

Daf Notes

Insights into the Daily Daf

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Kesuvos Daf 9

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Daily Daf

I Found an Open Entrance

Rabbi Elozar said: If the husband (*after his first act of cohabitation with his virgin bride*) claims, "I found an open entrance (*her hymen has been torn by someone else*)," he is believed to render her forbidden to him.

The *Gemora* questions this ruling: Why should she become forbidden to him? It is a double doubt if she should be forbidden to him. It is uncertain whether she cohabited with another man during her betrothal to him (*in which case she is regarded as an adulteress who is forbidden to live with her husband*) or perhaps it occurred before she was married to him. And even if you say that she cohabited with another man during her betrothal to him, there is another doubt whether she was violated or by her own free will.

The *Gemora* answers: Rabbi Elozar is referring to a case where she is the wife of a *Kohen* (*in which case, she will be forbidden to the husband even if she was violated*). Alternatively, he can be referring to the wife of a *Yisroel*, but the case is where her father accepted *kiddushin* for her when she was under three years old and one day (*in which case, she will be forbidden to her husband, since she obviously cohabited while she was married to him, for if it occurred before she was three, her virginity would not be affected*).

The *Gemora* asks: What is the necessity for Rabbi Elozar's ruling? Didn't we learn Rabbi Elozar's main point (*that a man may, by his own testimony, may prohibit for himself a thing or a person otherwise permitted to him*) in the following *Mishna*: If a man says to a woman, "I betrothed you," and she says, "You have not betrothed me," she is permitted to marry his relatives, but he is prohibited to marry her relatives.

The *Gemora* answers: We might have thought that only in the *Mishna's* case does one become forbidden by his own words because he is certain regarding his claim, but in Rabbi Elozar's case, where his claim is not a certainty, for he really does not know if he found an open entrance or not, perhaps she does not become forbidden to him; Rabbi Elozar teaches us that she is indeed forbidden to him.

The *Gemora* asks: Did Rabbi Elozar really say that she is forbidden to him? But surely, Rabbi Elozar had said: A wife does not become forbidden to her husband except in the case when there is a warning and seclusion (*if the husband warned the wife not to seclude herself with a specific man and she disregards his warning and secludes herself with that man, she becomes forbidden to her husband*), and as we find in the occurrence that happened (*between King David*

and Bas-sheva)? (It is evident that Rabbi Elozar does not prohibit the wife to her husband just based on his claim that he didn't find signs of her virginity.)

The *Gemora* questions the last statement: Was there a warning and seclusion by the incident with King David and Bas-sheva? And furthermore, was Bas-sheva rendered forbidden to her husband?

The *Gemora* explains: This is no difficulty, for this is what Rabbi Elozar meant to say: A wife does not become forbidden to her husband except in the case when there is a warning and seclusion, and this we learned from the occurrence that happened, where there was no warning and seclusion, and that is why Bas-sheva was not forbidden to her husband.

Nevertheless, the original question remains: She is only forbidden to her husband if there is a warning and a seclusion, but she would not be rendered forbidden based on his testimony that he found an open entrance.

The *Gemora* answers: Rabbi Elozar's statement cannot be taken literally, for will she only be forbidden to her husband if there is a warning and a seclusion, but if witnesses testify that she committed adultery, will she not be rendered forbidden? Obviously, yes! Rather, the following is what Rabbi Elozar meant: A woman will not be rendered forbidden to her husband through the testimony of one witness, but rather, only through the testimony of two witnesses. And a warning and seclusion even with through one witness (*on the seclusion*) will render her forbidden. A husband's claim that he found an open entrance is regarded as if there would be two witnesses (*because he is certain regarding his claim*). And why was Bas-sheva not rendered forbidden to David (the adulteress becomes forbidden to the adulterer)? It is because she was violated (*it was without her consent, and in such cases, the woman would be permitted to her husband, therefore, she is permitted to the adulterer as well*).

Alternatively, the *Gemora* answers according to what Rabbi Shmuel bar Nachmeini said in the name of Rabbi Yonasan: Everyone who goes out into the war of the House of David writes for his wife a deed of divorce beforehand (*so that in case he falls in battle his wife should be free to marry without the necessity of chalitzah. The get would in that case take effect retroactively from the date of its writing; this is why she did not become forbidden to her husband; she did not commit adultery*). (8b – 9b)

Support from the Mishna

Abaye cites support for Rabbi Elozar's ruling from our *Mishna*: The *Mishna* had stated: A virgin is married on Wednesday. We may infer from here that she is only married on Wednesday, but not on Thursday. What is the reason for this? It is because we are concerned that his anger will subside (*by waiting for the next time that Beis Din would be in session; they were in session in the big cities on Monday and Thursday; if a husband, who got married on Wednesday, will have a claim regarding his wife's virginity, he would be able to go early the next morning to the Beis Din*). What were the Rabbis concerned about? If it was regarding her *kesuvah*, what is the reason to concern ourselves with that; let the husband give her the *kesuvah* (*if he so desires*)? Rather, it must be that she is forbidden to him. Isn't the *Mishna* referring to a case where the husband claimed that he found an open entrance (*and this would prove that the wife is forbidden to him based on such a claim*)?

The *Gemora* rejects the proof: Our *Mishna* could be discussing a case where he claimed that he did not find any blood (*only in this case, where his claim is a more certain one, will she be rendered forbidden to him*). (9b)

Deprive her of the Kesuvah

Rav Yehudah said in the name of Shmuel: If the husband (*after his first act of cohabitation with his virgin bride*) claims, “I found an open entrance (*her hymen has been torn by someone else*),” he is believed to cause her to lose her *kesuvah*.

Rav Yosef asks: What is the necessity of Shmuel’s ruling? Have we not learned this principle from the following *Mishna*: One who eats at his father-in-law’s house (*between the time of betrothal and the time of marriage*) in Judaea (*where this was common practice*) without witnesses, cannot raise the claim (*after the marriage*) regarding his bride’s virginity, because he has secluded himself with her (*and we suspect that he might have had intimate relations with his bride*). The *Gemora* infers from here that it is only in Judaea that he cannot raise this claim, but in the Galilee (*where it was not customary for the husband to seclude himself with the bride before they were married*), he can raise it. Regarding what, was his claim? If his intention was to render her forbidden to him, why should he not be able to raise this claim in Judaea? (*If he is sure that he has not been intimate with her during the time of betrothal and he charges her with unfaithfulness, he renders her, by the mere charge, forbidden to him?*) It is evident that his claim is to cause her to lose her *kesuvah*. Isn’t the *Mishna* referring to a case where the husband claimed that he found an open entrance (*and this would prove that he is believed to cause her to lose her kesuvah based on such a claim*)?

The *Gemora* rejects the proof: The *Mishna* could be discussing a case where he claimed that he did not find any blood (*only in this case, where his claim is a more certain one, will she lose her kesuvah*). (9b)

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Counterclaim

Rabbi Elozar said: If the husband (*after his first act of cohabitation with his virgin bride*) claims, “I found an open entrance (*her hymen has been torn by someone else*),” he is believed to render her forbidden to him.

It is not clear from the *Gemora* regarding the counterclaim of the woman. Most Rishonim maintain that she is forbidden to him only if she contradicts him and states that her entrance was not opened, or if she remained quiet. However, if she concedes that her entrance was opened, but she claims that she was violated or she was wounded by wood, she is believed, and she will not be forbidden to him. This is because the husband’s claim is an uncertain one, but she knows what happened, and a certain claim has more validity than that of an uncertain one, especially when we can combine her certain claim with her presumption of innocence.

The Rosh disagrees with this. He states: Since there is only one doubt, we must rule stringently, and she is not believed. It is also established that we do not give more credence to a certain claim over an uncertain one, especially when there is a majority contradicting her claim. Most women cohabit willingly, and when they are violated, there is usually a rumor to that effect. A majority is superior to a presumption of innocence. We can therefore, not rely on her claim, and she is forbidden to her husband. The Rashba, while agreeing with the Rosh, states that she is believed regarding her *kesuvah*.