The Gemora explains that it must be that the Tanna Kamma said as follows: When are these words (that a husband may not set movables for the kesuvah) said? It is when he did not take responsibility (should they get lost or stolen); however, if he assumes this responsibility, then they may be set for the kesuvah. And to this, Rabbi Yosi responded: Even if responsibility is accepted, why should we allow that they (movables) be set for the kesuvah, as they (movables) are not fixed, and they still might devalue?

The Gemora therefore asks: Now, if even there, where there is merely the possibility that the movable items will devalue, and yet Rabbi Yosi is concerned (and disallows the setting of movables for the kesuvah), here (by the case of reducing her kesuvah amount through a condition), where the kesuvah is definitely reduced, is it not certain (that R' Yosi will not allow it)?

The Gemora answers: Now, is this a comparison? In the case of devaluation, the woman is not aware of the possibility and therefore does not forgo the devaluation. In our case, the woman knows, and is forgoing her rights to the full value of the kesuvah.

The Gemora relates: Rami bar Chama's sister was married to Rav Avya. Her kesuvah became lost. They came before Rav

Yosef. He said to them: Rav Yehudah said in the name of Shmuel as follows: This (that it is regarded as a promiscuous cohabitation when a man cohabits with a woman who is insecure about receiving the full value of her kesuvah) is the opinion of Rabbi Meir, but the Sages say: A man may keep his wife for two or three years without a kesuvah. Abaye said to him: But Rav Nachman said in the name of Shmuel: the law follows Rabbi Meir in his decrees? Rav Yosef responded: if so, go and write her a new kesuvah document. (56b2 – 57a1)

INSIGHTS TO THE DAF

Stipulation regarding Marital Relations

The Gemora cited a Baraisa: If someone says to a woman that she is betrothed to him on condition that he does not owe her support, clothes, or marital relations, the *kiddushin* is valid, but the conditions are invalid; these are the words of Rabbi Meir. Rabbi Yehudah says: In monetary matters, the condition is upheld.

The Gemora explains that Rabbi Yehudah holds that one can make a condition modifying the obligations stipulated by the Torah regarding monetary law.

This would explain why Rabbi Yehudah holds that the condition is valid when he stipulated that he does not owe her support or clothing; however, why is it valid when he stipulates that he will not have marital relations with her? This is not a monetary law!?

Rashi, because of this, writes that the husband remains obligated to have marital relations with her, for this is not a financial right. Depriving a wife from relations would cause her physical distress and therefore the condition is void.

The Mishnah Lamelech challenges this from a Gemora which states that one can say to his fellow, "Hit me and you will be exempt." Evidently, one can waive physical anguish! Furthermore, we find that a woman can release the husband from his marital relations!?



Some answer that Rashi himself, cited in the Shitah Mikubetzes in Kesuvos (56a), states that the condition is void, for we assume that a woman will not waive her rights regarding anything which causes physical anguish; however, if she explicitly forfeits those rights, they are forfeited.

Rabbeinu Chananel holds that a man may stipulate on marital relations, and a wife can waive her rights to it as well. This is because the pleasure of relations belongs to her and it would be regarded as a financial right.

DAILY MASHAL

RABBINICAL OFFENSE IS MORE SEVERE

The Gemora states that the Rabbis were stricter and strengthened their enactments more than for those of the Torah.

The Gemora in Shabbos (110a) cites the verse in Koheles [10:8]: *One who breaks through a stone wall will be bitten by a snake*. This is referring to someone who does not heed the words of the Sages. One is not permitted to scoff at the decrees of the Rabbis. The Gemora in Eruvin states that one who transgresses the words of the Chachamim is liable to death at the hand of Heaven.

Rashi in Avoda Zarah (27b) states that even if he will be given medicine for this snake bite and will be healed, other snakes will come and he will eventually die.

The Maharal explains: The Rabbis' goal was to erect a fence to safeguard the commandments of the Torah. One who negates these decrees is causing a breakdown for the mitzvos of the Torah. This is why we deal with him so harshly.

Rabbeinu Yonah explains why one who violates a Rabbinical decree is dealt with in a stricter manner than one who transgressed a Torah commandment. One who violates a Biblical prohibition respects the law, but he is motivated by

his physical desires to sin. He is not rebuffing his obligation, rather it can be regarded as a momentary slip in his observance. One who violates a Rabbinical enactment does so because of a lack of regard for their decrees. He belittles them on account that they were not written in the Torah and there is no real necessity to keep them. He is rejecting his obligation and therefore deserving of death.