



THE HAKUK EDITION

ENGLISH TOPICS ON THE DAF

Dedicated L'Refuah Shlaima for Yaakov ben Victoria

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Daf Hashovua Yevamos Daf 20

Our Gemara discusses why a Kohen Gadol can't do yibum with his yevama. Until the end of the sugya, at the bottom of 20b, we assume it is forbidden due to a derasha.

A central topic of debate, which we have mentioned before, centers on such cases where yibum is not possible. Does the issur kares of eishes ach return, or is it only a lav?

The **Parshas Derachim** (Derech Mitzvosecha, Chelek 3) ponders this question and divides it up as follows. If the inhibitor is just a lav, midioraisa the asef is docheh the lo sasef and yibum is permitted, but the Rabbonon forbade it. Certainly there is no eishes ach, and if the yovom did yibum anyway it has all the effects of yibum (the other brothers are pattur, etc.). An example is a Kohen Gadol and a yevama from *erusin*. However, the Parshas Derochim is unsure about a Kohen Gadol and *nissuin* – there is a lav and an asef, as our Gemara says. Since it's assur from the Torah, the kares of eishes ach should be reinstated. On the other hand, we have a passuk requiring chalitzah (ועלתה) *יבמתו השערה*, so maybe that also serves to remove the original issur of eishas ach? (As an additional point, he suggests that if

there is no karess there might not even be malkus for the lav, since in and of itself the lav is nidcheh by the aseï of yibum!)

Let's analyze the Rishonim and try to see which side they take.

The **Tosfos HaRosh** (3b) asks, where there is an aseï preventing yibum, it constitutes an eishes ach without a hetter of yibum – so it should even exempt the other tzaros from yibum? He answers that since chalitza is required, it is not comparable to arayos delineated in the first Mishnah of the Mesechta, and won't pattur tzaros. The Tosfos HaRosh clearly says that eishes ach applies where yibum does not.

The same is deduced from the words of the **Rashba**, asserts the **Shaar Hamelech** (Hilchos Yibum 6:11). When our Gemara says (at the top of 20b) "Chayavei lavin, kiddushin is valid with them," it doesn't mean that in our case it's valid – we assume at this point that midioraia they cannot do yibum! Rather, it means that *in general* chayavei lavin are capable of kiddushin. He is learning that eishes ach would apply here and thus kiddushin would not.

Conversely, the **Meiri** here states explicitly that if the Kohen Gadol does yibum (with a yevama from *nisuin*) he needs a get because kiddushin is feasible between them. Obviously he understands that there is no longer any issur eishes ish, for kiddushin is not binding where there is an issur karess.

So too may be inferred from **Rashi** later on (79b) – explaining Rabbi Akiva, who equates chayavei lavin with chayavei karess, Rashi says they would thus be forbidden with eishes ach. The halacha, however, is not like R' Akiva; kiddushin is binding with chayavei lavin. It follows that eishes ach would not be applied, either. (Rashi at the end of 20a sounds like this, as well – "We may apply to him 'to take'.")

At the very end of our sugya, Rava advances one more attempt to explain why a Kohen Gadol can't marry a yevama from erusin. Since chalitza could satisfy both the lav and mitzvas yibum, yibum itself is forbidden. The Gemara rejects this from the fact that if a seris did yibum, he acquired the yevama.

Rabbi Elchonon Wasserman (Kovetz Hearos 20:8) wonders why shouldn't he be koneh her; what factor precludes the kinyan, if it is only a lav? He notes that according to the Parshas Derochim's first option, they would revert to issur eishes ach – that would suffice to void the kiddushin. If the second alternative is correct, though, he doesn't know why yibum wouldn't not be effective. In his eloquent expression: Although in this case the aseï is *not* docheh the lav, the lav is not docheh the aseï, either. So, the aseï of yibum should be effectual?

It all depends on where the starting point is, argued **Rabbi Shlomo Heiman** in a letter to Rav Elchonon. The Beraisa states that a seris is koneh. In such a case, the Parshas Derochim would not entertain the thought that there is eishes ish – obviously, there is not. That possibility is only if the Gemara says yibum is not koneh. So, he doesn't agree with Rav Elchonon's application of the Parshas Derochim to this Gemara.

What is the axis of this argument between the Rishonim? **Rav Elya Boruch Finkel** ז"ל elucidated beautifully that if we say chayavei lavin and aseï were removed entirely from the hetter of yibum – just that they have to do chalitzah – then they would have an issur of eishes ach. On the other hand, if we view them as still in the general hetter of yibum, but with the aseï blocking actual yibum, eishes ach will have fallen away.

Another way to explain it has been mentioned before in these pages. Is the hetter of yibum entirely an expression of aseï docheh lo saseï, or is it a blanket exemption from the issur of eishes ach? **Rav Nochum Partzovitz** applied this chakira to our discussion. Tosfos et al hold like the first option, and so whenever the aseï can't be docheh, eishes ach returns. The other Rishonim, like Rashi and Meiri, understand it the second way, and eishes ach is never in force unless it falls under the rubric of achos ishah (at the beginning of the Mesechta).