



OVERVIEW of the Daf

1) Clarifying the Mishnah (cont.)

The inference of the Mishnah that the phrase, **נייא אותה** is understood to mean that one must know whom the revocation is for is challenged from the halachos of rending a garment upon the death of a relative where if a person discovers that he had the wrong relative in mind he is not required to rend his garment a second time.

A resolution to this inquiry is suggested.

A Baraisa is cited that supports this distinction.

R' Ashi offers an alternative resolution to the apparent contradiction between our Mishnah, discussing revoking vows and the Baraisa that discusses rending a garment.

A Baraisa is cited that supports this distinction.

Tangentially, the Gemara rules about the principle of **תוך כדי דבור** דמי.

2) **MISHNAH:** The Mishnah rules about confirming or revoking part of a vow. The Mishnah also explains the language necessary to make two vows rather than one vow with

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REVIEW and Remember

1. What is the source that one must tear kriah with the correct deceased in mind?

2. Is it possible to confirm part of a vow?

3. What is the dispute between R' Yishmael and R' Aki-va versus Chachamim?

4. When is it possible for a husband/father to revoke a vow even though it is not the day he heard the vow?

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Distinctive INSIGHT

Retracting one's verbal statements within moments

תוך כדי דיבור כדיבור דמי חוץ ממקדש ומגרש

The **ר"ן** explains the rationale behind the halacha of being able to correct one's words within moments, and why it does not apply in the case of kiddushin and divorce. Generally, when a person speaks, his intent is that he should be able to adjust or correct his words if he catches himself within a few seconds. However, the two areas identified in the Gemara as exceptions are very serious situations, and a person would not state his intentions unless he had very carefully thought out the consequences of this words beforehand. This is why, in these two cases, a person cannot retract his words even within moments.

Tosafos (Bava Basra 129b, **ד"ה חוץ**) discusses a case where a person addresses idolatry and says to a statue, "You are my god," but he then immediately tries to retract his words. Tosafos notes that here, too, his statement is final, and his recantation does not cancel the idolatrous nature of his words. Tosafos suggests that the reason is due to a scriptural decree. This, however, is a bit peculiar, as we do not find such a verse in regard to a unique definition of **תוך כדי דיבור** regarding idolatry.

Rashbam (ibid., 130a, **דייה וקידושין**) writes that the reason we do not allow a person to retract his words regarding kiddushin is a rabbinic enactment, so that people should not cast aspersions about whether this woman is married to this man, even after he immediately takes back his offer of kiddushin. This is why we demand that the kiddushin be treated seriously, and the rabbis require a **גט**. Rashbam therefore points out that if a man offers kiddushin to a woman in front of witnesses, and within seconds he declares that the kiddushin money be a gift instead, this case is one of **ספק קידושין**.

שו"ת הר"ן shows that Rambam disagrees with Rashbam, as he holds that if either the man or the woman changes his or her mind within a moment after the kiddushin is given, this retraction has no meaning, and the woman remains betrothed without a doubt. Accordingly, Rambam rules that there is no doubt in the matter at all, and we do not suggest that a **גט** be given to alleviate any doubt.

Shulchan Aruch (E.H. 49:2) seems to rule according to Rashbam in terms of considering the kiddushin valid, and that the retraction is disregarded. Yet, Shulchan Aruch does not only treat this as a doubt, but rather that the retraction has no validity, and the woman would need to be given a **גט** if the relationship would be dissolved. ■

HALACHAH Highlight

Observing shiva for the wrong relative

והתניא אמרו לו מת אביו וקרע ואחר כך נמצא בנו לא יצא ידי קריעה
 And it was taught in a Baraisa: If a person was told that his father died and he tore his garment and then discovers it was his son, he did fulfill his obligation to tear his garment

Rav Yehonasan of Volozhin¹ reports of a halachic disagreement he had with the Av Beis Din of Novhardek, Rav Alexander Ziskind. There was a man who received news that his sister passed away and after observing shiva he was told that the sister he thought was dead was still alive and it was another sister that passed away. Rav Ziskind ruled that he is obligated to observe another period of shiva and based his ruling on our Gemara. The Gemara teaches that if a person rends his garment for the wrong relative he is required to rend the garment a second time for the correct person; therefore, the same halacha should apply for shiva, meaning if one observed shiva for the wrong person he should be required to observe another period of shiva. Rav Yehonasan strongly disagreed with this ruling. The reason a person who tore kriah for the wrong relative must tear his garment again is based on a drosha from a verse that taught this halacha. If there was no drosha there would be no reason to require a person to rend again, therefore, since there is no drosha that teaches this halacha in reference to mourning, it is logical to conclude that he is not required to observe another period of shiva.

Rav Eliezer Yitzchok Fried², the Rosh Yeshiva in Volozhin, challenged the conclusion of Rav Yehonasan. He asserts that the primary purpose of the pasuk cited in reference to tearing kriah is intended to teach that one tear does not

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two parts.

3) Identifying the author of the Mishnah

The Gemara initially asserts that the Mishnah reflects the opinion of R' Yishmael.

The Baraisa that contains R' Yishmael's opinion is cited.

The Gemara explains the rationale behind the dispute between R' Yishmael and R' Akiva.

R' Chiya bar Abba asserts that Chachamim disagree with R' Yishmael and R' Akiva.

Rava states that the last halacha of the Mishnah follows the opinion of R' Shimon.

4) **MISHNAH:** The Mishnah discusses cases where the husband was unaware of his ability to revoke a vow.

5) Clarifying the dispute

The Gemara notes a contradiction in the positions of R' Meir and Chachamim, including R' Yehudah, recorded in the Mishnah, with their opinions recorded in a Baraisa. ■

count for two different deaths and not for the halacha requiring proper intent when the kriah is performed. Accordingly, since aveilus is a Rabbinic enactment and thus there will not be a verse that will address this issue, it will be determined by logic. Consequently, since we find concerning kriah that intent is imperative for the validity of the kriah so too it is logical to assume that intent is essential for the proper observation of shiva thus if someone observed shiva for the wrong relative he is required to observe another period of shiva. ■

1. חוט המשולש ח"ג סי' מ"ב

2. חוט המשולש ח"ג סי' מ"ג ■

STORIES Off the Daf

Not a Laughing Matter

ומקדש

Someone heard a young man ask a young woman to marry him. The witness was horrified since the two were quite young. The witness didn't see anything, he merely heard the exchange. When questioned, the girl claimed that she had meant it as a joke. "Of course I was just kidding; I knew that marriage requires the presence of two witnesses and we were alone in the room. Anyway, the

ring he gave me was my graduation ring that I had given to him to show my esteem. Such tokens are not meant as permanent gifts. They are returned when the boy and girl part company.

"Also, he grabbed the ring back immediately after the joke!" she concluded.

Rav Moshe Feinstein, zt"l, was consulted regarding this question. He replied, "Rema states that we must suspect kiddushin if two people admit to having been married in the presence of one witness. The fact that the young man grabbed it back immediately doesn't help since we find in Nedarim 87 and other places that one may not retract

from marriage even immediately. However, maybe this can help at least to show that marriage was not intended. But who knows if it was really תוך כדי דיבור? Perhaps it was a little longer. But we definitely believe her when she says that she was joking, since there was only one witness. Especially since she says she knew that two witnesses are necessary for kiddushin.

Rav Moshe concluded, "Although she does not require a divorce, the two should be disciplined to prevent them from making jokes about such serious issues in the future!" ■