



לע"נ ברוך בענדיט ובורה גרוס ע"ה
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The Hakuk Edition English Topics on the Daf

Dedicated l'refuah sheleima for Yaakov ben Victoria

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THE SIXTH PEREK OF YEVAMOS IS DEDICATED:

לע"נ גרשון בן החבר מרדכי

Yevamos Daf 65

If a woman marries a man and they don't have children, he divorces her and pays her kesubah. So too if she marries a second man and the same thing happens. If it recurs a third time, she now has a chazaka of childlessness, and does not receive her kesubah money. Why doesn't she have to give back the kesubah money she received from the first two men? The Gemara says we may assume this status began only now.

How do we understand such a suggestion? Isn't it more logical to assume she was like this all along?

Chazaka is a Talmudic concept relevant to many other areas of halacha. For example, the Torah says that until an ox gores three times, the owner pays only half the damages it incurs. Only after it has a chazaka of damaging does he pay fully. If someone's children are niftar from having a bris, r"l, three times, he does not circumcise any future children.

Rav Elchonon Wasserman (Hosafos, here) explains that until it repeats itself three times, we can still assume it was an accident. But once it happens many times, we can no longer say it's an accident. Accordingly, the third time proves the

nature of the situation; the animal is unsafe, the constitution of his children do not allow for a bris. And this nature was extant from the beginning.

If so, asks Rav Elchonon, how can our Gemara say that after three marriages without children the woman became barren only now? That is not how chazaka works!

Many other Acharonim have discussed this. The Kehilos Yaakov (Niddah 66) notes Tosfos' opinion that the Gemara's sevara is strong enough only to let her keep the first two kesubos, but not enough to make the third husband pay her (see Tosfos "Taitzai"). It keeps the status quo, but cannot force anyone to give anything. Similar to rov, following the majority of circumstances, it indeed is not a definite contention.

Even more so, he points out that the sevara of "becoming weak" is the natural, unavoidable condition of every woman! Every childbearing woman weakens with age and eventually becomes unable to conceive. The Gemara is teaching us that the chazaka of barrenness is inherently different from all others, because everyone is headed in that direction,

anyway. Thus, we may argue that she was still fertile during the first two marriages and only lost her ability now. (Even so, we apply to her the chazaka of childlessness from now on.)

Rav Shimon Shkop (Bava Kamma Siman 33) explains that Rishonim debated the mechanics of chazaka, and that can help us with our Gemara.

On Sukkos, we begin saying “mashiv horuach umorid hegeshem” in shemoneh esrei. For the following thirty days, if we don't remember if we said it, we should assume we did not. After that, we have become accustomed to saying it, so if in doubt we probably said it. The Tur (O.C. 114) cites Maharam MiRottenburg's creative solution: he repeated it ninety times on Shemini Atzeres, and never had to worry about it! He compares it to the goring of an ox. However, Rabbeinu Peretz argued with him; it doesn't help. Why is it different from goring? The Beis Yosef writes that here is a matter of the tongue getting used to saying something new, and it takes time – a month – for that to happen.

What is the crux of their machlokes? Rav Shimon says they differ in how to understand the mechanism of a chazaka. Is it as we've been saying, that if something happens three times it reveals its nature; or do three occurrences create a new nature? Maharam sees mashiv haruach as the same thing as an ox, because he understands chazaka as creating a new habit. R' Peretz argues because he learns chazaka as revealing the nature that always was there. Habituating yourself to say something is not comparable.

Back to us. According to Maharam (which is paskened by the Shulchan Aruch), chazaka means that three occurrences

make a new reality. Therefore, is it entirely possible that this woman was fit to have children while married to her first two husbands, and only now changed! Every chazaka works like this.

However, we can't so easily dismiss Rav Elchonon's opinion that chazaka shows what was there all along. In the case of babies passing away from their bris, it's not logical to say that it became their nature when it kept happening! Obviously, that was their nature from the beginning. It must be, asserts R' Aryeh Koledetzky shlit"a, that there are different forms of chazaka. In sum: Our sugya indicates a chazaka which develops with time, the chazaka of babies was from the start, and some are debatable – oxen and mashiv haruach (Avnei Hamakom, Chagiga p. 342).

Finally, Rav Nochum Partzovitz explains that both aspects are true. Three times are enough to make a second nature in something. But still, one might argue that all three were circumstantial; maybe the ox was unusually provoked all three times? The rule of chazaka serves to dispell this notion. If it keeps happening, it is no happenstance! It may have been its nature all along, or it developed it now, but there's no avoiding the chazaka (Bava Kamma 2b).