

OVERVIEW of the Daf

1) The **ט** and gift of one who is deathly-ill (cont.)

The Gemara concludes its unsuccessful challenge to R' Huna's comment that the parameters for a **ט** and a gift of a deathly-ill person are the same.

It is noted that Rabbah and Rava disagree with R' Huna and maintain that when a deathly-ill person gives a **ט** and recovers the **ט** is still valid.

The position of Rabbah and Rava is unsuccessfully challenged.

2) A **ט** after the husband dies

A Baraisa that is similar to the Mishnah is cited.

A contradiction between the first two rulings of the Baraisa is noted and resolved.

An incident is referenced that indicates that the first ruling of the Baraisa should be followed.

Another incident is cited that raises the issue of whether a seller accepts all responsibility, even for accidents that are unusual.

Rava ruled that one does not accept responsibility for accidents that are unusual.

Ravina unsuccessfully challenges Rava's ruling.

A related incident is cited.

3) MISHNAH: The Mishnah discusses the guidelines a couple are to follow when the husband gives his wife a **ט** that will work, after he dies, retroactive to the time when it was given.

4) Seclusion

A Baraisa is cited that elaborates on the Mishnah's restriction against seclusion.

R' Nachman in the name of Rabba bar Avuha explains the meaning of the Baraisa.

The Gemara seeks to determine whether a ruling of R' Yochanan follows either of the two opinions cited in the Baraisa.

Abaye challenges the interpretation of R' Nachman in the name of Rabba bar Avuha and offers an alternative explanation in its place.

The Gemara seeks to determine whether a ruling of R' Yochanan follows either of the two opinions cited in the Baraisa.

Rava challenges the interpretation of Abaye and offers an alternative explanation in its place.

The Gemara seeks to determine whether a ruling of R' Yochanan follows either of the two opinions cited in the Baraisa.

5) Clarifying the dispute between R' Yehudah and R' Yosi

A Baraisa clarifies R' Yosi's ruling.

This explanation is challenged and Rabbah offers an alternative explanation of the dispute.

A Baraisa is cited that elaborates on the rulings in the Mishnah. ■

Distinctive INSIGHT

"כדת משה וישראל" - The rabbis nullify the marriage

כל דמקדש אדעתא דרבנן מקדש ואפקעינהו רבנן לקדושי מיניה

Rav Huna ruled that if a seriously ill person wrote a **ט** for his wife, we presume that his intention is that it be valid only upon his death. If he dies, they are divorced (from the moment it was written). However, if the man recovers, the **ט** is automatically nullified, as we assume he had in mind to divorce his wife only if he was to die from that illness.

Rabbah and Rava disagree with Rav Huna, and they hold that if a seriously ill man writes a **ט** for his wife, the **ט** is valid and the marriage is terminated even if he recovers. The reason they maintain the position that the **ט** ends the marriage is due to a rabbinic decree lest people say that a **ט** can take effect after death. In other words, we cannot have a situation where the **ט** is only valid if he dies, but not if he survives. This would have lead people to misunderstand and think that a **ט** is valid only after one's death. The truth is that in this case the **ט** is valid retroactive from the time it is written, but people's impression would be otherwise, so the rabbis validate the **ט** in all cases and the marriage is terminated.

The Gemara questions this approach. How can the rabbis take a marriage that the Torah recognizes as still valid, and, due to their enactment, consider the woman divorced, thus permitting her to marry someone else? To explain this, the Gemara declares that whenever a man betroths a woman, he does so "according to the law of Moshe and Yisroel". This gives the rabbis the license to revoke the marriage when they see fit. Whenever this case occurs, the marriage itself is annulled, and the couple is considered never to have been married to each other in the first place.

Pnei Yehoshua asks, why don't we say, "Whoever divorces, does so according to the laws of Moshe and Yisroel"? The husband declares that he divorces the wife "according to the laws of Moshe and Yisroel," just as he declares this same formula upon marrying his wife. We can then say that when a seriously ill man writes a **ט** and survives, we can simply say that the **ט** is valid. Why is the focus upon the marriage, rather than upon the divorce?

He explains that the nature of the rabbinic imposition by a divorce is that if a seriously ill man writes a **ט**, we do not allow for personal, unspecified conditions he might have. If he later says he is against the **ט** now that he survived, this is credible, and we need a special rule in this case to annul the marriage itself. ■

HALACHAH Highlight

Do stipulations include unusual occurrences?

אונסא דלא שכיח הוא

It was an accident that was unusual

Rambam¹ rules that when someone sells property to another and gives the buyer a guarantee he is responsible to reimburse the buyer if the property is confiscated. This responsibility, however, is limited to where the accident (אונס) is something that commonly occurs but if the accident is something that is unusual the seller is not responsible to reimburse the buyer for such an occurrence. Teshuvos Chaim She'al² writes that this principle is not limited to where land is sold with a guarantee, rather whenever someone makes a stipulation it is assumed that he only included those occurrences that are common but not those that are uncommon.

Teshuvos Chaim She'al utilized this principle to answer an inquiry that was sent to him for a ruling. Reuven betrothed a young girl and the bride's mother agreed to pay a dowry to her future son-in-law. Additionally, she agreed to cover the young man's expenses before the wedding so he could study Torah and grow in his Fear of Heaven in a town that had renowned Torah scholars. The groom agreed that if the engagement breaks he will immediately reimburse the bride's mother for the money she invested towards his Torah study. After some time the bride's mother realized that this young man would not develop into a Rov or halachic decisor and she requested that her future son-in-law should return home to minimize the expenses. When the bride became aware of what occurred she understood that her future husband would not succeed in his learning as she imagined and she refused to go forward with the marriage. No

REVIEW and Remember

1. What principle allows the Rabanan to undo (מפיקיע) a kiddushin?

2. Does a stipulation include unusual circumstances?

3. What is the status of a woman who received a גט that will be effective retroactively?

4. What are a husband's rights from the time the husband gave the גט until he dies?

amount of pressure that her relatives applied was successful at changing the bride's mind and it became clear that the wedding would not occur. Accordingly, the mother of the bride asked the groom to reimburse her for the expenses she covered while he was learning since at this point that marriage will not take place. Teshuvos Chaim She'al answered that the question of whether the groom must pay revolves around the question of whether it is common for a bride to refuse to marry her fiancé. If the occurrence is common it is assumed that the groom's commitment to reimburse the bride's mother included even this case but if it is unusual that he would be exempt. Teshuvos Gunas Veradim³ defines an "unusual occurrence" as one that is so unusual that it is astonishing (דבר זה הפלא) but an event that occurs often enough that it is not astonishing does fit into this category. ■

1. רמב"ם פ"ט מהל' מכירה ה"ה.

2. שו"ת חיים ח"א סי' י"י.

3. שו"ת גינת ורדים א"ה הע כלל ב' סי' ח'.

STORIES Off the Daf

Unforeseen Changes

"אונסא דלא שכיח..."

As is well known, people used to marry at a very young age. Such marriages were arranged by the parents who often ironed out the conditions before the prospective couple even met. After the meeting between the prospective couple, the conditions were ratified. In one such match, the parents agreed to make a wedding by a certain date. Any side responsible for delaying would pay a huge fine. When the young couple gave their shy acquiescence, the parents made a kinyan on the fine. It

was clearly stipulated that even if some kind of אונס came up, the side that delayed was required to pay.

Unfortunately, the sister of the bride went off the derech. In that particular time this was virtually unheard of and the boy's family decided to call off the wedding. How could they be sure that this would not happen to the kallah?

The girl's family for their part did not unduly protest. When the time came the father of the girl requested the fortune of money the boy's father had agreed to pay if he had delayed the wedding for any reason. "You signed it, now you must pay it."

"But how was I to know that something so outlandish would occur? Do you think if one of the children had been tak-

en captive the parents would have to pay?"

They consulted the Rosh, zt"l, on this matter who ruled that he need not pay. "... On Gittin 73 we find that a certain man sold his land to his friend and accepted responsibility for any mishap which would occur. A river was rerouted through this field. Rav Acha bar Tachlifa and Rava both rule that he need not pay since this is an exceptional mitigating circumstance. We see that even though one agreed to be accountable for all אונס, he is not responsible for an exceptional circumstance. The same is true in your case. He never would have agreed to accept responsibility for such an אונס so he need not pay." ¹ ■

1. שו"ת הרא"ש, כלל לד, סימן א'

