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Daf Hashovua Yevamos Daf 42

We continue the sugya of havchana, the three-month wait before a woman may remarry.

On our daf, Shmuel cites a possuk as the source for it, that Jewish lineage must be clarified. Rava mentions several problems which can arise if paternity is unclear.

The big question the commentators deal with: Is havchana midioraisa (a Biblical prohibition), or just midirabonon (a Rabbinical enactment)? The most basic difference is in situations of doubt. A safek dioraisa is forbidden, while a safek dirobonon may be permitted.

The **Aruch L'ner** assumes that it is subject to the two opinions here. Shmuel quotes a possuk, so it's midioraisa; Rava offers reasons for it, since it's a gezeira midirabonon.

However, even though Shmuel quotes a possuk, it doesn't necessarily mean it's dioraisa. It may be an asmachta, an allusion from a possuk to back up a Rabbinic rule. Thus suggests the **Beis Shmuel** (Even Haezer 13) – and so everyone agrees it's only midirabonon. Indeed, points out Keren Orah, this possuk is used in a later Gemara for a different derasha, as Tosfos notes.

Why *wouldn't* the Torah want to clarify who's the father? We generally go by rov, the majority of cases; usually it's obvious who the father is. Also, there are means of

testing her status; we just prefer to avoid it, as our Gemara says further down the amud (Gevuros Ari, Yoma 75a).

Many Acharonim connect this question to the parsha in Chumash of Eishes Yefas Toar, the singular hetter of a beautiful non-Jewish woman encountered in battle. The pesukim in Devorim 21:10-14 describe the details of permitting the woman to the Jewish soldier, including, “She shall cry over her mother and father for a *yerach* of days; after that you may come to her.” *Yerach* commonly refers to the moon, or a month on the lunar calendar. If so, that means a man may marry a woman before three months have elapsed from her first marriage!

Indeed, Acharonim such as the **Netziv** (Haemek Shealah, Vayeira 12:1) prove from here that havchana *cannot* be midioraisa. If the Torah doesn’t demand it in order to differentiate between Jewish offspring and gentile, certainly between Jews it’s not mandatory. On the other hand, the halacha of yefas toar is also subject to a dispute. Let’s explore that sugya a little bit.

The Gemara on daf 48b cites a Beraisai. “*Yerach yamim* – this is thirty days. Rabbi Shimon ben Elazar says ninety days: ‘*yerach*’ – 30; ‘*yamim*’ – 30; ‘and afterwards’ – 30.”

So, according to the Tanna Kamma, we apparently don’t need havchana to ascertain if a child born was conceived when the mother was a gentile or Jew. Rabbi Shimon does require a three-month wait, so he may hold that it is midioraisa. More explicit is the Sifri on this possuk, in which Rabbi Akiva states that three months are required to differentiate between the two unions.

Thus, these Tanaaim argue if havchana is midioraisa or midirabonon. Now, it’s not probable that Shmuel and Rava are merely repeating the same argument as the Tanaaim, asserts the Netziv. Rather, Shmuel may follow Rabbi Shimon’s view and it is midioraisa. Rava, on the other hand, could say that even Rabbi Shimon is speaking only by Eishes Yefas Toar; in regular Jewish cases it’s midirabonon.

Even more intriguing is the **Rambam**. In Hilchos Gerushin (11:18-20) he writes, “Any woman who becomes divorced or widowed cannot get married until she waits ninety days... And it is a *gezeiras Chachomim* that even a woman who is not fit to give birth must wait...” and he lists off the examples from our sugya.

The **Radvaz** notes that first the Rambam mentions havchana, and then he adds “a *gezeiras Chachomim*.” This implies that the basic idea is midioraisa, and the Rabbonon added even women who can’t give birth. This is a whole new approach!

Indeed, the commentaries dispute what exactly Rambam holds by Yefas Toar. He writes (here, and Hilchos Melochim 8:6) that she needs to wait three months. Some learn the Rambam as following the opinion of Rabbis Shimon and Akiva mentioned above. But the Lechem Mishnah maintains that he really follows the Tanna Kamma, and the possuk means one month. Yet, another two months are necessary – practically, to make sure she isn't pregnant!

How could the Tanna Kamma say she's permitted after one month if they still have to wait longer? Aruch L'ner answers that this possuk is not about havchana, but a different point. She must "cry for a month." For example, even if she's already pregnant, so the child is certainly from the first husband, she still must wait one month.

In sum, the Acharonim dispute whether Shmuel holds havchana is midioraisa, if he agrees with Rava that it's midirabonon, and about what Rambam holds.

Let's conclude this inexhaustible subject, which is posed to Rabbonim umpteen times, with one shealah that was printed in **Marcheshes** (Vol. 2:2). The author Hy"ד was Rav in Vilna, and a woman there received a get sent from her husband in America. It was dated Tamuz, and it arrived in Teves, six months later. She had a shidduch offer, and wanted to remarry right away, since she was afraid she would lose the opportunity if she would have to wait three months. Is there any room to be lenient?

He explores the issues, primarily a mochlokes if you count three months from when the get is written or from when the woman receives it. This is disputed in the Gemara and down to the poskim in the Shulchan Aruch. If you count from the time of writing, she may get married already. Because havchana is quite possibly midirabonon – and certainly in this case, when she was separated from her husband for many months already – we may rely on the opinion that permits her to get married right away, as it's a shaas hadchak.