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Agunot with a twist of Teshuva

The tenth *perek* begins with a case where a woman receives testimony that her husband, who was travelling overseas, died. Based on this testimony, she remarries. Soon after, her original husband returns home alive and well. The *Mishnah* deals with this unfortunate scenario. The *Gemara* is particular on the language of the *Mishnah* and explains that this case refers to where the woman remarries based on a single witness' testimony.

Ordinarily, in Jewish law, a formal testimony requires two valid witnesses. The *Gemara* (*Yevamot* 88a) does mention certain instances where testimony from a single witness is valid, however cases that could potentially permit a forbidden relationship do not appear to qualify. The *Gemara* however does conclude that "because of *agunah* (the potential of this woman being bound in wedlock) the Rabbis were lenient". Due to this leniency, they also instituted stringencies in the event that the original husband does return alive (as listed in the *Mishnah*). The intention being that the woman will be extra careful before trusting the single witness and relying on the rabbinic leniency.

The commentaries have difficulty with the *Gemara's* conclusion. If two witnesses are required for valid testimony, no matter how honourable the intentions, how can the *Chachamim* allow her to remarry if she is really still considered to be married? Especially in a case dealing with forbidden relationships – an *issur karet*!

Rashi (*Shabbat* 145b) and *Rashba* (*Shita Mekubetzet, Ketubot* 3a) write that in this instance the *Chachamim* retroactively dissolve the original marriage. Consequently, when she goes to remarry, she is genuinely a single woman.¹

The *Ritva* poses a number of problems with this suggestion. One difficulty being that the *Gemara* explains that if both "husbands" die, then both sets of brothers perform *chalitzah*, yet only the brothers of the original husband are obligated biblically implying that the original marriage is still intact. The *Meiri* solves this problem explaining that that dissolution of the original marriage is conditional on the original husband not returning.

The *Ritva* offers another solution explaining that this is an exceptional circumstance. Firstly the witness is testifying about a matter that, if he is lying, will be revealed in due course. Combine this with the fact that the *Chachamim* will be ruling very stringently in the advent that the husband does return. Consequently, the wife will be very careful, and inspect the details before remarrying. All these factors combined are enough to be considered like complete testimony even on a biblical level. The *Torah* gave authority to the *Chachamim* to determine when a mass of indicators can be given the weight of complete testimony. They simply decided that this is one such circumstance.

Finally the *Tosfot* (*Yevamot* 88a, s.v. *mitoch*) takes a third approach. The single witness is not accepted as testimony on a biblical level, and the marriage (if the husband is still alive) remains intact. Rather, the *Tosfot* explain that as there appears to be strong reasoning supporting this decision and since the ruling does not uproot a biblical rule, the *Chachamim* were given the authority to rule in such a manner.²

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There is one important point to remember when learning this topic as we approach *Rosh Hashanah* and *Yom Kippur*. We have learnt that if the husband returns, since she has technically had a relationship with another man while still being married to her original husband, she is forbidden to return to her original husband. This is despite being misled and misguided by faulty testimony. With this in mind the *Gemara* in *Yoma* (86b) writes:

R' Yochanan says :Great is the power of *teshuva* as it overrides a negative prohibition in the *Torah* (repentance) as it is written: (*Yirmiyahu* 3:1) "If a man put away his wife, and she go from him, and become another man's, may he return to her again? Will not that land be greatly polluted? But you [Israel] have played the harlot with many lovers; and would you yet return to Me? says *Hashem*."

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¹Even though it is possible to understand that *Rashi* there is referring only to a case of testimony based on hearsay (*ed m'pi ed*), nevertheless the opinion written in the name of the *Rashba* clearly refers to this case.

² See also *Tosfot, Nazir* 43a, s.v. *ve'hai*.

Revision Questions

במות י' ד' – י"ב א'

- What is the law regarding a case where a man's wife was overseas and witnesses came and told him that she had died. Then, based on that testimony, he goes and marries his "late"-wife's sister. Then it is discovered that his original wife is still alive? (י' ד')
- What is the case described in the *Mishnah* where the conclusion is: (י' ה')
"מותר בראשונה, שלישית, ובחמישי... ואסור בשניה וברביעית..."
- What does the *Mishnah* mean when it says: (י' ו')
"בן תשע ויום אחד, הוא פסל ע"י אחין והאחים פוסלין ע"י"
- Regarding the previous question, is there a difference between the *ben teshah* and the brother in regards to when that principle applies? (י' ו')
- What is the law if a *ben teshah*:
 - Performed *yibum* then one of the brothers also did? (י' ז')
 - Performed *yibum* and then perform *yibum* on the *tzarah*? (י' ח')
 - Performed *yibum* and then died? (י' ט')
 - Got married and then died? (י' י')
 - Performed *yibum*, and then when he grew up married another, then died (without any children)? (י' י"א')
- Is one allowed to marry the relative of an *anusa*? (י"א א')
- Can one marry *anusat aviv*? (י"א א')
- Do two brothers, one of which was in its mother's stomach when she converted and the other was conceived and born after the mother converted, perform *yibum* or *chalitzah*? (י"א ב')
- Regarding a case where five baby boys were mixed up, such that we don't know who their mothers are, and each grew up and got married and died without any children, describe how *yibum* is performed to each of their wives? (י"א ג')
- What is the law regarding *yibum* and *chalitzah* if woman's child and her daughter-in-law's child got mixed up, grew up and then: (י"א ד')

 - Got married and died with without any children?
 - The other brothers married and died without any children?

- What is the law regarding a case where the child of the wife of a *kohen* and her maid-servant's child got mixed up with regards to: (י"א ה')

 - Eating *trumah*?
 - *Tameh met* if they are both "freed"?
 - *Zro'ah* and *lechayayim*?

- What is the law regarding a case where a woman remarried immediately after divorce and we are not sure the paternity of her child, with respect to *yibum* and *chalitzah* if:
 - His mother had sons from both marriages?
 - Both of the husbands had sons from other marriages? (י"א ו')
- Regarding the previous question, what is the law if one of the father's was a *kohen* and the other was an *Israel*? (י"א ז')
- Regarding the previous question, what if both father's were *kohanim*? Which *mishmar* would he serve in? (י"א ח')
- Where is *chalitzah* performed? (י"ב א')
- What type of *sandal* can be used for *chalitzah*? (י"ב א')

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Between mincha & ma'ariv
Mizrachi Shul

Friday & Shabbat
10 minutes before mincha
Mizrachi Shul

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Next Week's Mishnayot...

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	שבת קודש
17 th September כ"ד אלול	18 th September כ"ה אלול	19 th September כ"ו אלול	20 th September כ"ז אלול	21 st September כ"ח אלול	22 nd September כ"ט אלול	23 rd September א' תשרי ראש השנה Yevamot 13:8-9
Yevamot 12:2-3	Yevamot 12:4-5	Yevamot 12:6-13:1	Yevamot 13:2-3	Yevamot 13:4-5	Yevamot 13:6-7	

