

This month's Daf Digest is dedicated
L'ilui Nishmas Yosef ben Chaim haKohen Weiss (8 Elul) & Mrs. Yenta Weiss, Rivke Yenta bas Asher Anshel (13 Elul)
Family Weiss, London

OVERVIEW of the Daf

1) One who betroths with a stipulation and marries without a stipulation (cont.)

Abaye explains the rationale behind Rav's position.

It is noted that Rav and Shmuel dispute this matter in a different context.

The Gemara explains why it is necessary for them to dispute this matter in two different contexts.

Shmuel's position is unsuccessfully challenged.

Rabbah and Rava offer different explanations why, in the cases disputed by Rav and Shmuel, a **ט** is required even though he is not obligated to pay her kesubah.

Rabbah offers an alternative explanation of the dispute between Rav and Shmuel.

Abaye successfully challenges this position and forces Rabbah to revise his explanation.

This revised explanation is also challenged by Abaye but the challenge is refuted.

Abaye presents a second unsuccessful challenge to Rabbah.

A third challenge against Rabbah, from Abaye, is recorded. ■

REVIEW and Remember

1. What is the rationale behind Rav's position?
2. Why do Rav and Shmuel disagree on the same issue in two different contexts?
3. Why in the case of a man who betrothed and married a woman without vows is it necessary to give a **ט**?
4. How does a girl become an "orphan during her father's lifetime"?

Distinctive INSIGHT

Rescinding the condition of the woman not having oaths לא תימא טעמיה דרב כיון שכנסה סתם אחולי אחליה לתנאיה

The Mishnah presented a case where a man betrothed a woman on the condition that she not be bound to any oaths. If the man discovers that she, in fact, had declared oaths upon herself at that time, the kiddushin is null. If, when the man married the woman he did so without repeating his stipulation and he made no mention of his prior condition, the marriage is nevertheless ended, and the woman receives no kesubah.

In the Gemara, Rav explains that the man must issue a **ט** in order to dismiss this woman. This is surprising, for, after all, he had stipulated that the kiddushin was contingent upon her not having any oaths, and this condition was not fulfilled. According to most Rishonim, Rav is explaining that it is not that we say that the man forgoes his stipulation by being silent at the time of the marriage. Rather, the husband knows that the original offer of kiddushin is null. It was conditional, and the condition was not met. When the man nevertheless marries the woman, he intends for his relations with her to be an act of kiddushin. ר"ן explains that the man does not want his act of having relations to be meaningless (בעילת זנות). Therefore, the husband understands that by marrying this woman, he is revoking his original stipulation and he intends for the original kiddushin to be valid unconditionally.

Tosafos notes that it is difficult to understand how Rav could have even suggested that the husband is able to rescind his having placed a condition on the kiddushin. The truth is that he only gave her kiddushin if she had no oaths in effect, and she actually did have oaths. How can the husband now recreate the kiddushin if it was clearly non-binding? Tosafos explains that Rav means that although the original kiddushin is invalid, perhaps the husband still intends for kiddushin to be valid by means of the **חופה** which he is presenting now. Ran explains that the husband could have ostensibly salvaged the original kiddushin. We could say that the reason he placed a condition upon the kiddushin is that he felt that it would be more convenient for him to have a wife who was unencumbered by oaths, as this was perceived as an inconvenience to him. Later, when the hus-

HALACHAH Highlight

Nullifying kiddushin

רבא אמר תנא ספוקי מספקא ליה ... גבי איסורא לחומר
Rava says that the Tanna is uncertain [whether the husband can nullify the marriage without having made a stipulation] and concerning matters of prohibition he rules stringently

There was once a couple who had a civil marriage in חוץ לארץ and had a religious wedding in Eretz Yisroel. A short time after the chasunah, the wife discovered that her husband had decided, even before the chasunah, to practice another religion. She immediately left her husband and the question was whether the kiddushin could be nullified given the fact that he never told about his new religion. In other words, is there circumstantial evidence (אומדנא) that allows us to assume that she would have never married him had she known that he had left Judaism, or not. What made the matter even more pressing was that subsequent to the wife leaving, the husband was incarcerated and thus unable to give a גט.

The Chelkas Yaakov¹ addressed a number of different points related to this difficult question. One interesting issue is whether practicing another religion puts one into a different halachic category than one who does not observe any of the mitzvos. Although it is certainly more abhorrent for a person to leave Judaism on an emotional level, but is there any halachic difference, since a person who does not observe the mitzvos is also considered a mumar².

Regarding the issue of circumstantial evidence, he cites a

(Insight. Continued from page 1)

band married her without restating the condition, we might have indeed said that the husband is maintaining his insistence that the marriage be smooth and convenient, but he now sees that his wife having oaths is not a legitimate concern, and he is now ambivalent to whether or not she has oaths. Nevertheless, Rav explains that the Mishnah is not a case where the husband is dismissing the condition. ■

related teshuvah of Chasam Sofer³ where he gives credibility to matters of circumstantial evidence even in the context of nullifying a kiddushin. In practice, however, Chelkas Yaakov, rejects applying this reasoning. One reason is that Chasam Sofer himself only suggested the rationale in theory but refused to apply the principle in practice. Secondly, halacha⁴ follows the opinion of Rava who maintains that if a man does kiddushin without a stipulation and later discovers one of the blemishes that disqualify a woman, the kiddushin remains in force because of doubt. This ruling applies even when circumstantial evidence would clearly indicate that the husband would be concerned about this particular blemish. Therefore, it is clear that if a husband cannot nullify a kiddushin, despite circumstantial evidence in his favor, certainly a woman could not nullify a marriage with circumstantial evidence, since women have a greater interest in marriage than men. ■

1. שו"ת חלקת יעקב אה"ע סי' פ"ה
2. שם אות ג'
3. שו"ת חת"ס אה"ע ח"א סי' פ"ב.
4. שו"ע אה"ע סי' ל"ט סעי' ה'. ■

STORIES Off the Daf

Civil Marriage?

"אין אדם עושה בעילתו בעילת זנות..."

Rav Yitzchak Zilberstein, shlit"א, was once asked to clarify the halachic position about numerous civil marriages that took place in the Soviet Union during the periods of communist anti-religious persecution.

"A man married a woman in Russia during the years when it was impossible to fulfill Torah and mitzvos openly, and many Jews tended to pretend to be non-Jews so that they wouldn't have to suffer oppression. For this reason, the cou-

ple decided to only marry civilly and did not arrange a chuppah and kiddushin. Do we say about such a couple what it says in Kesuvos 73a, that the assumption is that a Jewish man doesn't intend his relations to be wanton, but rather that he is assumed to have intended that they will constitute kiddushin? And in this case, there were other Jews who saw them living together as man and wife after their civil marriage—are they to be considered witnesses to the kiddushin? Or perhaps this situation is not one where we would make such assumptions?"

Rav Zilberstein answered, "The truth is that many great poskim have already addressed this question in a

number of different forms, and their general approach is that since either the couple had the choice of marrying properly and chose not to, or since they never had any awareness of the need to marry properly at all, we do not assume that their household arrangement constitutes kiddushin. Even so, one would require a גט l'chumrah in the event of divorce. However, if the couple did indeed want to marry properly but were prevented by the prevailing persecution, one would assume that the husband had intended that living together as man and wife should constitute kiddushin, and their relationship would have to be treated accordingly." ■

