



One Witness and *Edut Isha*

The *tenth* perek discusses a case where a woman received news that her husband who had travelled overseas had passed away. Even though normally two witnesses are required to have legal significance, we learn that in this case, the woman would be able to marry based on this single witness testimony.¹

The *Mishnah* (10:2) also discusses the consequences if the husband returned, alive and well. The *Mishnah* also differentiates between whether the woman had (re)married based on a single witness or whether it was based on two witnesses. The *Mishnah* describes the first case as being “by way of *Beit Din*” whereas the second case “not by way of *Beit Din*”. In other words, when there are two witnesses, it does need a permit from *Beit Din*, since there are two valid witnesses that provide the basis for her to remarry. It is only when there is one witness, that her ability to marry was by way of *Beit Din*.

From this simple understanding, one would assume that for the woman to remarry when there is only one witness, that testimony would need to be presented in front of a *Beit Din*. This is further supported by the fact that the expression in the previous *Mishnah* is that she marries with the “permission of *Beit Din*”. This is indeed how the *Shulchan Aruch* (17:39) rules. The *Rama* agrees adding that the *Beit Din* must a valid *Beit Din* with none of the *dayanim* related to the family or witness. The *Shulchan Aruch* however includes another opinion (the *Ran*) that if she nevertheless married based on a single witness without the ruling *Beit Din*, she would not have divorce her second husband.

The *Chelkat Mechokef* (78) argues at length against the *Rama*’s requirement that there be a proper *Beit Din* for her to remarry. Instead, he understands that the process is like

another other halachic issue that requires a *Chacham* to clarify the ruling.² Confirming with a *Chacham* is even more important considering that the leniency assumes that she would investigate the matter and would not flippantly rush to remarry. He explains that there are indeed advantages to hearing the witness in front of *Beit Din*. Firstly, it ensures that her remarrying is based on direct witness testimony and it is not considered “*ed mi’pi ed*” if it were to be investigated later. Furthermore, it ensures that the single witness will not later deny what he said or claim he was not serious at the time. Nevertheless, for the permit itself a *Beit Din* is not required.

The *Beit Shmuel* (124) however defends the *Rama*’s position citing the *Gemara* (*Yevamot*) that discusses whether *edut isha* requires *derisha* and *chakira* – the thorough interrogation of the witness/es. The position that requires *derisha* and *chakira* recognises that there are financial ramifications – the collection of the *ketubah*. It would seem then that in this case, it is more than a regular *pesak* (halachic decision) but rather a *din* (a ruling by *Beit Din*).

The *Chazon Ish* (*Even HaEzer* 12) cites *R’ Akiva Eiger* who understands, like the *Rama*, that the *heter* requires *Beit Din*. *R’ Akiva Eiger* understands that when the *Chachamim* instituted this leniency, it was provided that the testimony had to be received in front of *Beit Din*.

The *Chazon Ish* however disagrees. He points to other leniencies such as allowing her to marry based on a *bat kol* (an unidentified voice) or a *nochri* that is *masiach le’fi tuma* (discussing the matter not in the context of a formal testimony) as proofs that a formal testimony in front of a *Beit Din* is not required.

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¹ Previously (Volume 3, Issue 6) we probed the basis of this leniency.

² Regarding the language of the *Mishnah* he notes that *Mishnah* states it is *reshut beit din* and not *hora’at beit din*. Furthermore, we find that the

language of *reshut beit din*, much like *tenai beit din*, does not refer to a specific *beit din* but rather ruling instituted by the *Chachamim* in general.

Revision Questions

יבמות ט: ג' – י"א: ג'

- Describe two scenarios through which a *bat Kohen* who marries a *Yisrael*, would once again be able to eat *trumah*? (ט: ג')
- What is the law regarding a woman that remarries after receiving news that her husband died overseas, but then discovers her original husband is still alive? (י: א')
- Regarding the previous question, which brothers perform *chalitzah* if both "husbands" then die? (י: א')
- What is the difference if the women mistakenly remarried with or without the instruction of the *beit din*? (י: ב')
- What is the law if a woman remarries after hearing that her husband died, and then hears that her husband was alive but recently did indeed die? (י: ג')
- 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 עי"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 performed *yibum* on the *tzarah*? (י: ח')
 - Performed *yibum* and then died? (י: ח')
 - Got married and then died? (י: ח')
 - Performed *yibum*, and then when he grew up married another, then died (without any children)? (י: ט')
- Is one allowed to marry the relative of his *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')

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Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	שבת קודש
3 December כ' כסלו	4 December כ"א כסלו	5 December כ"ב כסלו	6 December כ"ג כסלו	7 December כ"ד כסלו	8 December כ"ה כסלו	9 December כ"ו כסלו
Yevamot 11:5-6	Yevamot 11:7-12:1	Yevamot 12:2-3	Yevamot 12:4-5	Yevamot 12:6-13:1	Yevamot 13:2-3	Yevamot 13:4-5

