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Kesuvos Daf 73

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Daf Notes is currently being dedicated to the neshamot of

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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

Betrothal on Condition

It was taught: If a person betrothed a woman on a condition (*that she had no current vows*), and he later married her without mentioning that condition (*and she was later found to be in violation of that condition*), there is an argument between Rav and Shmuel. Rav says: She requires a divorce, while Shmuel argues that she does not require a divorce.

Abaye states: Do not say that the reasoning of Rav is that because he married her without mentioning the condition he must have forgone the stipulation. Rather, Rav’s reasoning is that a person does not make his marital relations into promiscuity.

The Gemora asks: Didn’t Rav and Shmuel already have such an argument? It was stated: A minor was married off by her brother or mother in a Rabbinical marriage in her youth, and stayed married to her first husband, and had marital relations with him even once she became older. She then did mi’un (*refused the Rabbinical marriage*) and married someone else. Rav says: She does not require a divorce from the second person (*as she is still married to the first person*). Shmuel states: She does require a divorce from her second husband.

[The Gemora presumes that their argument is regarding the status of their marital relations when she became older. Did the first husband have relations when she

became older in order to do a Torah betrothal (not just Rabbinical as it was previously), or was this just a continuation of the first marriage? This could fit into the argument of whether or not a person will allow his marital relations to retroactively be deemed promiscuity.]

The Gemora answers: Both arguments are necessary. If Rav would have only discussed the argument regarding the minor, one might think that this is because she did not violate any condition. However, where there was a clear violation of a condition Rav might agree to Shmuel that she does not even require a divorce. Similarly, if the case regarding conditions was the only one stated, perhaps only there Shmuel said a divorce is unnecessary. However, in the case regarding the marriage of the minor, perhaps he would agree to Rav that she does not need a divorce. This is why both arguments are necessary. (72b4 – 73a2)

Challenging Shmuel

The Mishnah states: If a person married a woman without conditions, and he found that she had existing vows, he can divorce her without giving her a kesuvah. The Gemora asks: This implies that while she does not receive a kesuvah, she does require a divorce. It must be that this is a case of where he betrothed her on condition and married her without mentioning the condition, and this is inconsistent with the ruling of Shmuel that she does not require a divorce!?



The Gemora answers: No, the case is where the entire betrothal and marriage was done without conditions. If the betrothal was on such a condition and the marriage was not, she indeed would not require a divorce.

The Gemora asks: Instead of the Mishnah giving a case of a betrothal done on the condition a woman has no existing vows, and saying that if the condition was violated the betrothal was invalid, the Mishnah should merely say that if a person marries a woman and she is found to have vows the marriage is invalid. We would certainly know that in a case where the condition was mentioned upon betrothal that the marriage is invalid!

The Gemora answers: The Mishnah indeed means to say this in the following manner. If a person betrothed a woman on the condition that she had no vows and he later married her without mentioning that condition, the betrothal is invalid. If the betrothal and marriage is done without condition and it is found that she has vows, she can be divorced without a kesuvah. This implies correctly that although she does not need a kesuvah, she does require a divorce. (73a2 – 73b1)

Distinction between Kesuvah and a Get

The Gemora asks: What is the difference? Why should she require a divorce but not receive a kesuvah?

The Gemora answers: It is because he says, "I cannot live with a woman who makes vows."

The Gemora asks: If so, let her not require a divorce as well!?

Rabbah answers: She requires a Rabbinical divorce (only). This is also the opinion of Rav Chisda, who says: She requires a Rabbinical divorce (only).

Rava says: The Tanna of the Mishnah was unsure if she requires a divorce, and therefore was lenient about the husband's monetary kesuvah obligation, but was strict that she should receive a divorce (*which has halachic ramifications*). (73b1)

A Betrothal in Error

Rabbah states: The argument (*of Rav and Shmuel*) is only regarding one who betroths two women in a possibly mistaken fashion. [*The case is where he makes a condition with the first that she has no vows, but he married the second lady without mentioning anything. Rav would say that he perhaps liked the second one so much he didn't care if she had vows, while Shmuel would say his mindset is clearly that he does not want wives with vows.*] However, in a case where he made their betrothal conditional but did not mention the condition by the marriage, everyone (*even Rav*) agrees that he relented on his condition.

Abaye asked: Our Mishnah is clearly talking about one woman, and we asked a question on Shmuel above from this Mishnah!?

The Gemora answers: It must be that this is what Rabbah meant to say. Their argument is regarding a case of one woman but similar to a mistake by two women. [*The case is where the betrothal was on condition; he then divorced her before marrying her, and then betrothed her and married her without condition.*] However, in a regular case where the betrothal is with a condition and the marriage is unconditional, everyone agrees he relented on his condition.

Abaye asked from the following Baraisa: If a betrothal was a mistake, or done with less than (the value of) a *perutah* (*small coin*), or the betrothal was done by a minor, even if he later sent presents to his "fiancé" (*when he became older or in any of the cases above*), the betrothal is invalid.



This is because the presents are an extension of the original invalid betrothal. However, if the couple cohabited, the betrothal is valid. Rabbi Shimon the son of Rabbi Yehudah said in the name of Rabbi Yishmael: Even if they did cohabit, the betrothal is invalid. In this case, Abaye asks, the question is regarding one woman, and we see they still argue. Is it (the case above of the *mistaken betrothal*) referring to where he thought that she did not have vows (and yet they argue; this contradicts Rabbah)!!?

The Gemora answers: No, it is talking about the case where the betrothal was done with less than a *perutah*.

The Gemora asks: This cannot be the case of mistaken betrothal mentioned in the Baraisa, as that case is mentioned separately in the Baraisa!?

The Gemora answers: It is as if the Baraisa stated: What is a case of mistaken betrothal? Someone who betroths a woman with less than a *perutah*.

The Gemora asks: What is the reasoning behind the argument in the Baraisa?

The Gemora answers: One opinion (*Tanna Kamma*) holds that a person knows that betrothal with less than a *perutah* is invalid. Therefore, when he cohabits with the woman, he had in mind to cohabit for the sake of (effecting) betrothal. The other (*Rabbi Shimon*) maintains that a person doesn't realize that betrothal cannot be done with less than a *perutah*. Therefore, when he cohabits with the woman, he does so based upon what he thinks was already a valid betrothal (*and he has no intent that this should be a valid betrothal*).

The Gemora asks from a Baraisa: If a man says to a woman, "I am going to cohabit with you (*in order to acquire you as a wife*) on condition that my father will approve," even if his father does not approve, she is betrothed to him (*for we assume that a person does not*

intend to act promiscuously, and he waives his condition, as he wants to betroth her even if his father does not consent to the marriage). Rabbi Shimon ben Yehudah said in the name of Rabbi Shimon: If his father approves, she is betrothed to him. If not, they are not. Now, isn't this a case where only one woman is involved and yet they argue?

The Gemora answers: They are arguing about the following. One opinion says that the condition meant that as long as his father is quiet about it, the betrothal is valid. The father was indeed quiet, therefore the betrothal is valid. The other opinion says that the condition meant that verbal approval was needed from the father, and the father remained quiet. Therefore the betrothal is invalid.

The Gemora asks from the following Baraisa: **[The Mishnah in Yevamos stated: If a man divorced his wife, and remarried her, she is permitted to the yavam (even though at the time his brother had divorced her, she was prohibited to the yavam, as his brother's divorced wife, nevertheless since at the time of his death she is his brother's wife who requires yibum, she is permitted to the yavam, for we do not say: the yevamah comes before the yavam for yibum on the basis of the first marriage, and from the time that this brother divorced her she is prohibited to the yavam as his brother's divorced wife; but we say: the death of the husband makes the yevamah require yibum); but Rabbi Eliezer prohibits. Rav Ashi explains: The reason Rabbi Eliezer prohibits the yibum is because of a Rabbinic decree that people might confuse this case with an orphan during the father's lifetime (a minor who was given in marriage by her father and she was divorced and later the husband remarried her, all agree that she is prohibited to the yavam). Since everyone agrees in that case that she may not be taken in yibum (since her divorce was fully effective by Torah law, since her father had given her in marriage, whereas her subsequent marriage was only valid by Rabbinic law, since she is a minor and she had**



already left her father's authority, and this marriage does not have the power to cancel the divorce; she therefore is prohibited to the yavam as his brother's divorced wife), Rabbi Eliezer prohibited yibum in the other cases as well, as a precautionary measure.] The *Chachamim* agree with Rabbi Eliezer in the case of a minor who was given in marriage by her father and was divorced, she is like an orphan in her father's lifetime; if he remarried her, she is prohibited to the *yavam*, because her divorce was fully effective, and her remarriage is not. Which case are we referring to? To the case in which he divorced her when she was a minor and he remarried her when she was a minor; but if he divorced her when she was a minor and he took her back when she was an adult, or even if he remarried her when she was a minor and she became an adult when she was with him, and he died, she either performs *chalitzah* or is married by *yibum*. They said, in the name of Rabbi Eliezer, She performs *chalitzah* and she does not undergo *yibum*. Now, isn't this a case where only one woman is involved and yet they argue?

The Gemora answers: There, as well, they argue about the following: One opinion (*Tanna Kamma*) holds that a person knows that betrothal with a minor is invalid (on a Biblical level). Therefore, when he cohabits with the woman, he had in mind to cohabit for the sake of (effecting) betrothal. The other (*Rabbi Eliezer*) maintains that a person doesn't realize that betrothal cannot be done with a minor. Therefore, when he cohabits with the woman, he does so based upon what he thinks was already a valid betrothal (*and he has no intent that this should be a valid betrothal*). (73b2 – 74a1)

INSIGHTS TO THE DAF

A Legitimate Marital Act, not a Promiscuous One

It was taught: If a person betrothed a woman on a condition (*that she had no current vows*), and he later

married her without mentioning that condition (*and she was later found to be in violation of that condition*), there is an argument between Rav and Shmuel. Rav says that she requires a divorce, while Shmuel argues that she does not require a divorce.

Abaye states: Do not say that the reasoning of Rav is that because he married her without mentioning the condition he must have forgone the stipulation. Rather, Rav's reasoning is that a person does not make his marital relations into promiscuity.

The Rishonim ask: The cohabitation in this case is anyways a promiscuous, non-marital cohabitation! This is because we learned previously (54b) that if anyone reduces the prescribed *kesuvah* amount from his wife, any acts of cohabitation is regarded as promiscuous. In our case, she does forfeit her *kesuvah* since the husband stipulated that she should not be under any vows, and since it emerged that she is under a vow, he would not be obligated to pay her *kesuvah*! Accordingly, what advantage is there that he does not want his cohabitation to be a promiscuous one (*and therefore, the betrothal is valid*), it is anyways regarded as a promiscuous one?

The Ran answers: A person is particular that he will not intentionally render his cohabitation to be regarded as a promiscuous one. However, he is not particular if the Rabbis render his cohabitation to be promiscuous (*and it is the Rabbis who deemed it to be a promiscuous cohabitation, when he cohabits with a wife without a kesuvah*).

DAILY MASHAL

“When a man takes a wife and marries her ... ” (Devarim 24:1) This verse is the source of the Jewish concept of marriage, and it alludes to the means by which Kiddushin (marriage) can be affected, of which there are three (Kiddushin 2a): the transference of money from the

husband to the wife (today, we use a ring equal to at least the Talmudic value of a “perutah”); a marriage contract stating the officialness of the union, and consummation (which the Talmud outlawed for obvious reasons, permitting it only after Chupah has been performed).

There are basically two stages to the Jewish marriage process: Kiddushin and Nisuin. Kiddushin, from the same word as “Kiddush,” means to sanctify, or to “set-aside.” As the Talmudic commentary Tosfos points out (Kiddushin 2b), when a man becomes halachically engaged to a woman, she becomes sanctified to him, that is, off-limits to every other man. They may not live together at this stage of the relationship, but, for all intents and purposes, they are **HALACHICALLY** husband and wife. Separation at this stage would require a “Get,” that is, a halachic divorce document.

Nisuin is the part of the process that is performed through the ceremony under the Chupah, which makes the man and woman husband and wife in every sense of the term. Hence, a married person is called a “*nisui*.”

It used to be that after the halachic engagement of Kiddushin was done, the chason (groom) and kallah (bride) would return to their parents’ homes to prepare for the wedding to be held months later. In Talmudic times, before catering and refrigeration made weddings a “snap,” months of preparation were necessary to give the kallah the type of wedding every woman deserves. As a result, a considerable span of time would pass before the marriage could be consummated, though halachically, they were already married.

As a result, and because young people often have difficulty controlling their passions, unfaithfulness sometimes resulted between the time of Kiddushin and the final act of Chupah. This was tantamount to adultery. For this reason, today, Kiddushin and Nisuin take place at

one time under the chupah; any other type of “engagement,” for the most part, is only ceremonial.

However, warns Rabbi Pinchas Winston, one must always be very careful, lest he and she find himself and herself **UNINTENTIONALLY** “married,” the consequences of which may be the requirement of a divorce should the man and woman choose not to remain together. And remarriage in a case where divorce was necessary but not carried out results in illegitimate children, accidentally or purposely.

The bottom line is that the male-female relationship is never a casual “event.” As the word Kiddushin implies, it is a **HOLY** relationship, one rooted in the very reason for creation, of which the Talmud says is to **TRY** to have children. In fact, King Chizkiah was almost killed for not having children, and one of the four questions they’ll ask us when we get up “There” for the final “test” is: Did you try to have children?