

This month's Daf Digest is dedicated
L'ilui Nishmas Rivka Yenta bas Asher Anshel (14 Elul) and Yosef ben Chaim haKohen Weiss (8 Elul)
Family Weiss, London

OVERVIEW of the Daf

1) The acquisition of a yevama (cont.)

The source that a yevama is acquired by cohabitation is identified.

The Gemara unsuccessfully challenges this source.

2) The yevama's acquisition of the right to remarry

The source that a yevama acquires herself back by chalitzah is identified.

The Gemara unsuccessfully challenges this source.

A kal v'chomer is suggested as the source that the yavam's death permits the yevama to remarry.

The kal v'chomer is unsuccessfully challenged.

Alternative kal v'chomer's are suggested and rejected.

In the course of this discussion the Gemara mentions a principle that whenever there is a "constraint" written in the Torah a kal v'chomer cannot be utilized.

The Gemara continues to discuss the possibility that a גט should permit a yevama to remarry.

3) MISHNAH: The Mishnah discusses the acquisition of a Jewish slave, a Jewish maidservant and the Jewish slave who chooses to stay beyond six years.

4) Acquiring a Jewish slave with money

The sources that a Jewish slave is acquired with money in different circumstances are identified.

In the previous discussion the Gemara mentioned an opinion that did not expound a gezeirah shavah using the word שכיר. The Gemara now cites a Baraisa that contains

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REVIEW and Remember

- Who is supposed to make the declaration חלוץ הנעל? חלוץ הנעל?
- Is it necessary to the yavam to use his own shoe for chalitzah?
- What are the ways a Jewish maidservant acquires her freedom?
- Is it possible for a person who sold himself into slavery to become a נרצע?

Distinctive INSIGHT

Selling oneself as a slave

עבד עברי נקנה בכסף ובשטר

Rambam (Hilchos Avadim, 1:1) explains that there are two ways by which a person can be sold as a Jewish slave. One way is if he stole money and cannot pay it back. This is the case discussed in the Torah at the beginning of Parashas Mishpatim (Shemos 21:2), where a person is sold by the court. The later verse (ibid. 22:2) explicitly speaks about a theft and its consequences, "If he has not (any money to pay back the theft), he shall be sold due to the theft."

The second circumstance whereby a person can become a Jewish slave is where a person sells himself due to his being destitute. This is discussed in the Torah in Parashas Bechukosai (Vayikra 25:39), "If your brother becomes impoverished...and is sold to you." The details of these two categories of Jewish slaves are discussed in our Gemara.

Rambam notes that it is prohibited for a person to sell himself in order to raise funds for the purpose of saving the money, or to use the money to buy merchandise or to pay a loan. The only reason to sell oneself for money is if one needs the money for food. Minchas Chinuch (Mitzvah 42, #17) infers from the ruling of Rambam that it is prohibited to sell oneself even if the money is needed to fulfill a mitzvah, such as to have funds in order to marry a wife.

Minchas Chinuch proves that this is the opinion of Tosafos (Bava Basra 13b). The Gemara there discusses the case of one who is half-owned as a slave, and his other half is a free man. The Gemara points out that this person has no solution in terms of marriage. He cannot marry a Jewish woman, due his being a half-slave. He also cannot marry a maidservant, due to his being half-free. Tosafos notes that the Gemara does not suggest that he sell his free half as a slave in order to become a full slave and be able to marry a maidservant. The reason this suggestion is not presented demonstrates that it is prohibited for one to sell oneself, being in violation of the verse (Vayikra 25:42) "The Jewish people are My servants," even in order to fulfill a mitzvah.

Minchas Chinuch points out that there are other Rishonim, however, who hold that it is permitted to sell oneself as a slave in order to raise funds to perform a mitzvah. Rashi to Kidushin 69b explains that Rav Simlai considered giving advice to a mamzer to sell himself as a slave, and, according to the opinion of Rabbi Eliezer, he would thereby be permitted to marry a maidservant. We see that according to this, it is permitted to sell oneself as a slave for the sake of fulfilling a mitzvah. ■

HALACHAH Highlight

Who makes the declaration חלוץ הנעל?

ואמר לנו ענו כולכם ואמרו בית חלוץ הנעל

And he told us all to respond, "בית חלוץ הנעל"

The Mishnah in Yevamos (106b) cites a disagreement about who makes the declaration חלוץ הנעל following a successful chalitzah. Tanna Kamma maintains that the mitzvah is for the judges who preside over the chalitzah to make the declaration, rather than the students who observe the chalitzah ceremony. R' Yehudah disagrees and maintains that all the people who are present at the chalitzah should make the declaration. The Gemara there cites a Baraisa that relates that one time R' Tarfon presided over a chalitzah and all those who were present made the declaration חלוץ הנעל in accordance with the opinion of R' Yehudah.

Shulchan Aruch¹ ruled that all those who are present at the chalitzah should make the declaration חלוץ הנעל in accordance with the opinion of R' Yehudah. The difficulty with this ruling is that halacha should follow the opinion of Tanna Kamma rather than R' Yehudah, why then does Shulchan Aruch rule in accordance with R' Yehudah? In his commentary to סדר חליצה², Beis Yosef answers that since R' Tarfon ruled in accordance with R' Yehudah, the halacha will follow that position. Furthermore, Tanna Kamma does not maintain that it is prohibited for the students present to make the declaration; he merely main-

that view.

A suggested explanation of the dispute in the Baraisa is presented.

Rav Tavyomi in the name of Abaye offers a different explanation for the dispute.

Rav Tavyomi in the name of Abaye suggests an explanation for the second dispute in the Baraisa. ■

tains that it is unnecessary. Therefore, ruling in accordance with R' Yehudah is able to accommodate both positions.

Aruch Laner³ challenges this explanation of Beis Yosef. He writes that there are many instances when an incident follows one position of a dispute and nevertheless halacha follows the other opinion. Why then did Beis Yosef find this to be a compelling reason to rule in accordance with R' Yehudah? He answers that the Gemara Yevamos (101a) presents a dispute how many judges are needed to preside over a chalitzah ceremony. Rabanan hold that three judges are needed whereas R' Yehudah maintains that five judges are needed. The Gemara explains that Rabanan follow R' Tarfon's position regarding the declaration of חלוץ הנעל. Accordingly, since halacha follows the opinion of Rabanan in that case it follows that it will follow R' Tarfon's position regarding the requirement for all those present to make the declaration of חלוץ הנעל. ■

1. שו"ע אה"ע סי' קס"ט סעי' מ"ב.

2. פירוש סדר החליצה סק"פ.

3. ערוך לנר ליבמות ק"ו: ד"ה במתניתין ולא מצוה. ■

STORIES Off the Daf

For the Sake of the Mitzvah

"מנלן..."

Today's daf discusses chalitzah.

A certain woman was happily married with several children. After her children were already grown, her first husband died. Although she was getting older she still wished to remarry, so when an appropriate match was suggested she agreed to meet the man. Although he was somewhat older than her, the two were very well suited for one another. Their wedding was very joyous.

All of the widow's children had homes of their own and her new husband had no children at all. The well-

matched couple developed a wonderful marriage for over ten years. When the wife second husband died, she was already getting on in years and had no desire to remarry.

Shortly after the month-long period of mourning, this man's sister approached her and said, "My brother didn't have any children but as you know, he did have a brother in a distant city. Don't forget that you must make the voyage there to receive chalitzah from him."

The widow answered, "Although I thank you for your concern, I have no

intention of remarrying so I have no reason to travel."

The sister was not certain so she asked a family member to ascertain if this was really the only reason to do chalitzah. When this person asked the Chelkas Ya'akov, ז"ל, he ruled that she had to go and get chalitzah even if she didn't remarry. He said, "It is obvious that chalitzah is a Torah mitzvah in and of itself, so she must make efforts to fulfill this mitzvah just like any other. Although this mitzvah is actually the brother's mitzvah, she gets rewarded for helping him do his mitzvah, as we find in Makkos 5."¹ ■

1. שו"ת חלקת יעקב, אבן העזר, סימן קי"ב