



Yevamos Daf Yud Zayin

WHETHER THE ZIKAH OF A YEVAMAH IS M'DORAISA OR M'DRABBANAN

ביבמות דף י"ז: אמר רב הונא אמר רב, שומרת יבם שמתה מותר באמה. אלמא קסבר אין זיקה, ולימא הלכה כדברי האומר אין זיקה, אי הוה אמר הכי הוי אמינא הני מילי בתרי אבל בחד יש זיקה. ולימא הלכה כדברי האומר אין זיקה אפילו בחד, אי אמר הכי הוה אמינא אפילו מחיים, קמשמע לן לאחר מיתה אין, מחיים לא, משום דאסור לבטל מצות יבמין וכו'.

ורב יהודה אמר שומרת יבם שמתה אסור באמה. אלמא קסבר יש זיקה, ולימא הלכה כדברי האומר יש זיקה, אי הוה אמר הכי הוה אמינא הני מילי בחד אבל בתרי אין זיקה. והא כי פליגי בתרי פליגי, אלא אי אמר הכי הוה אמינא מחיים אבל לאחר מיתה פקעה לה זיקה, קא משמע לן דזיקה בכדי לא פקעה.

-א-

Which parts of zikos and aggidos are *min hatorah*

The issur of achos zekukto must be m'drabbanan, for if it were m'doraisa, chalitzah would be unnecessary/A number of specific areas where zikah is m'doraisa/The kinyan biah/Hafaras nedarim/When a shomeres yavam is mezaneh, she becomes assur to the yavam/The kinyan kasp'o of a yavam regarding eating terumah/Zikah m'doraisa applies only when it can come to the gemar kinyan

-רמב"ם, רשב"א, קהלות יעקב, חידושי הגר"ט-

א. Our Gemara relates how a number of *Tanaim* and *Amoraim* disagree as to whether or not there is *zikah*. Practically speaking, when we say the *yevamah* is *zaku-kah* to the *yavam*, there is a disagreement as to whether this is considered to be some form of *ishus*, or not, instead merely constituting an obligation to do *yibum*. This matter is relevant with regards to a number of specific *dinnim* relating to *yibum*, as are enumerated in the later *dappim*.

Within the subject, the *Rambam*¹ *paskens* like *Rebbi Yehudah* that when a *shomeres yavam* dies, her mother

is *assur* to the *yavam*, with the reason being because of *zikah*. The mother is considered tantamount to the mother in law of the *yavam*, but he then relates that this *issur* is merely *m'drabbanan*.

The *Rashba*² similarly writes that when it comes to the *issur nissuei kerovos* because of *zikah*, it is only a prohibition *m'drabbanan*, for if we would say an *achos zekukto* is *assur min hatorah*, she then wouldn't need *chalitzah*, for when dealing with a situation where *yibum* is irrelevant, *chalitzah* isn't necessary either. As such, the prohibition must merely be *m'drabbanan*, which is why *chalitzah* is necessary. [1]

The *Kehillos Yaakov*³ though cites a number of sources from the *Gemara* where the *zikah* and *aggidos* between a *yavam* and *yevamah* are clearly *min hatorah*, and we will now bring a few.

1-The *Gemara* in *Kiddushin*⁴ uses the *pasuk* of "ובעלה" to teach how a women can become *mekudeshes* through *biah*. It then relates that the concept couldn't just be

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[1] The *Yeshareish Yaakov*¹⁴ cites a number of sources from the *Gemara* and *Rishonim* showing that the *issur* of *achos zekukto* is only *m'drabbanan*, not *m'doraisa*. In his conclusion he writes that

he was lengthy because the *Naos Desheh* wanted to say that *achos zekukto* is *m'doraisa*, which is why he brought a number of proofs against his words.

learnt out from how *biah* works by *yibum*, for a *yevamah* is *zekukah* to the *yavam*, and *Rashi*⁵ explains the *Gemara* to be saying that by *yibum* the act of *biah* comes to complete the connection already generated by the *kiddushin* of the dead brother. As such, it is clear there is some kind of *zikah min hatorah* generated by the *kiddushin* of the dead brother.

2-The *Mishnah* in *Nedarim*⁶ cites *Rabbi Yehoshua* as saying that when dealing with a *shomeres yavam* where there is only one *yavam*, he has the ability to be *meifer* her *nedarim*, akin to how a husband has the ability to be *meifer* his wife's *nedarim*. The *Gemara* explains that *Rebbi Yehoshua* holds of *zikah*, and the *Ran*⁷ elaborates that *zikah* is stronger than *eurusin*, for it makes her a full *kenusah* with regards to *hafaras nedarim*. As such, this clearly shows *zikah* to be *min hatorah*, for it works to be *mattir* an *issur neder m'doraisa*.

3-The *Mishnah* in *Sotah*⁸ relates that if a *shomeres yavam* is *mezaneh* with another man, she becomes *assur min hatorah* to the *yavam*. This clearly shows there is a *zikah min hatorah* even prior to the act of *yibum*, for if we would say there is no *zikah min hatorah*, it wouldn't be possible to *assur* her to the *yavam* because of her act of *zenus*. The *issur* of *zenus* only prohibits a woman to her husband and the *bo'el*, not anyone else. As such, in order to understand why she becomes *assur* to the *yavam*, it is

necessary to say there is a *zikah*, which is why the act is tantamount to having been *mezaneh* while married.

4-*Tosafos*⁹ later cite *Rabbeinu Tam* as saying that if a *bas yisrael* was married to a *kohen*, and her husband died without children, thereby making her eligible for *yibum*, she is allowed *min hatorah* to eat *terumah* even prior to *yibum*, for she is considered to be the *kinyan kasp* of the *yavam*. As such, it is clear the concept of *zikah* works *min hatorah*.

The *Kehillos Yaakov* then relates that although these sources show for there to be a concept of *zikah min hatorah* between the *yavam* and *yevamah* even prior to *yibum*, nevertheless, it isn't a contradiction to the dispute amongst the *Tanaim* and *Amoraim* as to whether or not there is a *zikah m'drabbanan*. In reality, we can say all agree there is a *zikah min hatorah* between a *yavam* and *yevamah*, just their dispute relates to whether or not this *zikah* can be applied to create an *issur* on the relatives. Similarly, they wish to know whether or not this *zikah* works to make the cowife of an *ervah* like any other cowife, for even to those who hold there is an *issue* with regards to relatives because of *zikah*, it is only a *din d'rabbanan*, not *m'doraisa*. At the same time, when it comes to the *zikah* and *keshet* between the *yavam* and *yevamah* with regards to other *Halachos*, it certainly is *min hatorah*. [2]

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By any *kiddushei ishah* there is a *kinyan*, with the woman being acquired by her husband, and an *ishus* between them. Some *Halachos* are generated by the *kinyan*, while others are generated by the *ishus*

-אבי עזרי-

[2] To better explain, the *Avi Ezri*¹⁵ relates how when it comes to *kiddushei ishah*, there are 2 factors at play. 1-The woman becoming *mekudeshes* and *kanuyah* to her husband. 2-The *ishus* between them.

Bearing this in mind, the *Torah* elaborates on a number of specific *Halachos* relating to a husband and wife, with some being subject to the *kinyan* of the husband over his wife, and others to the *ishus* between them.

Practically speaking, when the wife of a *kohen* eats *terumah*, the *heteir* stems from the fact that she is his *kinyan kasp*, meaning it has to do with how she is *kenuyah* to her husband, not the *ishus* between them. This is evidenced from how even the slave of a *kohen* has a *heteir* to eat *terumah*, and even the *kohen's* animal as well, with the reason being because of the *kinyan kasp*. As such, it is clear that when the wife of a *kohen* has a *heteir* to eat *terumah*, it is because of the husband's *kinyan* over her. The same is true

with regards to the husband's ability to be *meifer* the *nedarim* of his wife, with it being generated not by the *ishus* between them, instead relating to the *kinyan* of the husband over his wife. This is evidenced from how a father as well has the ability to be *meifer* the *nedarim* of his daughter, and there is no concept of *ishus* between a father and his daughter, with it instead having to do with his status as her father. The same can be seen from how the father and husband of a *na'arah ha'meorasah* are *meifer* her *nedarim* together.

On the other hand, when it comes to the *issur kerovos* affecting the husband because of his wife, it certainly has to do with the *ishus* between them, not the *kinyan*. This is why when it comes to one being *mekadesh* a fetus, the *Rambam*¹⁶ writes that she is *mekudeshes*, but the *Chiddushei Rabbeinu Chaim Halevi* clarifies that this doesn't create an *issur kerovos*, for the *kiddushin* of a fetus involves only a *kinyan*, not *ishus*, as only the *kinyan* can take effect when being *mekadesh* a fetus. Conversely, concerning *ishus*, such a thing isn't relevant for a fetus, which is why the *issur kerovos* fails to take effect.

Bearing this in mind, when it comes to the *zikah* of a *yevamah*, with regards to the *kinyan* of the husband over the wife, we can say this portion is *min hatorah*, for the same way a husband has

The *Granat*¹⁰ also cites numerous sources from *Shas* showing how *zikah* is *min hatorah*, relating how this should seemingly be problematic for the *Rishonim* who assert that *zikah* is only *m'drabbanan*. However, he answers using a different approach, relating how *zikah min hatorah* applies only when the *yavam* actually completes the *kinyan*, with it showing there was a *zikah* until the culmination of the *yibum*. Conversely, in the scenario where he never ends up marrying her, there we don't say there was a *zikah min hatorah*. In such a scenario, there is then an opinion for there to still be *zikah m'drabbanan*, with *Chazal* saying there was *zikah* although he never married her.

His words make clear that even with regards to *kerovim*, if dealing with a *yevamah* where the *yavam* will eventually marry her, there is an *issur kirvah min hatorah*. Conversely, when dealing with a *yevamah* where there is no intention by the *yavam* to marry her, the *zikah* is merely *m'drabbanan*, with the *issur kirvah* only being *m'drabbanan* too.

Bearing this in mind, he then relates that even if we say there is *zikah min hatorah*, this is true only where there is one *yavam*, for she is destined to fall to him for *yibum*, with him having the responsibility to complete the *kinyan*. There we can say the initial *zikah* is *min hatorah*. Conversely, when dealing with 2 *yevamin*, being that it isn't possible for both of them to complete the *kinyan* generated by the *zikah*, we can say all agree for the *zikah* to apply only *m'drabbanan*, not *m'doraisa*.

To his words it should come out that when we say a *yavam* has the ability to be *meifer* the *nedarim* of his *yevamah*, with the reason being because the *zikah* allows us to be lenient even with *d'oraisa's*, this should be true only where he will eventually complete the *kinyan*. Conversely, where this isn't his intention, it should come out retroactively for his *hafarah* to be null. Similarly, when it comes to the *shomeres yavam* of a *kohen* eating *terumah*, the *zikah* should work only where he will eventually marry her. Such a thing though is a *chiddush* to say.

-ב-

An explanation of *zikah*

Zikah epitomizing his ability to marry her against her will/Zikah epitomizing her lack of ability to marry someone else/Zikah by chaivei lavvin and asei/Zikah of 2 yevamin

-חינוך, רמ"א, הירושאי רבי נחום-

ב. In explaining the concept of *zikah*, *Rebbi Nachum*¹¹ cites the words of the *Chinuch*¹², who writes that when a woman is *zekukah* to the brother, meaning to say she is in his *reshus* if he wants to marry her, for the *Torah* is *makneh* her to him, this is called *zekukto*. As such, *Chazal* made it *assur* for him to marry her sister, because of the *zikah*, although there was no *kiddushin* at all. *Rebbi Nachum* then points out how these words imply that the *zikah* practically refers to her being in his *reshus* to marry her, and his ability to marry her against her will, which is generated by the *zikah*.

On the other hand, the *Rema*¹³ explains *zikah* to mean

“והוא אסור בזיקים” *Rebbi Nachum* understands the *Rema* to be saying that *zikah* relates to the prohibition against her marrying someone else, with the *zikah* constituting this *issur*.

He then comments that according to the *Chinuch's* explanation, for the *zikah* to refer to his ability to marry her against her will, we need an explanation for why *zikah* applies to *chaivei lavvin* and *asei*, for being that she is *assur* to him, she isn't in his *reshus* to marry her.

To deal with this, he writes that when dealing with *chaivei lavvin* and *asei*, we need to say that although there is no *mitzvas yibum*, for an *asei* doesn't have the ability to push off a *lav* and an *asei*, nevertheless, being that *zikah* generally refers to the ability of the *yavam* to marry the *yevamah* against her will, this is a concept applicable even to *chaivei lavvin* and *asei*, just practically speaking

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a *kinyan* over his wife, so too this *kinyan* remains intact when it comes to a *yavam*. As such, the *zikah* helps for *hafaras nedarim* and eating *terumah*, as they are subject to the *kinyan* of a husband over his wife. Conversely, when it comes to the *ishus* portion, the *zikah*

isn't *min hatorah*, instead having the weight of a *d'rabbanan*, which is why when it comes to the *issur kerovim*, the prohibition is only *m'drabbanan*, not *m'doraisa*.

there no *mitzvah*, with it even being *assur* for him to perform *yibum* because of the *issur*.

He also writes that when the *Gemara* differentiates between the *zikah* of one *yavam* versus multiple *yevammin*, it is more understandable to the explanation of the *Chinuch* for the *zikah* to relate to his ability to marry her against her will. This is why there is no *zikah* by 2

yevammin, for only one can marry her against her will. Conversely, to the *Rema* who holds how the *zikah* relates to the prohibition against her marrying someone else, the difference between one *yavam* versus 2 is less understandable, for even when there are 2 *yevammin*, they both make it *assur* for her to marry someone else. [3]

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When we say a *yevamah* cannot marry someone else, if this is generated by the *ishus* remaining from the husband

-אתון דאורייתא-

[3] The *Esvan D'oraisa*¹⁷ raises a *safek* relating to the prohibition against a *yevamah* marrying someone else, wondering whether the *issur* is generated by the *ishus* remaining from the husband, which doesn't completely dissipate, instead merely transforming from *misah* into a *lav*, or if the *ishus* of the husband completely dissipates, with the prohibition against her marrying someone else constituting a new prohibition after the death of the husband.

Even if we say the prohibition is generated by the fact that the *ishus* of the husband doesn't fully disappear, he raises an additional *safek* concerning whether this means the *issur* from the husband remains, or if it transfers over to the *yavam*, meaning that it now relates to the *yavam* himself. He then goes to great lengths over the practical differences which arise.

Now, concerning the *Rema's* assertion that *zikah* relates to the

yevamah being prevented from marrying anyone else, we can still explain that it stems from the *ishus* remaining from the husband. Practically speaking, the same way she was forbidden from marrying anyone else in the lifetime of her husband because of his *ishus*, with her being bound by an *issur kareis*, so too the same is true when her husband dies, with her remaining with a lighter form of *ishus*, thereby preventing her from marrying others. The prohibition merely downgrades from *kareis* to a *lav*, which is the *zikah* remaining, which prevents her from marrying someone else.

Bearing this in mind, we earlier explained how when we say *zikah* is merely *m'drabbanan*, it relates to the *issur kerovim*. Conversely, concerning other matters, there certainly is an *iggud* and *zikah* between the *yavam* and *yevamah min hatorah*. Now, if we say the *zikah* constitutes the prohibition against her marrying someone else, it is certainly *pashut* that this *zikah* is *m'doraisa*, with the some of the original *ishus* remaining.

מראי מקומות

1. בפרק א' מהלכות יבום הלכה י"ג .2 בחי' להלן דף כ"ז: .3 ס' ט"ז .4 דף ד': .5 (ד"ה שכן) .6 דף ע"ד. .7 שם (ד"ה ורבי) .8 דף י"ח: .9 דף ס"ז: (ד"ה קנין) .10 חי' ס' י"ב .11 חי' (אות ש"ח) .12 מצוה ר"ו .13 אהע"ז ס' קנ"ז סעיף א' .14 לעיל דף ח'. .15 על יבמות ס' י"ז .16 בפרק ד' מהלכות אישות הלכה ט"ז .17 כלל ח'