



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

# The Hakuk Edition English Topics on the Daf

*Dedicated l'refuah sbeleima for Yaakov ben Victoria*

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## **YEVAMOS DAF 94 IS DEDICATED:**

### ***L'Zecher Nishams Yenta Rivka bas R' Yaakov Halevi***

Chamoso Achar Missa

Is a mother-in-law considered an ervah, a forbidden relative, even after the death of her daughter, one's wife?

Rabbi Yishmael would say that she is, according to Rava, but Rabbi Akiva would not. We hold like R' Akiva. Even though she's not an ervah, though, she is still forbidden. What is the degree of the prohibition? Let us explore the writings of the Rishonim and Acharonim on this.

Tosfos says that the lav and even karess punishment remain! Only sereifa, the death penalty meted out by Beis Din, is removed. So too maintains the Rambam (Issurei Biyah 2:8). Although the Gemara in Sanhedrin 76b labels it "issura b'alma," "just an issur," it means to exclude just the death penalty (Maggid Mishnah).

But Rashi in Sanhedrin (ibid) seems to argue. He writes that R' Akiva learns the possuk as, "If his wife is still alive, his mother-in-law is punished with sereifa. If not, there is no punishment of sereifa but just an issur of the curse – 'Cursed is one who lays with his mother-in-law.'" This implies that there is no longer any karess, either, just a Biblical curse. They would

not be obligated to bring a korbon chatos for it.

So understands the Rashba, proving as well from a later Gemara (98b) which defines R' Akiva's opinion as the issur being "weakened" after the wife's death. Based on his view, that Gemara applies an additional leniency; the Rashba argues that if karess were to remain, it would be a model for other kulos.

Another source for this opinion is a Rashi on the first amud of our Masechta. Explaining "chamoso," one of 15 arayos that exempt the yevamos from yibum, Rashi says, "her husband (the father-in-law) died and she married his (the son-in-law's) brother." The Maharam asks that Rashi could've described a simpler case: A man marries his brother's daughter, she dies and then his brother dies. Since his brother had no children left at the time of his death, his wife would need yibum. However, since she is both the sister-in-law and the mother-in-law of the first man, she's exempt. Why did Rashi have to put an additional marriage into the picture?

Interestingly, Rashi does depict such a case on a later Gemara, Rav Elya Boruch Finkel zt"l cites from Rav Chaim

Shmuelevitz. On daf 12b Rashi explains the case of “chamoso who is mima’enes” as exactly this example – his brother married his niece. That Gemara is discussing the “chamoso” of our Mishnah. So, indeed, why couldn’t Rashi say it here?

The Rivash answers that such a case would be subject to the argument over chamoso achar missa, and R’ Akiva holds it is not an ervah! He assumes that there is no karess, and that is why it would not exempt the deceased brother’s wives from yibum. As we learned in earlier sugyos, karess is linked to the eligibility of kiddushin. If there’s no karess, there is tefisas kiddushin, and it’s not considered an ervah. It cannot fit into the list of yevamos exempt from yibum. (He adds that the question doesn’t really start; what’s the difference if the case is two men dying or two women dying? And anyway, Rashi needs to set up this case for the following arayos in that Mishnah – eim chamoso, etc. See Teshuvos Rivash, 374.)

Why does Rashi mention the simpler case on daf 12? The Gemara says that the first Mishnah wishes to avoid cases which are subject to arguments, but the later Gemara is not bound to such a rule. This is based on Tosfos 2b (Shiurei R’ Eliyahu Boruch 2a).

Now, according to Tosfos, there is karess for chamoso even after one’s wife dies, so such a case should exempt her and all the tzaros from yibum. Still, the Aruch L’ner asserts, even Tosfos would provide that same example as Rashi. Why? We find in the Gemara on 2b that the chamoso of our Mishnah is liable to sereifa. It must be, then, that it refers only to a chamoso when the wife is still alive, because only then is sereifa applicable! So, even Tosfos would have to explain the Mishnah like Rashi.

Technically, though, Tosfos should hold that a chamoso even after one’s wife’s death exempts her and all tzaros from yibum. Rashi would seem to say they are not exempt from chalitza.

The strange part is that the Shulchan Aruch makes no mention of this issue. Both when discussing arayos with whom kiddushin is not tofess and about yibum, no distinction is made about chamoso achar missa. This troubled the poskim, such as the Dagul Mairivava on E.H. Siman 15, and Knesses Hagedola on Siman 173. The many Rishonim who side with Rashi would require chalitza, and if the former son-in-law is mekadash her, she should need a get!

The chalitza shealah actually happened once and the question was sent to the Noda B’Yehuda (E.H. II, 148). He concurred with the petitioner that chalitza is required, due to those Rishonim. He tries to defend the Shulchan Aruch that perhaps we may deem it a sfek sfeka, a double doubt: according to R’ Yishmael she still gets sereifa, so she’s a full ervah. And even according to R’ Akiva, according to Rambam and Tosfos she still gets karess. So the Shulchan Aruch left it out. But he is not at peace with this idea, since we hold that the halacha follows R’ Akiva.

Rav Shach, however, maintains that everyone agrees they are exempt. The petur from yibum is based on the pesukim about arayos, and in this context that term may include even those without the punishment of karess. For example, the Gemara (daf 11) mentions tzoras sotah and one who remarries his gerusha as examples of exempting the yevamos, even though there is no karess there. So too, no chalitza is needed for a chamoso even after her daughter’s death (Avi Ezri Yevamos Siman 1).