



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

Yevamos Daf 96

Our daf opens with a discussion if a shomeres yavam who is mezaneh becomes thereby forbidden to her yavam. Rav Hamenuna says she is forbidden, and Rav and Shmuel base their opinions on the question if a shomeres yavam is considered a married woman (eishes ish) or not.

We know that the Torah forbids a shomeres yavam to marry anyone other her yavam with a lav – “The wife of the niftar cannot marry out, to a foreign man.” How can this lav also have the severity of an eishes ish?

In his Asvan Dioraisa, Rav Yosef Engel explains Rav’s view. Usually, when a husband dies, the wife becomes freed from the bonds of marriage entirely. The exception to the rule is when there is a yavam, since the Torah tells us she is not yet free; zikah keeps her essentially still bound by her marriage. So, although yevama l’shuk is only a lav, zikah serves to maintain the prior status of eishes ish she had while married to the first man. Alternatively, maybe the zikah of yibum is enough to qualify as an ervah and the

repercussions of her zenus is the same as that of an eishes ish.

Shmuel can hold either that the first marriage is completely finished, so all there is now is a regular lav, or that the Torah downgrades the strength of her affiliation to a lav.

He bases this concept on a Gemara in Kiddushin (14a). The Mishnah there states that a yevama is exempted from yibum if the yavam dies. How do we know this? The Gemara suggests it’s a kal v’chomer – if a fully-married woman is released from marriage with her husband’s death, certainly a shomeres yavam? Deflects the Gemara, maybe a husband is different, since “the one who forbade her, permits her” – meaning, the same man who made her forbidden to marry anyone else (by marrying her) may likewise permit her (with his death). This is as opposed to a yavam, since the late husband caused her issur and we’re proposing that the yavam should release her!

This implies that the issur for a yevama to marry out derives from the first man.

But the Gemara continues with the rejoinder, “here too, the yavam forbade her (with zikah) and the yavam permits her (with his death).” Here the Gemara is saying that the entire prohibition of a shomeres yavam is attributed to the yavam!

These are the two options, says Rav Yosef Engel (Klal 8 Perek 1), and Rav and Shmuel are arguing about this.

There are more ramifications to this issue. Can chalitza be performed at night? The Mishnah later on (104a) lists opposing opinions about it. What is the crux of their machlokes? A din Torah must start during the day (Sanhedrin 34b), but if it had already begun, it may be finished at night. The two Tenaim argue if chalitza is comparable to the start of a court case or the end of it. The Steipler (Siman 21) cites the explanation of the Ohr Zarua lining up these two views with the two ways of understanding the issur of a shomeres yavam. If it’s a continuation of the first marriage, chalitza is the end of the case. If it’s a new issur, it’s the beginning!

Shu”t Maharit (E.H. 18) elaborates with more proofs from Gemaras and addresses other sugyas which seem to contradict this premise. For example, in Kesubos (58a) it says a Kohen yavam cannot give his yevama terumah to eat, until he does yibum. Why not? The Gemara says it’s because the possuk allows “his acquired ones” to eat, and “she is the acquisition of his brother.” This implies that the bond between them is held over from his dead brother? But Rashi there explains that it means she

was his brother’s acquisition, and now that he was niftar she is nobody’s acquisition! That is why she cannot have terumah. (And even Tosfos, who holds that she may have terumah if she already began consuming it when her first husband was alive, can agree. After his death, her permission to eat shifts to that of the yavam’s zikah.)

The maskana of that Gemara in Kiddushin is that zikah is a new issur. This aligns with the opinion of Shmuel in our daf, and indeed that is the halacha (E.H. 159:3). In the case of zenus, though, the Rema cites the Nemukei Yosef that she is forbidden to the man she cohabited with, as a knass. This sparked many responses among the poskim. The Beis Shmuel comments that if this were so, the same would apply to any case of a married woman anusah – she’d be forbidden forever to the other man. However, in Siman 11, he cites many Rishonim who pasken that she is permitted to him, since she remained permitted to her husband (if he’s a Yisroel). Pischei Teshuvah (note 9) also quotes those who cast doubts on the psak by a shomeres yavam – it is peculiar for a Rishon to invent a knass not found in Chazal. The Chasam Sofer (I:26) also opined that if a Rav were to permit it, for reasons he sees fit, we would not protest.