

נחל נובע

על סדר נשים



Articles
and
Revision Questions
on
Mishnayot

לעילוי נשמת

יחזקאל זעליג בן ישראל ע"ה

- What profession should a single man refrain from being engaged in? (די: ייג)
- According to *R' Yehuda* a majority of which professionals are *reshaim*? Are *ksheirim*? Are *tzadikim*? (די: יייד)

הדרן עלך סדר נשים

- What are *shtukei*? (ד:י ב:י)
- What are *asufei*? (ד:י ב:י)
- Regarding which relationship does the *Tana Kama* and *R' Yehuda* argue? (ד:י ג:י)
- How many generation back does a *Kohen* need to check in his fiancé's past when marrying a *Kohenet*? Or marrying an *Yisraelit*? (ד:י ד:י)
- Regarding the previous question to which case is marrying a *Leviya* compared? (ד:י ד:י)
- When checking the lineage, if an ancestor had one of which five professions is it then not necessary to continue checking further back? (ד:י ה:י)
- Which of a *bat chalal* or a *bat chalalah* can marry a *Kohen*? (ד:י ו:י)
- According to *R' Eliezer ben Ya'akov* when is the daughter of a *ger* forbidden from marrying a *Kohen*? (ד:י ז:י)
- Is a parent believed when they say that their child is a *mamzer*? (ד:י ח:י)
- If a man sent a *shaliach* to marry off his (minor) daughter, but then went and decided to marry off his daughter himself, what is the law if the *shaliach* married off the daughter first? (ד:י ט:י)
- What is the law regarding a case where a couple went overseas, yet the man returned with children claiming that his wife that he left with gave birth to these children and then passed away? (ד:י י:י)
- What is the law, relating to *yichus*, regarding a case where a man returns from abroad saying:
 - "This is my wife that I married while away and these are her children"?
 - "I married while away and my wife died, and these are the children from that relationship"?(ד:י י"א:י)
- Does *yichud* apply where there is:
 - Two men and one woman?
 - Two women and one man? (Include the exception.)
 - A mother and son? (ד:י י"ב:י)

Table of Contents

EDITORS FORWARD	11
INTRODUCTION	13
YEVAMOT	15
<i>Beit Shammai and Beit Hillel</i>	15
Yevamot (1:4)	
Yaron Gottlieb	
Understanding a <i>Ma'amar</i>	18
David Bankier	
Types of Mourning	21
Yevamot (4:10)	
Yehuda Gottlieb	
It is Not Good for Man to Live Alone	24
Yevamot (6:6)	
David Bankier	
Marrying a Moabite	27
Yevamot (8:3)	
Allon Ledder	
Agunot with twist of <i>Teshuva</i>	30
Yevamot (10:1)	
David Bankier	
Removing Leather Shoes	33
David Bankier	
Marriage of a <i>Cheresh</i>	35
Yevamot (14:1)	
Rabbi Natan Rickman	
In Pursuit of Truth (and how to find it)	37
Yevamot (15:2-3)	
David Bankier	

KETUBOT	40
Introduction to Ketubot Allon Ledder	40
Testimony of a Katan Ketubot (2:10) David Bankier	43
Compensation for Shame Ketubot (3:7) David Bankier	45
Adding to a Ketubah Ketubot (5:1) David Bankier	47
Forfeiting a Ketubah Ketubot (7:6) Shmoiki Berkowitz	49
Truth and Peace Ketubot (9:2) Noam Greenberger	52
Fraud Ketubot (11:5) Yehuda Gottlieb	55
Understanding Names Ketubot (13:1) David Bankier	57
NEDARIM	59
Introduction to Nedarim David Bankier	59
Brit Millah Nedarim (3:11) David Bankier	61

- Can a person *mekadesh* a married woman now, in case her current husband dies? (ג':ה)
- What is the law regarding the case where a person performs *kidushin* on the condition her father consents? (ג':ו)
- Regarding the previous case what if her father subsequently dies? Or what if instead the husband dies? (ג':ו)
- What is the law regarding the case where a man says that he married off his daughter but he does know to who, and then someone says it was him? (ג':ז)
- Regarding the previous case what if two people say it was them? (ג':ז)
- Is a person believed if he said regarding his daughter that he married her off and subsequently accepted her *get* when she was a *katan*? (ג':ח)
- Is a man on his death bed believed if he says he has children? Or if he says he has brothers? (Why is this important?) (ג':ח)
- What is the law regarding the case where a person who has two wives and two daughters from each of the wives says that he married off his “big” daughter? (ג':ט)
- What is the law regarding a case where a man say to a woman “I was *mekadesh* you!” and:
 - She denies it?
 - She say it was not her but her daughter that he was *mekadesh*? (ג':י)
- What is the law regarding a case where a man say to a woman “I was *mekadesh* your daughter” and she say it was not her daughter but herself that he was *mekadesh*? (ג':יא)
- Complete the following rules and explain: (ג':יב)
 - _____ כל מקום שיש קידושין ואין עבירה
 - _____ כל מקום שיש קידושין ויש עבירה
 - _____ כל מקום שאין קידושין ויש עבירה
- According to *R' Tarfon*, how can one “*metaher*” a *mamzer*? (ג':יג)
- What were the ten categories of family that returned from *Bavel*? (ג':יד)
- Who can *charurei* marry? (ג':יד)

- Does it help if he sends her gifts later of a much higher value? (ב'י:ר)
- Can a man perform *kidushin* to two women with one *prutah*? (ב'י:ר)
- What is the law regarding a case where a man attempts to *mekadesh* a mother and daughter at the same time? (ב'י:ר)
- What is the law regarding a case where a man attempts to *mekadesh* a group of women, two of which are sisters? (ב'י:ר)
- Can a person perform *kidushin* with:
 - *Matanot kehuna*?
 - *Ma'aser sheni*?
 - *Hekdesh*? (ב'י:ח)
 - *Orlah*?
 - *Basar be'chalav*?
 - The money made from selling *kil'ei kerem*? (ב'י:ט)
 - *Trumah*?
 - *Mei Chatat*? (ב'י:י)
- What is the law regarding the case where a person sends a *shaliach* to perform *kidushin*, and the *shaliach* marries the woman himself? (ג'י:א)
- What is the law regarding the case where a person is *mekadesh* a woman on the condition that it takes effect in thirty days, and in that time another person performs *kidushin*? (ג'י:א)
- Can *kidushin* be performed on the condition that he will give her a sum of money? (ג'י:ב)
- What is the difference if he stipulated as a condition in *kidushin* the he “has 200 *zuz*” and he “will show her 200 *zuz*”? (ג'י:ב)
- What case is brought that is similar to the previous question? (ג'י:ג)
- According to *R' Meir*, what qualifies as a satisfactory condition? (ג'י:ד)
- What is the law regarding a case where a man says “when I married you I thought you were *bat Kohen*” and she is really a *bat Levi*? (ג'י:ה)

Benefiting from Mitzvot Nedarim (5:4-5) Yehuda Gottlieb	63
Nedarim affecting others – who is liable? Nedarim (7:9) David Bankier	65
Hatarat Nedarim – Annulment of Vows Nedarim (9) Allon Ledder	68
Hafarat and Hatarat Nedarim Nedarim (10) David Bankier	71
NAZIR	74
Introduction to Nazir Yehuda Gottlieb	74
A Simple Mishnah Nazir (2:2) Rabbi Natan Rickman	76
Nezirut of Queen Helena Nazir (3:6) Yehuda Gottlieb	79
Prohibition of Head-Shaving of a Nazir David Bankier	81
SOTAH	83
Introduction to Sotah Allon Ledder	83
Miriam – Chessed and Emunah Sotah (1:9) David Bankier	86

Coming Closer to Hashem through Mitzvot Sotah (3:4) Ben-Zion Hain	89
Shema and Tefillah in Any Language Sotah (7:1) David Bankier	91
Scared of War Sotah (8:5) David Bankier	93
GITTIN	95
Gittin before Kidushin David Bankier	95
Ein Shlichus l'Koton Gittin (2:5) Adam Korbl	97
Tikkun Olam in Gittin Gittin (3) David Bankier	99
Heightened Sensitivity Gittin (5:8-9) Ben-Zion Hain	101
The Fatal Condition Gittin (7:4) Shmoiki Berkowitz	103
KIDUSHIN	106
Kidushin with Money Kidushin (1:1) David Bankier	106
A “Better” Mitzvah Kidushin (2:1) Yehuda Gottlieb	109

- How is property that has *achrayut* acquired? How is property that does not have *achrayut* acquired? (א: ה')
- Is it ever possible to acquire property that has no *achrayut* with property that has *achrayut*? (א: ה')
- At what stage in the purchasing process does one have to go through with the deal? (א: ו')
- What types of *mitzvot* are noted in the *Mishnah* that men are *chayav*, but women are *patur* (two types)? What types of *mitzvot* do they both have a *chiyuv* (three types)? (א: ו')
- What eight things are customary for a man to do with *kodshim* that women are not? (א: ח')
- For which two *korbanot* do women perform the waving service? (א: ח')
- What types of *mitzvot* are customary to fulfill in *Eretz Yisrael*? (א: ט')
- What three things are promised to those who perform one *mitzvah*? (א: י')
- What three things keep a person away from sin? (א: י')
- Complete the following phrase: (א: ב')
האיש מקדש __ ובשלוחו
- If someone told a woman that he was betrothing her with a cup of wine and it was found to be honey, is the *kidushin* valid? Would *Rabbi Shimon* agree? (א: ב')
- If someone told his slave to betroth someone in a certain place and he went and did it in another place, is the *kidushin* valid? (א: ב')
- If someone told his slave to betroth someone who was currently in a certain place, and he went and did it in another place, is the *kidushin* valid? (א: ב')
- What is the law if *kidushin* was performed: (א: ה')
 - On the condition that has no *mumim* and she had *mumim*?
 - With no conditions and it was found that she had *mumim*?
To which *mumim* does this apply?
- Can a man perform *kidushin* with an item of value less than a *prutah*? (א: ו')

- What can be done if two *gittin* (with the same names from different people) were mixed up on the way to the wives? (ט: ז'ה)
- Can a single *get* be used for multiple divorces? (ט: ז'ה)
- In what case can having Greek signatures on a *get* be problematic and why? (ט: ז'ר)
- Can a *get* be written on two sides of a page? (ט: ז'א)
- Where are the valid locations on a *get* for the signatures of the witnesses? (ט: ז'א)
- Can a *get* be written in Hebrew and the signatures be in Greek? (ט: ז'ח)
- Is a signature valid if it is just the person's name without the father's name (i.e. missing "*ben Ploni*")? (ט: ז'ח)
- What is a *get me'useh* and is it valid? (ט: ז'ח)
- What is an *amatlah* and how is important in the law of *gittin*? (ט: ז'ט)
- List the three opinions regarding what is considered adequate grounds for divorce. (ט: ז'י)

Kidushin

- What are the three means of *kidushin*? (א: ז'א)
- What are the two ways a woman leaves a marriage? (א: ז'א)
- How is a Hebrew male slave acquired? How does he "acquire himself" (i.e. set himself free)? (א: ז'ב)
- Is this the same for a female slave? What is extra? (א: ז'ב)
- According to *Rabbi Meir* how is a Canaanite slave acquired? How does he acquire himself? (א: ז'ג)
- According to the *Chachamim*, how is a Canaanite slave acquired? How does he acquire himself? (א: ז'ג)
- How is a *behema gasa* and a *behema daka* acquired according to: (א: ז'ד)
 - *Rabbi Meir* and *Rabbi Elazar*?
 - *Chachamim*?

Pre-Marital Gifts	112
Kidushin (2:6)	
David Bankier	

Social Class System	114
Kidushin (4:1)	
Allon Ledder	

REVISION QUESTIONS 117

Yevamot	118
----------------	------------

Ketubot	131
----------------	------------

Nedarim	141
----------------	------------

Nazir	149
--------------	------------

Sotah	155
--------------	------------

Gittin	161
---------------	------------

Kidushin	168
-----------------	------------

- If a *get* was thrown to a woman while she was standing on a roof and was destroyed prior to landing, when do we say that the *get* is valid? (ג: ח)
- What is a *get yashan* and can it be used? (ד: ח)
- What is the law regarding a case where the husband wrote his wife a *get* dated from the time of the destruction of the *Beit Ha'Mikdash* and she then remarried? (ה: ח)
- What two other cases (not related to *gittin*) share the same law raised in the previous question? (ו: ח)
- What is the law regarding a case where the *sofer* mistakenly gave the *get* to the wife and the *shovar* to the husband, and the husband gave the wife the *shovar* thinking it was the *get* and the wife gave the husband the *get* thinking it was the *shovar*? (ז: ח)
- What is *R' Eliezer's* opinion regarding the previous question? (ח: ח)
- Can a woman marry a *Kohen* if she was handed a *get* on a condition and the condition was not fulfilled (and then the husband subsequently died)? (ט: ח)
- In which case do *Beit Shammai* and *Beit Hillel* argue about, where a husband that divorced his wife is required to give her another *get*? (י: ח)
- What is a *get kereach*? (יא: ח)
- Explain the debate regarding how a *get kereach* can be fixed? (יב: ח)
- According to who is a *get* invalid if it was given on the condition that the wife would not marry a particular person? (יג: ח)
- How and when can this be fixed? (יד: ח)
- When do we say that such a condition is not problematic? (טו: ח)
- What is the essential wording of a *get*? (טז: ח)
- Which three *gittin* are invalid, yet if the woman remarries and has children using this *get*, the children are not *mamzerim*? (טז: ח)

- Can a man give his wife a *get* on the condition she gives him a sum of money? (ז: ז)
- What does *Rabban Shimon ben Gamliel* rule in a case where a man gives his wife a *get* on the condition that she gives him a particular item, yet that item was lost? (ז: ז)
- If a man gave his wife a *get* on the condition that she cared for his father, yet he died before she was able to care for him, when do we say that the *get* is invalid? (ז: ז)
- What is *Rabban Shimon ben Gamliel's* rule regarding a woman's inability to fulfill a condition in a *get*? (ז: ז)
- Which two cities lie on each side of the border of *Yehuda* and *Galil*? (ז: ז)
- If a husband gives his wife a *get* on the condition it will take effect if he does not see her for a period of thirty days, is the *get* valid if he consequently did see her frequently prior to disappearing for thirty days? (ז: ז)
- With what wording of the condition would a *get* be valid if it was given on the condition that the husband would not return within twelve months and died during that period? (ז: ז)
- If the husband directed two people to write and hand a *get* to his wife if he did not return within twelve months, and the witness wrote the *get* immediately and handed the *get* to the wife after twelve months, is the *get* valid? (ז: ז)
- Is a *get* valid if it is thrown: (ז: ז)
 - Into the wife's *chatzer*?
 - Into the wife's bed?
 - On to the wife's lap?
- Is a *get* valid if it was handed to the wife on the presumption that it was a financial document? (ז: ז)
- Can a woman be handed a *get* while she is sleeping? (ז: ז)
- Is a *get* valid if it was cast at the wife's feet while she was standing in the public domain? (ז: ז)
- For which two other areas does the law dealt with in the previous question apply? (ז: ז)

Editors Forward

With much gratitude to *HaKadosh Baruch Hu*, I am able to present the third volume of *Nachal Noveah*.

Seder Nashim includes the *masechtot* of *Nazir* and *Sotah*. Just as they are placed in the *Mishnayot*, these topics are recorded next to one another in the *Torah*. *Chazal* find this significant. *Rashi* explains that the procedure performed for a *sotah* and the results was quite disturbing. One witnessing such a ceremony, would be bothered and at the same time realise that indulgence in wine would have been a prime factor in leading the *sotah* to this end. Consequently, this person would take an oath (for a period of time) to become a *nazir*, thereby prohibiting the consumption of wine.

The commentators question this rationale. Having witnessed the consequence of wine consumption and been impacted by it, there would be no need for further protection. One would think the opposite - a person that has not witnessed the *sotah* ceremony would need to become a *nazir*.

One answer provided by the *Ohr Gedalyahu* is that once someone is exposed to sin, no matter how repulsed, the possibility of committing that sin is created. What we see or hear has an effect on us.

Baruch Hashem, we have surrounded ourselves with *Mishnayot* for over two and half years. Be it those that are actively engaged in learning the *Mishnayot* or those who politely listened in *shul* as the *shiurim* have been delivered. *Yashar koach* to everyone. If the effect of being surrounded by negative experiences can be so strong, how much more so for positive ones.

Yashar Koach!
David Bankier

- Explain the debate regarding one who accepts the *get* of a *na'arah me'orasah*. (י:ב)
- Can a *ketanah* elect a *shaliach kabalah*? (י:ג)
- Is a *get* valid if the husband's *shaliach* gave the *get* to the wife in a different location to the one he was told? (י:ג)
- Is a *get* valid if the wife's *shaliach* received the *get* in a different location to the one he was told? (י:ג)
- Considering a *bat Yisrael* who is married to a *kohen*, if she wished to use a *shaliach* to obtain her *get*, using what *shaliach* would she be able to continue to eat *trumah* until the *get* reaches her hand? (י:ד)
- If a man just said to two people “write a *get* for my wife” in which cases would they both write and hand the *get* to his wife? (י:ה)
- Describe the case in which anyone that hears the husband holler “write a *get* for my wife” can both write and hand her the *get*? (י:ו)
- What is the difference if the husband said “give a *get* to my wife” in front of two or three people? (י:ו)
- Regarding the previous question, who argues that there is no difference? (י:ו)
- What is the law if the husband said “all of you write a *get* for my wife”? (י:ו)
- If someone became a mute, how do we confirm that he wished to give his wife a *get*? (י:ז)
- If two people were directed to write a *get* by the husband, can they get a *sofer* to write the *get* and get other people to sign it? (י:ז)
- Can a man give his wife a *get* on the condition that it takes effect after he dies? (י:ז)
- What is the law if a husband gives his wife a *get* saying “this is your *get* from today and after death”? (י:ז)
- What is the law regarding a woman who receives a *get* from her husband on the condition that it takes effect now if in the future the husband dies? (י:ז)

- What are *nechasim meshubadim*? Is there any restriction as to when debts can be collected from them? (ה' ב:י)
- From who are debts always collected from the lowest quality property? (ה' ב:י)
- What is never collected from *nechasim meshubadim*? (ה' ג:י)
- If someone returned a lost wallet, does he need to swear that he found it empty of the money it contained? (ה' ג:י)
- When is an *apotropus* obligated to swear that he never took from the property of *yetomim*? (ה' ד:י)
- When is one exempt from compensation if he caused another's food to be *tameh*? (ה' ד:י)
- Can a *chareshet* be divorced through a *get*? (ה' ה:י)
- What was instituted as *takanat shavim*? (ה' ה:י)
- Explain the law of *sikrikun* and when did it apply? (ה' ו:י)
- What other law that applies to acquisitions is similar to that of *sikrikun*? (ה' ו:י)
- How did the law of *sikrikun* change and what was the final amendment to that change? (ה' ו:י)
- How does a *cheresh* engage in a transaction? What does *R' Yehuda* add as another acceptable means of communication? (ה' ז:י)
- What are *pa'utot*? (ה' ז:י)
- Which three cases are debated as to whether they are forbidden due to *darkei shalom* or because it is *gezel gamur*? (ה' ח:י)
- Can one lend cooking implements during the *shmittah* year to one that is suspect of transgressing the prohibitions of *shmittah*? (ה' ט:י)
- Until which point can a *eshet chaver* assist an *eshet am ha'aretz* in making bread? (ה' ט:י)
- Describe the case in which once the husband hands the *get* to the *shaliach* he cannot cancel the *get*. (ה' י:י)
- If a woman elected a *shaliach* to accept her *get* and he did so, but then disposed of the *get*, how many witnesses would she require to confirm the divorce? (ה' י:י)

Introduction

The *Gemara* in *Shabbos* (31a), which is commonly quoted with regards to discussions concerning the different parts of the six *sedarim*, brings a *passuk* from *Yesha'ayahu* and learns that each one of its words is referring to a different *sefer*. Some of the connections between the *passuk* and the *sedarim* are more obvious – like the word עתך (times) which refers to *Seder Mo'ed* which is mostly concerned with the Jewish calendar. Yet other connections are more elusive, such as the word חוסך chosen by the *Gemara* to refer to *Seder Nashim*, the one we are dedicating this book to.

Rashi, of course, deals with the problem directly. חוסך, he says, means immunity or great strength, and therefore it was given as a name for the *sefer* dealing with women's issues. Women give the family an heir, and that is the real power behind the continuity of the family. In short: the *sefer* of *Nashim* deals with the continuity of the Jewish people, and is therefore called 'strength'.

Indeed, *Rashi's* point is well taken, but I would like to make another point regarding his observation. Let us ask ourselves: why did we not see what *Rashi* saw? Why was it not clear to us? The answer is that the actual texts and discussions within the *sefer* do not deal with this broad picture which *Rashi* presents to us. This is precisely *Rashi's* greatness, that despite the intricate family relationships discussed in *Yevamot*, the detailed discussion of a *Nazir's* exact words where one syllable or letter can hold tremendous consequences, and the continuous discussions regarding the wording in a *ketuba*, *get* or *kiddushin* – despite all those *Rashi* sees the bigger picture. It is easy to get lost in the details, but what the *Gemara* is asking us to do is to take a step back and look at the system as a whole, to see what was created by that system, what was achieved.

This book is a testament to that very idea. The compilation of articles reflecting different sides and different issues in the various topics discussed in *Seder Nashim* does not dim the light of Judaism by over-exploring details, but rather shines that light all the more. Through these articles, one must learn to look at the philosophy of Judaism, and not only at the bare facts which are incorporated within it.

A big *Yeshar Koach* goes to all those involved in this project, and above all to the main force behind the *Mishnah Yomit* project in *Mizrachi* – Doodie Bankier. May we all be *zocheh* to take part in *Hashem's Torah* each and every day.

Rav Yoni Rosensweig

Rosh Kollel Torah MiTzion - Beit Midrash Naftali Herc

- What is the law if the *kohen* dies prior to the person separating *trumah*? (יג: א)
- If someone set aside fruit in case later he wished to use them as *trumah* for other produce, then later discover that they were lost, for what period of time prior to discovering this must he assume they were lost? (יח: א)
- According to *R' Yehuda* if someone tries a similar scheme with wine, how often and when must he check the quality of the wine? (יח: א)
- If a husband sent a *get* with a *shaliach*, until when can he cancel the *get* and what is required to cancel it? (יא: א)
- Regarding the previous question, in the past how was a *get* cancelled and why was it changed? (יב: א)
- What else changed in the laws of *gittin* for this reason and who instituted the change? (יב: א)
- How does an *almanah* collect her *ketubah* from *yetomim*? (יד: א)
- Who instituted the *pruzbel*? (יד: א)
- Explain the debate regarding a servant who was captured and redeemed, whether he is automatically no longer a servant? (יד: א)
- How do we deal with a person who is a “half-servant, half-free”? (יד: א)
- What is the law regarding one who sells his servant to a *goi*? To which other purchaser does this law apply? (יז: א)
- Which two things are one not allowed to overpay for, *mipnei tikkun olam*? (יז: א)
- List three of the opinions regarding whether one can remarry his ex-wife, if she was divorced because of a *neder*. (יז: א)
- For what other reason for divorce is there a debate whether the couple can remarry? (יח: א)
- In what case do when not redeem a Jewish servant of a *goi*? (יט: א)
- What legal payments are collected from the best quality land? Medium quality? Lowest quality? (יא: א)

- Is a *get* valid if it was written on the horn of a cow while it is still attached to the cow? (ב' גי)
- Explain the debate regarding a *get* that was written on something that was attached to the ground and signed after it was detached. (ב' ד')
- Are there limitations on who can write a *get*? (ב' ה')
- Are there limitations on who can be a messenger to bring a *get*? (ב' ה')
- Complete the following phrase and explain: (ב' ו')
"כל _____ בודעת כשר"
- Which five women are not valid witnesses to the death of another woman's husband? (ב' ו')
- Are these women valid as messengers to bring a *get*? (ב' ו')
- If a woman brings her own *get* does she need to say "*befanai nechataav u'befanai nechtam*"? (ב' ו')
- Can a *get* that was written for another couple that had the same names be used? (ג' א')
- Explain the debate regarding how much of a *get* can be pre-written? (ג' ב')
- If a *get* was lost, why can it not be used once it is found? In which case can it be used? (ג' ג')
- Can a *get* be given if it was sent from the husband who was ill? (ג' ג')
- What are the three cases presented in which we are concerned that the husband has died and who presented these cases? (ג' ד')
- If a messenger bringing a *get* within Israel falls ill, can he hand the *get* on to another *shaliach*? (ג' ה')
- Regarding the previous case, what happens if the *shaliach* was bringing a *get* from outside Israel? (ג' ו')
- If someone loans money to a *kohen* on the condition that he may separate *trumah* for him and then sells it to another *kohen* and then the *kohen* travels overseas, can he continue to fulfill this condition? (ג' ו')

Yevamot

Beit Shammai and Beit Hillel

Yevamot (1:4)

Yaron Gottlieb

At the end of the first chapter of *Yevamot* we get an insight into the unique relationship that existed between *Beit Hillel* and *Beit Shammai* and a clearer understanding of what the *Mishnah* in *Avot* means when it describes the argument for the sake of heaven as being the dispute between *Hillel* and *Shammai*. The exact nature of the dispute gives us a clear directive as to how we should conduct our own disagreements.

The last *Mishnah* in the first chapter of *Yevamot* brings a dispute between the two houses of study which on the surface is quite astonishing. The *Mishnah* leaves us with a catch twenty-two where someone who acts in accordance with *Beit Hillel* would be forbidden to marry a *Kohen* according to *Beit Shammai*, while if the reverse action was taken and the opinion of *Beit Shammai* was followed the child would be a *mamzer* according to *Beit Hillel*. Nevertheless "*Beit Shammai* did not refrain from marrying women from *Beit Hillel*, and neither did *Beit Hillel* refrain from *Beit Shammai*." The continuation is that they also ate from each other's houses in spite of the differing opinions with regards to ritual purity.

On the surface this is both shocking and to a certain degree highly utopian. It appears that *Chazal* were willing to forgo their *Halachic* decisions for the sake of Jewish unity - a statement that does not hold up to scrutiny in the *Gemara*. It would certainly have many ramifications to the structure of *Halacha* today if this would be true.

In the *Yerushalmi* (*Kidushin* 1:1 and here in *Yevamot*) it seems to suggest that while they were not conciliatory towards each others

position it was accepted that they had differing positions. Not much was done about this situation¹ until the heavenly voice came down and stated clearly that everyone must follow the opinion of *Beit Hillel*, which effectively ended the debate as a practical concern.

The *Yerushalmi* then gives us *Yavneh* as the location of the *Sanhedrin* when the heavenly voice was heard. This strange additional piece of information seems to tell us something extra. *Yavneh* was the central seat of Jewish learning immediately following the destruction of the temple as was requested by *Rabbi Yochanan ben Zakkai* (see *Gittin* 55b). It is a symbol of the new age *Torah* of the exile. It is at this point that the vibrant debate and the way of life that existed prior to the destruction came to be redefined by the heavenly voice for the thousands of years of the exile.

This way of thinking however is not actually the answer given by the *Bavli* (*Yevamot* 14a) as well as the commentators, who unanimously follow that direction. The *Gemara* says that due to the massive ramifications of the two cases (having children who are *mamzerim* in the first and the defiling of the sacrifices in the second) they clearly would not blindly intermarry. Instead each school would inform the other of a relationship that they knew the other school would find questionable. The *Gemara* therefore simply says that instead of putting a blanket ban on the other house they had a series of checks to determine the persons status according to their opinion, as they would readily volunteer information about any vessel whose purity is suspect according to the view of their rivals.

¹ *Editor's note:* There is a debate in the *Yerushalmi* whether *Beit Shammai* acted in accordance to *Beit Hillel's* ruling acting stringently or whether each school acted according to their own opinion. According to the latter opinion, even though there could have potentially been problems relating to *mamzerut*, the *Yerushalmi* explains that these cases never existed - והמקום משמר ולא אירע - מעשה מעולם"

- The death of *R' Meir? Ben Azai? R' Yehoshua? R' Elazar ben Azarya? R' Akiva? Rabban Gamliel HaZaken? Rabbi?* (ט"י: ט"ו)
- What are the signs of the end of *galut*? (ט"י: ט"ו)

Gittin

- If someone brings a *get* from overseas, what must he say? (א' :א')
- What if he is unable to say it? (א' :ג')
- According to *R' Yehuda* what are the “borders” of Israel for the laws of *gittin*? (א' :ב')
- Why is the previous question important? (א' :ג')
- What other legal area shares the same law as discussed in the previous questions? (א' :ד')
- Are *kuti'im* allowed to be witnesses on a *get*? (א' :ה')
- If a person sends someone as a *shaliach* to give his wife a *get*: (א' :ו')
 - Can he cancel the *shlichut* before the *shaliach* arrives?
 - Can the *shaliach* still give the *get* if the person passes away?
- What is the law if the *shaliach* can only say “*befanai nechataav*”? (א' :ב')
- What if one person can only say “*befanai nechataav*” and another can only say “*befanai nechtam*”? (א' :ב')
- What special case does *R' Yehuda* permit similar to the previous question? (א' :ב')
- Which of the following invalidates a *get*: it was written at night or it was signed at night? (א' :ב')
- Who argues on the rule discussed in the previous question and why? (א' :ב')
- Is there something special about the ink that must be used to write a *get*? (א' :ג')

- Would the *eglah arufah* be performed if the closest city did not have a *Beit Din*? (ט: ב) (ט: ב)
- If the head was severed from the body, where was the body buried? (ט: ג) (ט: ג)
- Explain the debate regarding from which part of the body the distance to the closest city was measured. (ט: ד) (ט: ד)
- Who would perform the *eglah arufah*? (ט: ה) (ט: ה)
- Where was the *eglah arufah* performed? (ט: ו) (ט: ו)
- What work could be performed on the site of the *eglah arufah*? (ט: ז) (ט: ז)
- Why would the *Beit Din* say: (ט: ח) (ט: ח)
"ידינו לא שפכה את הדם הזה ועינינו לא ראו"
- What would happen to the *egel* if the murderer was found prior to the *arufah*? (ט: ט) (ט: ט)
- Could the murderer be tried if he was found after the performance of the *eglah arufah*? (ט: י) (ט: י)
- If one person said they saw the murder and another dismissed his claim, would they still carry out the *eglah arufah*? (ט: יא) (ט: יא)
- From what point did they cease performing *eglah arufah*? (ט: יב) (ט: יב)
- What other process stopped as a result of societal changes? (ט: יג) (ט: יג)
- What ended with the deaths of *Yosi ben Yo'ezer* and *Yosi ben Yochanan*? (ט: יד) (ט: יד)
- What three things did *Yochanan kohen gadol* put an end to and what two things were different in his time? (ט: טו) (ט: טו)
- What stopped with the end of the *Sanhedrin*? (ט: טז) (ט: טז)
- What stopped with the end of the *Nevi'im Rishonim*? (ט: טז) (ט: טז)
- What three things ended with the *Churban Ha'Bait*? (ט: טז) (ט: טז)
- What does *R' Shimon ben Elazar* say was lost along with *taharah* and *ma'asrot*? (ט: טז) (ט: טז)
- What decrees were made as a result of the following events:
 - The war of *Aspasyanus*?
 - The war of *Titus*?
 - The war that resulted in the *churban*? (ט: טז) (ט: טז)

This gives us a clear look at a true dispute for the sake of heaven. In spite of differences of opinion, there is still room to recognise a difference of opinion and that this view is also the word of G-d – "Both these and these are the words of the living G-d." At the end of the day they were both strong in their own views but were able to recognise the opposing position and were comfortable enough in their own opinions to be able to accommodate them in a way that would not create divisions in the nation.

Understanding a *Ma'amar*

David Bankier

The third *perek* contained many complex cases of *yibum*. One of the details added to some of these cases was when a brother performed a *ma'amar* to a *yavamah* (his late brother's wife whom requires *yibum*). From the *Mishnayot* learnt (2:1-2, 3:5-6), it appears that a *ma'amar* does not replace or equal *yibum*, yet does form somewhat of a connection between the brother and the *yavamah*. But what is a *ma'amar* and what is its source?

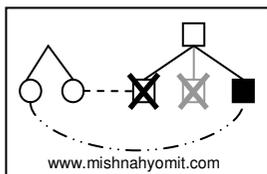
The *Rambam* (*Yibum* 2:1) explains:

Rabbinically (*midivrei sofrim*), it was instituted that the *yavam* would not be with his *yavamah* until he performs *kidushin* before two witnesses with a *prutah* (coin) or something the value of a *prutah* – this is called *ma'amar*. The *ma'amar* does not 'acquire' the *yavamah* completely [like *yibum*]....

The *Rambam* explains that the *ma'amar* is a rabbinically enacted process that mirrors *kidushin* (see 2:2). It was enacted as an intermediate stage before *yibum* in much the same way as *kidushin* is an intermediate stage before *nisuin* (see *Rambam Ishut* 1:1-2).

However the very status of a *ma'amar* is a subject of debate in a *Mishnah* (3:5):

Three brothers: two of which marry two sisters and the remaining brother is single. One of the brothers dies, and [the single brother] performs a *ma'amar* [but as yet has not performed *yibum*]. After that, the other [sister-marrying] brother dies. *Beit Shammai* say, the brother may stay with his wife [i.e. the person to whom he performed a *ma'amar*] and the other sister can leave [without even *chalitzah*] as she is the sister of his wife. *Beit Hillel* says, he must give his 'wife' a *get* and perform *chalitzah* and must [also] perform *chalitzah* to the other sister.



- What was the *birchot kohen gadol*? (ז: ז')
 - When was *parashat ha'melech* read? (ח: ז')
 - What did *parashat ha'melech* contain? (ח: ז')
 - What was the difference between the *brachot* recited by the *kohen gadol* at '*birchot kohen gadol*' and the *brachot* recited by the *melech* at *parashat ha'melech*? (ח: ז')
 - Was the *mashuach milchama* allowed to address the soldiers in a language other than *lashon ha'kodesh*? (ח: ז')
 - In who did the *Plishtim* put their faith when they fought *Am Yisrael*? (ח: ז')
 - In who did *Bnei Amon* put their faith when they fought *Am Yisrael*? (ח: ז')
 - If someone purchased a new house, were they told to return home from the battle field? (ח: ז')
 - If someone received a vineyard as a gift, were they told to return home from the battlefield? (ח: ז')
 - Was a *yavam* told to return home from the battlefield? (ח: ז')
 - What would the people that were sent home from the battlefield do? (ח: ז')
 - Was a *machzir gerushato* sent home from the battlefield? (ח: ז')
 - Which people would be exempt from all army service, on and off the field? (ח: ז')
 - What are the three opinions regarding to whom the following verse refers: (ח: ז')
- "הירא ורך לבב"
- Could people leave the battlefield once the battle begun? (ח: ז')
 - What are the two opinions regarding in which battles everyone partook? (ח: ז')
 - Explain the debate regarding how many people were sent from the *Beit Din* in *Yerushalaim* for the *eglah arufah* procedure. (ח: ז')
 - In what state must the body be found in order that the *eglah arufah* be performed? (ח: ז')

- On the day that *R' Elazar ben Azarya* was elected as *nasi* what did *R' Akiva* expound regarding:
 - *Tum'ah ve'tahara?* (הי:בי)
 - *Tchum Shabbat?* (הי:גי)
- How was the *shirat ha'yam* sung according to *R' Akiva* and how was it sung according to *R' Nechemya?* (הי:ד)
- Who learnt that *Iyov* worshipped *Hashem* through *yir'ah* and who learnt that he worshipped *Hashem* through *ahavah?* (הי:ה)
- Explain the debate regarding the level of *edut* required for *stirah?* (הי:א)
- What level of *edut* is required to prevent a *sotah* from drinking *mei sotah?* (הי:ב)
- Which witnesses would prevent a *sotah* for drinking *mei sotah* yet not prevent her for receiving her *ketubah?* (הי:ב)
- Which event requires a more formal level of *edut* – *kinui* or *stirah?* (הי:ג)
- From which *p'sukim* is the law described in the previous question derived? (הי:ג)
- If there are two conflicting testimonies regarding whether she was *nitmeit* when does she nonetheless drink *mei sotah?* (הי:ד)
- Which seven things may be recited in any language? (הי:ה)
- Which eight things must be recited in *lashon ha'kodesh?* (הי:ה)
- From where do we learn that *mikra bikurim* must be recited in *lashon ha'kodesh?* (הי:ו)
- From where do we learn that *chalitzah* must be recited in *lashon ha'kodesh?* (הי:ו)
- Regarding the *brachot* and *klalot*: (הי:ז)
 - On which mountain did *shevet levi* stand?
 - Towards which mountain were the *brachot* said?
 - Towards which mountain were the *klalot* said?
 - What was done when they were completed?
- What are the differences between how *birkat kohanim* was performed inside and outside the *beit ha'mikdash?* (הי:ז)

Beit Hillel's understanding is consistent with the above explanation of a *ma'amar*. In simple terms since a *ma'amar* is not complete *yibum*, even though he performed a *ma'amar* she would still require *yibum*. Consequently this is similar to a case of a person who is required to perform *yibum* to two sisters. Each of the sisters is defined as “*achot zkukato*” (the sister of the woman he is required to perform *yibum* to) which is a (rabbinically) forbidden relationship. The only difference is that since he performed a *ma'amar* to one of the sisters, she would also require a *get* to “undo” it.

However *Beit Shammai's* position seems to be more difficult. It appears that once he performs the *ma'amar*, she is his wife completely (see the *Gemara* for a full analysis of *Beit Shammai's* opinion). *Rashi* indeed explains that *Beit Shammai* hold that the *ma'amar* is considered like *yibum* (“*ke'knusa damya*”). The question remains, according to *Beit Shammai*, on what level is this *ma'amar* operating.

The *Tosfot* (*Yevamot* 29a s.v. *Beit Shammai*) maintain that the *ma'amar* acquires on a biblical level. *Rashi* however (29b) appears to state that even *Beit Shammai* agrees that it is only rabbinic. The *Tosfot* find this position difficult when analysing many cases. For example, in the case above, if the *ma'amar* was only affective on a rabbinic level, according to *Beit Shammai* how could the other sister leave and remarry without even *chalitzah?* (*Achot zkukato* requires *chalitzah!*)

The *Tosfot* (s.v. *ela*) suggest that perhaps *Rashi* understands that the *ma'amar* has the ability to remove the prohibition of *achot zkukato* such that he may complete *yibum*. The other sister may leave without *chalitzah* only after he does indeed complete *yibum*. However this is not the simple understanding of the *Mishnah*. Also *Rashi* (18a s.v. *kinyan gamur*) appears to state explicitly that a *ma'amar* affects marriage in its fullest sense.

Alternatively the *Rashba* explains that *Rashi* agrees that *Beit Shammai* hold that a *ma'amar* works on biblical level. The point *Rashi* is making is that it is not equivalent to *kidushin* with respect to the punishment associated with having relationship with *ba'alat ma'amar* as compared to an *arusa* (engaged women).

R' Kornfeld (<http://www.dafyomi.co.il/yevamos/insites/ye-dt-029.htm>) suggests that *Rashi* may understand that according to *Beit Shammai* perhaps a *zukah* alone is really considered like being married. Therefore even without a *ma'amar* the remaining sister is considered his wife's sister. The *Chachamim* however rule stringently against this rule in practice. The *ma'amar* in this case simply reverts the *Chachamim's* stringent ruling, thus enabling the other sister to leave freely.

- Which are the four people that *R' Yehoshua* describes as being *m'chalei olam*? (י"ד: ג')
- Explain the debate regarding whether *mei sotah* can have a delayed effect. (י"ה: ג')
- After which point is a *sotah's mincha* offering that became *tameh* burnt? What happens to the *mincha* offering if it became *tameh* before this point? (י"ו: ג')
- What is different about the *mincha* offering of a *sotah* who is the wife of a *Kohen*? (י"ז: ג')
- What are the four differences listed between a *Kohen* and a *Kohenet*? (י"ח: ג')
- What are two differences between men and women when it comes to the laws of *nazir*? (י"ט: ג')
- What are two differences between men and women when it comes to death penalty? (י"י: ג')
- Can an *arusa* become a *sotah*? From which *pasuk* is this law derived? (י"א: ד')
- Can a *gerusha* that married a *kohen* become a *sotah*? (י"א: ד')
- Which four women listed, do not become a *sotah* yet are divorce without receiving a *ketubah*? (י"ב: ד')
- What is the debate between *Beit Shammai* and *Beit Hillel* regarding a *sotah* whose husband dies? (י"ב: ד')
- What is a *meuberet chavero* and explain the debate regarding this case? (י"ג: ד')
- Explain the debate regarding whether a *zkeina* can become a *sotah*. (י"ג: ד')
- If a *sotah* who is the wife of a *kohen* is found to be innocent, can she return to her husband? (י"ד: ד')
- Does the *kina* apply to *issurei arayot*? (י"ד: ד')
- In what three cases can the *beit din* provide the *kina* instead of the husband? Would this *kina* make her a *sotah*? (י"ה: ד')
- Who else would the *mei sotah* affect? (י"ה: ד')
- If the *sotah* refused to drink, aside from her husband, who else would she be forbidden from marrying? (י"ה: ה')

- Were other women allowed to watch the process? (א: ר)
- Explain the following phrase and list three ways in which it applies to a *sotah*: (א: ז)
במדה שאדם מודד, בה מודדין לו
- How does the above phrase apply to:
 - *Shimshon*?
 - *Avshalom*? (א: ח)
 - *Miriam*?
 - *Yosef*?
 - *Moshe*? (א: ט)
- What *korban* would the *sotah* bring and in what three ways does it differ from a regular *korban* of that class? (ב: א)
- From what material was the cup made that was used for *mei sotah*? (ב: ב)
- From where was the cup filled with water? (ב: ב)
- From where was the earth taken from and for what was it used? (ב: ב)
- List the three opinions regarding what was included in the *parashat sotah*. (ב: ג)
- What material was the *parasha* written on and what substance was used for the writing? (ב: ד)
- About what would the *sotah* respond “*amen, amen*”? (ב: ה)
- Complete the follow rule and explain: (ב: ו)
”כל _____ לא היה מתנה עמה”
- What was done with the *sotah’s korban*? (ג: א)
- When during the process was the *sotah’s korban* offered? (ג: ב)
- Until when can the *sotah* refuse to take part in this procedure? (ג: ג)
- Does the procedure continue if after the point discussed in the previous question the *sotah* admits that she is *temeah*? (ג: ג)
- If the *sotah* pulls out, can the *megillat ha’sotah* be used for another *sotah*? (ג: ג)
- If a *sotah* was guilty, how long would it take for the *mei sotah* to have an effect? (ג: ד)

Types of Mourning

Yevamot (4:10)

Yehuda Gottlieb

The *Mishnah* in *Yevamot* (4:10) states

A *yavamah* may not perform *chalitzah* and is not taken in through *yibum* until she has waited three months, and likewise all other women may not enter into *eirusin* (*halachic* engagement) and *nisuin* (marriage) until they have waited three months (following their previous marriage).

The reason for this decree is to ensure that a situation will not arise in which the paternity of a child born during the second marriage will be thrown into doubt. This is achieved by delaying the second marriage for three months. If at the end of that period the woman shows no signs of pregnancy, we are certain that she did not become pregnant by the first husband. Thus, any child born afterwards is definitely the offspring of the second husband.

In the same *Mishnah*, *R’ Yosi* is of the opinion that “all previously married women may enter into *eirusin* immediately, except a widow”. According to *R’ Yosi*, a widow is not permitted to enter into *eirusin* straight after the death of her husband, as she must fulfil a thirty day mourning period.

The *Gemara* (*Yevamot* 43a) outlines a number of challenges that attempt to refute the opinion of *R’ Yosi*. In one of these attempted refutations, *Rava* compares the mourning period of the week preceding *Tisha B’Av* with the mourning period following the death of a close relative. The *kal vachomer* dictates that since in a mourning period (the week of *Tisha B’Av*) where the *halacha* is that it is forbidden to engage in business activities, yet it is permissible to enter into *eirusin*, it should logically follow that in the mourning period where it is permitted to engage in business activities (the thirty days of mourning for a husband) that it should be permissible to enter into *eirusin* during this time.

A lengthy discussion ensues in the *Gemara*, but the conclusion of the *Gemara* is stated by *Rav Ashi* (43b): “present mourning is different from mourning about the past and communal mourning is different from individual mourning.” *Rashi* explains the difference that the *aveilut* during *Tisha B’Av* is of a public and historical nature; therefore we are able to be more lenient in letting people do *eirusin* in this time. The same cannot be said for an individual, “fresh” *aveilut* where doing *eirusin* in this time is deemed totally inappropriate.

However, this explanation does not address the contradiction of business activities. Why should business activities be deemed forbidden in a public, ‘older’ *aveilut*, whereas in the individual, ‘recent’ *aveilut* it is permitted?

Tosfot (s.v. *shani*) answers this question in a practical way. They state that the reason that business activities are forbidden in the week preceding *Tisha B’Av* is precisely because it is a public and past *aveilut*. If business activities were permitted, people would see a shopkeeper going to work during this week, and feel that this shopkeeper was not appropriately mourning for the destruction of Jerusalem. *Tosfot* focuses on the word ‘*rabbim*’. The reason why *Tosfot* feels that *eirusin* is permitted in the week before *Tisha B’Av* is specifically because it is an ‘older’ *aveilut*. *Tosfot* focuses on the two aspects of the *aveilut* separately - the public aspect to forbid business activities, and the ancient aspect to allow *eirusin* during this time.

This explanation is problematic according to *Rashi*, who seems to be saying we are lenient during the week of *Tisha B’Av* because of both aspects combined (public and ancient *aveilut*). How then does *Rashi* understand the inconsistencies of business activities during these two times?

R’ Kornfeld (<http://www.dafyomi.co.il/yevamos/insites/ye-dt-043.htm>) states that it could be that *Rashi* understood the *Gemara*

- Regarding the previous case, what are the two opinions if one of the *nazirs* then dies? (יח: יא)
- What is the law regarding a *nazir* that is *tameh b’safek* and *muchlat b’safek*? (יח: יב)
- Can a *goi* become a *nazir*? (יט: יא)
- What is the difference between where a person is *meifer* his wife’s *neder* to become a *nazir* and where a person is *meifer* his servant’s *neder* to become a *nazir*? (יט: יב)
- Which form of *tumat hamet* does not forfeit any days, if it is discovered after a *nazir* has completed his term? Provide an examples of this form of *tumat hamet*. (יט: יג)
- When is an area defined as *shechunat kevarot* and why is it important? (יט: יד)
- What are the seven ways to check a *zav* and after which point do these checks not apply? (יט: טז)
- Aside from *Shimshon* which other *navi* was a *nazir*? (יט: יז)

Sotah

- In the first *Mishnah*, about what is the debate between R’ *Eliezer* and R’ *Yehoshua*? (יא: יא)
- What constitutes a warning for the purposes of *sotah*? (יא: יב)
- What are the five cases where a *sotah* does not drink *mei sotah*? (יא: יג)
- Where was a *sotah* first taken? (יא: יד)
- What was the first thing they would do to a *sotah*? (יא: טז)
- What would happen if a *sotah* admitted to having an affair? (יא: יז)
- If a *sotah* maintained her innocence, to where was she next taken? (יא: יח)
- What else was performed at that location? (יא: יט)
- Was the *sotah* allowed to wear jewellery during the process? (יא: כ)
- Describe how the *sotah* was prepared? (יא: כא)

- Describe the process of *tiglachat ha'taharah* for a *nazir*? (י:י) (י:י)
- What was done with the *nazir*'s hair once it was shaved? (י:י)
- Explain how the *nazir*'s *shlamim* was offered? (י:י)
- From what point would the *nazir* once again be allowed to become *tameh met*? (י:י)
- What is the law if after the *tiglachat*, one *korban* is found to be *pasul*? (Be specific) (י:י)
- Explain the debate regarding a *nazir* that became *tameh* after the *korbanot* were offered, yet prior to the *tiglachat*. (י:י)
- Can a *nazir* and *kohen gadol* become *tameh met* for a relative? (י:י)
- If a *nazir* and *kohen gadol* come across a *met mitzvah* who should become *tameh met* to bury the body? (י:י)
- List some of the forms of *tumat met* which causes a *nazir* to forfeit all the days already observed forcing him to restart? (י:י)
- What are the three ways a *nazir* attracts the *tum'ah* described in the previous question? (י:י)
- On which days of the purification process is the *nazir* sprinkled with *mei effer haparah*? (י:י)
- From when does the *nazir* restart his count after coming into contact with a *met*? (י:י)
- List some of the forms of *tumat met* that do not cause a *nazir* to forfeit all the days already observed? (י:י)
- Regarding the previous questions, would the *nazir* be required to bring a *korban* as a result of becoming *tameh met* in those manners? (י:י)
- If a *nazir* become a *zav*, do those days of *tumat hazav* count towards his *nezirut*? (י:י)
- According to *R' Eliezer* for what other *halacha* is the distinction between forms of *tumat hamet* important? (י:י)
- What is the law regarding a case where a person says to two *nazirs*, "I saw that one of you became *tumat hamet* but I am not sure which one"? (י:י)

in a way similar to that of *Tosfot*, that *Tisha B'Av* is more stringent when it comes to doing business activities, but for a different reason than the reason that *Tosfot* gives. According to *Rashi*, the very fact that *Tisha B'Av* is not an individual *aveilut* requires that steps be made to help arouse people to mourn. The *Chachamim* made certain enactments in order to help people focus on the *aveilut* and ponder the destruction of Jerusalem and not be distracted. Therefore, they prohibited things which cause people to take their minds off of mourning, such as business activities. That is, the actual fact that business activities are forbidden may not be a law of *aveilut* at all! They did not prohibit *eirusin*, though, on such days, because *eirusin* is a momentary act that will not detract from one's concentration on mourning for Jerusalem. Following the death of a husband, though, since the *aveilut* is personal and recent, the mourner will not become distracted from his *aveilut* by undertaking business activities.

It is Not Good for Man to Live Alone

Yevamot (6:6)
David Bankier

In the sixth *perek*, the *Mishnah* explains that one should not abstain from engaging² in the *mitzvah* of *pru u'rvu* (having children) if he has not yet had children. The number and gender of the offspring necessary to fulfil the *mitzvah* is the subject of debate in the *Mishnah*.

The *Gemara* (61b) is particular in the wording of the *Mishnah* and explains that all that the *Mishnah* allows one to abstain from, once he has had “children”, is the *mitzvah* of *pru u'rvu*; however even if he has had children, he should not refrain from having a wife. The *Gemara* cites the following *pasuk* in support of this directive: “It is not good for Man to be alone”³ (*Bereshit* 2:18).

Ha'Emek Davar explains the above *pasuk* is not stating that there needs to be a male and female for reproductive means, because this is a common necessity for all creatures. The *pasuk* is rather referring to the need for a spouse and helper in all aspects of one's life, as the *pasuk* continues: “I will make a compatible helper for him” (“*ezer kenegdo*”).

Ha'Emek Davar continues that each person has his unique character traits each with their strengths and deficiencies. The *ezer kenegdo*, one's ideal partner, will have contrasting character

² See *Tosfot Yom Tov* (s.v. *mi'piryah ve'rivyah*).

³ The *Ben Yehoydah* quotes a difficulty posed by the *Iyun Ya'akov*: How is the *Gemarah* bringing this as a proof for the importance of having a spouse even if he has had children? At that point in *Bereshit*, *Adam* had not yet had children! He answers, that the reason why it is brought is because the *pasuk* itself explains that Man required a spouse not just for reproduction, but rather because “I will make a compatible helper for him” (as this article continues to explain). Alternatively, the reference to *ha'Adam* refers to mankind as apposed to *Adam* in particular.

- Explain the three opinions regarding who are indeed *nezirim* in the following case: A group of six people sees someone approaching from a distance. One says “I am a *nazir* if that is *Ploni*”. The second says “I am a *nazir* if that is not *Ploni*”. The third person says, “I am a *nazir* if one of you two are a *nazir*”. The fourth says “I am a *nazir* if none of you are *nazirs*”. The fifth says (to the first two) “I am a *nazir* if both of you are *nazirs*”. The sixth says “I am a *nazir* if all of you are *nazirs*”. (ה: ה')
- Regarding the previous case, what is the law if they were never able to clarify if the person approaching was *Ploni*? (ו: ה')
- Regarding the previous case, what if they were not arguing about the identity of a person, but rather arguing about whether a *koi* is a *chaya* or *behema*? (ז: ה')
- What are the prohibitions placed on a *nazir*? (ח: י')
- How many grapes must a *nazir* eat in order to be liable to lashes? (ט: י')
- What are *chartzanim*? (י: י')
- What are *zagim*? (יא: י')
- If bandits forcibly shaved a *nazir*'s hair, must he restart his count? (יב: י')
- Is a *nazir* allowed to wash his hair? (יג: י')
- If a *nazir* drinks wine for the whole day, when is he liable to multiple sets of lashes? (יד: י')
- Does the previous law apply to the other two prohibitions? (טו: י')
- How is the prohibition of consuming grape products more strict than the other two prohibitions? And how is it more lenient? (טז: י')
- Regarding the other two prohibitions, how are each more strict than the other? (יז: י')
- Describe the process of *tiglachat ha'tumah* for a *nazir*? (יח: י')
- According to *R' Tarfon* how does *tiglachat ha'tumah* for a *nazir* differ from that of a *metzora*? (יט: י')

- If *Reuven* declared that he is a *nazir* and *Shimon* said “me too” is *Shimon* also a *nazir*? (יא: ד')
- Regarding the previous question, what is the law if *Reuven* (through *she'elat chacham*) had his *neder* undone? (יא: ד')
- If a woman declared that she is a *nezira* and her husband said “me too”, can he then be *meifer* her *neder*? (יא: ד')
- If the husband said “I am a *nazir* – and you?” and the wife responds “amen”, can he then be *meifer* her *neder*? (יב: ד')
- If a woman became a *nezira* is she punishable if: (יג: ד')
 - She drank wine and then her husband was *meifer* her *neder*?
 - Her husband was *meifer* her *neder* without her knowing about it and then she drank wine?
- If a woman became a *nezira* and separated animals for the purpose of the *korbanot* and her husband was then *meifer* her *neder* what is done with the animal? (Provide both cases). (יד: ד')
- Regarding the previous question, what if she separated money instead? (Provide both cases). (יד: ד')
- What are the four opinions regarding the point after which a husband cannot *meifer* his wife's *neder nezirut*? (יה: ד')
- Can a parent make their child a *nazir*? (יז: ד')
- In what case can a child use the money set a side for the *korbanot* for his parent's *nezirut* for his own *nezirut*? (Include both opinions) (יח: ד')
- Give three examples of *hekdesh ta'ut* and is it considered *hekdesh*? (יט: ד')
- If someone made a *nazir* declaration and thought perhaps it was not a genuine *nazir* declaration, then after sometime a *chacham* confirmed it indeed was, from when does he begin counting his *nezirut* time? (יג: ד')
- What did *Nachum HaMadi* rule regarding the *nezirim* that came from outside Israel and only then discovered that the *Beit Ha'Mikdash* was destroyed? (יז: ד')

traits specifically “designed” to help and improve each other. By extension, points of conflict or tension more often than not reveal opportunities for growth and improvement.

While one's partner may be the ideal person for this endeavour, the *Ba'al Shem Tov* expands the need for social interaction for personal growth. There is a *Mishnah* in *Negaim* (2:5) that deals with the ability of a *kohen* to inspect the *tzara'at* affliction of another, which reads as follows:

כל הנגעים אדם רואה חוץ מנגעי עצמו

The literal translation is: “a person may see (or inspect) anyone's afflictions (even relatives), other than his own”. However, punctuated differently it would translate: “All afflictions that a person sees outside (i.e. in others), it is from his own afflictions.” In other words, if one is bothered by a particular trait or characteristic of another, it is a sign the he himself is suffering from that problem.

The *Ba'al Shem Tov* explains that a person left in solitude is likely to believe he is righteous and without flaws. With the above secret known, our interactions with others enable us to develop an entire program of self development and improvement. Where should I start? Just ask yourself what really bothers me about so-and-so. That is likely to be a good starting point.

The *Ba'al Shem Tov* adds more. He explains that if one is bothered by another during his *tefillah* he should not ask, “Why did *Hashem* bring this person to disturb my *tefillah*?” Instead he should view the experience as *hashgachah pratit* (divine providence) intended to drive him to strengthen his *tefillah* and *avodah*.⁴

⁴ The *Ba'al Shem Tov* adds even more, explaining that even if someone is witness to another person sinning, the fact that he witnessed it means that there is some element of that sin in him.

Thus there is a simple solution for those endeavouring in personal growth and looking for guidance. We need just open our eyes. Every interaction provides vital indicators of where we are lacking and what we must improve. If that shift of focus is taken, then every stress turns into guidance, every frustration dissolves into relief and every moment becomes an opportunity to come closer to *Hashem*.

- Explain the debate regarding a person that makes a *neder* if his wife has a “*vlad*” and then the wife miscarries. (ב' ח'י)
- Regarding the previous question, what if they then have a child? (ב' ח'י)
- Provide a practical difference between a person that says “I am a *nazir*, and also a *nazir* when I have a child”, and a person that says, “I am a *nazir* when I have a child, and also a *nazir*”. (ב' ט')
- If someone said “I am a *nazir* when I have a child, and also a *nazir* for 100 days”, when would the duration of his *nezirut* be greater than 130 days? (ב' י')
- With what acceptance of *nezirut*, after which, if one cuts his hair on the thirtieth day is it (*bedi'eved*) acceptable, and when is it not? (ג' א')
- If someone accepts two *nezirut* on which days does he cut his hair? (ג' ב')
- What did *R' Papyas* testify about, regarding the previous question? (ג' ב')
- Explain the debate regarding a *nazir* that becomes *tameh* on the thirtieth day. (ג' ג')
- Explain the debate regarding a 100-day *nazir* that becomes *tameh* on the one-hundredth day. (ג' ד')
- Explain the debate regarding a 100-day *nazir* that becomes *tameh* on the one-hundred and first day. (ג' ד')
- What is the law regarding a person that declares he is a *nazir* while standing in a cemetery? (ג' ה')
- What is the law regarding a *nazir* that enters a cemetery? (ג' ה')
- What is the law regarding a person that was a *nazir* outside Israel, then moved to Israel? (ג' ו')
- For how many years was *Hilni Ha'Malka* a *nezira* and why? (ג' ו')
- Explain the debate regarding two conflicting sets of testimonies regarding the duration for which a person accepted being a *nazir*. (ג' ז')

- What is the standard length of time for being a *nazir*? (ג: א)
- How long is the duration of a person's *nezirut* if he says:
 - "I am one and half *nazir*"
 - "I am a *nazir* and one hour"
 - "I am a *nazir* for thirty days and one hour." (ג: א)
 - "I am a *nazir* like the number of hairs on my head" (ד: א)
 - "I am a *nazir* like a full house" (ה: א)
 - "I am a *nazir* from here to Elsternwick" (ו: א)
 - "I am a *nazir* like the days of the year" (ז: א)
- Explain the debate regarding someone who said "I am a *nazir* from dried figs"? (א: ב)
- How does *R' Yehuda* understand the above debate? (א: ב)
- What case is raised in the next *Mishnah* that is debated in a similar manner to the previous questions? (ב: ב)
- What is law regarding a person that is presented with a cup of a wine, and proclaims "I am a *nazir* from this"? (ג: ב)
- Is this law different if the person was already inebriated? (ג: ב)
- What is the law regarding a person that accepts upon himself *nezirut*:
 - On the condition that he can drink wine? (ד: ב)
 - But at the time did not know that a *nazir* was not allowed to drink wine? (ד: ב)
 - And knew that a *nazir* is not allowed to come into contact with dead bodies, but that in this instance, since he is an undertaker, the *Chachamim* would allow him to come into contact with dead bodies. (ד: ב)
- If a person says "I am a *nazir* and I accept also to bring the *korbanot* for another *nazir* at the completion of his term", and his friend hears, and says "Me too!" – what should they do? (ה: ב)
- Explain the debate regarding a case similar to the one in the previous question, but where the first person said, "I am a *nazir* and I accept also to bring the *korbanot* for 'half' another *nazir*". (ו: ב)
- Does the term "*vlad*" also include a *tumtum*? (ז: ב)

Marrying a Moabite

Yevamot (8:3)

Allon Ledder

The *Mishnah* (8:3) rules that male Ammonites and Moabites (and their descendants for eternity) are prohibited from marrying into the Jewish community. Ammonite and Moabite females are excluded from this prohibition (provided that they convert).⁵

The exclusion of the females was subject to debate (*Gemara Yevamot* 76b). It is an important debate touching on the validity of the Davidic line of kings (which will include the *Mashiach*). *David HaMelech* was the great grandson of the famous Moabite convert – *Rut*. *David's* son *Shlomo HaMelech* married *Naamah*, an Ammonite convert, and their son *Rechavam* continued the Davidic line. How could such a fundamental *Halacha* be subject to debate?

Just before *Pesukai D'Zimrah* in *Shacharit*, the siddur lists the thirteen hermeneutic principles through which the *Torah* is elucidated (e.g. *Kal Vachomer*). The *Great Sanhedrin* would use these principles to, among other things, derive from the text of the *Torah* details of *Halachot* that were previously unknown or forgotten. Details that were derived in this manner could be overruled by any later *Great Sanhedrin* if they determined that a different derivation was more valid (*Rambam, Hilchot Mamrim* 2:1).⁶

⁵ Ammonites and Moabites are not identifiable today because the Assyrian King Sennacherib exiled them and moved them to a different location. Therefore this prohibition no longer applies.

⁶ In contrast, Rabbinical enactments and *minhagim* could only be overruled by a *Great Sanhedrin* that was superior in wisdom and in number. *Gezayrot* (precautionary measures to ensure biblical prohibitions would not be transgressed) could never be rescinded by any Great Sanhedrin. (*Hilchot Mamrim* 2:2-3).

On the other hand, if the *Halacha* in question was given directly to *Moshe* by *Hashem* (a '*Halacha LeMoshe MiSinai*') it could never be overruled. A *Halacha* would only be classified as a *Halacha LeMoshe MiSinai* if there was a reliable tradition to that effect.⁷ A case in point is towards the end of the third *Mishnah*. After arguing with the *Chachamim* about the status of female Egyptians and Edomites,⁸ *R' Shimon* concludes that the arguments are irrelevant because he has a tradition from his teachers that his opinion is a *Halacha LeMoshe MiSinai*.

The *Brisker Rav* uses this principle to explain a difficulty in *Megillat Rut*.⁹ Before *Boaz* married *Rut* he offered *Rut*'s closest relative the opportunity to marry her. The relative refused on the basis that he might ruin his inheritance (according to *Rashi* 'inheritance' means 'future children'). He feared the biblical prohibition against marrying a Moabite. *Boaz*, who was head of the *Great Sanhedrin*, assured him that the prohibition only applied to male Moabites. However the relative still refused to marry *Rut*.

The *Brisker Rav* asks, if *Boaz* declared in the name of the *Great Sanhedrin* that only male Moabites were prohibited, how could the relative dismiss this? Also, why was the relative only concerned about the effect on his children? If the relative held that the marriage to a female Moabite was prohibited, he should have refused on that basis.

The *Brisker Rav* explains that the relative was not concerned about personally transgressing. He could rely on the interpretation of the *Great Sanhedrin* and marry *Rut*. His concern was that a future *Great Sanhedrin* might overrule this interpretation and decide that female Moabites were also prohibited. This would mean that his children would be tainted as descendants of a

⁷ This was before the oral law was written down.

⁸ The dispute is set out in the *Gemara* (*Yevamot* 77b).

⁹ Quoted in 'The Dynamics of Dispute' by Rabbi Zvi Lampel.

- Confirmed the vow but only with respect to figs.
- Was *meifer* the vow but only with respect to figs.
- What is the law regarding a husband who hears his wife's *neder* and then after a day says: (י"א: טז)
- I did not know about the concept of *hafarat nedarim*.
- I did not know that what my wife did was considered a *neder*.
- If a man made a *neder* against giving any benefit to his son-in-law, how can he give a gift to his daughter? (י"א: ח)
- What is learnt from the following *pasuk*: (י"א: ט)
"ונדר אלמנה וגרושה... יקום עליה" (במדבר ל' י')
- If a woman made a *neder*, then on the same day, divorced and remarried the original husband, can he *meifer* the *neder*? (י"א: ט)
- Complete the following principle: (י"א: ט)
זה הכלל: כל שיצאת לרשות עצמה _____
- What are the nine categories of "*na'arah*" whose *nedarim* are confirmed? (י"א: י)
- Can a husband *meifer* a *neder* whose condition (but not effect) falls under the category of *beino u'veina*? (י"א: יא)
- Which three women were initially divorce without a *ketubah* and why did the law change? (י"א: יב)

Nazir

- Is someone a *nazir*, if he saw a *nazir* walk past and he said "I am like him"? (א' א)
- What phrase is debated between *R' Meir* and the *Chachamim* in the first *Mishnah* as acceptance of being *nazir*? (א' א)
- What is the law regarding one who says "I am a *nazir* from impurity"? (ב' א)
- What is the law regarding one who says "I am a *nazir Shimshon*"? (ב' א)
- What is the difference between a *nazir Shimshon* and a *nazir olam*? (ב' א)

- Which two people can *meifer* the *nedarim* of a *na'arah meorasah*? Is it enough if only one of these people is *meifer*? (יא: י')
- If one of these two people dies, can the other *meifer* her *nedarim*? (יב: י')
- If the *na'arah* gets engaged, makes a *neder*, gets divorced, and gets engaged to another person all in the same day, who can *meifer* her *nedarim*? (יג: י')
- What was the *minhag* of the *talmidei Chachamim* with respect to *nedarim* of their daughters? (יד: י')
- What are the two opinions regarding when a *chatan* can be *meifer* the *nedarim* of his *bogeret kalah*? (יה: י')
- Explain the three opinions regarding who can be *meifer* the *nedarim* of a *shomeret yabam*. (יז: י')
- Explain the two opinions regarding whether a husband can be *meifer* his wife's future *nedarim*. (יח: י')
- Complete the following rule: (יח: י')
הפרת נדרים כל _____
- Explain how that rule can be both stringent and lenient. (יח: י')
- Which two cases are debated as to whether they are *nedarim she'yesh bahem inui*? (יט: י')
- Give examples of *nedarim* that “*yesh bahem inui*”? (יט: י')
- Can a husband *meifer* a *neder* made against gaining any benefit from anyone? (יט: י')
- What is the law regarding a *neder* made against giving any benefit to *Kohanim* or *Levi'im*? (יט: י')
- Can a husband *meifer* a *neder* made by his wife against giving any benefit to her father? (יט: י')
- What is the law regarding a *neder* made against giving any benefit to her husband, regarding *hafarah*? (Include all three opinions) (יט: י')
- Give an example of a “mistaken” *hafarah*. (יט: י')
- Does a mistaken *hafarah* qualify as a *hafarah*? (יט: י')
- What is the law regarding a woman that makes a *neder* against figs and grapes and her husband: (יט: י')

Moabite and would be prohibited from marrying into the Jewish community.

In fact, the *Great Sanhedrin's* interpretation was challenged three generations later (*Yevamot* 76b-77a). *Sha'ul HaMelech's* adviser, *Doeg* the Edomite, challenged *David's* fitness for kingship on the basis that he was a descendent of the Moabite *Rut* and therefore forbidden to marry into the Jewish community. The *Great Sanhedrin* of the day argued that the prohibition only applied to male Moabites, however *Doeg* was able to refute all of their arguments. *Yeser* the Israelite came to the rescue and saved the Davidic line of kings; he testified that he had a tradition from his teachers that the exclusion of female Moabites from the prohibition was a *Halacha LeMoshe MiSinai* and was therefore not subject to challenge.

However a difficulty still remains with this episode in *Megillat Rut*. Surely *Boaz* would have explained to *Rut's* relative that the *Halacha* relating to female Moabites was a *Halacha LeMoshe MiSinai* and was therefore not subject to challenge. Why then did the relative continue to refuse to marry *Rut*? Even though he knew that the *Halacha* in question was a *Halacha LeMoshe MiSinai*, it seems that he was afraid that a future *Great Sanhedrin* might forget this fact and try to overrule this *Halacha*. The incident with *Doeg* the Edomite and *David* proves that this was a valid concern.

Agunot with twist of Teshuva

Yevamot (10:1)

David Bankier

The tenth *perek* begins with a case where a woman receives testimony that her husband, who was travelling overseas, died. Based on this testimony, she remarries. Soon after, her original husband returns home alive and well. The *Mishnah* deals with this unfortunate scenario. The *Gemara* is particular on the language of the *Mishnah* and explains that this case refers to where the woman remarries based on a single witness' testimony.

Ordinarily, in Jewish law, a formal testimony requires two valid witnesses. The *Gemara* (*Yevamot* 88a) does mention certain instances where testimony from a single witness is valid, however cases that could potentially permit a forbidden relationship do not appear to qualify. The *Gemara* however does conclude that “because of *agunah* (the potential of this woman being bound in wedlock) the Rabbis were lenient”. Due to this leniency, they also instituted stringencies in the event that the original husband does return alive (as listed in the *Mishnah*). The intention being that the woman will be extra careful before trusting the single witness and relying on the rabbinic leniency.

The commentaries have difficulty with the *Gemara*'s conclusion. If two witnesses are required for valid testimony, no matter how honourable the intentions, how can the *Chachamim* allow her to remarry if she is really still considered to be married? Especially in a case dealing with forbidden relationships – an *issur karet*!

Rashi (*Shabbat* 145b) and *Rashba* (*Shita Mekubetzet, Ketubot* 3a) write that in this instance the *Chachamim* retroactively dissolve

- When is the end of the rainy season? (ח: ח')
- If one made a *neder* till the end of *Adar* without knowing that the year was a leap year, when does the *neder* end? (ח: ח')
- When does a *neder* against eating meat end if it was made until the fast of *Yom Kippur*? (ח: ח')
- Give an example where a person can effectively undo a *neder* affecting them, that was made by someone else. (ח: ח')
- What does *R' Eliezer* argue can be used to undo a *neder* and in what case do the *Chachamim* agree? (ט: ט')
- Can circumstances that occur after a *neder* is made be used as considerations to undo a *neder*? (Provide some examples that were given in the *Mishnah*) (ט: ט')
- Provide an example of a case where *R' Meir* maintains it is like *nolad* but does not share the same law as *nolad*. (ט: ט')
- According to who can *p'sukim* be used as considerations when undoing a *neder*? List some of those *p'sukim*. (ט: ט')
- Which *Tana* used financial obligations in a *ketubah* as basis for undoing a *neder*? (ט: ט')
- What did this same *Tana* change with respect to how particular *nedarim* are undone? (ט: ט')
- Give an example of when we say that since part of the *neder* is undone, we undo the entire *neder* and give an example of when this principle does not apply. (ט: ט')
- In what situation would a singularly phrased *neder* require multiple *petachim*? (ט: ט')
- What is the law regarding a case where a person makes a *neder* against drinking wine because it is bad for the stomach, and then after is told that old wine is indeed good for the stomach? (ט: ט')
- Can personal honour be used as a *petach*? (ט: ט')
- What is the law regarding one who makes a *neder* not to marry someone because they are short, yet in truth they are tall? (ט: ט')
- What is *R' Yishmael*'s opinion regarding *bnot Yisrael*? (ט: ט')

- Explain what the *ibur* and *techum* of a city are and are they included in a *neder* forbidding one from entering a city? (ז' ה')
- If one makes a *neder* from entering a house, where is the border from which he is forbidden to cross? (ז' ה')
- With what wording of a *neder* forbidding a fruit, would one also be prohibited from the money as a result of its sale or future trees that grow from the seeds of the fruit? (ז' ו')
- Give another example that shares the same law as the previous question? (ז' ו')
- What is the difference between the following two *nedarim*: (ז' ח')

”שאת עושה איני אוכל עד הפסח”
 ”שאת עושה עד הפסח איני אוכל”

- What is the law regarding the following *neder* after *pesach*: (ז' ט')
- ”שאת נהנית לי עד הפסח אם תלכי לבית אביך עד החג”
- When does a *neder* end if it is made for: (ח' א')
 - A day?
 - This day?
 - A week?
 - This week?
 - A month?
 - This month?
 - With what wording of a *neder* is the end of the *neder* the beginning of *Pesach*? Is the end of *Pesach*? (ח' ב')
 - When does a *neder* end if it is made to apply until the summer? (ח' ג')
 - Complete the following principle: (ח' ג')
- כל _____ ואמר עד שיגיע אסור עד שיגיע אמר עד שיהא אסור עד _____
 שיצא
- כל _____ בין אמר עד שיהא בין אמר עד שיגיע אינו אסור אל עד _____
 ”_____”
- What is the indication
 - that summer has began?
 - that summer has ended?
 - of the beginning of the harvest season? (ח' ד')
 - of the beginning of the rainy season? (ח' ה')

the original marriage. Consequently, when she goes to remarry, she is genuinely a single woman.¹⁰

The *Ritva* poses a number of problems with this suggestion. One difficulty being that the *Gemara* explains that if both “husbands” die, then both sets of brothers perform *chalitzah*, yet only the brothers of the original husband are obligated biblically - implying that the original marriage is still intact. The *Meiri* solves this problem explaining that that dissolution of the original marriage is conditional on the original husband not returning.

The *Ritva* offers another solution explaining that this is an exceptional circumstance. Firstly the witness is testifying about a matter that, if he is lying, will be revealed in due course. Combine this with the fact that the *Chachamim* will be ruling very stringently in the advent that the husband does return. Consequently, the wife will be very careful, and inspect the details before remarrying. All these factors combined are enough to be considered like complete testimony even on a biblical level. The *Torah* gave authority to the *Chachamim* to determine when a mass of indicators can be given the weight of complete testimony. They simply decided that this is one such circumstance.

Finally the *Tosfot* (*Yevamot* 88a, s.v. *mitoch*) takes a third approach. The single witness is not accepted as testimony on a biblical level, and the marriage (if the husband is still alive) remains intact. Rather, the *Tosfot* explain that as there appears to be strong reasoning supporting this decision and since the ruling does not uproot a biblical rule, the *Chachamim* were given the authority to rule in such a manner.¹¹

*

¹⁰ Even though it is possible to understand that *Rashi* there is referring only to a case of testimony based on hearsay (*ed m'pi ed*), nevertheless the opinion written in the name of the *Rashba* clearly refers to this case.

¹¹ See also *Tosfot*, *Nazir* 43a, s.v. *ve'hai*.

There is one important point to remember when learning this topic as we approach *Rosh Hashanah* and *Yom Kippur*. We have learnt that if the husband returns, since she has technically had a relationship with another man while still being married to her original husband, she is forbidden to return to her original husband. This is despite being misled and misguided by faulty testimony. With this in mind the *Gemara* in *Yoma* (86b) writes:

R' Yochanan says: Great is the power of *teshuva* as it overrides a negative prohibition in the *Torah* (repentance) as it is written: (*Yirmiyahu* 3:1) "If a man [divorces] his wife... and become another man's, may he return to her again? Will not that land be greatly polluted? But you [Israel] have played the harlot with many lovers; and would you yet return to Me? says *Hashem*."

- Complete the following rule: (ה' :ו')
"כל מתנה שאינה _____ אינה מתנה"
- If someone made a *neder* against cooked food, can he eat roasted food? (ו' :א')
- What *neder* would cover anything that is cooked in a pot? (ו' :ב')
- What *neder* only includes pickled vegetables? (ו' :ג')
- What is implied by the term "*ha'shaluk*"? (ו' :ג')
- What is not included by the term "*dag dagim*"? (ו' :ד')
- What is debated as being included by the term "*chalav*"? (ו' :ה')
- If someone made a *neder* against gaining benefit from a particular piece of meat, when are other foods that are cooked with that meat also forbidden? (ו' :ו')
- If someone makes a *neder* against grapes, can he drink wine? (ו' :ז')
- According to *R' Yehuda* why is date honey included in a *neder* forbidding dates? (ו' :ח')
- Why is sesame oil not included in a *neder* forbidding oil? (ו' :ט')
- What do the following terms used in a *neder* refer to: (ו' :י')
 - *Chitah*?
 - *Chitin*?
- Which product is debated whether it is included in the term *yerek* and explain the debate? (ו' :יא')
- According to the *Chachamim* what is included in the term *dagan*? Which term does *R' Meir* maintain refers to those things? (ו' :יב')
- If someone makes a *neder* against wearing woolen garments, what woolen product is not included in the *neder*? (ו' :יג')
- In response to the previous question, what principle does *R' Yehuda* raise? (ו' :יד')
- Which part of the house is debated between *R' Meir* and the *Chachamim* as being included in the term "*bayit*" in a *neder*? (ו' :יז')

- What is the difference between one that makes a *neder* against gaining benefit from his friend before the *shmittah* year and during the *shmittah* year? (ד' ה')
- If a person makes a *neder* preventing any benefit from his friend can they do business with one another? (ד' ו')
- If a person makes a *neder* preventing any benefit from his friend yet then does not have any food to eat, how can his friend provide him with food? (ד' ו')
- If *Reuven* made a *neder* against gaining any benefit from *Shimon* and they were traveling together, and *Reuven* ran out of food, how can *Shimon* give *Reuven* food without breaching the *neder*? (ד' ח')
- If two people share a *chatzer* and make a *neder* against gaining benefit from each other: (ה' א')
 - Explain the debate regarding whether they can walk through the *chatzer* to get to their properties.
 - What other case shares this same debate? (ה' ב')
 - What are two things that they cannot place in the *chatzer*?
- If *Reuven* made a *neder* against gaining any benefit from *Shimon*, when is *Shimon* forbidden from using an olive press that has been rented out by *Reuven*? (ה' ג')
- If one makes a *neder* against entering his friend's house, with what wording of the *neder* would he still be prevented from entering the house even if it was sold to another person? (ה' ג')
- If two people made a *neder* against gaining any benefit from each other, which public property would they be forbidden from entering? (ד' ה')
- Regarding the previous question, what is a possible solution to enable them to enter these properties? (ה' ה')
- Give examples for the following: (ה' ו')
 - *Davar olei bavel*.
 - *Davar shel otah ha'ir*.
- If *Reuven* made a *neder* against gaining any benefit from *Shimon*, then *Reuven* does not have any food to eat, what can *Shimon* do in order to give *Reuven* food? (ה' ו')

Removing Leather Shoes

David Bankier

If a married man dies without having any children, his brother is required to either perform *yibum* (affectively marrying the *yavamah* – the widow) or *chalitzah*. The thirteenth *perek*, discusses the process of *chalitzah*. One of the essential components involves the *yavamah* untying and removing the brother's right leather shoe in front of the *beit din* (See *Mishnah* 12:6 for a description of the entire process). There are many other areas in *Halacha* where leather shoes are removed. For example, on *Yom Kippur* we do not wear leather shoes and mourners also remove their shoes. The question may be asked, what significance does the lack of leather footwear entail? To answer this question, the ideas brought by Rabbi Akiva Tatz (*Letters to a Buddhist Jew*, p273-274) will be presented.

Rabbi Tatz writes as follows:

You will notice that whenever a complete transcendence is experienced, it is facilitated by removing the shoes. The key is this: the shoes are to the body what the body is to the soul. Just as the shoes carry the body over rough ground, the body carries the soul through the world.

Rabbi Tatz continues using the shoe-body, body-soul relationships to explain transcendent experiences. For example the *kohanim* in the *Beit Ha'Mikdash* did not wear shoes. Similar *Moshe* was told to remove his shoes when *Hashem* spoke to him. "Contact with the higher world that necessitates detachment from the lower world is expressed by the removal of shoes."

Likewise on *Yom Kippur*, he notes, we break from the regular mode of elevating the soul through the physical, and engage in "temporary asceticism to free the soul." The removal of shoes presents one dimension of this endeavour.

In a similar vein, he explains that mourners remove their shoes in an expression of empathy with a soul that has left its body. He also notes that the parallel between a corpse and shoes expresses itself in a *Halacha* which requires one to wash their hands after touching them.

Yet how are we to understand the removal of the shoe as part of *chalitzah*? Rabbi Tatz explains as follows:

The deeper understanding is that such a marriage brings down a reincarnation of the deceased brother; the widow marries the living brother, a spark of the same root soul, to bring a child into the world for her late husband. The child is in fact an incarnation of the deceased...

But if her brother-in-law refuses to marry her, she removes his shoe. She is saying to him in very clear Torah terms: “You are refusing to marry me and bring down a child for your brother; you are keeping body and soul apart.” What clearer image could there be to express this than separating of foot and shoe?

The *Melech Shlomo* (*Yevamot* 12:6) also draws a connection between performing *chalitzah* and mourning. Quoting *Rabbeinu Yechiel*, he explains that the widow comes before *beit din* and laments that her husband has died without any off-spring. Not wanting to perform *yibum* the brother declares that he does not desire to take her. The implication is that he is not concerned that his brother has died without offspring. The response is for her to remove his shoe, thereby saying now you should certainly mourn for your brother as he has died without offspring.

- With respect to *nidrei hekdesh*, if one was *noder* a *tallit* after what wording of the *neder* can the *tallit* be redeemed, and when can it not be redeemed? (ג: ה')
- If someone made a *neder* from benefiting from “*yoshvei yabasha*” can he get benefit from “*yordei yam*”? (ג: ו')
- If someone made a *neder* from benefiting from “*ro'ei ha'chamah*” can he get benefit from a blind person? (ג: ז')
- Which people are implied by one who makes a *neder* from gaining benefit from “*sh'churei rosh*”? (ג: ח')
- Explain the debate regarding the term “*noldim*” used in a *neder*. (ג: ט')
- Who is excluded from the term “*olei Yerushalaim*” yet included in the term “*shovtei Shabbat*”? (ג: י')
- Who is included in the term “*zera Avraham*”? (ג: י"א')
- If someone made a *neder* against an *Yisrael* gaining benefit from him, can he continue to do business with an *Yisrael*? (ג: י"ב')
- Which *areilim* are not included in the term “*areilim*”? (ג: י"ג')
- How many covenants were made over the *brit millah*? (ג: י"ד')
- Why does *Rebbi* hold that *brit millah* is important (“*gedolah*”)”? (ג: י"ה')
- What is the difference between one that makes a *neder* against gaining benefit from his friend and one that makes a *neder* against gaining food related benefit? (ד: א')
- If a person makes a *neder* preventing any benefit from his friend, can his friend:
 - return his lost object? (ד: ב')
 - teach him *Torah*? (Careful)
 - provide food for his family?
 - provide food for his animals? (ד: ג')
 - visit him if he is unwell?
 - treat him medically?
 - eat at the same table? (ד: ד')

- *Nazir*?
- *Shvuah*?
- Is the following a valid *neder*: (א' גי)?
 - "פיגול יהא מאכלך עלי"?
 - "יהא מאכלך עלי כאמרא"?
 - "ירושלים דבר זה עלי"?
- Explain the debate regarding the following *neder*: "עולה איני" (א' די). אוכל לך"
- Is the following a valid *neder*: "קונם רגלי מהלכת עמך" (א' די)?
- Is the following a valid *neder*: "חלין שאכל לך כבשר חזיר" (ב' א')?
- What is the law regarding a man the makes the following *neder* to his wife: "הרי את עלי כאמא" (ב' א')?
- What is the difference between one who says "קונם שאיני ישן" and "שבועה שאיני ישן" (ב' א')?
- In what respect is a *shvuah* more strict than a *neder*? (ב' ב')
- In what two ways is a *neder* more strict than a *shvuah*? (ב' ב'-ג')
- Provide two examples of the following principle: (ב' ד') "סתם נדרים להחמיר ופרושם להקל"
- Explain the debate regarding a case where one used "*cherem*" when making a *neder* then later explained he was referring to fish nets (*charmo shel yam*). (ב' ה')
- What are the four categories of *neder* that are automatically cancelled? (א' ג')
- Which category of *neder* is one that is made:
 - In the heat of a commercial transaction? (א' ג')
 - As follows: "קונם אם לא ראיתי בדרך הזה כיוצאי מצרים" (ג' ב')
 - Based on the fact that he had not eaten, then later he remembers he ate? (ג' ב')
- What are *nidrei onsin*? (ג' ד')
- Explain the debate regarding whether the law apply to *nidrei onsin* also applies to *shvu'ot*? (ג' ד')
- What are the three points of debate between *Beit Shammai* and *Beit Hillel* regarding *nidrei onsin*? (ג' ד')

Marriage of a *Cheresh*

Yevamot (14:1)

Rabbi Natan Rickman

The fourteenth *perek* opens with a discussion dealing with the *halachic* status of an action performed by a *cheresh* – a deaf mute. A deaf and mute person is considered feeble-minded, and is considered by *Torah* law to be legally incompetent. The question at hand is, if this person either receives or performs *kidushin* do we view this process as a binding act that will leave the man and woman married. The *Mishnah* rules that a *cheresh* can indeed get married, yet this marriage is only binding on a rabbinic level.

The *Mishnah* comments and explains an interesting practical problem that if the man is a deaf and mute, how is he able to communicate to his bride that he wishes to marry her. The *Halacha* allows the man to hint to his wife, and if she is mute herself, she is allowed to hint in return to express her desire to marry.

However, to truly understand what the *chiddush* of the *Mishnah* is, we must first ask why the action of the deaf-mute is not halachically binding?

Within the *Gemara* the deaf-mute person is often grouped with two other types of people, a *shoteh* and a minor. This 'famous' group of three are often unable to perform certain *halachic* actions. The problem is that for an action to be considered valid, both parties need to fully comprehend what is happening. For example, a child¹² who is below the age of *bar mitzvah*, often would not fully understand that when they sell an item and receive money or goods in return that they have lost all rights and claims over the item that they have sold. However, the *Halacha*

¹² The same would apply for both the *cheresh* and *shoteh*, either for the same reason or another reason.

does recognise that the child is able to purchase something since they can understand the concept of receiving.

The distinction between giving and taking forms one of the main pillars of Rav Dessler's ztz"l philosophy. Rav Dessler¹³ explains:

The faculty of giving is a sublime power; it is one of the attributes of the Creator of all things. He is the Giver *par excellence*; His mercy, His bounty and His goodness extend to all His creatures. His giving is pure giving for He takes nothing in return.

He later explains that the action of taking is where a person aspires to draw to himself all that comes within his reach.

This principle of Rav Dessler, which is classically only used for moral teachings, can however be used to understand the *din* of the *Mishnah* and why the Rabbis allow such a marriage to take *halachic* status when the *Torah* did not.

The general problem is that the *cheresh* is unable to understand giving; that there are two parties who after the exchange will have no legal bond or relationship. However, in the case of *kidushin* what is being created is one new entity, as the *Torah* describes in *Bereshit* (2:24) that they should leave their parent's home and become one. The *cheresh* can understand this change in status. However, a regular case of giving or buying and selling, where there are clearly two separate parties, the *cheresh* is unable to comprehend. The act of giving and losing all connection needs a mature and developed understanding, which according to the *Halacha* the *cheresh* does not have.¹⁴

¹³ Rav Dessler ztz"l, was Mashgiach in Gateshead Yeshiva, England and Ponevich Bnei Brak, Israel.

¹⁴ Rav Dessler ztz"l, does explain later in the article that at times taking is not just a necessary act but even the correct thing.

- Explain the debate between *Admon* and the *Chachamim* regarding a case where:
 - One party claims he is owed jugs of oil and the other party admits he only owes him empty jugs. (י"ג:ד')
 - The father reneges on his promise for a dowry just prior to *nisuin*. (י"ג:ה')
 - One party claims that his field was stolen from him yet his own signature is on the sale contract that is in the hands of the other party. (י"ג:ו')
 - A person returns from an extended period overseas to find that the access path to his property through another's field has disappeared and he does not remember where it was. (י"ג:ז')
 - One party presents a loan contract and the other party presents a sale document (dated after the loan contract) stating that he purchased land from the first party. (י"ג:ח')
 - Two parties each produce loan documents trying to claim money from each other. (י"ג:ט')
- What are the three regions in *Eretz Yisrael* for *nisuin* and why are they important? (י"ג:י')
- Can one force the members of his household to move to Israel? (י"ג:יא')
- If a couple marries in Israel and divorce outside Israel, in what currency must the *ketubah* be paid? (י"ג:יב')

Nedarim

- Is the following a valid *neder*: "ימפרשני ממוך שאיני אוכל לך" (א'י:א')
- Is it a valid *neder* if a person adds the phrase: (א'י:א')
 - כנדרי רשעים?
 - כנדרי כשרים?
- When making a *neder* what are the three *kinyan* for: (א'י:ב')
 - *Korban*?
 - *Cherem*?

ketubah if she is widowed from *eirusin* and if she is widowed from *nisuin*? (י"א:ב)

- Explain the debate regarding a case where a widow had sold part of her *ketubah* and her ability to sell part of the estate to support herself. (י"א:ג)
- Explain the debate regarding a case where the widow sold part of the estate that was more than the value of her *ketubah*. (י"א:ד)
- Explain the debate regarding a case where *beit din* sold property of the *yetomim* at a value that was tantamount to *ona'ah*? (י"א:ה)
- When does an *aylonit* have a *ketubah*? (י"א:ו)
- Does a divorcee that marries a *kohen* have a *ketubah*? (י"א:ז)
- Can a woman make a condition with her husband that he provide her daughter with food for five years? (י"א:ח)
- Does the condition hold if she divorces and marries another and makes the same condition? (י"א:ט)
- What happens if, within the five year period: (י"א:י)
 - the daughter gets married?
 - The husband dies?
- How would *pikchim* word such a condition? (י"א:יא)
- What is the law regarding an *almanah* that does not want to leave her late husband's house? (י"א:יב)
- What is the law regarding an *almanah* that returns to her father's house? (י"א:יג)
- Explain the debate regarding the time within which an *almanah* can collect her *ketubah* if: (י"א:יד)
 - She is living in her late husband's house.
 - She is living in her father's house.
- What were the two *halachot* that were disputed between *Chanan ben Avshalom* and the *bnei kohanim gedolim*? With whom did *Rabbi Yochanan Ben Zakkai* side? (י"א:יז)
- Explain the debate regarding how the sons and daughters are supported when there is a very small *yerusha*? (י"א:יח)

In Pursuit of Truth (and how to find it)

Yevamot (15:2-3)

David Bankier

In two of the *Mishnayot* (15:2-3) we see two arguments between *Beit Shammai* and *Beit Hillel* where *Beit Hillel* ultimately concedes. This is not the only instance where we find the *Mishnah* describing such debates between *Beit Shammai* and *Beit Hillel* that have this very outcome (see *Eduyot* 1:12-14, *Keilim* 9:2, *Ohalot* 5:2). If the *Mishnayot* were formulated in a terse manner to aid in memorising and if *Beit Hillel* ultimately conceded in these cases, why are they even recorded? Surely stating the opinion of *Beit Shammai* would have sufficed?

The *Rambam* in his Introduction to *Mishnah* explains:

[The reason is] to teach you the yearning for truth and choosing of righteousness. For these giants, prominent, pious, abounding in wisdom and complete in intellect, when they saw that the words of their opponent were superior to their own and more insightful, they would concede and retract their position. How much more so, for the rest of humanity, that if they see that the truth lies with their opponent, they should concede and not be stubborn. This is the meaning of the *pasuk* "righteousness, righteousness you shall pursue". About this, the Sages said: "admit to truth". In other words, that even if you could free yourself with further claim and arguments, if you know that your opponent words... are correct – concede and dismantle the argument.

We see then that this fundamental concept – admission of truth – was so important that the codifier of the *Mishnah* diverted from his usual concise style to teach it.

Analysing this answer deeper, one finds an awesome point. Despite being immersed in the depths of a heated argument, one can have the clarity to see the truth. While we can appreciate this sometimes, one could understand from the above *Rambam* that they had the ability to see the truth all the time. How?

The *Gemara* (*Eiruvin* 13b) states:

R' Abba said in the name of *Shmuel*, “For three years, *Beit Shammai* and *Beit Hillel* debated... A heavenly voice went forth and declared, “These and those are the words of the living G-d but the *halacha* follows *Beit Hillel*”

Firstly, we find that when they both indeed spoke the truth (this requires further explanation) the arguments certainly endured. They would not give in so easily.

The *Gemara* continues:

But now that these and those are the words of the living G-d, why did *Beit Hillel* merit to fix *halacha* according to their opinion? Because they were easy and forbearing and they would study their opinion and the opinion of *Beit Shammai*. Moreover, they would mention the matters of *Beit Shammai* before their own.

The *Sichat Mussar* (47) explains that at a first reading, it appears that *Beit Hillel* were rewarded for their *anava* (humility) with establishing *halacha* in accordance with their opinion. However he suggests a different understanding. This was not a reward; rather, *anava* is the only means of approaching the truth of *Torah*.

But what is *anava*? Unfortunately the English translation, “humility” presents a concept that may relate to external attributes of a person exhibiting *anava*, yet is far from its true meaning. It is certainly not simply abasing oneself. The *Sha'arei Teshuva* (1:24) writes:

The highest level of submission required for the path of *teshuva* is to raise and elate *avodat Hashem*, and not to take credit for oneself, for everything is minute when compared to one's obligation in *avodat Hashem*. Therefore one will worship with *tzniyut* and not desire honour for his honourable actions...

At the very heart of *anava* is *avodat Hashem*. One has been designed with all his strengths and weaknesses to function in a particular manner for this purpose.

- What can a woman collect if she presents the following: (ט: טי)
 - Two *ketubot* and two *gittin*?
 - Two *ketubot* and one *get* – with the *ketubot* dated before the *get*?
 - One *ketubah* and two *gittin*?
- If a man married two women, when is the *ketubah* of the first wife collected first and when is the *ketubah* of the second wife collected first? (יא: יא)
- In a case where a man had two wives, and he and his wives die, how is the *yerusha* divided if: (יב: יי)
 - The value of the estate is equal to the value of the two *ketubot*.
 - The value of the estate is slightly more than the value of the two *ketubot*.
- Regarding the previous question, what are the two opinions regarding how the estate is valued? (יג: יי)
- If a man has three wives, one with a *ketubah* 100 *dinar*, another with a *ketubah* of 200 *dinar* and another with a *ketubah* of 300 *dinar* – how is the property divided if: (יד: יי)
 - The estate is valued at 100 *dinar*?
 - The estate is valued at 200 *dinar*?
 - The estate is valued at 300 *dinar*?
- What is the order of *ketubah* collection in a case where there are four wives? (טז: יי)
- According to the *Tana Kama* what is different about the way the final wife collects her *ketubah*? (טז: יי)
- What is the law in a case where the first of two wives writes “*din u'dvarim ein li imach*” to the purchaser of her husband's field? (יז: יי)
- With respect to an *almanah* are the *yorshim* required to: (יח: נ"י)
 - Support her?
 - Bury her?
- According to *R' Shimon* what is the difference between the manner in which a widow sells property to collect her

- What is done with the *shomeret yabam's* original husband's: (ח:ז)
 - Money?
 - Picked/detached fruit?
 - Unpicked fruit? (Explain both opinions.)
- Can the *yabam* set aside money for the *yavamah's ketubah* in order to seize possession of his late brother's property? (ח:ח)
- What is the impact of the following statements made by a husband prior to marriage: (א:ט)
 - "דין ודברים אין לי בנכסידך"?
 - "דין ודברים אין לי בנכסידך ובפירותיהן"?
 - "דין ודברים אין לי בנכסידך ובפירותיהן ובפרי ברותיהן, בחיין ובמותך"?
- Explain the debate regarding who inherits a collateral in the hands of a lender. (ט:ב)
- What other possessions are also debated in the same manner as the previous question? (ט:ג)
- If a wife is placed in charge of components of a business can the husband demand a *shvuah* from her (as in normal business partnerships)? (ט:ד)
- What is the impact of the following statements made by a husband prior to marriage: (ט:ה)
 - "נדר ושבועה אין לי עליך"?
 - "נדר ושבועה אין לי עליך ועל יורשיך הבאים ברשותיך"?
 - "נדר ושבועה אין לי ולא ירושי ולא לבאים ברשותי עליך ועל יורשיך הבאים ברשותיך"?
- If the widow is made custodian of her late husband's property, can the *yorshim* demand a *shvuah* from her? (ט:ו)
- In which five cases must a widow vow prior to collecting her *ketubah*? (ט:ז)
- Explain the following cases: (ט:ח)
 - *Pogemet ketubah*.
 - Claiming a *ketubah* from *nechasim meshubadim*.
 - Claiming a *ketubah shelo befanav*.
- Can a lender claim money from the borrower if his has the loan contract, but claims he lost the *pruzbul*? (ט:ט)

With that focus, when one enters a *Torah* argument, a debate for the sake of heaven, it is no longer the clash of two personalities. Instead it is the combining of two *keilim* (tools) that are to be employed in the discovery of truth. In that environment, if the truth is monochromatic, then it will be easily revealed.

Ketubot

Introduction to *Ketubot*

Allon Ledder

The *Ketubah* is a husband's obligation to pay his wife a sum of money on his death or on their divorce. The second *Mishnah* in *Masechet Ketubot* sets out the basic obligation – a payment of 200 *zuz* when the bride was a virgin and 100 *zuz* in all other cases. In the case of the husband's death the payment is made from the husband's estate.

There is a difference of opinion as to whether the obligation to pay the *Ketubah* is rabbinic or biblical. However the accepted view is that it is a rabbinic enactment with, at best, support (*asmachta*) from the *Torah* (*Shmot* 22:16). Why did the *Chachamim* enact the *Ketubah* obligation? The *Gemara* (11a) explains that the purpose of the *Ketubah* payment is so that the husband should know that he would have to spend a substantial amount on dissolution of the marriage and would therefore think twice before divorcing his wife.

This rationale would no longer seem to apply today given *Rabbeinu Gershom's* edict (around the year 1000 CE) that a man cannot divorce his wife without her consent. Nevertheless, the *Ketubah* obligation is still in force today.

It is not clear why the *Ketubah* obligation applies upon the husband's death. Such a payment has no impact on the ease of divorcing one's wife and is therefore not relevant to the *Gemara's* rationale for the *Ketubah* obligation.

The *Torah* exhorts us on many occasions to be very careful when dealing with vulnerable members of society. Widows and orphans are the classic example that the *Torah* uses. The *Torah* tells us

- When does the law mentioned in the previous question no longer apply? (ח: ז)
- If the family claims that the *mum* developed after *eirusin* on who is the burden of proof? (ח: ז)
- What is the law when *mumin* develop on the husband after marriage? (ט: ז)
- For which *mumin* developing on the husband is there agreement that the husband must divorce his wife? (י: ז)
- Is there any restriction placed on a woman who inherits property: (יא: ח)
 - Prior to marriage?
 - After *kidushin*?
 - After *nisuin*?
- How does *R' Shimon* differentiate between property that, if sold by the wife after marriage, the husband may reclaim it from the buyers and property that the husband may not reclaim? (ב: ח)
- What is done with the following items that a wife inherits: (ג: ח)
 - Money?
 - Picked/detached fruit?
 - Unpicked fruit?
- Complete the following phrase and explain: (ד: ח)
"רבי שמעון אומר: מקום שיפה כוחו בכניסתה _____
"מקום שהורע כוחו בכניסתה _____"
- What is done with the following items that a wife inherits: (ה: ח)
 - Elderly servants?
 - Old vines?
- When can a husband claim the expenses paid on *nichsei melog*? (ו: ח)
- Are there any restrictions placed on a *shomeret yabam* on the sale of property she inherits? (ז: ח)
- Explain the opinions of *Beit Shammai* and *Beit Hillel* regarding what is done with the property of a *shomeret yabam* that dies? (ח: ח)

- What else does the husband add into the *ketubah* as a proportion of the dowry? (ד: ו)
- If the father did explicitly state the value of the dowry, what is the minimum value he must provide? (ה: ו)
- What are the two opinions regarding the following case: the first daughter got married and the father gave her a particular dowry, yet when it came time for the second daughter to marry, the father had already passed away - what is the value of her dowry that is taken from the *yerusha*? (ו: ו)
- Explain the debate regarding whether an orphaned woman can tell the executor of the *yerusha* responsible for her welfare, to hand over control to her *erus*? (ז: ו)
- Regarding the previous question, when is there no debate? (ז: ו)
- What are the two opinions regarding the time until a husband must divorce his wife if he made a vow preventing her from benefiting from his property? (ח: ז)
- What are the two opinions regarding the time until a husband must divorce his wife if he upheld her vow preventing her from benefiting from his property? (ח: ז)
- What are the two opinions regarding the time until a husband must divorce his wife if he upheld her vow preventing her from adorning herself and why? (ט: ז)
- How much time is it until a husband must divorce his wife if he upheld her vow preventing her from visiting her father? (Include two cases.) (ט: ז)
- Why must a husband divorce his wife if he upheld her vow not to go to a *beit avel* or *beit mishteh*? What is the exception to this rule? (י: ז)
- When does a woman lose her *ketubah*? (יא: ז)
- What is *dat moshe*? (יא: ז)
- What is *dat yehudit*? (יא: ז)
- What is a *kolanit*? (יא: ז)
- Which *mumin* are problematic if they were concealed from the husband prior to marriage? (יא: ז)

(*Shmot* 22:21): “Don’t cause anguish to any widow or orphan”¹⁵. This commandment relates to any widow or orphan, whether rich or poor. Special consideration is called for because of the likelihood of emotional vulnerability. The memory of their loss and the experience of loneliness suggest that the widow and orphan are likely to be more in need of support and encouragement than others. Some authorities hold that this commandment applies equally to divorced women.¹⁶

The *Chachamim* made a number of decrees to protect orphans. For example, orphans are treated more leniently under the laws of paying damages and in certain cases the obligation of orphans to pay debts is postponed until the orphan reaches the age of maturity (which is 13 for a male and 12 for a female).

Perhaps the *Chachamim* extended the *Ketubah* obligation to widows out of concern for the welfare of the widow.

This sheds light on many of the *Halachot* pertaining to the *Ketubah*. We can see how careful the *Chachamim* were to protect the welfare of these potentially vulnerable people. For example:

- It is forbidden for a man to continue living with his wife even for a moment without her having a *Ketubah* (*Rambam, Hilchot Ishut* 10:10).
- It is forbidden to agree to a *Ketubah* payment that is below the minimum prescribed amount (although the husband can agree to a higher amount) (*Ibid.* 10:9).
- The usual rule with monetary matters is that a person can agree to waive their right to receive a payment that is due to them, even for biblical matters. However the *Chachamim* forbade this in the case of the *Ketubah* payment (*Shulchan Aruch, Even Ha-Ezer* 69:6).

¹⁵ This is mitzvah 65 in the *Sefer haChinuch*

¹⁶ *Sema, Choshen Mishpat* 97:22

- Usually, Biblical obligations are denoted in *Kesef Tzori* (pure silver) while rabbinic obligations are denoted in *Kesef Medina* (1 part silver to 7 parts copper). Even though the *Ketubah* payment is a rabbinic obligation, the *Chachamim* imposed a payment calculated in pure silver¹⁷.
- The size of the *Ketubah* payment was quite substantial. 200 *zuz* in *Kesef Medina* (which is 1/8th of 200 *zuz* in *Kesef Tzori*) is enough to purchase food and clothes for a person for a whole year (*Bartenura Peah* 8:8).

In studying *Masechet Ketubot* we should be sensitive to the compassion shown by the *Chachamim* to divorced and widowed women and we should bear this in mind in our dealings with all people that are less fortunate and potentially vulnerable.

¹⁷ The *Rambam* disagrees and rules that *Kesef Medina* is used for the *Ketubah* payment (*Hilchot Ishut* 10:8).

- What is *R' Meir's* opinion regarding whether a woman can agree to her *ketubah* being a reduced value? (ה'א:)
- What is the maximum spacing allowed between *kidushin* and *nisuin*? (Include two cases.) (ה'ב:)
- What happens after this time period? (ה'ב:)
- Can a *bat Yisrael* who is a *shomeret yabam* to a *Kohen* eat *trumah*? (ה'ג:)
- Can a husband *makdish* his wife's handiwork? (ה'ד:)
- Explain the debate regarding whether the husband can sanctify *motar ma'asei yadeiha*? (ה'ד:)
- What are the seven *melachot* performed by the wife and when does this change? (ה'ה:)
- What are the opinions of *Beit Shammai* and *Beit Hillel* regarding how long we wait before forcing the husband to divorce his wife if he vowed against *tashmish*? (ה'ו:)
- What is the *mitzvah* of *onah* for *po'alim*? (ה'ו:)
- What are the opinions regarding a case where either of the spouses refuses *tashmish*? (ה'ז:)
- What are the husband's obligation regarding: (ה'ח-ט:)

 - Provision of food?
 - Provision of clothing?
 - General allowance?

- To whom do the measures in the previous question apply? (ה'ט:)
- What is the measure of *ma'asei yadeiha* and when does it change? (ה'ט:)
- Does a husband have any right to the property a wife inherits? (ה'י:)
- How does *R' Yehuda ben Beteira* divide *boshet* and *pegam* between a husband and wife? (ה'י:)
- Can a father prevent a dowry from passing on to the *yabam*? (ה'יב:)
- Compared to the dowry, what value is written in to the *ketubah* and in what circumstance does this calculation differ? (ה'יג:)

- If the father is alive during the trial?
- If the father died after the trial?
- If the father died prior to the trial?
- If she became a *bogeret* prior to the trial?
- On which of the cases in the previous question does *R' Shimon* argue? (ד:א')
- In what case is the *ketubah* payment paid to someone else other than the divorcee? (ד:ב')
- What is different from a regular case of *na'arah meorasah she'zinta* when: (ד:ג')
 - The *na'arah* converted?
 - The *na'arah* mother converted whilst pregnant with her?
- What are the five rights listed in the *Mishnah* that a father has whilst his daughter has not yet become a *bogeret*? (ד:ד')
- What is the difference between the rights of a father and husband? (ד:ד')
- What are the three obligations placed on a husband? (ד:ד')
- At what point is a girl transferred from the *reshut* of the father to the *reshut* of the husband? (ד:ה')
- Complete the following statement analysed by *R' Elazar ben Azaria*: (ד:ו')

" _____ והבנות _____ הבנים "
- What was the implication of the above statement? (ד:ו')
- Can a woman still claim the money of a *ketubah* if she never had one written for her? (ד:ז')
- What are the four conditions that even if they are not written into the *ketubah* are considered as if they have been written? (ד:ז'-ח', יי-יא')
- Can a husband alleviate the responsibility of redeeming his captive wife by sending her a *get* and *ketubah*? (ד:ט')
- What is different about the *ketubot* of *Anshei Yerushalaim* and *Anshei Yehuda*? (ד:יב')
- Can one add to the base value of a *ketubah*? (ד:יג')
- When is there a dispute as to whether the *tosefet ketubah* is paid? (ד:יד')

Testimony of a *Katan*¹⁸

Ketubot (2:10)

David Bankier

We have seen in past articles that a *katan* (minor) is unfit as a witness. It may have been surprising when the *Mishnah* (2:10) listed cases where an adult is able to testify regarding something he saw when he was a minor. These include:

1. Substantiating the signatures of his father, rebbi or brother (where another adult has also identified the signatures).
2. The manner in which a woman got married (see 2:1)
3. That a particular individual would either eat or be allocated a portion of *trumah*.
4. The location of a *beit ha'pras*.
5. The location of the *techum Shabbat*.

The *Gemara* (*Ketubot* 28a) and commentaries explain that each of the cases listed above all have rabbinic implication and the *Chachamim* therefore ruled leniently. If that is the case one must understand why we must wait till the *katan* has grown till we can accept his testimony.

The *Ritva* explains that ordinarily we require that a person is suitable to be a witness at the time of witnessing and at the time of testimony. In these cases, the *Chachamim* relaxed one of these requirements.

The *Tosfot HaRid* explains that the testimony is only received when he is an adult because if he is willing to testify about the matter as an adult, he must have a high level of certainty and confidence in the matter he is testifying about. It follows then, that when he is a child, we cannot be confident in his testimony.

¹⁸ Much of the content of this article was taken from <http://www.dafyomi.co.il/kesuvos/insites/ks-dt-028.htm>.

A further difficulty however is raised in the *Tosfot* by the *Riva* that cites the *Gemara* (*Pesachim* 4b) that enables a minor to testify whether a house has been checked for *chametz*. There the *Gemara* justifies accepting the minor's testimony by explaining that it is a rabbinic matter and therefore the *Chachamim* were lenient. (It is a rabbinic matter since after *bitul chametz*, the annulment of *chametz*, *bedikat chametz* (checking) is rabbinically required.) How is that case different from here where we only accept his testimony once he has grown up?

The *Rashba* explains that the case in *Pesachim* is different as the minor is testifying about something he did himself. The other cases however, regard matters he saw or can identify. It is regarding the former that one can rely with confidence on the minor in this rabbinic matter. (The *Tosfot* explain similarly that *bedikat chametz* is different as it is something that is in his ability to perform.)

Alternatively, the *Rashba* continues, *bedikat chametz* is different in that it occurs on a yearly basis and involves everyone. A minor would therefore be more familiar with it and may be relied upon.

From the above analysis we can develop an important insight into the *katan*. Firstly, it appears that when regarding many matters, they cannot be pushed or relied upon with confidence. If however once they grow up and on reflection still maintain their position, this may be relied upon in rabbinic matter.

More importantly, we find a further lesson in *chinuch* (education). There is a stark difference between matters in which a child spectates and a matter in which he takes an active role. Once a child is involved in the *mitzvah* the impact is so strong and clear that the *Chachamim* trusted him, even whilst he is a child.

- If two women were captives and both claim that they are *tehora*, when are they believed? (ב' רי)
- How many witnesses does one require to prove he is a *Kohen*? (ב' רי)
- What are the opinions of *R' Yehuda*, *R' Elazar* and *Rabban Shimon ben Gamliel* regarding the previous question? (ב' רח)
- If a woman is kidnapped, when is she allowed to return to her husband? (ב' טי)
- What can one testify about when they are an adult regarding what they saw when they were a child? (List five matters.) (ב' יי)
- What does it mean when it says: "אלו נערות שיש להן קנס"? (ג' יא)
- Which *ne'arot* do not have a *knas* associated with them? (ג' בי)
- What is the source for the law that if one is sentenced to death, he is exempt from monetary payments? (ג' בוי)
- Explain the debate regarding whether a *knas* applies to a *na'arah* that got engaged then divorced. (ג' גי)
- What three things is a *mefateh* obligated to pay? (ג' די)
- What four things is an *ones* obligated to pay? (ג' דו)
- What are the three differences between a *mefateh* and an *ones*? (ג' דז)
- In what case is the *ones* not "*shoteh ba'atzitzo*"? (ג' ה)
- According to *R' Elazar* what is another difference between a *mefateh* and an *ones*? (ג' ו)
- How is *boshet* (shame) compensation calculated? (ג' ז)
- How is *pegam* compensation calculated? (ג' ח)
- What relationship does the *Mishnah* draw between the rights of the father in *mecher* and *knas*? (ג' ט)
- What is a person obligated to pay if they confess that they stole an object? (ג' טי)
- Complete the following principle: (ג' טי) _____ זה הכלל: _____ אינו משלם על בי עצמו
- In a case of *pitui*, to whom are elements of compensation paid: (ד' א)

- What is the value of a *ketubah* for: (א' ב')
 - A *betulah*?
 - An *almanah*?
 - *Gerusha min ha'eirusin*?
- What are the three cases that *R' Meir* adds whose *ketubah* is also 200 and on which case do the *Chachamim* argue? (א' ג')
- What is the value of a *ketubah* for: (א' ד')
 - A *betulah almanah min ha'nesuin*?
 - A *giyoret*?
- Why did the *Mishnah* need to teach that an *almanat Yisrael* and an *almanat Kohen* have *ketubot* of the same value? (א' ה')
- Explain the two opinions regarding a case of *ta'anat betulim* where:
 - She claims she was raped after they were engaged. (א' ו')
 - She claims she is a *mukat etz.* (א' ז')
- What is the third case that is debated in the same manner as the previous question? (א' ח')
- If a single woman is found pregnant, is she trusted when she says the father is a *kohen*? (א' ט')
- What did *R' Yochanan ben Nuri* rule, regarding a woman who was raped and whether she could then marry a *kohen* and why? (א' י')
- In a divorce case where the value of a *ketubah* is disputed (100 or 200), on what basis do they decide the value? (א' ב')
- What case is brought in the *Mishnah* of “*ha'pe she'asar...*”? (א' ב')
- When are witnesses to a contract believed if they claim they were forced to sign the document? (א' ג')
- Explain the debate regarding whether it is enough if each of the witnesses on a contract to substantiate their own signature. (א' ד')
- Is a woman believed if she says she was divorced but cannot produce her *get*? (א' ה')
- What is the other case brought in the same *Mishnah* that shares a similar law to the previous question? (א' ה')

Compensation for Shame

Ketubot (3:7)
David Bankier

The *Mishnah* (3:7) details how the component of compensation referred to as *boshet* (shame) is calculated. This was raised because it is one of the components of compensation that a rapist is required to pay¹⁹. *Boshet* is also included as one of the five basic forms of compensation placed on one that inflicts physical injury on another.²⁰ The *Mishnah* explains its calculation as follows:

What is *boshet*? It is according to the person that caused the shame and the one who was shamed.

The above *Mishnah* describes that the social standing of the two parties influence the calculation. As the *Rambam* (*Na'arah Betulah* 2:4) explains, the greater social standing of the victim and the more base the offender, the greater the shame.²¹

With the above information noted, we are still left wondering how exactly to place a monetary value on the shame caused. The *Rambam* (ibid. 2:5) explains:

Accordingly, the judges assess the standings [of the victim and offender] and evaluate how much the father and family would be willing to pay to avoid this incident from such a person, and this is what [the criminal] is obligated to pay.

¹⁹ This is amongst other obligations – see 3:4 for more details.

²⁰ See *Bava Kama* 83b, which lists *nezek* (physical damage), *tza'ar* (pain), *ripui* (medical costs), *shevet* (lost labour opportunity) and *boshet* as the five principle elements of compensation.

²¹ See also *Rashi* (*Ketubot* 40b) who writes the criminal being a *beinoni* (regular person) can be more shameful than if the criminal was an important person or a base person. The *Bach* (*Choshen Mishpat* 420:24) suggests that perhaps *Rashi* is allowing for a different measure of *boshet* in the case of rape than a regular case of inflicting bodily harm. Nevertheless, he cites the *Ran* who dismisses this *Rashi* as referring to something else and notes that the *Rambam* and *Tur* seem to treat the calculation of *boshet* in the same manner across the board.

The *Ramah*²² however argues that such a manner of assessment does not isolate the *boshet* component and would also include *tza'ar* (anguish) as well. Furthermore in the hypothetical scenario, for example, of a hand being severed, it may be insignificant if the crime occurred in secret, as the embarrassment of having a severed hand endures beyond the incident itself.

The *Ramah* therefore suggests using other hypothetical cases to isolate and assess the value of the *boshet*. For example, in the case of a severed hand, how much would this person be will to be paid in order to have his shrivelled hand (that no longer has any sensation) that required severing be severed by such a person? Or alternatively, how much would he be willing to pay such that his hand, that the courts ruled must be severed, not be severed by such a person. He brings support for this means of assessing *boshet* as the *Gemara* uses a similar means when assessing *tza'ar* in the case where there is also physical damage. Using the same example, the *Gemara* (85a) writes that the judges assess how much a person would be willing to pay to have a hand that had to be severed by court ruling, be removed with anaesthetic (i.e. painlessly) or in the manner in which the criminal severed it.

In defence of the *Rambam* one could suggest that *boshet* is different to *tza'ar*. The monetary value of physical pain can be isolated as the potential pain experienced in the hypothetical scenarios may be equal to the case in question. In other words the physical pain to be endured by this victim who had his hand severed by the criminal would be equal irrespective of the reason why it was being severed as long as the method employed was the same. Shame however is far more complex. One cannot be certain that the shame experienced in any hypothetical case would be equal to the shame endured as a result of the crime. Consequently the *Rambam* does not employ any hypothetical tools and simply charges the judges to assess how much one would wish to pay to avoid the entire incident.

²² See the *Shitah Mekubetzet Bava Kama* 85a and *Ketubot* 40b.

- Regarding the previous question, with what change to the detail of the case is the law reversed? (ט"ו: ט"ו)
- When is a women trusted to say that her *yabam* died? (Careful) (י: ט"ו)
- Regarding which relatives is a man not trusted about, if he claims they died and in what circumstance? (ג: ט"ו)
- What is the law regarding a woman, whose co-wife and husband went overseas, and then she received word that her husband had died – can she remarry? Does she require *yibum* or *chalitzah*? (א: ט"ו)
- What is the law regarding a case where two women married to two brothers, claim that their husbands have died? What if one of the women has two witnesses supporting her? What if one of the women has children? (ב: ט"ו)
- What is the vital feature that one must identify about when testifying about a dead body? (ג: ט"ו)
- Can one testify that a man has died if he saw him fall into the ocean? (ד: ט"ו)
- Give some examples of what they would accept as a form of testimony enabling a woman to remarry? (ה: ט"ו)
- Can a woman get married based on a *bat kol*? (What is a *bat kol*?) (ו: ט"ו)
- When *R' Akiva* went to *Nehard'ah*, in the name of who did *Nechamya Ish Beit Dli* say that a woman can get remarried based on a single witnesses testimony? (ז: ט"ו)
- Which opinion does not accept single witness testimony? (ח: ט"ו)

Ketubot

- On what day of the week would one marry a *betulah* and why? (א: א)
- On what day of the week would one marry an *almanah* and why? (א: א)

- In what circumstance does *Beit Hillel* maintain that we trust a woman when she says her husband has died? (טי״ו: ב׳)
- What was the debate between *Beit Shammai* and *Beit Hillel* regarding, in a case where they both agreed that she is trusted to say her husband has died? (טי״ו: ג׳)
- Who conceded in the argument described in the previous question? (טי״ו: ד׳)
- Which five people are not trusted to testify that a woman's husband has died? (טי״ו: ה׳)
- If a woman remarried on the basis of a single witness's testimony, can she remain married if another single witness testifies that her original husband is still alive? (טי״ו: ו׳)
- What is the law regarding a case where a person's two wives return from overseas and: (טי״ו: ז׳)
 - One says the husband died, and the other says the husband is alive?
 - One says the husband died, and the other says the husband was killed?
- If a woman and her husband travel overseas and she returns saying that her husband has died, can she remarry? Can the co-wife remarry? (טי״ו: ח׳)
- Regarding the previous question, if the co-wife was a *bat Yisrael* married to a *Kohen*, can she continue to eat *trumah*? Explain. (טי״ו: ט׳)
- What case is raised that shares the same ruling as in the previous two questions? (טי״ו: י׳)
- What should one do if they married one of five women, and they do not know who, yet all the women claim it was them? (טי״ו: יא׳)
- What case does *R' Tarfon* claim is similar to the case in the previous question and why does *R' Akiva* argue that it is different? (טי״ו: יב׳)
- If a woman returns from overseas claiming that both her husband and only child died, in what situation (regarding the order of the deaths) is she believed and when are we concerned? (טי״ו: יג׳)

Adding to a *Ketubah*

Ketubot (5:1)
David Bankier

The *Mishnah* (5:1) writes:

Even though the [Sages] said the [*ketubah* of] a *betulah* collects 200 [zuz] and an *almanah* 100 [zuz], if he wishes to add even 100 *zuz*, he may add.

We learn from the above *Mishnah* the concept of the *tosefet ketubah* – the monetary addition to the base value of the *ketubah*.

The *Gemara* (*Ketubot* 44b) exclaims that the above statement appears obvious. Why should a husband not be able to give his wife a gift if he chooses?²³ The *Gemara* responds that one may have thought the *Chachamim* would have prevented people from adding to the base value of the *ketubah* so as not to embarrass those who are unable due to lack of funds.²⁴

When grappling with the point of embarrassment the *Rishonim* enter into a debate regarding how this *tosefet* would be drawn up in the *ketubah*. The *Ramban* writes that the *Mishnah* must be referring to where the *ketubah* and the *tosefet* are written together as one lump sum. One may have thought that the differing base values in the *ketubah* may have led to embarrassment. If however the *tosefet* was specified separately, it would equate with the

²³ The *Shita Mekubetzet* explains that the *Gemara* is not asking why the *Mishnah* is being taught. The *Gemara* later derives from the *Mishnah* writing “wishes to add” as apposed to “wishes to write” that the *tosefet ketubah* shares the same *halachic* status as the base value of the *ketubah*. The *Gemara* is rather asking why it is written in such a wordy manner making mention of “if he wishes to add... he may add” which simply implies that the husband can do what he wants to.

²⁴ The *Tifferet Yisrael* adds that even though the earlier *Mishnah* (1:5) already implied that one can add to the base value of the *ketubah*, he explains that one could think that it is an exceptional case as it deals with *kohanim* who we are obligated to honour.

husband giving his wife a gift and surely no one would think that the *Chachamim* would try to prevent this.

The *Meiri* however argues that no matter how it is written in the *ketubah* whether as a lump sum or two separate figures, the potential for embarrassment is there. One can understand that as this *ketubah* is read in public, people will be able to do the maths and readily know how much the husband was willing to spend. To answer this, we can cite the *Ritva* who explains it is not the embarrassment of the husband that we are concerned about. Instead it is of the wife whose base value of her *ketubah* appears to be lower than other women.²⁵

A second question on the *Ramban* comes from the *Mordechai* (136) who writes that a previous *Mishnah* (1:5) seemed to imply that only a select group of people were allowed to increase the value of the *ketubah*. For this reason he understands that the previous *Mishnah* allowed those people to increase the value of the *ketubah* and include it in one lump sum, where as our *Mishnah* is only allowing additions if it is included in the *ketubah* separately from the base value of the *ketubah*.

So how would the *Ramban* respond to the question of the *Mordechai*, if he maintains that anyone could include this base and additional values as one lump sum if the wish. The *Tosfot* (12b) explain that the difference in the *ketubot* of these select families was that next to the lump sum they would add the words “as is deserving to you”. One can understand that the difference is that by those families the implication is that the base value has changed.²⁶

²⁵ The *Ritvah* then explains that according to this understanding, when the *Gemara* says, “so as not to embarrass he who does not have” it is also coming to include the woman’s father who may be embarrassed that he could not provide a large enough dowry such that his daughter’s base *ketubah* would be larger.

²⁶ For the *halacha* regarding how the *Tosefet Ketubah* is included, see the *Rama* (*Even Ha’Ezer* 66:7) and *Darkei Moshe* (*ibid.* 66:9).

- If a *yavamah* is a *chereshet*, what should the *yabam* do - *yibum* or *chalitzah*? (י"ג: ד"י)
- What is the law if two brothers, one a *pikeach* and the other a *cheresh*, marry two sisters that are *pikchot* and the *cheresh* dies? (י"ד: ד"י)
- Regarding the previous case, what if the *pikeach* dies instead (without any children)? (י"ד: ד"י)
- What is the law if two brothers, both *pikchim*, marry two sisters, one a *pikachat* and the other a *chereshet*, and the husband of the *chereshet* dies? (י"ה: ד"י)
- Regarding the previous case, what if the husband of the *pikachat* dies instead (without any children)? (י"ה: ד"י)
- What is the law regarding a case with two brothers, one a *pikeach* married to a *pikachat* and the other a *cheresh* married to a *chereshet*, both wives being sisters, and the *cheresh* dies without any children? (י"ו: ד"י)
- Regarding the previous case, what if the *pikeach* dies instead (without any children)? (י"ו: ד"י)
- Regarding the previous two questions, what is the law if the wives were not related? (י"ז: ד"י)
- What is the law if two brothers, both *pikchim*, marry unrelated women, one a *pikachat* and the other a *chereshet*, and the husband of the *chereshet* dies? (י"ח: ד"י)
- Regarding the previous case, what if the husband of the *pikachat* dies instead (without any children)? (י"ח: ד"י)
- What is the law regarding a case with two brothers, one a *pikeach* married to a *pikachat* and the other a *cheresh* married to a *chereshet*, the wives being unrelated, and the *cheresh* dies without any children? (י"ט: ד"י)
- Regarding the previous case, what if the *pikeach* dies instead (without any children)? (י"ט: ד"י)
- In what situation do we not trust a woman who returns for overseas saying her husband passed away overseas? (Include both opinions) (י"א: ט"ו)

- Explain the debate regarding *yibum* for a woman that had previously divorced and then remarried her husband? (י"ג: ט"ו)
- If two brothers marry two sisters, one of which a *ketanah* (*yetomah*), and the brother married to the *gedolah* dies (without children), what is the law regarding *yibum*? (Include the three opinions.) (י"ג: ט"ו)
- If a person married to a *pikachat* and a *chereshet*, dies without any children, to whom should *yibum* be performed? (י"ג: ט"ו)
- If a person married to two *ketanot* (*yetamot*) dies, and one brother performs *yibum* to one and then another brother tries to perform *yibum* to the other, can the first brother stay with the *ketanah*? (י"ג: ט"ו)
- What is the law if a man married to a *pikachat* and a *chereshet* dies (without any children) and one brother first performs *yibum* to the *chereshet* and then another brother performs *yibum* to the *chereshet*? (י"ג: ט"ו)
- What is the law if a man marries a *gedolah* and a *ketanah* (arranged by her brother) and dies (without any children) and one brother first performs *yibum* to the *ketanah* and then another brother performs *yibum* to the *gedolah*? (י"ג: ט"ו)
- What is the law regarding a minor that performs *yibum*? (י"ג: ט"ו)
- When do we force the *yabam* to divorce the *yavamah*? (י"ג: ט"ו)
- When do we request that the *yabam* perform *chalitzah*? (Include two cases) (י"ג: ט"ו)
- What has happened to a man such that he can never divorce his wife? (י"ג: ט"ו)
- Is the law the same if these things happened to the wife? Explain. (י"ג: ט"ו)
- What case does *R' Yochanan ben Gudgedah* bring to support the answer to the previous question? (י"ג: ט"ו)
- What is the law if two brothers, one a *pikeach* and the other a *chereshet*, marry two sisters that are *chershot*, and one brother dies without children? (י"ג: ט"ו)

Forfeiting a *Ketubah*

Ketubot (7:6)
Shmoiki Berkowitz

The *Mishnah* (7:6) presents a number of cases where a wife's behaviour warrants her immediate divorce while forfeiting her rights to a *ketubah* (an obligation of a husband to provide an amount of money to his wife in the event of his death or divorce). One of the cases mentioned is where a wife feeds her husband untithed food.

The *Gemara* (72a) seeks to understand how a husband could have the knowledge that he is being fed untithed food. If he is aware, he will tithe the food himself. If he is oblivious, he has no comprehension of his wife's behaviour. The *Gemara* concludes that the situation is where the wife informs her husband that food was tithed by a reputable authority and was later found to have lied.

The *Rishonim* discuss why the *Gemara* did not bring a seemingly more simple case, that the wife admitted that she fed her husband untithed food. This is a dispute between the *Ra'avad* and the *Ran*, and is discussed in the *sefer Simchat Binyamin*.

The *Ra'avad* writes that if the wife admitted, she would not be believed, as we have the principle of "a person does not admit to self-incriminating information" and she retains her rights to her *ketubah*. This principle is applied to cases relating to *issurim* (prohibitions) relevant here as she is admitting to have caused her husband to transgress. The *Meiri* adds that anyone who places an impediment to the performance of a *mitzvah* is considered a *rasha* (wicked), and as such, no-one would admit to such behaviour.

According to the *Ran*, the wife would be believed and her *ketubah* would be revoked, yet the *Gemara* did not cite this case as it is

uncommon. The reason why she is believed is due to the conflicting principle of “the admission of one of the parties in a legal dispute is equivalent to the testimonies of 100 witness pairs”. This principle relates to monetary matters, and the *ketubah* is an issue of financial concern.

The conflict between the *Ra'avad* and *Ran* when the wife admits to having fed her husband untithed food stems from their different understandings of why a *ketubah* is revoked when she is discovered to have lied.

The *Pnei Yehoshua* writes that according to the *Ra'avad* her *ketubah* is revoked as punishment imposed by the *Chachamim* against her undesirable behaviour. Since we would not believe her if she admitted to have acted improperly, as it is self incriminating, she retains her *ketubah*. The *Pnei Yehoshua* adds that we only apply the principle of “the admission of one of the parties in a legal dispute is equivalent to the testimonies of 100 witness pairs” in the event where the consequences relate directly back to the original admission. The punishment of losing her *ketubah* is a result of her character flaw, and not specifically due to one specific act.

Rav Elchanan Wasserman זצ”ל in his *sefer Kovetz Shiurim* has a different understanding of the *Ra'avad*. When it is found out that the wife has lied, it becomes apparent that the couple can no longer remain together, as the husband has lost his trust in his wife. Since the couple is incompatible, the wife loses her rights to her *ketubah*. Only when the husband decides to divorce based on his personal reasons, not because his wife cannot be trusted, is the wife entitled to her *ketubah*. In the event where the wife admits to have fed her husband untithed food, she is, in essence, admitting that she is not compatible with her husband. We therefore do not believe her as “a person does not admit to self incriminating information”.

- Both of the husbands had sons from other marriages? (י”א: ר)
- Regarding the previous question, what is the law if one of the father’s was a *Kohen* and the other was a *Yisrael*? (י”א: ז)
- Regarding the previous question, what if both father’s were *Kohanim*? Which *mishmar* would he serve in? (י”א: ז)
- Where is *chalitzah* performed? (י”ב: א)
- What type of *sandal* can be used for *chalitzah*? (י”ב: א)
- Which of the following is acceptable for *chalitzah*: (י”ב: ב)
 - Using a borrowed shoe?
 - Wearing the left shoe on the right foot?
 - Using a shoe that is the wrong size?
 - Performing *Chalitzah* at night?
- What are the three components of *chalitzah*? (י”ב: ג)
- Which of the three components: (י”ג: ג)
 - If left out is still acceptable?
 - May not be left out?
 - Is subject to debate whether it is acceptable if left out?
- Can a *cheresh* perform *chalitzah*? (י”ב: ד)
- What is the law regarding *chalitzah* that is performed before a *beit din* of two people? (י”ב: ה)
- Describe the process of *chalitzah*. (י”ב: ו)
- What is *mi’un*? (י”ג: א)
- What are the five points of debate between *Beit Shammai* and *Beit Hillel* regarding when *mi’un* can be performed? (י”ג: א)
- Who qualifies for *mi’un*? (י”ג: ב)
- According to *R’ Eliezer ben Ya’akov* when is the *ketanah* considered “*ishto*”? (י”ג: ג)
- If a girl underwent *mi’un* can she still marry a *Kohen*? (י”ג: ד)
- Complete the follow rule and explain: (י”ג: ד)

”זה הכלל: ___ אחר ___, אסורה לחזור לו. ___ אחר ___ מותרת לחזור לו”
- If the *ketanah* left a number of husbands, some of which through *mi’un* and the others through a *get*, which can she remarry? (י”ג: ה)

- Regarding the previous question, is there a difference between the *ben teshah* and the brother in regards to when that principle applies? (י: י)
- What is the law if a *ben teshah*:
 - Performed *yibum* then one of the brothers also did? (י: י)
 - Performed *yibum* and then performed *yibum* on the *tzarah*? (ח: י)
 - Performed *yibum* and then died? (ח: י)
 - Got married and then died? (ח: י)
 - Performed *yibum*, and then when he grew up married another, then died (without any children)? (ט: י)
- Is one allowed to marry the relative of his *anusa*? (א: א"י)
- Can one marry *anusat aviv*? (א: א"י)
- Do two brothers, one of which was in its mother's stomach when she converted and the other was conceived and born after the mother converted, perform *yibum* or *chalitzah*? (ב: א"י)
- Regarding a case where five baby boys were mixed up, such that we don't know who their mothers are, and each grew up and got married and died without any children, describe how *yibum* is performed to each of their wives? (ג: א"י)
- What is the law regarding *yibum* and *chalitzah* if a woman's child and her daughter-in-law's child got mixed up, grew up and then: (ד: א"י)
 - Got married and died with without any children?
 - The other brothers married and died without any children?
- What is the law regarding a case where the child of the wife of a *Kohen* and her maid-servant's child got mixed up with regards to: (ה: א"י)
 - Eating *trumah*?
 - *Tameh met* if they are both "freed"?
 - *Zro'ah* and *lechayayim*?
- What is the law regarding a case where a woman remarried immediately after divorce and we are not sure about the paternity of her child, with respect to *yibum* and *chalitzah* if:
 - His mother had sons from both marriages?

The *sefer Simchat Binyamin* provides an explanation of the *Ran*. In contrast to the *Pnei Yehoshua's* understanding of the *Ra'avad*, it may be said in the name of the *Ran* that the annulment of the wife's *ketubah* is not a punishment but rather a condition placed on the *ketubah*. A husband, generally, offers his wife a *ketubah* with the understanding that she will sustain an appropriate household. Accordingly, if she admits to having fed her husband untithed food, she is merely saying that she is no longer entitled to the money outlined in the *ketubah*. We would therefore believe her, as we would in any commercial situation, in accordance with the principle of "the admission of one of the parties in a legal dispute is equivalent to the testimonies of 100 witness pairs".

Truth and Peace

Ketubot (9:2)

Noam Greenberger

Rabbi Akiva says: “We do not show compassion in judgment...”
(Ketubot 9:2, Kehati trans.).

Although said regarding a particular context, this statement of Rabbi Akiva begs a much larger question - What is the relationship between *din* (strict law) and *rachamim* (compassion) in *Halacha*? As will be shown, *Halacha* does not regard these two concepts as an impossible combination, but rather, in some instances as one and the same, and in others, as complementary entities.

Peshara (compromise)

On the issue of the role of the *Beit Din* as the arbiter of justice in Jewish society, the *Gemara* (*Sanhedrin* 6b) presents (among others) the following opinion:

R' Yehoshua ben Karcha says: It is a *mitzvah* for a judge to arbitrate a compromise, as it is stated: “Execute truth and judgment of peace in your gates” (*Zechariah* 8:16). But where there is judgment there is no peace; and where there is peace there is no judgment! What then is the judgment which has within it peace? I would say this is compromise.

The *Rambam* accepted this view and took it to its logical conclusion. He writes (*Yad, Hilchot Sanhedrin* 22:4):

It is a *mitzvah* to ask the disputing parties at the beginning of the court case whether they desire *din* or *peshara*...and any *Beit Din* that consistently rules a compromise is praiseworthy.

Thus, we see an example, and a fairly wide-reaching one at that, in which *Halacha* recognises the need to take into account peace as well as truth.

- Which of the following can eat *trumah* and which can eat *ma'aser*: (ט: יד)
 - *Bat Yisrael* engaged to a *Kohen*?
 - *Bat Yisrael* engaged to a *Levi*?
 - *Bat Levi* engaged to a *Kohen*?
- If a *bat Yisrael* marries a *Kohen* and has a child, then her husband dies, can she eat *trumah*? (ט: ה)
- If she then marries a *Levi* and has a child, then her husband dies, can she eat *trumah*? Can she eat *ma'aser*? (ט: ה)
- If she then marries an *Yisrael*, can she eat *trumah*? Can she eat *ma'aser*? (ט: ה)
- Regarding the previous question, when would she once again be able to eat *trumah*? (ט: ה)
- Describe two scenarios through which a *bat Kohen* who marries a *Yisrael*, would once again be able to eat *trumah*? (ט: ו)
- What is the law regarding a woman that remarries after receiving news that her husband died overseas, but then discovers her original husband is still alive? (יא: א)
- Regarding the previous question, which brothers perform *chalitzah* if both “husbands” then die? (יא: א)
- What is the difference if the women mistakenly remarried with or without the instruction of the *beit din*? (יב: ב)
- What is the law if a woman remarries after hearing that her husband died, and then hears that her husband was alive but recently did indeed die? (יג: ג)
- What is the law regarding a case where a man’s wife was overseas and witnesses came and told him that she had died. Then, based on that testimony, he goes and marries his “late”-wife’s sister. Then it is discovered that his original wife is still alive? (יד: ד)
- What is the case described in the *Mishnah* where the conclusion is: (יה: ה)
”מותר בראשונה, שלשית, ובחמישי... ואסור בשניה וברביעית...”
- What does the *Mishnah* mean when it says: (ו: ו)
”בן תשע ויום אחד, הוא פסל ע”י אחין והאחים פוסלין ע”י”

- Which people: (ז':ה)
 - "לא פוסלים ולא מאכילים"?
 - "פוסל ומאכיל"?
- Describe a case how a *kohen gadol* can invalidate one from eating *trumah*? (ז':ו)
- Can an *arel* eat *trumah*? (ח':א)
- Can an *arel's* wife eat *trumah*? (ח':א)
- What is a *petzua daka*? (ח':ב)
- What is a *cherut shofcha*? (ח':ב)
- Who can a *petzua daka* and *cherut shofcha* marry? (ח':ב)
- When can one marry a converted: (ח':ג)
 - *Moavi*?
 - *Amoni*?
 - *Mitzri*?
- Which of the above cases is the subject of a debate? (ח':ג)
- What are the two opinions regarding when a *saris* is *choletz*? (ח':ד)
- In what situations does a *saris* invalidate a *yavamah* from marrying a *Kohen*? (ח':ה)
- Can a *bat Yisrael* eat *trumah* if she is married to a *Kohen* who is: (ח':ו)
 - A *saris chamah*?
 - An *androginus*?
- What are the four cases where a woman is permitted to her husband but not the *yavam*? (ט':א)
- What are the four cases where a woman is not permitted to her husband but permitted to the *yavam*? (ט':ב)
- What are the four cases where a woman is not permitted to either her husband or *yavam*? (ט':ב)
- If one marries one of the *shniyot la'eriyot*: (ט':ג)
 - Is the brother required to perform *yibum*?
 - Are the children *kasher le'kehuna*?
 - Does the wife have a *ketubah*?
- If a *kohen* marries a *chalutzah*, does his wife have *ketubah*? (ט':ג)

***Kofin Al Midat Sodom* (coercion against behaviour akin to that of the people of Sodom)**

Here we have another *Halachic* principle that legislates a higher moral standard into mainstream law. As Arnold Cohen writes, "In Jewish Civil Law, equity will not allow a man... to adopt a 'dog in the manger attitude', refusing to confer upon another a benefit which costs him nothing. Provided he suffers no real or contingent harm, a man will be coerced to bestow the required privilege on his fellow."²⁷ This notion appears in a well-known *Mishnah* in *Pirkei Avot*. It states (5:13): There are four attitudes among men:

There are those who say, "What's mine is mine and what's yours is yours". This is a median moral attitude and some say this is an attitude that was carried by the people of Sodom... Those who say, "What's mine is yours and what's yours is yours"- is righteous.

Once again, whilst on the one hand the above *Mishnah* recognises the element of 'righteousness' inherent in an altruistic stance on personal property rights, *Halacha* enforces this lofty model as standard practice.

Above and Beyond the Law (*Lifnim Mi'shurat Ha'din*)

A third example of when compassion and ethics become part and parcel with strict law is in the implementation of the concept of *Lifnim Mi'shurat Ha'din*. On this topic, the *Gemara* (*Bava Metzia* 83a) brings a powerful story:

Raba bar bar Chanan (*RbbC*) had a keg of wine broken by porters. He took their cloaks as payment. They went and told *Rav*. *Rav* said to *RbbC*, "Give them back their cloaks!" *RbbC* then asked him, "Is that the *din* (strict law)?" *Rav* responded, "Yes, as it is written: In order that you go on the path of good people (*Mishlei* 2:20)." *RbbC* gave the porters back their cloaks. They (the porters) said to *Rav*, "We are poor people, and we laboured the entire day; we are starving and have nothing to eat." *Rav* then said to *RbbC*, "Pay them their fee!" He asked *Rav*, "Is that the *din*?" *Rav* answered him, "Yes! As that very

²⁷ An Introduction to Jewish Civil Law, p.173

verse I quoted earlier continues: and keep the ways of righteous people.”

As *Rashi* on that *Gemara* notes, the verses quoted refer to “goodness” and “righteousness” rather than strict law and thus indicate that *Rav*’s judgment (and so too his definition of ‘*din*’ in this instance) was one that required *Raba bar bar Chanana* to go beyond the letter of the law in his treatment of the porters.

We are left to conclude, along with Rav Moshe Avigdor Amiel (former Chief Rabbi of Tel Aviv-Jaffa) that “*Halacha* does contain two categories of ‘strict law’ and ‘beyond the letter of the law’, but under *Halacha*, ‘strict law’ itself often contains the ‘beyond the letter of the law’.”²⁸ Rav Amiel further explains that the character of *Halacha* parallels the character of *Am Yisrael*. For regarding us it is written, “your nation are all righteous people” (Yeshaya 60:21) and regarding Torah it is written, “And what nation is there so great, that has statutes and judgments so righteous as all this *Torah*” (*Devarim* 4:8).²⁹

²⁸ Ethics and Legality in Jewish Law, p.17.

²⁹ Ibid., p.9.

- If one had relations with in *issur arayot be'shogeg*, can the woman still marry a *kohen*? (י:ב)
- Explain the debate regarding a daughter of a *kohen* who was a *gerusha* and got engaged (*kidushin*) to a *kohen*, whether she can eat *trumah*. (י:ג)
- Regarding the previous case, when does everyone agree she can eat *trumah* and when does everyone agree that she cannot? (י:ג)
- Can a *kohen gadol* marry a widow from *kidushin*? (י:ד)
- If a *kohen* was *mekadesh* a widow and then was elected to be a *kohen gadol* can he still marry her? (י:ד)
- If a *kohen*'s brother dies (without children) leaving a wife, and this *kohen* performs a *ma'amar* and is then elected to be a *kohen gadol*, can he complete the *yibum*? (י:ד)
- Explain the debate whether a *kohen* can marry an *aylonit*. (י:ה)
- Explain the debate between *Beit Shammai* and *Beit Hillel* regarding the requirement of *pru u'rvu*. (י:ו)
- According to *R' Yochanan ben Bruka* who is commanded to perform the *mitzvah* of *pru u'rvu* and what is his source? (י:ו)
- If a *Kohen* marries a *chalutzah* can the servants that she brought with her eat *trumah*? (Be specific) (י:ז)
- If a *Kohen* marries a *bat Yisrael* can the servants that she brought with her eat *trumah*? (י:ז)
- If an *Yisrael* marries a *bat Kohen* can the servants that she brought with her eat *trumah*? (י:ז)
- According to *R' Yosi* if a *bat Yisrael* that marries a *kohen* is widowed while pregnant (with no other children), can her servants eat *trumah* and why? (Be specific) (י:ז)
- Which five people prevent a *bat Kohen* from eating *trumah*? (י:ז)
- If a man had two wives, one of which was the daughter of his brother, and both he and the wife that was his brother's daughter were killed, but we are unsure who died first, what is the law regarding the remaining wife (with respect to *yibum/chalitzah*)? (י:ז)

- Regarding the previous case, is there ever a preference to which wife *yibum* or *chalitzah* should be performed? (ד':י"א)
- The offspring from which three forbidden relationships are debated as being considered *mamzerim*? (ד':י"ב)
- What are the three different opinions regarding the definition of a *mamzer*? (ד':י"ג)
- When is one allowed to marry his wife's sister? (ד':י"ג)
- Explain the debate regarding the following statement: (ה':י"א)
"אין גט אחר גט ולא מאמר אחר מאמר"
- What else is required if the brother performed:
 - A *ma'amar* and *get*?
 - A *ma'amar* and *chalitzah*?
 - A *ma'amar* and *yibum*? (ה':ב')
 - A *get* then a *ma'amar*?
 - A *get* and then "yibum"?
 - A *get* and then *chalitzah*?
 - *Chalitzah* and then a *ma'amar*? (ה':ג')
- What is the law regarding a case where one brother who had two wives die (without children) where one brother is left and he:
 - Performed a *ma'amar* to both women?
 - Performed a *ma'amar* to one, and "yibum" to the other?
 - Performed a *ma'amar* to one, and gave a *get* to the other?
 - Gave a *get* to one and a *ma'amar* to the other?
 - Gave a *get* to both women? (ה':ד')
 - Did *chalitzah* to both women?
 - Did *chalitzah* to one and performed a *ma'amar* to the other? (ה':ה')
- Complete the following phrase and explain: (ה':ו')
"אין אחר _____ כלום, בין בתחילה, בין באמצע בין בסוף
ו _____ בזמן שהיא בתחילה _____, באמצע ובסוף _____"
" _____"
- Regarding the previous question, on what point does *R' Nechemiah* argue? (ה':ו')
- If one is forced to perform *yibum*, is *yibum* valid? (ו':א')

Fraud Ketubot (11:5) Yehuda Gottlieb

The *Mishnah* in *Ketubot* (11:5) is based on the *halacha* that a *Beit Din* can sell the movable property of a deceased husband's estate in order to pay for his wife's *ketubah*. In order to do this, the *Beit Din* must make an evaluation of the property which will be sold.

The *Mishnah* states:

[Concerning a sale based on] the appraisal of the judges who undervalued it by a sixth or overvalued it by a sixth - the sale is void.

These guidelines form the parameters of another *halacha*, namely *Ona'ah*.

A sale that has occurred based upon the appraisal of the judges cannot be undervalued or overvalued by more than a sixth. *Rashi* questions this *Mishnah*. The sale would be void if the property was undervalued by *Beit Din* because the *Beit Din* are acting as the agents of the orphans, and by undervaluing their property, they are not acting in the orphans' best interest. However, if they overvalue the property, why should the sale be nullified? *Rashi* therefore explains, that the sale would be void if the property was overvalued in order to ensure that both parties are treated equally.

However, the *Ran* explains in a different manner. There is a concept that a *shaliach* (agent) is only ever sent in order to act in the best interests of those that appoint them. If a case arose where the agent did not act in the senders best interest, the sender is able to nullify the actions of the *shaliach*, by stating that he did not wish the *shaliach* to act to his detriment. This concept can apply to our case as well. In a case where *Beit Din* undervalues an orphan's property, the orphan is able to nullify the sale since *Beit Din* (their agents) are not acting in their best interests. The *Ran* adds that the buyer too, relies on the evaluation of the *Beit Din* (that they are not overcharging) and in that way the *Beit Din* are

acting as the agents of the buyer. Therefore, if the *Beit Din* were to overcharge by more than a sixth, the buyer is able to nullify the sale as their agent (*Beit Din*) were not acting in their best interest.

The *Sefer HaChinnuch* (*Mitzvah* 337) explains the reason why property that is overvalued by less than a sixth is deemed a proper sale. Surely, a buyer has a right to renege on a sale if he finds out that he is being overcharged! The *Sefer HaChinnuch* writes that a merchant is able to overcharge up to a sixth of a product's value in order to make a profit. He writes that above this he is unable, as these laws were set in place to improve communal life and civilise habitation. Although a merchant is able to slightly overcharge in order to make a profit, overcharging by anything higher than a sixth would be detrimental to communal and societal living.

In the case of a seller undercharging or overcharging less than a sixth, the *Rambam* writes that the seller is not obligated to give the buyer back the value that he was overcharged (and vice versa) as people are not *makpid* (particular) on anything less than a sixth. It seems that this would be the case even if the buyer still had possession of the money and indicated that he was particular about *Ona'ah*. Nevertheless we would take the money out of his possession and force him to complete the sale, because his *da'at* is *mevatel* (nullified) as the majority of people are not particular about this insignificant amount.

However, the *Machaneh Ephraim* disagrees with this view and states that if a buyer is still in possession of his money, he does not have to complete the sale as he is able to claim that he belongs to the minority of people that *are* indeed particular about this amount of money. Additionally, there is a *klal* which the buyer can rely on – the fact that we do not follow the majority in monetary cases. Therefore, since we do not follow the majority, he is able to claim that he is particular about the amount he is being overcharged, and therefore will not have to complete the sale.

- What is a *shomeret yavam*? (ד:יג)
- What is the law regarding the inheritance of a *shomeret yavam* that dies? (Include both opinions) (ד:יג)
- What is the only difference between being married through *yibum* and being married in the regular manner? (ד:יד)
- Which brother is first approached to perform *yibum* or *chalitzah*? (ד:יז)
- If all brothers decline, which brother must perform either *yibum* or *chalitzah*? (ד:יז)
- If one of the brothers is overseas, do we wait for him to return? (ד:יז)
- If one performs *chalitzah*, who inherits his late brother's property? (ד:יז)
- If one performs *yibum*, who inherits his late brother's property? (Include both opinions) (ד:יז)
- If one performs *chalitzah*, which of her relatives is he forbidden to then marry? (ד:יז)
- Regarding the previous question, which of his relatives is she forbidden to then marry? (ד:יז)
- If one's brother marries his divorced wife's sister, then dies, must he perform *yibum*? (ד:יח)
- What is the law regarding a case where while a *shomeret yavam* is waiting, one of the brothers goes and performs *kidushin* to her sister? (ד:יט)
- Regarding the previous question, in what scenario would the brother be told to give the sister of the *shomeret yavam* a *get*? (ד:יט)
- How long must one wait before performing *yibum* or *chalitzah*? (ד:י)
- Describe the three opinions regarding to who else this waiting period applies. (ד:י)
- If four brothers die (without children) can one of the remaining brothers perform *yibum* to all four wives? (ד:יא)
- If one brother dies (without children) that had more than one wife, can the brothers perform *yibum* to both wives? (ד:יא)

- Explain the debate regarding the case where two brothers marry two sisters and die (without any children) and what the single remaining brother must do. (י: ד')
- Regarding the previous question, when can the brother perform *yibum* to one of the widowed sisters? (י: ד')
- Explain the debate regarding the following case: three brothers, two of which marry two sisters. One dies, and the single brother performs a *ma'amar*. The second married brother then dies. What is the remaining brother required to do? (י: ה')
- What is the law regarding the following case: three brothers, two of which marry two sisters and the third brother is also married. One of the brothers that married one of the sisters dies, and the third brother performs a *yibum* then dies (with out any children). What is the remaining brother required to do? (י: ו')
- Regarding the previous case, would the law change if the wife of the remaining brother (i.e., one of the sisters) died prior to the second brother dying? (י: ז')
- Regarding the first *Mishnah* in the *masechet*, when do we say that the *tzarot* still require *chalitzah*? (י: ח')
- Three brothers marry three different women. If the first brother dies, and the second performs a *ma'amar* then dies, what is the third brother required to do? (י: ט')
- If two brothers marry two sisters, and one of the brothers dies, and then soon after the wife of the remaining brother dies, can he perform *yibum* to the remaining sister? (י: י')
- If two people performed *kidushin* on two women, and then by *chuppah* the couple switched by mistake, when would the men have transgressed three different *issurim*? (י: יא')
- What is the law if a brother performs *chalitzah* on a *yavamah* and then it is discovered that she was pregnant? (Include both cases) (י: יב')
- What is the law if a brother performs *yibum* on a *yavamah* and then it is discovered that she was pregnant? (Include all three scenarios) (י: יג')

Understanding Names

Ketubot (13:1)

David Bankier

The thirteenth and final *perek* of *ketubot* opens with mentioning two judges in *Yerushalaim* and the number of instances in which they differed in their rulings from the *Chachamim*. The *Mishnayot* continue by listing each of those cases. The names of these *dayanei gezeirot* were *Admon* and *Chanan ben Avshalom*.

Rabbeinu Tam (*Tosfot* s.v. *shnei*) asserts that the name of the second judge must read *Chanan ben Avshalom* as apposed to *Chanan ben Avshalom*. The rational presented appears to be as follows: Firstly, according to *R' Meir* (*Sanhedrin* 103b) *Avshalom* (from *sefer Shmuel*) has no place in the world to come. This would qualify him as a *rasha*. Secondly, the *Gemara Yoma* (38b), quoting the *pasuk* “The name of the wicked will rot” (*Mishlei* 10:7) explains that we do not use the names of *reshaim* when naming children.³⁰ Consequently, the person cited in this *Mishnah* cannot be named *Chanan ben Avshalom*.³¹

At first glance this line of reasoning may appear a little strange. The *Rabbeinu Tam* stated with absolute confidence as to the correct version of the *Mishnah* just because it was not appropriate to give a child the same name as *rasha*? Maybe his parents made a mistake? How could *Rabbeinu Tam* make this claim with such certainty?

³⁰ This is *Rashi's* explanation of the phrase “לא מסקינן בשמייהו”. *Rashi* also explains that “the names of the wicked will rot” as they will not be used and waste away as an iron utensil slowly rusts away when left idle. The *Maharsha* explains that the idea presented in the *Gemara* is learnt since the *pasuk* after mentioning “the **memory** of the righteous is blessed” makes reference specifically to the **name** of the wicked and not just their memory.

³¹ The *Rabbeinu Tam* does continue by bringing a source for the name *Avshalom*.

A closer reading of the above *Gemara Yoma* sheds much light on the reasoning of *Rabbeinu Tam* and on names in general. There the *Gemara* continues by questioning this idea that we do not use the names of *reshaim* when naming children. It follows with a story of a young child name *Doeg* the same name as the *rasha* in *sefer Shmuel*. The response of the *Gemara* is to focus on the end of the story, where the child suffered an unfortunate end.

Rabbeinu Channanel provides a tremendous explanation to the above dialogue. The *Gemara* is not telling us that it is not the “proper thing” to give the child the same name as a *rasha*. Nor is avoiding giving the child that name a round-a-bout way of trying to punish the *rasha*. *Rabbeinu Channanel* explains that this *Gemara* is teaching us that the implication of “the name of the righteous will rot” is that a person with such a name cannot succeed.

In Jewish thought names are not just agreed referential tools. A name rather reveals much about the essence and potential of the named object or person.³² For example, the *Ohr Gedalyahu* explains that *Adam’s* task, when naming the animals, was to identify their very essence. Naming a child is a difficult task and heavenly assistance is provided when doing so. Giving a child a name of a *rasha*, a “rotting” name, would significantly and negatively impact that child.

This explains why *Rabbeinu Tam* was so adamant that the *dayan*, this giant in the judicial system, was named *Chanan ben Avshalom*. For such a position to be held by a person named *Chanan ben Avshalom* would have been impossible.³³

³² For example, see *Gemara Yoma* 83b where the *R’ Meir* was rightly cautious in his dealings with an individual, because of his name. See also *Sichat Mussar* (60)

³³ One could suggest an alternative reason could simply be that as we avoid mentioning the names of *reshaim* had his name be *Chanan ben Avshalom* then the *Mishnah* would have just written the name *Chanan*. (This is the case on other instances where a parent is a *rasha*.) Yet this line of reasoning would

- Regarding the previous question, is the law different if he has more than one brother? (ב' ר') (ב' ר')
- If two unrelated people married two sisters but were not sure who married who, what should they do? (ב' ר')
- Regarding the previous question, what should their brothers do if they then die (without any children)? (ב' ר')
- Regarding the previous question, is the law different if one of the husbands had more than one brother? (ב' ר')
- Regarding the previous question, is the law different if both the husbands had more than one brother? (ב' ר')
- In general, on which brother does the responsibility of *yibum* initially lie? (ב' ר')
- What is one suspected of doing if he is obligated to divorce a woman he married? (ב' ר')
- If witnesses come with news that a women’s husband was killed, are they allowed to marry his wife? (ב' ט')
- What other two cases share the same law as the previous question? (ב' ט-י')
- What are the two exceptions to the answers for the previous two questions? (ב' י')
- If two brothers marry two sisters and then die (without any children) can the two remaining brother perform *yibum*? (ב' יא')
- What is the law if they both go ahead and perform *yibum*? (ב' יא')
- Regarding the previous case:
 - Is the law any different if one of the remaining brothers is a relative of one of the widowed sisters (*issur ervah*)? (ב' יג')
 - What is the law if one of the remaining brothers has an *issur kedushah* with respect to one of the widowed sisters? (ב' יג')
 - What if one of the remaining brothers has an *issur ervah* to one of the sisters and the other brother has an *issur ervah* to the other? (ב' יג')
- In which previous *Mishnah* did we see a case relating to the laws derived from the previous set of questions? (ב' יג')

Yevamot

- What are the fifteen relatives that are exempt from *yibum*? (א: א)
- What is a *tzarah* and when are they also exempt for *yibum*? (Careful) (א: א)
- Provide an example of how a *tzarah* of a *tzarah* can also be exempt from *yibum*. (ב: א)
- Provide an example of how one of the *tzarot* of one of the relatives in the first *Mishnah* could indeed be obligated for *yibum*. (ב: א)
- What are the six relationships forbidden to both brothers? (ג: א)
- Can one marry a *tzarah* of one of these relatives? (ג: א)
- Who argues with the principle brought in the first *Mishnah* and what does he argue? (ד: א)
- List two implications of this dispute. (ד: א)
- What are the cases brought of “*eshet achiv shlo haya b’olamo*”? (ב: א-ב)
- Who argues on the second case and why? (ב: ב)
- What is the law regarding the two sisters that married two brothers, and then the both brothers passed away, with respect to the third remaining brother? (ג: ב)
- What is the exception to the answer to the previous question? (ב: ג)
- What is an *issur mitzvah*? (ב: ד)
- What is an *issur kedushah*? (ב: ד)
- What is the law regarding *yibum* for a relationship defined as an *issur mitzvah* or *issur kedushah*? (ג: ב)
- Is a brother that is a *mamzer* required to perform *yibum*? (ב: ה)
- What should one do if he married one of two sisters, but is unsure who he married? (ב: ו)
- Regarding the previous question, what should his brother do if this person then dies (without any children)? (ב: ו)

Nedarim

Introduction to Nedarim

David Bankier

In general there are two forms of *nedarim*. One is where one volunteers to offer a sacrifice in the *Beit Ha'Mikdash* – *nidrei hekdesh*. The second is where a person forbids himself from gaining any benefit from a particular object – *nidrei issur*. It is this latter category of *neder* that is the subject of this *masechet*.

Nidrei issur is learnt from the following *pasuk*:

If a man makes a vow to *Hashem*, or makes an oath to obligate himself he must not break his word. (*Bamidbar* 30:3)

Despite the many detailed *halachot*, the *Gemara* (*Nedarim* 22a) is quite critical of one who makes a *neder*:

It was taught in a *beraitah*: *R' Natan* said, if one makes a *neder*, it is as if he built a *bamah* (an altar outside the *Beit Ha'Mikdash*), and one who fulfils it, it is as if he offered on [the *bamah*] a *korban*.

One may ask, if making *nedarim* is problematic, why then is the fulfilment of the *neder* compared to offering a *korban* outside the *Beit Ha'Mikdash*?

The *Kli Yakar* (*Bamidbar* 30:3) explains as follows. There are two situations in which one may make a *neder*. The first can be in a fit of anger, where in the heat of the moment a person blurts out a *neder*. The second is where one is cool, calm and collected and consciously decides to make a *neder*.

imply that *Chanan's* father would have been a *rasha* and not simply shared the name with that *rasha*.

It is this latter category which the *Chachamim* had the insight into the motivation of one that makes such a *neder*. The *Chachamim* perceived that such a person is extremely haughty, by separating themselves from the rest of the community and forbidding for themselves that which is permissible to all others. Indeed elsewhere the *Gemara* (*Sotah* 4b) treats haughty individuals as if they have built an individual alter outside the *Beit Ha'Mikdash*.

Yet as there are two circumstances under which one can make a *neder* it is not immediately obvious why a person made a *neder*. The *Kli Yakar* however explains that if someone indeed fulfils the *neder* then we know that this person belongs to the latter category. This is because, if the *neder* was formulated at a time of anger, once the person cools down, he would surely go to a *Chacham* to “undo” the *neder*. If however the *neder* was fulfilled then it is clear that the *neder* was motivated by pride. The *korban* was offered up on the *bamah*, the very purpose for which this *bamah* was constructed.

Revision Questions

daunting. We are only judged based on how we measure up compared to our own potential. However we can never know what our potential is and when we have reached it. No matter what we have achieved, there is always more that can be done.

Brit Millah
Nedarim (3:11)
David Bankier

A majority of the third *perek* dealt with the law that when interpreting the terms of a *neder* we see what is generally implied by people when they use such terms. The final *Mishnah* in the *perek* mentions that if a person makes a *neder* against gaining benefit from *mulim* (circumcised people), the term would only include Jews, whether or not they were circumcised, as that is what is implied by the term.

This leads the *Mishnah* on to a discussion about the greatness of the *mitzvah* of *brit millah*, illustrating the point with various proofs, e.g. the *mitzvah* overrides *Shabbat*. One such case is as follows:

R' Yishmael said, great is the *mitzvah* of *millah* for thirteen covenants were made over it.

The *Rambam* explains that in the *parasha* where *Hashem* instructs *Avraham* in this *mitzvah*, the words “*brit*” (covenant) or “*briti*” (my covenant) is repeated thirteen times.

The *Tosfot Yom Tov* asks a number of questions. Firstly not every instance where the word *brit* is mentioned implied the formulation of a covenant. Furthermore what is *R' Yishmael* adding by saying that thirteen covenants were made through the *brit millah*? Surely, one covenant would be enough to demonstrate its importance!

The *Tosfot Yom Tov* suggest that the mentioning of *brit* thirteen times indicates the power of this *brit* as being equivalent to and as great as the *brit* that was made over the thirteen *midot*. After *Hashem* instructed *Moshe* in the thirteen attributes of mercy (which we recite when we say *slichot*) the *pasuk* continues “Behold, I formulate a covenant” (*Shmot* 34:10). The *Gemara* (*Rosh Hashanah* 17b) explains that a covenant was formed that

whenever *Am Yisrael* prayed and recited these thirteen attributes of mercy, none of the attributes would go unanswered. The *Tosfot Yom Tov* explains, the *Mishnah* is teaching us that the *mitzvah* of *brit millah* is so powerful, like the thirteen attributes of mercy, that it “never goes unanswered”.³⁴

The *Ben Yehoyada* explains the significance of the number thirteen in a different manner. Thirteen is the numerical equivalent of the word *echad* (one); he provides two explanation for this. The first is that the *brit* testifies to the oneness of *Hashem*. Other beliefs maintain that there are two separate divinities, one good and the other evil. The *Gemara* (*Sanhedrin* 39a) recounts that consequently a particular sorcerer maintained that the upper half of the body belonged to the good one, while the bottom half, the region of waste, belonged to the evil one. The *brit millah*, a means of spiritual elevation, is performed precisely in the bottom half of the body to reaffirm *Hashem's* Oneness. The second significance of *echad* refers to the oneness or separateness of *Am Yisrael*. The *brit millah* is the *mitzvah* that has kept *Am Yisrael* separate from mixing with the other nations – “*goi echad ba'aretz*” (See *Sanhedrin* 39a).

The *Tiferet Yisrael* also makes reference to the connection between thirteen and *echad* taking a position in between the two explanations just presented. He explains that this *brit millah* resembles a oneness between *Am Yisrael* and *Hashem*. It presents an indelible mark the we are His servants forever.

³⁴ The *Tosfot Yom Tov* continues to explain that both the thirteen attributes of mercy and the thirteen mentioning of *brit* are divided into two groups – of three and ten. By *brit millah* the split is textual, and by the *midot* the division is the three words that refer to *Hashem* that may not be erased and ten regular words. By *brit millah* the order is the group of ten, then three, while by the *midot*, it is three then ten. He explains that the grouping of three is more elevated (as by the names of *Hashem* in the *midot*). By *brit millah* the spiritual movement is one of elevation thus the transition from ten to three. Conversely by the attributes of mercy, they are the means of bringing divine mercy down, hence the transition from three to ten.

equal opportunities. There is almost a consensus that in an ideal world, there will be an egalitarian society based on merit and that no-one's opportunities in life should be limited by their status.

However lets take a closer look at the justice of this notion of equal opportunity. People are born with different talents and skills which limit their ultimate status. While we can learn new skills and improve ourselves, many of our attributes are ours from birth, just like our lineage.

How can we reconcile our Western notions of equality with Judaism's apparent class system. One answer is highlighted by the *Gemara*. The *Rabbanim* teach us that honours are to be bestowed according to a person's accomplishments in life and nothing else - “The *Mamzer* who is a *Talmid Chacham* takes priority over the *Kohen Gadol* who is ignorant” (*Horayot* 13a). *Hashem* takes into consideration one's circumstances when assessing one's achievements and ultimately one's merit. We are ultimately assessed based on the extent to which we have reached our potential.

R' Moshe Feinstein touches on this issue in a comment on the *Rashi* to *Shmot* (6:26). In this *pasuk*, *Aharon's* name is mentioned before *Moshe's* name. *Rashi* notes that sometimes in the *Torah* *Moshe's* name precedes *Aharon's* name and sometimes *Aharon's* name precedes *Moshe's* name. *Rashi* comments that this shows that *Moshe* and *Aharon* were equally great. R' Moshe Feinstein asks how this can possibly be true. The *Torah* itself testifies that *Moshe* was the greatest prophet of all time (*Bamidbar* 12:7). R' Moshe Feinstein answers that just like *Moshe*, *Aharon* achieved the absolute maximum of his potential. *Hashem* measures our merit based purely on how well we achieve our potential taking into account our unique circumstances.

On the one hand, this is quite a reassuring idea. We will not be judged based on how we compare to other people because we all have different circumstances. On the other hand, this can be quite

Social Class System

Kidushin (4:1)
Allon Ledder

One of the main themes in the beginning of the final chapter is the apparent class system in Jewish society. For example, the *Mishnah* (4:1) lists ten genealogical classes of people who returned to *Eretz Yisrael* after the Babylonian exile and explains which of those classes are allowed to intermarry and which are not. The *Mishnah* (3:12) lists those women which are forbidden to marry *Kohanim* and the *Kohen Gadol*. The *Mishnayot* (3:13 and 4:8) deal with *Mamzerim* – who, despite being the children of two Jewish parents, are excluded from marrying into the congregation. In almost all of these cases, one's status follows directly from the status of one's mother or father (3:12).

Some of these restrictions on marriage still apply today. *Kohanim* are still prohibited from marrying divorcees. There are many sad cases of *Mamzerim*, who, through no fault of their own, are severely limited in who they can marry. It seems they are locked into a social class due to accident of birth.

This theme is also evident in *parashat Bamidbar*, which describes the encampment of the tribes of *Bnei Yisrael* around the *Mishkan* in the desert⁵⁴. There is a great rigidity about the encampment – each individual's distance and direction from the *Mishkan* was purely a function of their lineage. Those who were lucky enough to be born a *Kohen* or a *Levi* would camp closest to the *Mishkan* and would be privileged to serve in the *Mishkan*.

This seems quite foreign to our 'modern' notions of equality. Western society believes in the idea that everyone should have

⁵⁴ Some of these ideas are based on 'Jewish Meritocracy' - an article by Rabbi Noson Weisz, *parsha Bamidbar* 2006. (see: www.aish.com/torahportion/mayanot/Jewish_Meritocracy.asp)

Benefiting from *Mitzvot*

Nedarim (5:4-5)
Yehuda Gottlieb

The *Mishnah* in *Nedarim* (5:4-5) mentions that if one makes a vow that his friend is "*cherem*" to him, or that he is "*cherem*" to his friend, they are forbidden to derive benefit from common facilities or property within their town. They are however able to derive benefit from facilities of *Olei Bavel*, that is, property that was designated for public use of those who returned to *Eretz Yisrael* from the *Babylonian* exile.

The *Mishnah* continues by mentioning some examples of both properties that are categorised as belonging to '*Olei Bavel*', including *Har Ha'Bait* and water cisterns in the middle of the road, and those that are categorised as belonging to the town – such as, the town square, the synagogue and *sefarim*.

The *Ran* understands that the *sefarim* referred to by the *Mishnah* are the *sefarim* which are used for the communal reading which took place at the synagogue. It is for this reason it is forbidden for both the person making the vow and the subject of the vow, as they are deriving benefit from an item that is common ('belongs') to the two of them (being members of the community).

Tosfot and the *Rosh* understand that these *sefarim* refer to *sifrei kodesh* purchased with communal funds and are set aside to be used for study by the public.

The *Rashba* (see *Bedek Ha'Bait, Yoreh Deah* 224) however rules that one cannot forbid *sifrei kodesh* to his fellow, because studying from such *sefarim* is a *mitzvah* and the benefit of performing a *mitzvah* cannot be prohibited. This is a concept found in *Masechet Rosh Hashanah* (28a) which introduces the principle of *Mitzvot Lav Lehenot Nitnu* (i.e., *mitzvot* were not

given to Israel for the purpose of our deriving benefit from their fulfilment). The *Gemara* states that if one is bound by a vow prohibiting him from deriving benefit from his fellow, the fellow is permitted to blow *shofar* for him. Additionally, he may fulfil the *mitzvah* with a *shofar* from which he has vowed not to gain benefit.

According to the way the *Tosfot* and *Rosh* understand our *Mishnah* it seems that the benefit of the *mitzvah* (of studying *Torah*) is being prohibited by the vow - a ruling inconsistent with the *Gemara* in *Rosh Hashanah*!

R' Avraham Min HaHar solves this apparent contradiction. The principle of *Mitzvot Lav Lehonot Nitnu* means that the performance of a *mitzvah* is in and of itself not considered a 'benefit' that can be prohibited by a *neder*. The reason is because one is not doing the *mitzvah* for any personal benefit, but rather fulfilling *Hashem's* commandment. However, if one derives personal benefit from something or someone while fulfilling a commandment – the *neder* is deemed to be violated. Therefore, the case in *Rosh Hashanah* is deemed to be purely the performance of a *mitzvah* (blowing the *shofar*), and since the parties are not gaining any personal benefit they may blow the *shofar* for one another.

However, the case of learning out of *sifrei kodesh* is different. Learning *Torah* is intensely gratifying, and one does gain personal benefit from *Torah* study. This is evident from the fact that a mourner is forbidden to learn *Torah*, and that all people are forbidden to learn *Torah* on *Tisha B'Av*. This is because the study of *Torah* gladdens the heart and spirit, and gives us personal benefit. Since this *mitzvah* is bound with personal satisfaction it is an exception to the general rule of *Mitzvot Lav Lehenot Nitnu* and therefore a *neder* is able to render these communal *sifrei kodesh* as forbidden.

The *Tosfot* points out a difficulty in *Rashi's* understanding, explaining that if a man gives a woman of a gift for the purpose of *kidushin*, they have to be engaged in discussion about getting married otherwise it is meaningless. The *Ritva* answers this difficulty, explaining that since they have already undergone *shiduchin*, part of the concern is that perhaps they agreed that he would send her a gift later for the purpose of *kidushin*.

Nonetheless the *Tosfot* provide a different explanation. They understand that since the prevalent custom in the area is that gifts are only sent after *kidushin*, the concern is that *kidushin* has already been performed at an earlier date. Furthermore, the *Ritva* explains that the lack of witnesses does not abate our concern, as the witnesses may have since traveled overseas. The *Rambam* who understands similarly explains that in such a case, despite the fact that the prevalent custom is to send gifts after marriage, the requirement for a *get* is still only on the level of a doubt. The *Haghot Maymoniyot* explains that this is because we are also still concerned for the minority of that place who send gifts prior to marriage. The *Ritva* points out that according to this understanding, the concern is still present even if the gifts were not sent with witnesses.⁵³

One may ask, according to the *Tosfot*, why not simply ask him or her if they had already performed *kidushin*? To this the *Mordechai* explains that in this case the husband is arguing that *kidushin* was performed while the wife denies it.

In summary we have two understanding of the concern regarding gifts sent in a place where gift are not normally sent prior to *kidushin*. The first, *Rashi's*, is that the gift itself may be an act of *kidushin*. The second, *Tosfot's*, is that the gifts may be indicative that *kidushin* might have already been performed.

⁵³ See the *Ritva* for further differences.

Pre-Marital Gifts

Kidushin (2:6)
David Bankier

If a man attempts to perform *kidushin* with an object of monetary value less than a *prutah*, *kidushin* has not been performed. The *Mishnah* (2:6) taught that this is still the case even if the gentlemen subsequently sent her gifts of a far greater value than this minimum requirement. The *Mishnah* explains that the reason why these gifts do not help is because they were presumably sent to her under the assumption that the original transaction affected the *kidushin*. Consequently these gifts were sent simply as gifts and not for the purpose of *kidushin*.

A discussion in the *Gemara* ensues regarding the significance of gifts given prior to married. The *Gemara* concludes that in a place where in general gifts are given prior to *kidushin*, we are not concerned. However, in a place where gifts are given only after *kidushin* we are concerned.

The *Rishonim* debate the exact point of concern. *Rashi* explains that the *Gemara* is discussing a case where the couple have undergone *shiduchin*. *Shiduchin* refers to where the couple have agreed to marry but as yet have not even undergone *kidushin*. Today, we would commonly refer to it as engagement. During this period the man sent the woman these gifts⁵². *Rashi* explains that we are concerned having sent the gifts with two witnesses, he intended that the gifts would be for the purpose of *kidushin*. Consequently if someone else consequently performs *kidushin*, we are concerned that *kidushin* might have been already performed by the original man by virtue of the gifts and thus we require a *get* from both men.

⁵² The *Ritva* explains that the case must refer to *shiduchin*, otherwise we would never be concerned that a man sending a single woman a gift would be for the purpose of *kidushin*.

Nedarim affecting others – who is liable?

Nedarim (7:9)
David Bankier

During *nedarim* we have learnt that through a *neder* one can make his own property forbidden to another person. This requires further analysis.

The *Sefer HaChinnuch* explains as follows:

...We have the power to make forbidden what is originally permitted. For the *Torah* taught us... “to tie a bond about himself, he shall not profane his word (*lo yachel d'varo*)” (*Bamidbar* 30:3). Thus the matter is similar to *hekdesh*, consecration, about which we find in the *Torah* that a man has the power to consecrate what belongs to him by the words of his mouth, and then it becomes forbidden at once to both him and to all the world...

At first glance, it would appear that the source cited by the *Sefer HaChinnuch* would bind an individual who makes a *neder* applying to himself. However, if one makes a *neder* forbidding another person, what is that person violating if he indeed proceeds to get benefit from that object?

Matters are clarified when analysing a *Mishnah* (7:9). The *Mishnah* describes a case where the husband made *assur* any benefit derived from him (till *Pesach*) if his wife visited her father's house (till the later date, *Sukkot*). The *Mishnah* describes the scenario of her visiting her father's house after deriving benefit from her husband, thereby retroactively causing her to breach the *neder*. The conclusion is that the prohibition of *lo yachel d'varo* has been violated. Yet who has violated this prohibition?

The *Ran* (*Nedarim* 15a) explains that clearly the husband (who formulated the *neder*) has not violated the prohibition for he did not do anything that was prohibited. Rather, in this case, the wife would be liable because she breached the *neder*, even though she

did not make the *neder*. “*Lo yachel d’varo*”, explains the *Ran*, is understood as meaning “the word” should not be breached, regardless of who formulated it. He further supports this idea by explaining that we find by *hekdesh*, that if someone consecrates something to the *Beit Ha’Mikdash*, and another person comes and eats it, that second person has transgressed *lo yachel d’varo* and is punished (*Niddah* 47a).

The *Rambam* (*Nedarim* 10:12), when discussing this case writes: “if she goes [to her father’s house] prior to *pesach* and he [actively] benefits her prior to *pesach*, **he** [is punishable] by lashes”. It is understood that in this case the husband is punished because he actively breached his own *neder*³⁵. The question is, is the wife also punished? The absence of any mention of it led the *Ran* to believe that the *Rambam* maintained that she is not punished for she did not formulate the *neder*; thereby understanding *lo yachel d’varo* in its simplest sense.

The *Kesef Mishnah* argues that the *Rambam* maintains, like the *Ran*’s own position, that the wife is clearly also punished and that this point is obvious and did not need mentioning. The *Rambam* was focusing on the more novel point that the husband can transgress this prohibition by actively benefiting her, when ordinarily one is not liable if he feeds another a prohibited item.

The *Lechem Mishnah* however argues that what the *Rambam* ruled earlier (*Nedarim* 5:1) appears to confirm the *Ran*’s understanding: If *Reuven* makes a *neder* prohibiting benefit from *Shimon* it is indeed prohibited to *Shimon*. If however *Shimon* goes and gets benefit from *Reuven* his is not punishable by lashes “because he did not say anything”.³⁶

³⁵ Even though it appears that the *Ran* argues that there is no transgression in his involvement.

³⁶ One understanding of the exemption of lashes, while nevertheless being *assur*, is because the *Rambam* maintains that only *issurim* that are explicitly stated and not learnt out from a *drash* are punishable by lashes. As the

However, for all other preparations, an agent could have done them for him, because they did not impact on their *kavod Shabbat* as much.

kidushin is from the *Torah*, so why then does the Gemara bring cases of *hechsher mitzvah* to illustrate that point?

Most *Rishonim* hold that the preparing for the *Shabbat* is not a *mitzvah* in its own right. Rather it is a *hechsher mitzvah* to the *Shabbat* itself. However, the *Rambam* holds that preparing for *Shabbat*, is in itself part of the *mitzvah* of *kavod Shabbat* (which is a *mitzvah* from the *Torah*). Therefore, according to the *Rambam* both the statement and the illustrations refer to *mitzvot d'oraita*.

In the example given by the *Gemara* we see that each *Amora* would do one thing in order to prepare for *Shabbat*. Why did they only do one thing? Surely their dinner was going to be consist of more than just one fish, or meat? If we say that there is a greater *mitzvah* if a person does something himself as opposed to having an agent doing it for him, then why did these *Amoraim* not prepare the whole *Shabbat* meal?

The *Magen Avraham*, when referring to *bedikat chametz*, states that a person must only search one room, and then since he has begun the *mitzvah*, this concept of “a greater *mitzvah* done by himself, rather than an agent” has been fulfilled. Therefore, in the case of preparing for *Shabbat*, just by beginning the work, and preparing fish for *Shabbat* on one’s own, is enough, and an agent can finish up the *Shabbat* preparations with no detriment to the original *mitzvah*. The *Shulchan Aruch HaRav* however, states that the case that the *Magen Avraham* was referring to with regards to *bedikat chametz* was specific to a sick individual. In all the other cases, the *Shulchan Aruch HaRav* states that one must complete the whole *mitzvah* in order to also fulfill the concept of “*mitzvah bo, yoter m'bshlucho*.” Then why did these *Amoraim* only do one particular action in preparing for *Shabbat*? This is because they were searching for those things, that would give them a special *Oneg Shabbat* when they ate them. It was only these foods that would give them this *oneg*, and these that they had to prepare with regards to them having a greater *mitzvah* than anyone else.

How can we explain the opinion of the *Kesef Mishnah*? Perhaps one could suggest that the difference in this case to the classic case cited by the *Lechem Mishnah* is that this case involved a condition. Elsewhere the *Rambam* (*Nedarim* 2:1) writes that one can accept a *neder* if another person makes it for him and he responds “*amen*” or anything equivalent to it. Perhaps, in this case, the *Kesef Mishnah* understood that by the wife fulfilling the condition (visiting her father’s house) she affectively accepts the *neder* herself (like responding *amen*). Therefore if she then breaches the *neder*, in this case, it is as if she breached her own *neder* and is punishable with *lashes*.

prohibition applying to another is not explicitly stated, rather learnt from a *drash*, it is not punishable.

Hatarat Nedarim – Annulment of Vows

Nedarim (9)
Allon Ledder

The *Torah* attaches extreme gravity to our words. As *Shlomo HaMelech* says: “death and life are in the power of the tongue” (*Mishlei* 18:21). This point is illustrated in the laws relating to *lashon hara*, *rechilus*, *ona'at devarim* and *leitzanut*. Another example is making a vow (a *neder*). When making a *neder* the spoken word has the force of *Torah* law.

The *Chachamim* were strongly opposed to making *nedarim*. Therefore there is a custom to say “*bli neder*” (without a vow) before undertaking certain obligations. People who have made *nedarim* are encouraged to have them annulled (*hatarat nedarim*).

The ninth *perek* of *Masechet Nedarim* discusses some of the *Halachot* relating to *hatarat nedarim*. The person who made the *neder* appears before a *Torah* scholar or a panel of three laymen. The person must specify the *neder* to at least one member of the panel (*Yoreh Deah* 228:14). The *neder* is not automatically annulled. An “opening” must be found – a consequence of the *neder* that is foreseeable and objectionable. The *neder* can only be annulled if the person can honestly say that had they taken this consequence into account they would not have made the *neder*³⁷. If the person cannot honestly say this then the annulment is of no effect and the *neder* remains in force.

The *Chachamim* regard it as an extremely serious matter to approach the days of judgment with a violation of a *neder*. Therefore we do *hatarat nedarim* twice during this time:

³⁷ To formally annul the *neder*, the panel or scholar repeats the formula “it is permitted to you” three times (*Yoreh Deah* 228: 3,7).

A “Better” Mitzvah

Kidushin (2:1)
Yehuda Gottlieb

At the beginning of the second *perek* of *Kidushin*, the *Mishnah* rules that a man is able to betroth (*mekadesh*) a woman by himself or through an agent. The *Gemara* (41a) states:

Now that he is able to betroth a woman with an agent, is the case of betrothing ‘by himself’ needed? *Rav Yosef* answered – there is a greater *mitzvah* when he does it, as opposed to the agent.

Most *Rishonim* argue about exactly what *mitzvah* is being discussed by this passage of *Gemara*. The *Ran* (*Ketubot* 2a) states that the *mitzvah* that is referred to here is one of *p’ru urvu* (bearing offspring). He states that the whole reason marriage is instituted is to fulfill the *mitzvah* of *p’ru urvu* and that *kidushin* is a *part* of that *mitzvah*. The *Rosh* (*Ketubot* 17) however disagrees with this opinion. He states that it is not necessary to marry in order to fulfill the *mitzvah* of *p’ru urvu*⁴⁹. Rather, his opinion is that *kidushin* is only a *hechsher mitzvah* (preparation) to the actual *mitzvah* of *p’ru urvu*. The *Rambam* differs from these opinions as well, and states that there is a separate *mitzvah* of *kidushin* that is based on *p’sukim* from the *Torah*.⁵⁰

The *Gemara* then continues to bring cases that highlight how certain Rabbis would prepare for *Shabbat* themselves, rather than getting others to do work for them.⁵¹ The example which is brought in this context is puzzling according to the *Rambam*’s opinion. This is because the example seems to be outlining cases of *hechsher mitzvah*. Now the *Rambam*, stated that the *mitzvah* of

⁴⁹ In certain instances, one is able to fulfill the *mitzvah* by having a concubine (see *Sefer Bereishis*)

⁵⁰ *Devarim* 24:1

⁵¹ The *Gemara* notes that *Rav Safra* would sever the heads of the animals that were to be eaten and *Rava* would salt his own fish.

Blessed are you *Hashem*... Who has sanctified us with His commandments, and has commanded us regarding forbidden unions; who forbade betrothed women to us, and permitted women who are married to us through canopy and consecration. Blessed are You *Hashem*, Who sanctifies His people Israel through canopy and consecration.

The reference to *issurim* and *mutarim* is now completely relevant. The extended text tells the story of the inherent difference between *ishut* (Jewish marriage) and *znut* (promiscuity); it is this fixed middle stage. *Kidushin* itself represents the very sanctity of *Am Yisrael*. That is why it ends with *mekadesh yisrael*.⁴⁸

⁴⁸ Rav Rosensweig uses this to explain the *Rambam's* opinion that there is *mitzvah* of *kidushin* (see *ketoret Hilchot Ishut*). This would appear strange. Why should there be a *mitzvah* on a *kinyan* that is *oser*? If the *kinyan* is understood as a solid choosing of such importance, the *mitzvah* is well understood.

- on the last day of *Elul*, which is *erev Rosh Hashana*³⁸; and
- the *Kol Nidrei* service on *erev Yom Kippur*.

However these services do not comply with all of the *Halachot* relating to *hatarat nedarim* as described above.

On *Erev Rosh Hashana*, we perform *hatarat nedarim* in front of a panel of three people, (this complies with one requirement of the *Halacha*). However, we do not specify each if the *nedarim*. The declaration that we recite specifically says that it is impossible to specify the *nedarim* because there are so many. Accordingly, we cannot not find appropriate “openings” to justify annulling each of the *nedarim*. Therefore the *hatarat nedarim* of *Erev Rosh Hashana* is not a *halachic* annulment, but only a means of repentance for the sin of breaking a *neder* (*Artscroll Rosh Hashana Machzor*, p3).

The *erev Rosh Hashana hatarat nedarim* also states that future *nedarim* should be of no force. This prior nullification does not free the person from the obligation to keep their word, it only reduces the severity of the sin. The prior nullification is only effective if the person making the *neder* forgets it while making the vow. If they had the nullification in mind and made the *neder* anyway, the *neder* is binding (*Yoreh Deah* 211:2).

The purpose of *Kol Nidrei* is to annul *nedarim* and *shvu'ot* that were made and violated during the previous year. According to this view, *Kol Nidrei* is phrased in the past tense, and refers to *nedarim* ‘from the past *Yom Kippur* until this *Yom Kippur*’. As with the *hatarat nedarim* of *Erev Rosh Hashana*, *Kol Nidrei* does not satisfy the *Halachic* requirements because the *nedarim* are not specified and there is no mention of a legitimate “opening” or consequence to justify the annulment of each *neder*. On that basis, *Rabbeinu Tam* strongly objected to *Kol Nidrei* being in past tense.

³⁸ An allusion to this can be found in the *pasuk* dealing with *nedarim* – *Lo yachel devaro kechol* (He must not break his word (*Bamidbar* 30:3)); the last letters of each word in this phrase form the word *Elul*.

Rabbeinu Tam suggested that *Kol Nidrei* should rather be a declaration to nullify in advance any future *nedarim*. Therefore, according to *Rabbeinu Tam*, the *Kol Nidrei* text should be phrased in the future tense – “from this *Yom Kippur* until the next *Yom Kippur*”. The authorities are divided as to which version is correct, and some authorities suggest that it is preferable to accommodate both views.

The fact that *Rosh Hashana* and *Yom Kippur* both begin with a form of *hatarat nedarim* reinforces the seriousness of vows and more generally, reminds us to be particularly vigilant with the words that we speak.

acquires a *kinyan issur* in that the wife is prohibited to all other men by virtue of being an *eshet ish*.⁴⁷

Other *Rishonim* elaborate further explaining that the parallel drawn to *Sde Efron* is for the purpose of teaching that the language of *kicha* implies a transaction or acquisition using money, and certainly not to equate a wife with property.

At first then this appears strange – why going through such mundane motions to bring about something so sacred. The *Maharshal* points out the *kinyanim* do indeed exist in the world of *kedushah* (which is also referred to as *kidushin*). For example the concept of a *kinyan* is found with respect to *ma'aser sheni*. Consequently a *kinyan* in *kidushin* is not necessary novel. Nonetheless, why is it employed?

The *Rambam*, when beginning the laws of marriage (*Ishut*) writes as follows:

Prior to the giving of the *Torah*, a man would meet a women in the marketplace. If he wanted her and she wanted him, he would bring her home, have marital relations privately and she would be his wife. Once the *Torah* was given, *Yisrael* was commanded that if a man wanted to marry a women he would first “acquire” here in front of witnesses. After that she could be his wife...

Matan Torah brought with it the innovation of this intermediate stage prior to marriage – *kidushin*. It also brought the novelty that *kinyan* can affect the world of *issurim*. Why? Rav Michael Rosensweig explains that these structured and monetary motions function as a solid choosing of one’s spouse in contrast to the whimsical means of partnering that preceded it.

Rav Rosensweig continues to explain that this is the reason for the strange text of the *bracha* recited on *eirusin*:

⁴⁷ See perhaps a similar understanding in the *Ran Kidushin 2a s.v. Ha'Isha*

Kidushin

Kidushin with Money

Kidushin (1:1)

David Bankier

A woman is “acquired” in three ways in three ways... with money, a contract or marital relations.

Kidushin (1:1)

The above *Mishnah*, the first of the new *masechet*, discusses the various means of performing *kidushin* – halachic engagement. Traditionally *kidushin* and *nisuin* (marriage) were distinct ceremonies with a significant break in time between them. Nowadays however, both *kidushin* and *nisuin* are performed together.

The first *Mishnah* however leaves us with a number of questions. What exactly is being achieved by *kidushin*? Why is it performed in such a mundane manner? Why does the *Mishnah* use the language of “acquisition”? Is *kidushin* really equivalent to purchasing a property?!

Indeed when finding a source for the use of money for *kidushin*, the *Gemara* draws a linguistic parallel between the *pasuk* describing a man “taking” a wife (“*yi’kach*”) and the *pasuk* that describes the transaction between *Avraham* and *Efron* when he purchased *ma’arat ha’machpela* (“*kach*”). This may lead some to believe that the *Gemara* is equating one’s wife with property.

The *Avnei Miluim* flatly rejects any such notion bringing multiple proofs that an *arusa* (a woman having undergone *kidushin*) is not anyone’s “property”. The reference to acquisition (*kinyan* and in other contexts *kinyan kaspo*) is not monetary, but rather termed “*kinyan issurim*”. In other words, through *kidushin* the husband

Hafarat and Hatarat Nedarim

Nedarim (10)

David Bankier

The beginning of the tenth *perek* sees the transition from learning about *hatarat nedarim* to *hafarat nedarim*. *Hatarat nedarim* refers to the process through which a person’s *neder* (vow) can be “undone” by a *beit din* or *chacham*, provided that a regrettable and foreseeable factor was not considered at the time of the *neder* (see the previous article). *Hafarat nedarim* on the other hand refers to a father’s or husband’s ability to suspend a *neder* made by his young daughter (*na’arah*) or wife respectively.

Through learning the laws of *hafarat nedarim* many differences between *hatarat nedarim* and *hafarat nedarim* have become apparent. At the end of the eighth *perek*, the *Bartenura* records one such difference:

The concept of *hafarah* only works if [the husband] says “*mufar lach*” like the language used in the *Torah*, because *hafarah* employed by the husband implies from this point onward [and] without reason as it says “he has broken (*hefer*) my covenant” (*Bereshit* 17:14). The *Chacham* however says “*mutar lach*, there is no *neder*, there is no *shvuah*” as he uproots the entire *neder*.

This distinction, that *hatarat nedarim* work retroactively to uproot the *neder* while *hafarat nedarim* is only effective from the point of *hafarah* and onwards, seems to be supported by a *Gemara* in *Nazir* (21b-22a). There the *Gemara* asks how exactly *hafarah* works – “*miaker aker*” (uproots) or “*migaz ga’yiz*” (cuts)? The *Tosfot* understand that the *Gemara* is asking whether or not it works retroactively like *hatarat nedarim*. The *Gemara*’s conclusion is that *hafarah* is “*migaz ga’yiz*” (cuts), which *Rashi* understand to mean that it is effective from the point of *hafarah* and onwards.³⁹ As the terminology *mutar* and *mufar* have very

³⁹ This also appears to be the opinion of the Rosh.

different implications, they are thus not interchangeable, and “*mutar lach*” is only used by the *chacham* while “*mufar lach*” is only used by the husband.

With the above said, the opinion of the *Rambam* is then surprising. Firstly he writes the *hafarah* completely uproots the *neder* “from its root” (*Nedarim* 13:2). Furthermore the *Kesef Mishneh* points out that when the *Rambam* writes: “For the father and husband do not *matir* like a *chacham* but rather uproots the *neder* from its outset”, it implies that *hatarat nedarim* performed by the *chacham* does not work retroactively. Aside from the problem already stated, the *Kesef Mishnah* points out that this implication flatly contradicts another statement of the *Rambam* (*Nezirut* 3) that suggests that the *Rambam* does agree that *hatarat nedarim* works retroactively.

The *Kesef Mishneh* explains the *chacham* and husband operate in two very distinct manners. As has been explained, in *hatarat nedarim* the *chacham* works with the person to determine a foreseeable factor that had it been considered at the time of the *neder*, the *neder* would never have been formulated. When the *chacham* is *matir* he is simply delivering a *halachic* conclusion that the identified consideration was indeed foreseeable and regrettable and thus the *neder* never got off the ground – it was a mistaken *neder*. In *hafarat nedarim* however, the *neder* the wife makes is a *neder*, yet through *hafarat nedarim* the husband uproots the *neder*. This explains how the husband is not “*matir* like the *chacham* but rather uproots the *neder*”, while leaving the understanding that *hatarat nedarim* works retroactively intact, since the statement of the *Rambam* here is referring the difference in function and not timing.

The *Kesef Mishneh* also explains that the *Gemara*’s question of whether that *hafarat nedarim* uproots the *neder* or is “*migaz ga’yiz*” is precisely this point. Unlike the explanation above, the *Gemara* is asking that after *hafarat nedarim* is it as if the *neder*

explanations presented by these *Rishonim*, differ slightly. By way of example, the *Ran* explains *R’ Yehuda* in the same way as *Rashi*. However, he understands *R’ Yosi* as being unsure whether stipulating that the *get* take effect immediately prior to death is valid. Accordingly, issuing a *get* under these circumstances could be seen as being effective immediately prior to death as instructed by the husband, in which case the wife will be put to death for adultery. Alternatively, this condition of the husband could be disregarded and the *get* takes effect retrospectively from the time of delivery, and the wife would not have committed a sin of adultery. Owing to this doubt, the wife must bring a *korban ashum talui*. The *Ran* concludes by claiming that *R’ Yosi* would agree that if the husband recovers, the wife would be put to death for adultery.

whereby we declare that the *get* only takes effect the moment before the husband's death, the wife is regarded as a "married woman in every regard" and subject to the punishment for adultery. However according to *R' Yosi*, who does not agree to the application of *Breirah*, every moment subsequent to the handing over of the *get* is potentially the moment prior to the husband's death, and her marital status is in perpetual uncertainty. Under these circumstances, the nature of any adulterous relationship is uncertain, and her punishment is to bring a *korban ashum talui* (which is brought when a person is unsure if they committed a sin whereby if committed inadvertently they would be required to bring a *korban chatat*). However, elsewhere *Rashi* (74a, "*R' Yosi*") explains that if the husband recovers from his illness the punishment is to bring a *korban chatat*, as the adulterous relationship is deemed inadvertent.

Many *Rishonim* disagree with *Rashi's* interpretation of the argument between *R' Yehuda* and *R' Yosi*. The *Rashba* and *Ran* question *Rashi's* explanation of *R' Yosi*, in the circumstance where the husband recovers, and maintain that the wife should still be required to bring a *korban ashum talui*, as at the time of her adulterous relationship, it could potentially have been the moment before the husband's death. Moreover, to change the punishment in the event of the husband's recovery confers an element of retroactivity, which, according to *Rashi*, *R' Yosi* does not recognise. *Tosfot* emphasises another implication of *Rashi's* interpretation of *R' Yosi*, where the husband dies from his illness and there are no issues regarding an adulterous relationship, but simply the question of the wife's status. There is no certainty of the moment prior to the husband's death when the *get* should take effect, and therefore, the status of the divorce is problematic. The logical extension of this would suggest an undesirable position where it would remain unclear if she is a divorcee or a widow.

In contrast to *Rashi*, many *Rishonim* understand that both *R' Yehuda* and *R' Yosi* agree to the application of the principle of *Breirah*. While sharing a common thread, the alternate

never existed (like *hatarat nedarim*) or it did exist but was absolved by the husband – "*migaz ga'yiz*"⁴⁰.

Therefore we have seen two understandings of a difference between *hatarat nedarim* and *hafarat nedarim*. Most *Rishonim* understand that *hatarat nedarim* is effective retroactively while *hafarat nedarim* is not. The *Rambam* on the other hand understand that both are effective retroactively, the difference is in the mechanism through which they take effect.

⁴⁰ The *Lechem Mishneh* adds to the *Kesef Mishneh* explaining that the term *migaz ga'yiz* means that the husband completely uproots only the elements of the *neder* that are between him and his wife hence the term *migaz* (cut or trim). For a full understanding see the *Lechem Mishneh* inside.

Nazir

Introduction to *Nazir*

Yehuda Gottlieb

A *nazir* is a person who has taken a vow of *nezirut*, obligating himself to take on certain restrictions not incumbent upon the rest of *klal Yisrael*. *Masechet Nazir* therefore follows on from *Masechet Nedarim* since the acceptance of *nezirut* is a *neder*. In other words, we move from a broader discussion about vows in the previous *masechet*, to describing a specific type of vow - that of a *nazir*.

There are a number of similarities between regular vows and a vow of *nezirut*. Both types of vows require a verbal declaration, and once said these declarations are legally binding. Likewise, both general vows and *nezirut* can be annulled by following certain processes (as discussed previously *hatarah* performed by a *Beit Din*, or *hafarah* performed by a husband or father).

There is however a major difference between these types of vows. A general vow will obligate the declarer to his own nominated parameters, while a vow of *nezirut* obligates its declarer to certain conditions which are specified by the *Torah*. These conditions include growing one's hair, abstaining from grapes and grape products, and not coming into contact with a dead body.

There is a *machloket* in the *Gemara* (*Ta'anit* 11a) about how a vow of *nezirut* should be viewed. *R' Elazar HaKappar* states that a *nazir* is a sinner, which is supported by the fact that a *nazir* must bring a *korban chatat* after his *nezirut* has finished. This is due to the sin of depriving himself from some pleasures in this world. However, *R' Elazar* seems to approve of someone taking on

The Fatal Condition

Gittin (7:4)

Shmoiki Berkowitz

The fourth *Mishnah* in the seventh *perek* of *Masechet Gittin* presents a case where a husband offers his wife a *get* that will only take effect should he die from his current illness. *R' Yehuda* and *R' Yosi* argue regarding the status of the wife during this interim period – between the handing over of the *get* and the husband's subsequent death. *R' Yehuda* maintains that the wife is considered “a married woman in every regard” while *R' Yosi* maintains that her married status is in doubt. *Raba* (*Gittin* 73b) explains that the circumstances of the *Mishnah* relate to the husband stipulating that the *get* is to take effect a moment before his death.

On the surface there does not appear to be any practical *halachic* difference between the two opinions, as even *R' Yosi* who states that the marriage is in doubt would still require the woman to behave as if she is still married avoiding any potential catastrophic outcome. Understanding the nature of the argument between *R' Yehuda* and *R' Yosi* highlights the practical implications of the differing views.

According to *Rashi* (*Gittin* 73b, s.v. “*u'Mashni*”), their argument pertains to the application of the principle of *Breirah*. This principle enables the status of a current act to be determined retrospectively by a subsequent outcome. *R' Yehuda* applies the principle of *Breirah* while *R' Yosi* does not. *Rashi* distinguishes between the two opinions by applying them to a case where the woman engaged in an adulterous relationship during the interim period between delivery of the *get* and the husband's death. According to *R' Yehuda*, even if the husband dies, the woman and her adulterous partner are subject to capital punishment for adultery. Considering that the principle *Breirah* is applied,

religions to become zealous and extreme in their pursuit of religious excellence. Their dedication to G-d can sometimes come at the exclusion of G-d's creations. On a simple level, many people feel that they must cut themselves off from society in order to achieve religious perfection while at the extreme level, many people have been killed in the name of religion and mistaken religious beliefs.

The laws of the *Torah* must be adhered to and are of the utmost importance, and as mentioned in the ninth *Mishnah*, there are lines that cannot and must not be crossed. However, these two *mishnayot* are reminding us very clearly that Judaism requires us to try as hard as possible to ensure that G-d's creations are not ignored by those who embrace His word.

nezirut due to the fact that the word 'kadosh' (holy) is used in connection with a *nazir*.⁴¹

The *Sefer HaChinnuch* (*Mitzvah* 374) provides a novel explanation for the purpose of a *nazir*. He explains that the man was put onto this world to serve *Hashem*. In order to do this, one must be in touch with the spiritual world. Man is severely constrained due to the fact that he is composed of physical matter, and therefore must at times turn aside from the service of his Creator and exert effort for the needs of his physical side. However, to focus solely on the Creator and completely neglect the needs of the body is also a sin. The *Sefer HaChinnuch* therefore suggests that the vow of *nezirut* is a good compromise. This vow allows a person to raise himself to an exalted level, yet not totally neglect his physical "dwelling". A person must abstain from wine and from cutting their hair, for this is enough of a separation from the physical world to subdue the *yetzer hara*, without destroying the physical "dwelling" given to him by *Hashem*.

The *Kli Yakar* (*Bamidbar* 6:2) agrees with this explanation and says that the purpose of *nezirut* is to separate oneself from the material pleasures of this world. The abstinence from wine is fundamental, as wine is the epitome of worldly pleasures. The *Kli Yakar* adds that the purpose of becoming a *nazir* is not only to take on the *nazir* restrictions solely for the time of the vow. The purpose of becoming a *nazir* is to change a person's *midot* for a lifetime. However, the *Kli Yakar* recognises that sometimes changing one's personality is very difficult while having an exposure to the physical world, therefore a vow of *nezirut* is needed, whereby one goes to the extreme and denies himself some physical pleasures in order to build and develop his relationship with *HaKadosh Baruch Hu*.

⁴¹ *R' Elazar* contends that the *pasuk* which states a *nazir* must bring a *chatat* are referring only to a *nazir tameh* (ie. a *nazir* who has violated his *neder* by coming into contact with a dead body).

A Simple *Mishnah*
Nazir (2:2)
Rabbi Natan Rickman

It would seem that to learn a *Mishnah* cannot or should not be that difficult. However as we see from the second *Mishnah* of the second *perek* of *Nazir*, at times *Rebbi* did not always leave us too many clues on how to understand a “simple” *Mishnah*.

Broadly speaking, the second *perek* of *Nazir* deals with various declarations that include the desire to become a *nazir*. However, the wording of the *Mishnah* is difficult to understand and can leave one wondering as to the nature of the case being discussed.

The second *Mishnah* for example, describes a case where a man is in front of a cow and exclaims that the cow says that it will become a *nazir* if it stands. Clearly, work is required to explain the simple meaning of the text.

The commentators approach this difficulty in different ways. *Rashi* on the *Mishnah* gives a rather lengthy explanation of the case and is “forced” to inform the person learning the *Mishnah* what the *Gemara* says. This approach, even though logical, is not always the method used by *Rashi*. *Rashi* often will leave the reader in suspense and just comments “the *Gemara* will explain”. Alternatively, at times *Rashi* will give his own understanding that does not necessarily have to follow the conclusion of the *Gemara*.

One example of this is the first *Mishnah* of the forth *perek* of *Gittin* where it discusses a decree (*takanah*) preventing a husband from cancelling the duty of a messenger carrying a *get* to his wife. There *Rashi* explains that the reason for the *takanah* was to prevent the husband forming a *Beit Din* of three people in another place and annulling the *get*. *Rashi* goes further and explains the concern for not allowing this is that the woman will be unaware

Heightened Sensitivity
Gittin (5:8-9)
Ben-Zion Hain

The theme of *Tikkun Olam* links almost all of the *mishnayot* in the fourth and fifth chapters of *Masechet Gittin*. However, the final two *mishnayot* in chapter five deal not with *Tikkun Olam* but rather with the idea of *Darchei Shalom* – The ways of peace.

Although these *mishnayot* begin with the all-encompassing introductory phrase “these are the things they decreed in the interest of peace” (5:8), the examples given fall into two categories:

1. Those things that you are not allowed to do in order to avoid fights and arguments with your fellow citizens such as taking an animal that has been caught in someone else’s trap or preventing a non-Jew from taking the produce that is set aside for the poor.
2. Those things that you should do in order to prevent hostility and bad feelings between people such as lending utensils that have the ability to be used to transgress *Torah* laws but can also be used without transgressing such laws.

The first category of decrees should be part of every person’s moral and ethical code. The *Torah* should not have to inform you that taking an animal from someone else’s trap is not allowed. Nor should the *Torah* have to tell you that a poor non-Jew living in Israel (where the laws of *Leket*, *Shichecha* and *Peah* apply) needs to be looked after. These laws are logical for any person and especially one who follows the *Torah*.

It is the second category of decrees from which we can learn the most. There is a tendency amongst religious people of all

The *Gemara* however asks, if the original actions of the husband took affect (with a biblical weighting), how can *Rabban Gamliel's* decree, no matter how noble, have any affect. If the husband cancelled the *shlichut* the wife should not be divorced! The *Gemara* explains that *Chachamim* have the ability to uproot the original marriage – “*afkinhu Rabbanan le'kidushei minei*”. This hinges on the fact that all marriages are affected “*k'dat moshe ve'yisrael*” – according to the belief of *Moshe* and *Yisrael*.

The *Tosfot* (*Ketubot* 33a) asks if the *Chachamim* have such an ability, then it could conceivably be employed in other areas as well. For example, if a woman had an affair, she could be saved from a capital punishment. The husband could quickly send her a *get* and then cancel the *shlichut*. Once *takanat Rabban Gamliel* comes into effect the marriage is retroactively uprooted thereby making her a single woman at the time of the incident. The *Tosfot* answers in such a case, where the husband sent and cancelled the *get* for this purpose, the *afkinhu* would not be applied.

One may be thinking, if the *Chachamim* have this tremendous power, then why is it not employed in all cases of *agunot*? The *Ramban* and *Rashba* explain that they were limited when they could exercise this power. It was only in cases like this one, where a *get* (whether or not it was valid) was indeed produced and handed over by the husband. In other cases however, they can not.

Therefore we are introduced to a novel power of the *Chachamim* while at the same time discover its limits of when they can apply it.

and get remarried. When this section of *Mishnah* is discussed in the *Gemara*, both the number of people required in such a *Beit Din* and the reason for the *takanah* are debated. The combination that *Rashi* uses to explain that *Mishnah* does not fit according to the possible options that are raised on the *daf*. This style within *Rashi* allows the learner to understand a *Mishnah* on a *pashat* level without the need to understand the complexity of the *Gemara*. *Rashi* gives the *pashat*, even when it will not stand strong against the explanation of the *Mishnah* from within the *Gemara*.

In our case, *Rashi* explains that the man assumes that the cow intends to only move when it wants to and will not be prompted by a person. This person making this declaration is implying that he will be a *nazir* (from the cow) if the cow's wishes are fulfilled and the person is unsuccessful in making the cow stand. It appears as if the man has given the cow the ability to choose if the person will become a *nazir*.

Tosfot as well have a lengthy explanation like *Rashi*, yet differs pointing out that the cow has really no level of intelligence to choose if it wants to stand or not. *Tosfot* brings an example from the boat that *Yonah* was on where the verse recounts that the boat itself was “thinking” about breaking. Again an object does not have the ability to think and choose; even an animal does not have this ability to think and choose. This can best be explained by the common phrase “animal instincts”; that the animal performs action in life but does not have to think about performing them or does not have the *bechira* (choice) of whether or not to perform them. Therefore *Tosfot* explain that it just appears that the animal is making a choice to sit and not move but in truth it is not making any real decision.

Tosfot bring *R' Yosef ish Yerushalaim* who explains that on seeing the cow lying down the person remarks to himself that the cow appears to be thinking “I wish I could get up. I would gladly become a *nazir* if I could succeed in getting up” Of course a cow

cannot be a *nazir*! Rather the person himself accepts to “fulfil her (apparent) wishes” if she indeed stands.

That is just one example of how to understand a “simple” *Mishnah*. How great was our master *Rebbe* and how far are we from him!

Tikkun Olam in Gittin

Gittin (3)

David Bankier

The third *perek* teaches that originally, if a husband elected a *shaliach* to send a *get* to his wife, he would be able to come before a “*bet din*” and cancel the *shlichut* thereby effectively putting a stop to the *get* and the divorce. *Rabban Gamliel* however, realised the danger in such practices and “*mipnei tikkun olam*” banded this procedure.

Exactly what motivated *Rabban Gamliel* to institute this ban is debated in the *Gemara* (*Gittin* 32a) and hinges on the different understandings of the original practice. *R' Nachman* understood that the husband originally was able to annul the *shlichut* in front of two witnesses; the term “*beit din*” consequently not having its usual meaning. In such cases, it was very possible that the *shaliach* would still hand the wife her *get* and she would be under the impression that she was indeed divorced. *R' Yochanan* therefore understood that *Rabban Gamliel* felt that the danger would then be that she would remarry, and because she was really not yet divorced, the children from this second relationship would be *mamzerim*.

Rav Sheshet however felt that originally, if the husband wished, he would be required to annul the *shlichut* in front of three people – a *beit din*. The *Gemara* explains that once an event occurs in front of three people “*it lehu kala*” (it has a voice) and it become widely known. Consequently, the wife would also know that the *shlichut* was cancelled. Therefore *Reish Lakish* explains that *Rabban Gamliel's* concern was not because of *mamzerut* but rather because of *agunot*. In other words, if a husband was able to retract from a *get*, it could lead to women being trapped in wedlock.

does not really explain how any notion of *shlichus* is employed in this operation.

The *Gedolei Rosh Yeshiva* offer other explanations to this difficult *Rabbeinu Yona*. One of their suggestions is based on an explanation by *Reb Akiva Eiger* in the first *perek* of *Kesuvos*. There he claims that the *chisoron*, or failing, in a minor's ability to have a *shliach* is not insofar as a *shliach* performing a *shlichus* for a minor, nor even in the child himself functioning as a *shliach*, but rather in the initial appointment of the *shliach* by a *koton*, or of the *koton* by a *shliach*. A *koton* is not in the *parsha* of *shlichus* only because he can not appoint, or be appointed.

Reb Akiva Eiger points out that since the real flaw is a minor's involvement in the initiation of a *shlichus*, in certain cases where no *minui*, appointment, is required, even a minor can function in the world of *shlichus*. For example, a *ger koton* can be immersed for conversion through a *shlichus* of *Beit Din* for the child, since *zechia* establishes a *shlichut* with no *minui*.

According to this understanding of *Reb Akiva Eiger*, the *Rabbeinu Yona* seems clearer. The case of *oimed al gabov* is essentially a situation where the *koton* is functioning as a *shliach*, without ever being formally appointed. A *minui* is not needed here since the *koton* is not representing or serving as the agent of the *gadol*, as would be the case in classical *shlichus*, but rather performing a raw act that is endowed with legal meaning by the *gadol* working with him.

Nezirut of Queen Helena

Nazir (3:6)
Yehuda Gottlieb

Someone who accepted upon himself a *nezirut* of a long duration (in *chutz la'aretz*), and completed his term of *nezirut*, and afterwards came to the Land of Israel - *Beit Shammai* say: He is a *nazir* for thirty days. *Beit Hillel* say: He is a *nazir* from the beginning of his term.

It happened that Queen Helena's son went to war and she declared, "If my son returns in peace from the war, then I will be a *nazir* for seven years." Her son returned from war, and she was a *nezirah* for seven years.

At the end of the seven years she went up to the Land of Israel and *Beit Hillel* ruled for her that she must be a *nezirah* for another seven years. At the end of those seven years she became *temei'ah* and so it resulted she was a *nezirah* for twenty-one years. *R' Yehuda* said: She was a *nezirah* for only fourteen years.

(*Nazir* 3:6)

Tosfot state that the case in the *Mishnah* is *lav davka* (happenstance). *Tosfot* hold that the case *Beit Hillel* and *Beit Shammai* argue about is a case that could occur if a *nazir* was to go up to *Eretz Yisrael* toward the end of his *nezirut*.

The *Bartenura* however, disagrees with this view and states that this *Mishnah* is talking about a case which is *davka*. He states that there cannot exist a *nazir* in *chutz la'aretz* due to the presence of *tumat Eretz Ha'amim* (the assumed impurity of *chutz la'aretz*). Therefore, according to the *Bartenura*, if a person vowed to become a *nazir* outside of *Eretz Yisrael* he is obligated to move to *Eretz Yisrael* in order to fulfill his vow. Interestingly the *Tosfot Yom Tov* adds, that a person who takes on *nezirut* is obligated to move to *Eretz Yisrael* immediately upon taking his vow.

The *Rambam* (*Hilchot Nezirut* 2:21) rules like the *Bartenura* and *Tosfot Yom Tov*. He states explicitly that the concept of *nezirut* does not exist in *chutz la'aretz*, and one who takes on a vow of *nezirut* is obligated to move to *Eretz Yisrael*, and be a *nazir* there for the amount of time stipulated in his vow.

The *Kesef Mishnah* finds this ruling from the *Rambam* problematic. The second half of the *Mishnah* indicates that Queen Helena took a vow of *nezirut* and yet she was not obligated to make *aliyah* to *Eretz Yisrael* immediately! The *Mishnah* explicitly states that she waited seven years before moving. It seems that those who hold a *nazir* must move to *Eretz Yisrael* are ignoring the *ma'aseh* (case) of Queen Helena!

The *Kesef Mishnah* provides three possible answers to his own question. Firstly, it is possible that the reason that Queen Helena moved to *Eretz Yisrael* is precisely because the *Rabbanim* held that it was an obligation on every *nazir* to undertake their *nezirut* in *Eretz Yisrael*. This answer is seemingly still difficult as the *Rambam* rules that one must move immediately to *Eretz Yisrael* upon accepting a vow of *nezirut* upon themselves.

Secondly, Queen Helena ruled a country called *Adiabene*, and she converted to Judaism with her son, *Munbaz* (*Bava Basra* 11a). Since she was the Queen of this country, it is very possible that the *Rabbanim* of the time did not know that she had taken on a vow of *nezirut*. Consequently, because they did not know, they could not force her to move to *Eretz Yisrael* immediately. It is only when she moved to *Eretz Yisrael* after seven years, that they became aware of her situation and ruled accordingly.

Thirdly, on a more practical level, the *Kesef Mishnah* suggests that Queen Helena was obligated to move to *Eretz Yisrael* immediately, however, for the first seven years of her *nezirut* she was bound by her obligation to rule the country. It is only after seven years, once her rule was over, that she was able to move to *Eretz Yisrael*.

Ein Shlichus l'Koton

Gittin (2:5)

Adam Korbl

The *Mishnah* (2:5) makes a novel statement that has significant legal ramifications: “Anybody can write a *get* - even a *cheresh* (deaf-mute), *shoiteh* (mental deficient) or *koton* (minor).”

The *Gemara* immediately questions this, asking how these individuals are capable of the necessary *lishmoh* intent in writing a *get* (at least according to *R' Eliezer*). The *Gemara* suggests several solutions. One of the possibilities the *Gemara* offers is that indeed the *katan* may write a *get* if a *gadol* is “*oimed al gabav*” – literally, standing above him.

Tosfos explain that the role of the *gadol* is to serve as an instructor and director. Without any instruction, the *koton* is incapable of having the *lishmoh* intent; if the *gadol*, however, directs his actions and informs him about the necessary intent, the *koton* would indeed be able to create the *get* appropriately.

An alternative understanding is presented by the *Rashba* in *Chulin* (12b). There he cites his Rebbi, *Rabbeinu Yona*, who establishes that since writing a *get* can be assigned to a *shliach*, the *gadol oimed al gabov* can therefore function through a similar mechanism.

The obvious problem is that a *koton* cannot serve as *shliach*, based on the principle of *ain shlichus l'koton*. How then does the *Rabbeinu Yona* claim that *oimed al gabov* operates through a system of *shlichus*? The *Imrei Moshe* explains that *Rabbeinu Yona* works with a complete split between the intent and the writing: the *koton* performs the act of writing, while the *gadol* supplies the *lishma*. This answer seems difficult however, since it

R' Yehuda said in the name of *Shmuel*: Anyone that does not know the nature [i.e. the laws] of *gittin* and *kidushin* – should not be dealt with [as a judge]. R' Asi said in the name of R' Yochanan that such judges are more destructive to the world than the generation of the flood.

The *Gemara* describes the vital importance that judges should be expertly knowledgeable in *gittin* and *kidushin*. Interestingly, *Shmuel* orders the two topics in the same manner as their *masechtot*. The *Maharsha*, notices this and questions the order in a similar vein as presented above. He answers that there are two important differences that made *gittin* a priority for the judges over *kidushin*. Firstly, the laws of *gittin* are more complicated than those of *kidushin*. More importantly, there are more dire consequences if a judge errs in cases of *gittin* as a married woman may be ruled as being divorced and as a result may unknowingly commit *halachic* adultery. Perhaps this logic then can also be applied to explain why the *Masechet Gittin* precedes *Kidushin*.

The *Galanter Rebbe* offers a different understanding that touches on our attitude to divorce. He explains that divorce is not and should not always be considered a viable option. Had *Kidushin* preceded *Gittin* then one may assume that marriage leads to divorce; it is a very valid possible direction. The reverse however is true. Great effort should be exerted in trying to preserve a marriage rather than hastily opting for a divorce. The *Chachamim* do not want *Kidushin* to lead to *Gittin*. That said, in certain circumstances when all options have been exhausted, tragically divorce may be the only option. In such a case, *Gittin* should be followed by *Kidushin*; the parties should be able to move from their unfortunate situation to the sanctity of another marriage once again.

Prohibition of Head-Shaving of a *Nazir*

David Bankier

There are three prohibition placed on a *nazir* – a *nazir* may not come into contact with dead bodies (*tameh met*), shave his hair (*tiglachat*) or consume any grape product. These three prohibitions however differ in respect to how they affect the *nazir* if transgressed. In general a person becomes a *nazir* for a fixed period (more commonly for a thirty day period). If a *nazir* becomes *tameh met* he must restart the entire count as all the previous days are forfeited (*Bamidbar* 6:12). Conversely, if a *nazir* drinks wine, despite transgressing a negative commandment, he does not restart his count, but rather continues being a *nazir* without losing a day. The interesting case however, is if a *nazir*'s head is shaved. The *Mishnah* (6:3,5) explains that a *nazir* forfeits (*soter*) thirty days. One must understand what this means and, if it disturbs his *nezirut* period, why it does not disturb it all together causing him to restart?

The *Gemara* (*Nazir* 44a), after asking why drinking wine should not also forfeit thirty days like shaving hair (from a *kal vachomer*), explains that the reason why head-shaving forfeits thirty days is “to satisfy the requirement for a growth of hair”. The simple explanation of this *Gemara* is that head-shaving does not disrupt his *nezirut* period; rather there is a technical obligation that his hair must be grown by the end of his *nezirut* period. The *Tosfot* (*Nazir* 39a) appear to understand the *Gemara* in this way. He explains that this technical requirement is that by the end of a *nazir*'s period, he must have the equivalent hair growth of standard *nazir* of thirty days. Consequently, they explain that if a *nazir* of sixty days had his hair shaved on the thirtieth day then he would not forfeit any days and still completes his period on the sixtieth day. The *Mishnah* must therefore be understood as explaining that head-shaving can cause a *nazir* to forfeit a maximum of thirty days.

The *Rambam* (*Nezirut* 6:1-2) and *Meiri* have a very different understanding. They explain that if a *nazir*'s hair is shaved, then he stops his count for a period of thirty days while still observing all the laws of a *nazir*, then continues his count after that. The *Rambam* provides the following example: if a person vows to be a *nazir* for one-hundred days, and after twenty days his head was shaved, he must wait for thirty days until his hair grows, after which he would count another eighty days.

The *Rambam* appears difficult. Initially it seems that head-shaving does indeed disrupt the *nezirut*, which appears to run against the simply understanding of the *Gemara* sighted above. (This is indeed the question posed by the *Lechem Mishneh*.) This understanding is however inconsistent with the example provided by the *Rambam*. If head-shaving caused the *nazir* to forfeit thirty days that he had already experienced, then he should have just said that the *nazir* restarts his count from the beginning like in the case of *tameh met*. Instead after the *nazir*'s head is shaved, he is effectively a *nazir* for another 110 days – an apparently more strict outcome than if he became *tameh met*!

One can perhaps understand the *Rambam* based on an explanation of the *Meiri*. When explaining the *Mishnah* the *Meiri* writes that head-shaving forfeits thirty days from the designation (“*torat*”) of hair-growth. Perhaps the *Rambam* agrees with the understanding of the *Gemara* presented earlier. Indeed, head-shaving does not disturb the *nazir*'s period in the same way the *tameh met* does. Also the *Rambam* would agree that the forfeiting of thirty days is to satisfy the technical requirement of having significant hair growth for the shaving process. However the *Rambam* may not understand, like the *Tosfot*, that this requirement can be satisfied at the end by the *nazir* having thirty days of hair-growth. Instead the *nazir*'s hair must have a designation of hair growth for the entire *nezirut* period. If at any point his head is shaved, he is still a *nazir*. However, in order that his hair can regain this designation, it must be left to grow for a period of thirty days.

Gittin

Gittin before *Kidushin*

David Bankier

The last *masechtot* in this *sefer* are *Gittin* and *Kidushin*. *Gittin* relates to divorce, while *Kidushin* discusses *halachic* engagement and ultimately marriage. The order of the last two *masechtot* at first may be somewhat surprising. One would expect that *Kidushin* would precede *Gittin* as it would match the chronological ordering of the events discussed in these *masechtot*. The reverse however is true.

The *Rambam* (Introduction to *Mishnayot*) explains that the order chosen matches the order in which the *pasuk* discusses both topics and from which one of the methods of *kidushin* is derived:

...and he wrote for her a bill of divorce and presented it into her hand, and sent her from his house. And she left his house and went and married another man (*Devarim* 24:1-2)

Consequently, the compiler of the *Mishnayot* simply adopted the order that was set out in the *Torah*.

One may still however feel unsatisfied. Why was this order chosen irrespective of where it was derived from?

Many have understood that this ordering is based on the concept that *Hashem* “creates the remedy prior to the blow”. While this concept has generally been understood on a national-historic level, i.e., that the seeds of salvation are planted prior to a national tragedy, it can be adapted to this context. In other words, the means of breaking out of a failed marriage is studied prior to committing to one.

Another approach may be gleaned from the following *Gemara* (*Kidushin* 13a):

“of a sin that he has in his hand”. The *Maharsha* explains that these battles operated in a miraculous manner in which *Hashem* fought the war for them. In the times of *Yehoshua*, for example, when “only” thirty-six people were killed in the battle at *Ai*, it was considered a tragic defeat. Consequently the soldiers would need to be of exceptional status in order to merit such miracles. The presence of sin therefore was a very real fear.

The *Gemara* explains that *R' Yosi Ha'Glili* also agrees with *R' Akiva* that a person that is literally scared returns from battle – this is learnt from a separate *pasuk*. “*Ha'yareh ve'rach levav*” simply refers to someone else. This can lead one to ask why ‘fear’, specifically, is used in context with sin. Furthermore, one would think that the less than righteous would have a reduced sensitivity or fear of their sins.

The *Or Ha'Chaim* therefore explains that one that has a sin would be struck with an unexplainable fear whether or not he was aware of his sins. The soldiers required miracles to protect them during the battles. This fear (as generated by the person’s *mazal* - see *Megillah* 3a) would be an indication that he has a sin making him unworthy of miracles and placing him in clear and present danger.

Sotah

Introduction to *Sotah*

Allon Ledder

Masechet Sotah follows *Masechet Nazir*.⁴² The *sotah* procedure is a divine determination of the wife’s innocence or guilt regarding suspected adultery after having being caught in seclusion with another man. Once a husband suspects his wife, it is unlikely that he will trust her, even if a *Beit Din* finds that she is innocent. The *sotah* test, whereby the woman drinks the bitter waters and *Hashem* Himself testifies, can convince a husband of his wife’s innocence. The *Mishnah* (1:1) teaches us that the *sotah* procedure is only used if the husband first warns his wife not to seclude herself with that particular man. If the woman is guilty, the bitter waters cause her to die an unnatural death. If there is already evidence that the woman is guilty, the *sotah* procedure is not administered. The woman is divorced without receiving her *ketubah* (or executed if she was properly warned).

Hashem allows His sacred name to be dissolved in the water as part of the procedure. To erase even one letter of *Hashem*’s name is usually a *d'oraita* prohibition punishable by lashes (*Rambam, Hilchot Yesodei Hatorah* 6:1-2). Nevertheless, an exception is

⁴² As well as being next to each other in the *mishnayot*, the *parshiyot* of *nazir* and *sotah* are next to each other in the *Torah* (*Bamidbar* 6-7). From this juxtaposition, the *Chachamim* derive that if someone witnessed a *sotah* being tested they should take upon themselves a *nazirite* vow (*Gemara Sotah* 2a). From this we can learn the powerful effect that a sin can have. Merely being exposed to this sin can have a negative impact and can remind you that it is possible to be overcome by temptation. The *Torah*’s antidote is to sanctify yourself as a *nazir* and to abstain from wine for a period of time.

made for the *sotah* procedure⁴³ demonstrating the importance of *shalom bayit* between a husband and wife.

The prohibition against adultery is the seventh of the ten commandments. The commentators have pointed out that the first five commandments (which appear on the first tablet) relate to *mitzvot* between man and *Hashem*. The second five commandments (which appear on the second tablet) relate to *mitzvot* between man and man. In addition, each of the first five commandments has a parallel in the second set. Under this system the second commandment (prohibiting idolatry) is parallel with the seventh commandment (prohibiting adultery) (*Mechilta Yitro*).

The connection between adultery and idolatry makes sense. Both sins involve a special, sanctified relationship. An idolater is being unfaithful in the relationship between man and *Hashem*. An adulterer is being unfaithful in the relationship between man and wife. There are many occasions in the *Tanach* where *Bnei Yisrael* stray after idols and the prophets compare them to an unfaithful wife (e.g. *Yirmiyahu* Ch 3; *Hosea* Ch 2).

This connection between idolatry and adultery sheds light on the events that follow the sin of the golden calf.

Firstly, *Moshe* instructed the tribe of *Levi* to go through the camp and execute three thousand of the sinners. According to *Rashi*, these were the idolaters who had been properly warned. This group of idolaters parallels the confirmed adulterer who was properly warned – she does not drink the bitter waters and is executed by the *Beit Din*.

Secondly, *Hashem* sent a plague that killed further idolaters. According to *Rashi*, these were the idolaters who sinned

⁴³ This follows the general rule that where a negative commandment and a positive commandment conflict, the positive commandment takes precedence (*Yevamot* 3b).

Scared of War

Sotah (8:5)

David Bankier

The beginning of the eighth *perek* describes the speech presented to the soldiers as they readied for war. It taught that some soldiers, due to various personal circumstances, were sent home prior to the battle and instead provided support for the soldiers on the battle field. There was another person that was also asked to leave; the *pasuk* describes him as “a person who is scared (*yareh*) and of soft heart (*rach levav*)”. The *Mishnah* (8:5) records a debate regarding to whom this description refers.

R' Akiva explains that the description is meant to be interpreted in the literal sense. In other words anyone who “could not stand in the heat of the battle or see the flash of the swords” was sent home. The *Ibn Ezra* elaborates on this opinion explaining that the terms *yareh* and *rach levav* refer to two different people each with distinct fears. The *rach levav* is simply understood as one who is scared of getting hurt. Yet there is another fear that appears to be an equally threatening force of the battle. That is of the *yareh*, who the *Ibn Ezra* explains, is the one that is unable to stomach inflicting pain on another. The *Tosefta* (*Sotah* 7) writes that even the greatest of heroes, if he is merciful, was sent home.

The *Ramban* provides a different distinction between the *yareh* and the *rach levav*. He interprets the *rach levav* in the same way as we have explained – one that is unable to bare the brutality of the battle field. However he explains that the *yareh* does not fear the reality of war, but rather lacks *bitachon* in *HaKadosh Baruch Hu*. This ‘fear’ is far more detrimental in a battle where “*Hashem... walks with you and fights for you*”.

The second opinion in the *Mishnah*, provided by *R' Yosi Ha'Glili*, is that “*ha'yareh ve'rach levav*” refers to a person that is fearful

sh'ma. There are some words which we do not know how to adequately translate (e.g., *totafot*). Alternatively, there are some words that have two meanings, both of which essential to the *sh'ma*. The example he brings is *ve'shinantem* which can both imply learning/teaching and “having the words [of *Torah*] sharp” so that you can immediately respond to a question. The *Orach HaShulchan* adds unless the translation is accurate word for word, it will no longer be considered *sh'ma*. Consequently, he writes, as today we are unable to translate the *sh'ma* it is forbidden to recite the *sh'ma* in any other language.

But what about *tefillah*? Granted that it may be considered a *mitzvah min ha'muvchar* to recite it in Hebrew, are other languages acceptable?

The *Mishnah Berurah* (O”C 101:13) writes that the ability to pray in another language was granted infrequently. Modifying the prayers on a permanent basis is a completely different matter. On the one hand, the Hebrew format as penned by the *Anshei Knesset Ha'Gedolah* has far reaching effects beyond our comprehension (see *Bei'ur Halacha* there). Secondly, historically, when people digressed from the original format, the content deteriorated leading to the omission of fundamental components of prayer (see *Mishnah Berurah* there). The *Tiferet Yisrael* (*Sotah* 7:1) writes that such initiatives may even border on “*b'chukoteihem lo te'lechu*”.

We find that while the *Mishnah* writes that one may be able to recite *sh'ma* and *tefillah* in other languages, today it does not seem practical. First and foremost, our inability to provide accurate translation is a technical barrier. Secondly, there are inherent dangers when we attempt to change the *tefillot* in a fixed manner. Finally we must appreciate that there is a qualitative difference between *lashon ha'kodosh* and all other languages.

intentionally before witnesses but were not properly warned. The lack of proper warning means that these people could not be executed by the Levites. This group parallels the confirmed adulterer who was not properly warned. She does not drink the bitter waters but the lack of a proper warning means that she cannot be executed by the *Beit Din*. She is forced to divorce her husband and she does not receive her *ketubah*.

Thirdly, Moshe ground up the golden calf, added the particles to water and forced *Bnei Yisrael* to drink the water. Those that had sinned without witnesses were punished upon drinking the water. This parallels the *sotah* who secludes herself with a man away from witnesses. Only the divine test of drinking the bitter waters can determine whether or not she is guilty. Similarly, the water that Moshe gave *Bnei Yisrael* to drink determined who fell into this third category of idolaters.

Like a husband who warns his wife not to seclude herself with a particular man, *Hashem* warned *Bnei Yisrael* before the sin of the golden calf when he told them the second of the ten commandments – do not commit idolatry.

Miriam – Chessed and Emunah

Sotah (1:9)
David Bankier

Towards the end of the first *perek* we learn that *HaKadosh Baruch Hu* both punishes and rewards measure for measure. One example brought is that of *Miriam*:

[This principle applies] also for reward. *Miriam* waited for her brother for one hour as it says “and his sister was stationed (*va'teitzav*) from afar” (*Shmot* 2:4); therefore *Am Yisrael* waited for her in the desert for seven days, as it says “and the nation did not travel until *Miriam* was collected” (*Bamidbar* 12:15).

The *Gemara* comments, that this case demonstrates that while punishments are indeed measure for measure, rewards are disproportional and increased.

It would appear from a simple reading of the *Mishnah* that *Miriam's* waiting resembled her care and concern for the welfare of her brother. This in turn was rewarded through *Am Yisrael* waiting for *Miriam* to recover from her affliction of *tzara'at*, itself a demonstration of the nation's concern for her welfare.

Another *Gemara* (*Sotah* 13b) suggests that *Miriam* had a different motive:

Miriam was a prophetess, and she prophesied saying: “My mother is destined to bear a son who will be the saviour of *Yisrael*.” When *Moshe* was born, the entire house was filled with light, where upon her father said to her: “My daughter, your prophecy has been fulfilled.” And when *Moshe* was thrown into the Nile, he said to her: “My daughter what has become of your prophecy?” This is the intent of “And his sister stood from afar to know what would be done with him” – to know how her prophecy would materialise.

From the above *Gemara*, *Miriam's* waiting for her brother was presumably faith driven. It would therefore initially appear that

Shema and *Tefillah* in Any Language

Sotah (7:1)
David Bankier

The seventh *perek* deals primarily with the various declarations that must only be said in *lashon hakodesh* (Hebrew). The first *Mishnah* however, lists those things that may be said in any language, including the recitation of *sh'ma* and *tefillah*.

In practice however, can we really recite *sh'ma* and prayer in any language? Is there any difference between praying in Hebrew, English or Japanese?

The *Mishnah Berurah* (O”C 62:3) makes two important points when it comes to reciting the *sh'ma* in another language. Firstly, there is a qualitative difference between *lashon ha'kodesh* and other languages. Quoting the *Bach* he writes that it is indeed a *mitzvah min ha'muvchar* to recite the *sh'ma* in *lashon ha'kodesh*. A distinction is also found in that one can fulfil the *mitzvah* of *sh'ma* if recited in *lashon hakodesh* even if he does not understand Hebrew, which is not the case when it comes to other languages.

Interestingly the qualitative difference is to be found at the core of Hebrew and other languages. In the *Bei'ur Halacha* he explains that the ability to recite *sh'ma* or *tefillah* in another language depends on whether the people of that locality, in general, speak that language. The reason is that unlike *lashon hakodesh*, that by its essence is a language, other languages are only considered languages by common agreement. Therefore if it is not commonly spoken in that area, it is not a language!

The second point is that nowadays there is a technical hurdle preventing one from reading the *sh'ma* in another language. It is practically impossible to provide a suitable translation of the

actually be their merit and save them from punishment should they stray from their future husbands.

The *Rambam* in *Hilchot Talmud Torah* (1:13) explains that although a woman does receive reward for learning *Torah*, her reward cannot be compared to that of a man. The reason for this according to the *Rambam* is that the reward of someone who is commanded to perform *mitzvot* is greater than the reward of someone who chooses to perform *mitzvot*⁴⁶.

Tosfot in *Masechet Avodah Zarah* (3a) state that the reason for this distinction is that a person who is commanded to perform *mitzvot* must constantly conquer and repel his evil inclination. Therefore, due to the fact that this person must work harder, their reward is greater.

Another explanation is offered by the *Maharal*. He explains that although someone who chooses to perform the *mitzvot*, but is not commanded to, does receive a reward, they miss out on the intrinsic connection that is created between the One who commands and the one who acts.

The fact that a person fulfills what *Hashem* wants them to do, causes their actions to be of greater significance and strengthens their connection with *Hashem*.

⁴⁶ This is based on the opinion of *Rabbi Channinah* in *Masechet Avodah Zarah* 3a (and other places).

Miriam's strong faith, expressed by her waiting for her brother, was rewarded with *Am Yisrael* waiting for seven days; an act of compassion. While the outward appearance of the act and reward appear to correspond with each other, there appears to be a mismatch in the underlying motivations of the act and reward. While some may rightly feel that this is not problematic, we can suggest that being rewarded 'measure for measure' aligns on every level.

In order to do this one can suggest that *Miriam* indeed had both motivations in mind when waiting for her brother. The full *pasuk* cited in the *Mishnah* is as follows:

And his sister was stationed (*va'teitzav*) from afar; to know what would happen to him"

On the one hand she was driven by faith, simply "to know what would happen to him". Yet she was also 'stationed' – a deliberate stand of solidarity and care.⁴⁴

Therefore the original assumption that the nation's waiting for *Miriam* to heal was a reward for her compassion, can be maintained. Yet for this understanding of *Miriam's* reward being measure for measure to be complete we must locate where she was rewarded for her undying faith in wanting "to know what would happen to him".

One could suggest that this element of *Miriam's* act was also rewarded. After *Am Yisrael* crossed the Reed Sea and was saved from the Egyptians, they broke out in song. At the end of the *shira* we find the following (*Shmot* 16:20):

Miriam the prophetess, *Aharon's* sister, took the drum in her hand, and all the women followed her with drums and dancing.

⁴⁴ The two parts of the *pasuk*, as described here, are indeed divided by an *etnachta*, a cantillation that resembles a break in a *pasuk*. Furthermore, it is only the first half of the *pasuk*, the half that has been described as referring to her care for her brother that was cited by the *Mishnah* further reinforcing that the *Mishnah* is referring to "stationing" as being rewarded by *Am Yisrael* waiting for her.

Rashi explains the reference to *Miriam* being a prophetess by quoting the *Gemara* cited above. Perhaps it is precisely relevant, after *Am Yisrael* were saved, to mention her credentials here as she is rewarded in leading the women in praising *Hashem*. For it was that prophecy that led to her undying faith - the faith which manifested in her following her brother at an apparently hopeless moment, to “know what would happen to him.”

Coming Closer to *Hashem* through *Mitzvot*

Sotah (3:4)

Ben-Zion Hain

Since the beginning of *Masechet Sotah*, we have been describing all of the details regarding the process of drinking the bitter waters. In the fourth *Mishnah* of the third chapter, the *Mishnah* describes what happens to the woman as she drinks the water:

She does not contrive to drink before her face turns yellow and her eyes bulge and she is replete with veins.

However, after describing the seemingly painful and traumatic ordeal that the woman who drinks the bitter water undergoes, the *Mishnah* tells us that there is a ‘way out’:

If she had any merit, it would suspend her punishment.

In other words, despite the fact that she may have sinned, became impure through infidelity, undergone the entire process and caused the name of *Hashem* to have been erased, there is a possibility that she will not be punished immediately if she has merits.

This possibility creates a great deal of concern and threatens to destroy the whole point of the *Sotah* water⁴⁵. *Ben Azai* therefore states that “a man is required to teach his daughter *Torah* so that if she must drink, she will know that the merit suspends it for her,” and not that she got away with it.

A further reason why *Ben Azai* might instruct fathers to teach their daughters *Torah* would be so that this *Torah* learning will

⁴⁵ This fact is discussed in the following *Mishnah* where *Rabbi Shimon* argues that merit does not delay punishment as this would cause women to see the *Sotah* waters as less severe because their merits would save them and it would also cause the innocent to be given a bad name. People would say that a woman who survived was in fact guilty but her merit kept her alive and saved her from punishment.