



לע"נ ברוך בענדיט וברכה גרוס ע"ה  
by Mr. & Mrs. Duvy Gross

# *The Hakuk Edition* **English Topics on the Daf**

*Dedicated l'refuah sheleima for Yaakov ben Victoria*

By Rabbi Mordechai Papoff

THE FIFTH PEREK OF YEVAMOS IS DEDICATED:

לע"נ דוד בן יצחק איסאק



YEVAMOS DAF 51 IS DEDICATED:

L'Zecher Nishmas Devorah Chaya Bas Yosef Tzvi

## **Yevamos Daf 51**

Biyas ben teisha

The Gemara says that if a ben teisha (a nine-year-old) tries to do yibum, it has the effect of maamar. The yevama is now forbidden to marry any of the other brothers. The Shulchan Aruch (Even Ha'ezer 170:16) notes that it is not exactly like maamar of a gadol (halachic adult), so if a gadol already did maamar, a ben teisha's maamar is ineffectual.

Why should a minor be able to do maamar at all? He cannot make a regular kiddushin. Furthermore, the Beis Shmuel explains that Chazal enacted maamar as a precaution.

Maamar is essentially the standard procedure of kiddushin, and if we would dismiss it when done by a yovom, one might think that even biyah doesn't make them married. He could change his mind and take a different one of the yevamos. All this is relevant to gedolim, but ketanim can't do yibum, or any marriage, for that matter. Why would Chazal see fit to enact maamar for minors?

He refers us to another Gemara, in Kiddushin 19a. There it cites a derasha to exclude a koton and a koton's wife from the death penalty of adultery. Why is a derasha

necessary, if he can't create a real kiddushin, anyway? The Gemara suggests that the possuk is talking about a yovom and yevama. "Since midioraisa she is fitting for him, and his biyah is effectual, maybe they'd be liable for eishas ish, as well." Rashi explains that a ben teisha can do yibum, as a Mishnah in Nidda (45a) states. He acquires her as his wife, midioraisa. The derasha serves to exclude the union from the death penalty for eishes ish.

According to Rashi, we can begin to understand why maamar should be necessary for ketanim – they are capable of doing yibum, and would forbid the yevama to other brothers midioraisa. Thus, maamar should have some validity as well so nobody confuse it with yibum.

Tosfos, however, argues with Rashi based on a later Gemara here (96b), "they considered biyas ben teisha like maamar of a gadol." This clearly seems to say that a minor's yibum is no better than maamar of a gadol, which is midirabonon. Therefore, Tosfos maintains that a koton's yibum is only midirabonon; midioraisa he has no ability to forbid any woman on anyone else. The Gemara in Kiddushin means only

that in general, zikah connects a yovom and yevama, and a ben teisha has the ability to perform biyah in essence. However, he cannot do yibum to acquire his yevama midioraisa, and that is indeed what the derasha teaches us – he's excluded from issurei eishes ish. If so, the question returns: why should a koton have maamar? The Beis Shmuel leaves it as a question.

To further explain Rashi, let us examine the Gemara in Nidda he cited. It asks a similar question as Tosfos – biyas ben teisha is as maamar? It answers that indeed, if a koton does yibum it is not effective enough that he could divorce her with a get. He must wait until he becomes an adult, do yibum again, and then may give her a get. This sounds like Tosfos argues, that his yibum is not really valid?

The Pnei Yehoshua (in Kiddushin) offers a beautiful explanation for Rashi. The opposite is true! A ben teisha is fully capable of performing yibum, but the Rabbonon reduced the strength of his kinyan and declared that it is no more potent than maamar of a gadol. He must wait until he grows up to give her a get, and other brothers may still do

maamar, etc. But midioraisa his yibum is binding!

Some Rishonim and Acharonim ask on Tosfos from the Mishnah at the beginning of the sixth Perek. On daf 53b it says that whether yibum is done intentionally or not, coerced or willingly, it is valid. So, although a minor is not considered to be endowed with daas enough to make a kinyan or kiddushin, if he does yibum it should be no worse than "unintentional" and valid?

In Shu"t Oneg Yom Tov (Even Ha'ezer 179) he differentiates between a ben teisha and a gadol who doesn't have kavana. How so? If a man wants to be mekadesh a woman on condition that he has no marital obligations toward her (she'er, kesus and onah), it is not valid (Kesubos 56a). Rishonim explain that kiddushin cannot take effect partially – it's all or nothing (according to R' Meir; see there). A koton is not yet obligated in any mitzvos, midioraisa. So, even though his biyah is considered as an adult's to evoke punishment to an ervah he cohabits with, he cannot make a kinyan of kiddushin. Even if he tried, he wouldn't be obligated in marital

obligations, so it's like a partial marriage, and not valid!

On the other hand, if a gadol does yibum without intention, he is capable of generating dioraisa marital obligations, and yibum works even in this fashion.