

## OVERVIEW of the Daf

### 1) Certifying a judge (cont.)

The Gemara identifies the case where Rav's ruling concerning judges testifying for a colleague applies.

### 2) Certifying a document

R' Zeira reports in the name of others that if one of the judges dies before the certification could be signed the remaining two judges must mention that fact in the certification.

R' Nachman bar Yitzchok offers another option.

This option is unsuccessfully challenged.

3) **MISHNAH:** The Mishnah presents two cases of a woman's claim regarding her status. The principle in both cases is that if all the information comes from her she is believed but if there is independent knowledge of the incriminating facts she is not believed to claim that she remains fit.

### 4) "The mouth that has forbidden is the mouth that has permitted"

R Ashi suggests a Biblical source for this principle.

The Gemara challenges the necessity of a Biblical source when it is a logical principle. The point is conceded and an alternative use for the verse is identified.

### 5) אמתלא - reason

A Baraisa rules that a woman who identified herself as married can later state that she is unmarried.

Rava bar R' Huna explains that the credibility is limited to a case where she has a reason for why she initially said something different.

Another Baraisa is cited that supports this explanation and contains a related incident.

Additional rulings and incidents are presented.

### 6) Conflicting testimony

(Overview...Continued on page 2)

## REVIEW and Remember

1. When is permitted for a kohen to marry a woman who was kidnapped?

2. Explain אמתלא?

3. What is the point of dispute between Tanna Kamma and R' Menachem bar Yosi?

4. When would a woman behave brazenly to her husband?

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## Distinctive INSIGHT

The case of אשם תלוי

מכדי תרי ותרי נינהו, והבא עליה באשם תלוי קאי

The Baraisa cites a case of a woman whose husband went away to a distant location and did not return. Two witnesses came and testified that the husband had died. Two other witnesses then came and testified that the husband had not died. The halacha is that the woman may not remarry, and if she did remarry, she need not be removed from the second husband. Rebbe Menachem bar Yosi argues against this last point, and he contends that even if she remarried, she must be removed from the second husband. He then clarifies that we only terminate the second marriage if the woman remarried after the second set of witnesses came and effectively cancelled the testimony of the first ones, that the husband had died. However, if the woman remarried before the second set of witnesses arrived, even Rebbe Menachem agrees that the woman may remain remarried to the second man, whom she married legally.

The Gemara questions Tanna Kamma who allows this woman to remain remarried even if she acted after hearing that the testimony of her husband's death was questionable. Is this woman and her partner not liable for an אשם תלוי for acting where a chattas offering might be needed (this is a case of possible adultery)? How can they remain married?

Tosafos here cites a dispute among the Amoraim in כריתות (17b), and only Rav Asi requires an אשם תלוי when a person eats a single piece of fat, not knowing whether it was שומן which is permissible, or whether it was חלב, which is prohibited. However, Chiya bar Rav holds that an אשם תלוי is only required when a person eats one of two pieces which were in front of him, one permitted and one prohibited, and he now does not know which one he ate. Tosafos in כריתות explains that our Gemara only mentions the אשם תלוי according to Rav Asi, as our case of marrying a new husband is only comparable to the case of partaking of a single item, not knowing whether it is permitted or not.

Tosafos in our Gemara explains that the question here can be understood even according to Chiya bar Rav. The reason Chiya bar Rav in כריתות explains that אשם תלוי applies only when a person eats one of two pieces is that the case has to have the potential to be resolved, and this is usually when at least one piece remains which can still be analyzed. Tosafos notes that in our case the situation of marrying when the status of the first husband is questionable can also potentially be resolved, by means of more witnesses or with other evidence. Here, even Chiya bar Rav would agree that the case is eligible for an אשם תלוי. ■

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# HALACHAH Highlight

## A retraction based upon a justification

אמרה טמאה אני וחזרה ואמרה טהורה אני ... אם נתנה אמתלא לדבריה  
אמנת

If a woman declares that she is temai'ah and then declares that she is tehorah ... if she offers a justification she is believed.

When a woman makes what seems to be a serious declaration that she is a niddah she is considered a niddah based on the principle that one can render something forbidden by making a declaration that the object is prohibited – שויה אנפשיה חתיכה דאיסורא. If, however, the woman retracts her statement and is able to give a justification for her first misleading statement, it is accepted and she is not considered a niddah. One example is a woman who assumed and declared she was a niddah because she found a stain on her garment but later realized that the blood came from a wound and she is not a niddah<sup>1</sup>. Another example is a woman who declared herself a niddah in the midst of a quarrel she was having with her husband. If she later asserts that her original claim was a reaction to the quarrel and was not in fact true she has offered an acceptable justification and removes her status of being a niddah<sup>2</sup>.

In certain cases a woman is not believed even if she offers a justification for her initial misleading statement. One practical example is a woman who told several people of her status as a niddah. Once the matter became public knowledge even a justification is no longer accepted to change her status<sup>3</sup>. A second case is if a woman conducts herself like a niddah for thirty days or longer, she is not believed to change that status even with a justification<sup>4</sup>.

On the other hand, there are certain instances where even a simple retraction is accepted. One case is where within approximately two seconds (תוך כדי דבור) she immediately retracted her declaration that she is a niddah<sup>5</sup>. A second example is where it was obvious all along that her statement was made in jest and she never

(Overview...Continued from page 1)

A Baraisa presents a dispute whether a woman is required to divorce if she married after conflicting reports regarding her eligibility.

The lenient opinion of R' Menachem bar Yosi is explained.

R' Menachem bar Yosi's position is unsuccessfully challenged.

R' Yochanan issues two rulings, one related to a conflicting report the husband died and one related to a conflicting report she is divorced. In the first case (where the husband was reported dead) he rules that if she marries she is not required to divorce, but in the second case (where the first husband was reported to have divorced her) she is required to divorce the second husband.

Abaye suggests an explanation that is unsuccessfully challenged. Rava offers a second explanation that is unsuccessfully challenged.

R' Assi suggests a final explanation.

A Baraisa cites two cases, one related to a conflicting report that she married and one related to a conflicting report that she divorced, and rules in the first case that if she married she is not required to divorce but in the second case she is required to divorce. ■

intended to make a serious declaration that she is a niddah<sup>6</sup>. A third example is where it is clear and evident that her initial declaration that she is a niddah was provoked by the anger she had towards her husband (in contrast to the earlier halacha where it was not obvious)<sup>7</sup>. ■

1. ש"ך יו"ד סי' קפ"ה סק"ג.

2. עי' שו"ת הרדב"ז ח"ד סי' רס"ד.

3. עי' ט"ז שם סק"ב בשם מהר"ל מפראג אולם עי' בתורת השלמים שם אות ג'.

4. פתי"ש שם סק"ה.

5. רמ"א שם סעי' ג'.

6. רמ"א שם ועי' ערוה"ש סעי' י'.

7. רמ"א שם ועי' ערוה"ש סעי' י"ב. ■

# STORIES Off the Daf

## The Words of the Wise

"מנין שהפה שאסר הוא הפה שהתיר..."

Rav Yechezkel of Kozhmir, ז"ל, once offered a certain moreh hora'ah important guidance in rendering halachic decisions. "When you think about it, the process of halachah appears perplexing at times. For example, very often we find that while the Shulchan Aruch permits something, the Rema can be stringent. Is it possible that one has permitted that which is truly forbidden? Could it be that one or the other actually ate traifos, for example? The truth, how-

ever, is as we say, that 'these and those are the words of the living G-d.' There are many possible interpretations of the law, but the actual halachah depends on the sages of each and every generation. And what determines what the halachah really is? The speech of the chachomim. Each sage's word made the object or action in question permitted or prohibited. It is his words that reveal the רצון ה' for that particular question, in that particular place, and that particular moment in time. Accordingly, a מורה הוראה must use his faculty of speech very carefully and make certain never to abuse it. Every word he speaks should be in absolute holiness and purity!"

When the Divrei Yisrael, ז"ל, recounted this story he would comment, "This explains the fact that halachic precedent doesn't necessarily follow the greatest scholar's opinion. Sometimes the halacha follows the lesser scholar because his speech is more pure than the greater scholar's. This can be understood from the Gemara in Kesuvos 22a which states: 'The mouth that prohibited is the mouth that permitted.' This can also be read differently. 'It is the mouth that permits. It is the mouth that prohibits.' In order for the words of the contemporary scholar to become halacha they must be spoken by a mouth that is holy and pure. It is the worthy mouth alone that permits and prohibits!" ■

