

OVERVIEW of the Daf

1) Conflicting testimony (cont.)

Abaye suggests an explanation why the Baraisa allows a woman to remain married when there was conflicting testimony regarding betrothal but does not allow her to remain married when the testimony involved divorce.

R' Ashi offers an alternative explanation which requires a reversal of the Baraisa's rulings.

2) Clarifying the Mishnah

R' Oshaya understands the last clause of the Mishnah as referring to the case of divorce whereas Rabbah bar Avin understands that it refers to the case of kidnapping.

The Gemara elaborates on the dispute.

It is suggested that the point of dispute revolves around R' Hammuna's ruling that asserts that a woman would not declare to her husband that they are divorced unless it was true.

This explanation is rejected.

Shmuel's father asserts that the Mishnah does not mean that she married; rather once she was authorized to marry she does not lose that authorization when witnesses offer a conflicting report.

This explanation is unsuccessfully challenged.

A Baraisa is cited that supports Shmuel's father's explanation. A related incident is cited.

A detail regarding the incident is clarified.

3) **MISHNAH:** The Mishnah discusses the credibility of a woman to declare she was not violated while in captivity.

4) **The credibility of one captured woman testifying about another**

A Baraisa is cited that elaborates on one woman's credibility to testify about another woman who was taken in captivity.

The Gemara notes that there seems to be an inconsistency concerning the different cases of the Baraisa.

Abaye maintains that the cases are in fact inconsistent.

R' Pappa offers a suggestion to maintain consistency in the Baraisa and explains each case in that light.

The necessity of the third and fourth cases of the Baraisa is explained.

5) **MISHNAH:** The Mishnah begins with a case of men testifying about their kehunah status. It concludes with a presentation of three other opinions on this matter.

6) **The necessity of the seemingly repetitious Mishnayos**

The Gemara begins to explain the need for all the different Mishnayos that teach the principle that, "the mouth that prohibits is the mouth that permits." ■

Distinctive INSIGHT

She should not marry due to the doubt

עד אחד אומר נתקדשה ועד אחד אומר לא נתקדשה תרוויחו בפניו קמסהדי, והאי דקאמר נתקדשה הוה ליה חד ואין דבריו של אחד במקום שנים

The Baraisa taught the case of two witnesses who came and testified that a woman had accepted kiddushin. Two other witnesses then came and testified that this woman had not accepted kiddushin. The halacha is that this woman should not marry anyone else at this point, because we must be concerned that she is already committed to a husband. If she does marry anyone else, she need not leave that marriage due to the doubt alone.

The second case of the Baraisa concerns a married woman. Two witnesses come and say that she was divorced, and two others testify that she was not divorced. The halacha here is that she is not free to marry anyone else, because we must be wary of the witnesses who say that she was not divorced. If she does remarry, she must be removed from the second marriage.

The Gemara asks, why is the halacha different in these two cases where she remarries? In the case of the woman accepting kiddushin she need not be removed from the second marriage, but in the case of the doubtful divorce we force the second marriage to be dissolved.

Abaye explains that the cases are dealing with two single witnesses, not two pairs of witnesses. In the first case, both admit the woman was not married to begin with. The one who says she received kiddushin has no credibility. In the second case, both single witnesses agree that this woman was a married person. The one who says she was divorced is the one who is not believed.

The Rishonim deal with a problem in Abaye's resolution. In the case of the unmarried girl, why does the halacha state that she should not marry *לכתחילה*? Here we have an unmarried woman, and one witness, who is not to be relied upon, says that she accepted kiddushin. She should be allowed to marry immediately, based upon her previous status of being unmarried.

Tosafos explains that the ruling of the Baraisa must be in a case where we know that a man tossed a kiddushin document at this woman, and we do not know if it landed closer to her, thus rendering her married to him, or if it fell closer to the man, and it failed to have an effect. In this case, her previous status of being unmarried is tenuous, and is not relied upon *לכתחילה*. ■

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In loving memory of their sister
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By Dr. & Dr. Ron Sanders
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In loving memory of their mother
לע"נ מרת רחל בת ר' יוסף הכהן, ע"ה

HALACHAH Highlight

Testimony about two people who look the same

שנים אומרים ראינוה שנתגרשה ושנים אומרים לא ראינוה שנתגרשה
Two people say they saw that she was divorced and two say that they did not see that she was divorced

There was once a woman from the town of Feen who was an agunah for many years. Her husband had left to travel and never reappeared. One day she was sitting in her shop and a man entered and began to inquire about some of the merchandise. As the conversation continued the man asked her about her husband and she shared her story. The man related that he had some knowledge of her missing husband and when she looked more closely at him he appeared like her husband. After the man left the shop the woman went to the rov who called the man to his home. The woman described identifying marks that would prove this man as her husband and other members of the community were also certain that this man was her husband. The man admitted to his identity and he divorced her, thus freeing her to marry.

After leaving town he declared that she was not really his wife and traveled to another town, Premsla, and strangely enough the same story unfolded. An agunah identified him as her husband as did other members of the community and the man admitted that he is her missing husband and stated that the reason he divorced the woman in Feen was for the money. The Beis Din of each town argued that the divorce they issued was valid and the woman in the other town is still married and a resolution could not be found.

Rav Yechezkel Landau¹, the Noda B'Yehudah, wrote at

STORIES Off the Daf

The Divorce Ceremony

"דכוליה עלמא אית להו דרב הונא..."

On today's daf we find the opinion of Rav Hamnuna, that a woman does not have the nerve to declare falsely to her husband, "You divorced me."

A husband and wife had moved to Yerushalayim from abroad, and upon their arrival the wife stated unequivocally that her husband had divorced her. The husband maintained that this was an outright lie. When they came before the beis din in Yerushalayim, the judges were in a quandary.

Although the Shulchan Aruch follows the opinion of Rav Hamnuna, the Ramah cites several divergent opinions about this issue. Some held that she is only believed to the extent that she would not be required to get a divorce if she remarried, but not to allow her to remarry לכתחילה or to collect her kesuvah. And while others hold that her status is like that of a complete divorcée, there is another opinion that since nowadays people are very brazen and pritzus abounds, we may only believe the wife l'chumrah.

The woman sounded very plausible, however, and her tearful entreaties were hard to ignore. On the other hand, the judges worried that perhaps she was lying for reasons of her own. Eventually, the

dayanim consulted Rav Chaim Leib Auerbach, zt"l, the famously clever and discerning Rosh Yeshiva of Shaar Hashamayim.

When Rav Auerbach met with the couple he quickly noticed that the wife was a very simple woman who would most likely be unaware of the procedure at a divorce unless she had really undergone the process.

He asked her, "As I am sure you remember the custom is to go around the chosson seven times at a wedding. How many times did the Rav have you go around your husband during the divorce ceremony?"

"Ten times!" exclaimed the woman.

With that, everyone knew she was lying and the case was thrown out of court. ■

REVIEW and Remember

1. Is there always public knowledge that a woman became betrothed?

2. What caused Shmuel's daughters to be taken into captivity?

3. In the Mishnah's case, why is the woman not believed when she claims that she was not violated?

4. Is the testimony of a single person sufficient to elevate a person into the status of a kohen?

length about the question and among the different points he analyzed was the statement of Chazal that there are no two people who look the same. This principle, explained Noda B'Yehudah, is absolute that there are no people who look the same for if it were possible for two people to look exactly the same there is no reason witnesses whose testimony was contradicted should ever receive lashes for giving false testimony. Even if the alleged victim were to appear there is the possibility that perhaps they witnessed the murder as they claim and there are two people who look the same. The reason there is no such concern is that there are no two people who look the same. Consequently, since both Batei Din claim to be correct and there is no indication which one is truly correct both women must assume that they are still married and unfortunately remain agunos². ■

1. שו"ת נודע ביהודה מהדו"ק אה"ע סי' ס"ה.

2. ע"ע שד"ח פאת השדה כללים מערכת אלף אות ס"ח. ■

