



THE HAKUK EDITION

ENGLISH TOPICS ON THE DAF

Dedicated L'Refuah Shlaima of Moshe Kalman ben Rivka

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Daf Hashovua Yevamos Daf 8

The Authority of Beis Din

At the end of daf 8b, the **Gemara** derives from a possuk that yibum may be done against the will of the yevama.

We find teshuvos from Rishonim about a medieval takana designed to control and regulate marriages. The **Rashba** was asked about the validity of a takana formulated by a community that if one conducted kiddushin with less than ten men present, it was not valid. He replied that the takana certainly has authority; he remarked that he personally decided on a similar case and the Ramban concurred with him. All the people in that town must agree to it, though.

He explains the mechanics of such takanos with the Talmudic rule “hefker Beis Din hefker,” that Beis Din has the authority to confiscate or otherwise declare ownerless any possessions of people if they see fit to do so. We find this concept in Ezra 10:8, as the leader of the people declared that anyone who refuses to comply with his ruling would have all his assets forfeited. Applied to this instance, the Beis Din has the power to declare the

money used to make the kiddushin as not his own, and therefore the kiddushin was not valid. The Rashba adds the caveat that if there is a Torah scholar in the town, it cannot be formulated without his consent (Teshuvos HaRashba Vol. 1:1206).

The **Beis Yosef** quotes this in Even Ha'ezer Siman 28, along with a teshuva from the Rivash who agrees on principle to the Rashba but is hesitant to pasken leniently (i.e. to not even require a get to end the marriage). But then the Beis Yosef cites the **Rashba"sh** (another Rishon) who vehemently disputed the whole idea. "Never was there such a psak; the earlier authorities were asked this question and refused to act in compliance with it." Other sources quoted there indicate that it was a hotly debated topic in those times.

This is relevant to our Gemara as well. The **Teshuvos Ginas Veradim** (E. H. 2:11) addresses an incident in which a man did yibum not in accordance with the takana of their town. Their takana was that if a "shtar shidduchin" (equivalent to tanaim) couldn't be written, the marriage must be made before a minyan of men and in the presence of the Rav of the town. The town was in an uproar, since some maintained that the yibum was invalid and they don't even need a get to separate. The Ginas Veradim discards such a notion, based in part on the teshuvos cited in the Beis Yosef above – certainly we must be machmir and consider the marriage valid, at least to require a get. Besides, he notes that the language of the town's edicts did not explicitly say the marriage would be null and void.

Another Rav, **Rabbi Yaakov Feraji**, wrote a teshuva (ibid. 13) asserting that takanos of this sort do not apply to yibum. The requirement to compose a shtar prior to kiddushin stems from the Gemara that one can't get married without formal consent and preparation. Yibum, however, is already predetermined by the Torah! Indeed, the yovom may take her against her will, and kiddushin is needed only midirabonon. Therefore, takanos about kiddushin have no bearing on cases of yibum.

Rav Moshe Feinstein (C. M. 2:1) asserts that a central Beis Din today has the same power and authority as the Beis Din Hagadol in the Beis Hamikdash. In fact, the indictment of zaken mamreh (described in Devarim

17:8-13) may be charged for insubordination to Beis Din! We won't kill him as the Torah commands, though, in the absence today of capital punishment by our Botei Din. (Rav Moshe adds the Rambam's halacha that the Beis Din must be comprised of at least one Dayan who acts l'shem shomayim.)

Chashukei Chemed (Sanhedrin 86b – Rav Yitzchok Zilberstein shlit"za) quotes a fascinating teshuva from the **Rosh**, displaying the severity of those who question decisions of Botei Din. Apparently, a Rabbi came along in one town and disputed the existing eiruv, made by previous Rabbonim years before. The Rosh was consulted, and he replied in fiery condemnations against him. "If he doesn't retract I warn you to put him into cherem, and distance him from Adas Yisroel. This matter needs strengthening, or else every fool can come along and nullify Toras Moshe. If he still doesn't listen, I decree upon him to give 1000 zuz to the mayor – and give this letter to the mayor! If that still doesn't help, all Eastern communities should excommunicate him, and decree his death as a zaken mamreh ..." (This sounds like it is literal – see Teshuvos Rosh 21:9.)

However, Rav Zilberstein notes that the **Maharitz Chiyos** seems to disagree, since he says that the possuk "Lo tosur" – do not turn away from what Beis Din tells you – refers only to the Beis Din in the Lishkas Hagozis, in the Beis Hamikdash.