



Cheresh and Chereshet

The *Mishnah* discusses cases where a couple was married and then one of the parties become a *cheresh* (deaf-mute). The *Mishnah* explains that if the wife became a *chereshet*, then they can continue to be married, but if he wishes to divorce her he can do so. If however he becomes a *cheresh*, then they would not be able to get divorced. We shall try to understand this *Mishnah*.

Recall that a *cheresh* is considered as not having *daat* – understanding to a level that has *halachic* significance. It is clear then why if he becomes a *cheresh* they cannot get divorced. Neither was a *cheresh* when they got married, so their marriage was binding on a biblical level. Once he becomes a *cheresh*, he is no longer a *ben daat* and therefore unable to give a *get*. *R' Yochanan ben Nuri* therefore asks that if that is the case, the same should be true if she became a *chereshet*. She is no longer a *bat daat* and therefore they should not be able to get divorced. The *Chachamim* respond that while the husband must be a willing participant in giving the *get*, it is not necessary for the wife to be.

Focusing on the opinion of *R' Yochanan ben Nuri*, it appears as if he understands that a woman can never be divorced against her will. The *Beit Yitzchak* (*Even HaEzer* II 3:4) finds this difficult, considering that in the case of *ones* or *mefateh*, the *Torah* teaches that the man may never divorce her (against her will). According to *R' Yochanan ben Nuri*, what then is unique about the case of *ones* and *mefateh*? Her willingness is required in all cases of divorce. Another question is based on the understanding that the *ketubah* was instituted with financial obligations so that a husband could not flippantly divorce his wife. According to *R' Yochanan ben Nuri* he would not be able to divorce her without her consent anyway, so the introduction of the *ketubah* appears unnecessary.

The *Beit Yitzchak* therefore understands that *R' Yochanan ben Nuri*'s position is specifically in the case of a *cheresh*. He cites the *Yerushalmi* (14:2) that asks (in the context of the discussion there) that regarding a *pikachat* (one who is not a *chereshet*) since they have *daat*, they can be divorced with or without *daat*. A *chereshet* however, who does not have *daat*, *daat* would be required for her to be divorced. The *Korban Ha'Eidah* there explains that this is similar to the principle of “*kol ha'raui le'bilah...*” In other words, *daat* does not prevent the divorce, provided it is possible to have *daat*.

The *Tosfot* (112b s.v. *he'id*) explains that the reason is that when the *get* is handed over, it will not be a full *shiluchin* since she will not understand and likely return. *Shayarei HaKorban* however finds this answer difficult since it could be explained to her prior to the *get* being given. He suggests that the above *Yerushalmi*, that requires *daat*, is based on the *hekesh* (connection) that connects marriage and divorce (“*ve'halcha ve'hayta le'ish acher*”). Just as *daat* is a requirement for marriage it is also required for divorce. The *Chachamim* however understand from the *pasuk* “*ve'natan be'yadah*” that it is not necessary for divorce.

The *Keren Orah* (*Yevamot* 113b) also understands that *R' Yochanan ben Nuri*'s position specifically relates to a *chereshet*. He explains that *R' Yochanan ben Nuri* agrees that a woman's *daat* is not required for divorce. She must nevertheless be aware that she has received her *get* (albeit against her will). *R' Yochanan ben Nuri* understands that a *chereshet* is in a worse position since that basic awareness will be lacking.

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Revision Questions

יבמות י"ג: ג' – י"ד: ג'

- Explain the debate regarding *yibum* for a woman that had previously divorced and then remarried her husband? (י"ג: ג')
- If two brothers marry two sisters, one of which a *ketanah* (*yetomah*), and the brother married to the *gedolah* dies (without children), what is the law regarding *yibum*? (Include the three opinions.) (י"ג: ג')
- If a person married to a *pikachat* and a *chereshet*, dies without any children, to whom should *yibum* be performed? (י"ג: ח')
- If a person married to two *ketanot* (*yetamot*) dies, and one brother performs *yibum* to one and then another brother tries to perform *yibum* to the other, can the first brother stay with the *ketanah*? (י"ג: ט')
- What is the law if a man married to a *pikachat* and a *chereshet* dies (without any children) and one brother first performs *yibum* to the *chereshet* and then another brother performs *yibum* to the *chereshet*? (י"ג: י')
- What is the law if a man marries a *gedolah* and a *ketanah* (arranged by her brother) and dies (without any children) and one brother first performs *yibum* to the *ketanah* and then another brother performs *yibum* to the *gedolah*? (י"ג: י"א')
- What is the law regarding a minor that performs *yibum*? (י"ג: י"ב')
- When do we force the *yabam* to divorce the *yavamah*? (י"ג: י"ב')
- When do we request that the *yabam* perform *chalitzah*? (Include two cases) (י"ג: י"ג')
- What has happened to a man such that he can never divorce his wife? (י"ד: א')
- Is the law the same if these things happened to the wife? Explain. (י"ד: א')
- What case does *R' Yochanan ben Gudgedah* bring to support the answer to the previous question? (י"ד: ב')
- What is the law if two brothers, one a *pikeach* and the other a *cheresh*, marry two sisters that are *chershot*, and one brother dies without children? (י"ד: ג')
- If a *yavamah* is a *chereshet*, what should the *yabam* do - *yibum* or *chalitzah*? (י"ד: ג')
- What is the law if two brothers, one a *pikeach* and the other a *cheresh*, marry two sisters that are *pikchot* and the *cheresh* dies? (י"ד: ד')
- Regarding the previous case, what if the *pikeach* dies instead (without any children)? (י"ד: ד')
- What is the law if two brothers, both *pikchim*, marry two sisters, one a *pikachat* and the other a *chereshet*, and the husband of the *chereshet* dies? (י"ד: ה')
- Regarding the previous case, what if the husband of the *pikachat* dies instead (without any children)? (י"ד: ה')
- What is the law regarding a case with two brothers, one a *pikeach* married to a *pikachat* and the other a *cheresh* married to a *chereshet*, both wives being sisters, and the *cheresh* dies without any children? (י"ד: ו')
- Regarding the previous case, what if the *pikeach* dies instead (without any children)? (י"ד: ו')

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17 December ה' טבת	18 December ו' טבת	19 December ז' טבת	20 December ח' טבת	21 December ט' טבת	22 December י' טבת	23 December י"א טבת
Yevamot 14:7-8	Yevamot 14:9-15:1	Yevamot 15:2-3	Yevamot 15:4-5	Yevamot 15:6-7	Yevamot 15:8-9	Yevamot 15:10-16:1

