

OVERVIEW of the Daf

1) Presuming a woman is a בתולה (cont.)

Rabbah infers from the Baraisa that if a man marries a woman thinking that she is a בתולה and discovers that she is a בעולה she receives a kesubah worth one-hundred zuz.

R' Ashi refutes the inference.

R' Ashi's refutation is unsuccessfully challenged.

A second version of this discussion is presented that revolves around an inference from the Mishnah rather than the Baraisa.

It is noted that the version that had the discussion revolve around the Baraisa would certainly apply it to the Mishnah but the version that had the discussion revolve around the Mishnah would not apply it to the Baraisa.

2) **MISHNAH:** The Mishnah teaches that a man cannot claim about his wife not being a בתולה in Yehudah where seclusion is allowed following betrothal.

3) Clarifying the custom in Yehudah

Abaye infers from the language of the Mishnah that even in Yehudah different customs were practiced as far as seclusion after betrothal.

A Baraisa is cited that supports this contention.

Abaye, Rava and R' Ashi dispute the meaning of the final ruling of the Baraisa.

4) **MISHNAH:** The Mishnah teaches that although widows collect a kesubah worth one-hundred zuz, nevertheless, the Beis Din of Kohanim would collect four-hundred zuz for the daughter of a kohen who was a בתולה.

5) The value of a widow's kesubah

A Baraisa rules, in contrast with the Mishnah, that the daughter of a kohen who is a widow receives a kesubah valued at two-hundred zuz.

R' Ashi explains that there were two enactments and the Mishnah and Baraisa express different stages in those enactments.

6) Increasing the value of a kesubah

R' Yehudah in the name of Shmuel notes that not only kohanim increased the value of their kesubos but other prominent families also collected a higher value for their kesubos.

This assertion is unsuccessfully challenged from a Baraisa.

7) **MISHNAH:** The Mishnah presents a dispute of R' Gamliel and R' Eliezer versus R' Yehoshua regarding how to rule in a case where the couple disagree when she became a בעולה.

8) Disputed claims

R' Yehuda and R' Huna disagree with R' Nachman and R' Yochanan concerning someone who responds, "I don't know," when a monetary claim is filed against him.

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Distinctive INSIGHT

Why is a claim of certainty (ברי) enough to extract money?

רב הונא ורב יהודה אמרי חייב, ברי ושמא ברי עדיף

If Reuven claims that Shimon owes him a hundred dollars, and Shimon responds by saying that he is not sure whether he owes it or not, Rav Huna and Rav Yehuda rule that Reuven's claim of certainty is believed, and he may collect the money from Shimon. The general rule is that we can only extract money based upon presentation of clear proof—**המוציא מחברו עליו הראיה**. How are we to understand this fascinating opinion of Rav Huna and Rav Yehuda who allow Beis Din to collect money based upon indications that are not conclusive?

Pnei Yehoshua (commentating upon Tosafos "Rav Huna") explains that we have an assumption (**חזקה**) that a person will not confront another and claim money unless the claim is true. We do not assume that Reuven, in our case above, is deceitfully lying. Because Shimon does not counteract this position of Reuven, the money may be collected.

Chasam Sofer explains that with his counter-claim of doubt, Shimon is admitting that his possession of the money is not indicative of his ownership. Therefore, when Beis Din rules that it be given to Reuven, Beis Din is not actually extracting money from someone who is in full possession.

קובץ שיעורים (כ"ו) and **שערי יושר (ו:יח)** explain that the claim of certainty of Reuven is not powerful enough to win. However, every claim in court must have a claim to counter it. Reuven has registered a claim, and Shimon must respond. When he says that he does not know, the claim of Reuven wins because it has not been neutralized.

Tosafos explains that the claim of Reuven is exceptionally

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REVIEW and Remember

1. Does a woman receive a kesubah if her husband married her assuming she was a בתולה and it turned out he was wrong?

2. Is it permitted for a man to give his wife a more valuable kesubah?

3. What were the two stages for the development of the kesubah for the daughter of a kohen?

4. Explain the disagreement concerning someone who responds to a claim with the phrase "I don't know".

HALACHAH Highlight

The status of a woman who had her בתולים restored

אמר רבה זאת אומרת כנסה בחזקת בתולה ונמצאת בעולה יש לה כתובה מנה

Rabbah said: The Baraisa teaches that if one married presuming his wife was a בתולה and it turned out she was a בעולה she receives a kesubah worth one hundred zuz.

Our Gemara discusses the issue of the value of the kesubah of a man who marries a woman presuming that she is a בתולה and discovers that she is a בעולה. Poskim debate whether a woman who is a בעולה is permitted to conceal this fact from her husband-to-be. One issue is whether concealing this information undermines the acquisition, since the man is entering the marriage under false pretenses (מקח טעות). A second issue is whether concealing this information renders the kesubah invalid and the couple are prohibited to one another until a kesubah worth one hundred zuz can be written.

The L'Horos Nassan¹ was asked about the kesubah of a woman who had her בתולים opened when she was younger to allow blood to exit her body, and the opening was subsequently stitched closed. L'Horos Nosson responded that this matter would seem to parallel a dispute between Tosafos² and Tosafos Ri"³. Tosafos seems to indicate that any time a woman's בתולים is not intact she is categorized as a מוכת עץ and her kesubah would be one hundred zuz. Tosafos Ri"d, however, disagrees and draws a distinction regarding how the בתולים was lost. The reason the kesubah of a woman who is a מוכת עץ is one hundred zuz is because the בתולים was damaged without

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R' Yehuda and R' Huna maintain that he is obligated to pay because the certain claim is stronger than the uncertain claim whereas R' Nachman and R' Yochanan maintain that, due to the uncertainty of the matter, the money should remain with its current owner.

Abaye demonstrates that Shmuel agrees with the position of R' Huna and R' Yehudah.

It is suggested that the dispute between R' Yehudah and R' Huna versus R' Nachman and R' Yochanan is the same dispute of the Mishnah between R' Gamliel and R' Eliezer versus R' Yehoshua.

R' Nachman asserts that he could even follow the position of R' Gamliel and the Gemara begins to demonstrate that R' Nachman is consistent with R' Gamliel. ■

her intent, which renders her less desirable. On the other hand, if a woman knowingly removes her בתולים to prevent pain or discomfort it does not detract from her desirability and since she never cohabited there is no reason her kesubah should not be worth two hundred zuz.

Upon further analysis he writes that since the doctors subsequently stitched closed the opening the woman could be considered a בתולה. This case would thus be compared to a girl less than three years old who is considered a בתולה regardless of what happened to her בתולים since it will regenerate. Similarly, since the doctor is able to repair the בתולים she is considered a בתולה and deserves a kesubah worth two hundred zuz. ■

1. שו"ת להורות נתן ח"ה סי' צ"א.
2. תוס' י"א: ד"ה ושמואל.
3. תוס' רי"ד שם ד"ה איתמר. ■

STORIES Off the Daf

The Sure Claim

"אוקי ממונא בחזקת מריה..."

Once, a grocer approached one of his regular customers and said, "Your wife has been pilfering from my store. You owe me for all those items I saw your wife take that she didn't pay for!"

Although when the husband asked his wife about the grocer's accusation, she denied it, the husband was fairly sure that the claim was probably justified. He was well aware that his wife had had some trouble with kleptomania in the past, and so he asked Rav Yitzchak Zilberstein, shlit"a, if he was obligated to pay for his

wife's theft.

Rav Zilberstein responded, "Although we find that in practical terms a husband is not responsible for what his wife steals (see Choshen Mishpat 349:1) this case is different. Since you or your children must have eaten from the stolen item, it comes down to whether the grocer is reliable. If we believe the grocer, the husband must pay. Based on Kesuvos 12b, we hold that even if a person makes a sure claim about a disputed sum, he is not necessarily believed without proof if the other party is unsure that his claim is well-founded. To discharge one's heavenly obligation, however, the unsure one must pay the disputed amount, as we find in Choshen Mishpat 79:9. In your case, the grocer appears to have a sure claim,

but since your wife casts it into doubt, one might think you have no obligation to pay. However, I believe that your wife's kleptomania is like a chazakah that supports the grocer's claim. You must therefore pay. On the other hand, the grocer must swear how much she took since otherwise any unscrupulous grocer can claim whatever he wishes from the husband at any time." ■

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good, for no one would advance such a brazen claim of certainty unless he was sure of himself. Shimon, on the other hand, should know if he owes money or not, and by responding by saying he does not know, his reaction is weak and unimpressive. In this case, the ברי wins. ■