

OVERVIEW of the Daf

1) The sixteenth erva (cont.)

The Gemara previously suggested that the Mishnayos of this perek deal with matters under dispute based on a Baraisa of R' Chiya. The Gemara declares that Rabbi does not follow the rules set forth in R' Chiya's Baraisa and he thus will maintain that the Mishnayos of this perek do not deal with matters under dispute.

Rava is quoted as asserting that Rabbi does accept the rules set forth in R' Chiya's Baraisa and it is because of a technical matter that the case of a mother who was raped by his father could not be listed in the Mishnah.

R' Ashi suggests that Rabbi does not accept the rules of R' Chiya and he will concede that the Mishnayos deal with issues that are under dispute but the Mishnah follows the opinion of R' Yehudah who prohibits marrying the woman raped by one's father.

Ravina unsuccessfully challenges R' Ashi's explanation. The Gemara relates that despite Rabbi's opposition to Levi's suggestion of a sixteenth ערה. Levi included the case of one's mother who was violated by his father as the sixteenth case.

Reish Lakish suggests that according to Levi we could add another case, namely one who in violation of the prohibition married his chalutzah

R' Yochanan gives one of two reasons this case was not included.

2) Marrying one's chalutzah

Reish Lakish and R' Yochanan disagree whether there will be a punishment of kares for one who marries his chalutzah. According to Reish Lakish only the one who did

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REVIEW and Remember

1. How does R' Ashi demonstrate that the Mishnah follow the opinion of R' Yehudah?

2. Was Levi deterred from maintaining his position following Rabbi's harsh criticism?

3. What is the punishment for one who marries a woman with whom he did chalitzah?

4. What is done when a yevama who is prohibited by a mere prohibition falls for yibum?

HALACHAH Highlight

Explaining the dispute between Reish Lakish and Rav Yochanan

אלא איהו שליחותא דאחים קעביד, איהי שליחותא דצרה קעבדה

The Gemara discusses the dispute between Reish Lakish and Rabbi Yochanan regarding a case where one of the brothers performed chalitzah with the yevama, and he then offered her kiddushin. Reish Lakish is of the opinion that the brother who gave chalitzah is prohibited to marry this woman due to the rule of **לא יבנה** - **אשר לא יבנה** - once the opportunity to perform yibum has been dismissed, there shall no longer be a marriage among the family. This is only a "regular" **לאו**, and one who takes her as a wife would be liable for lashes, not kares. The other brothers, however are faced with the original restriction not to marry a brother's wife when there is no mitzvah to do so, and if they would marry her they would be liable for kares.

Reb Yochanan holds that once chalitzah was given and yibum can no longer be done, the prohibition for any of the brothers to marry the yevama is only based upon the simple **לאו** of **לא יבנה**—**שוב לא יבנה**, and no one is liable for kares. The logic behind the ruling of R' Yochanan is that we consider the one brother who delivered chalitzah as if he was acting as a representative of the rest of the brothers, and the woman who accepted the chalitzah is seen as acting on the behalf of all the co-wives of the original brother. Reish Lakish does not agree with our seeing the actions of these two people as representative of the other family members. Therefore, the punishment of kares remains for them (see Rashi 11a, **ד"ה ומ"ד כרת**)

Rav Elchonon, *zt"l*, (**קובץ הערות ד: ט**) explains that this dispute reveals a fundamental difference of opinion how to view the process of chalitzah and how it functions.

Rabbi Yochanan explains that each brother had a direct responsibility to perform either yibum or chalitzah to each of the wives. When one brother delivers chalitzah to one wife, we consider it as if all the brothers gave all the wives their official release. This is why they all become permitted to marry. Reish Lakish, however, understands that only the one brother acted on his own and dismissed the one wife. Why are the co-wives all released to marry? We must say that Reish Lakish holds that through this act of the one brother, we say **איגלאי מילתא** that no other brother ever had a responsibility to fulfill the mitzvah addressed by the one brother, and all remaining co-wives were never connected with a **זיקה**. The mitzvah of the brothers was fulfilled via this one brother and the wife who received chalitzah. ■

Distinctive INSIGHT

Marrying one's chalutzta

איתמר החולץ ליבמתו וחזר וקדשה אמר ריש לקיש הוא אין חייב על החלוצה כרת והאחין חייבין על החלוצה כרת וכו', ור' יוחנן אמר בין הוא ובין האחין אין חייבין לא על החלוצה כרת וכו'.

It was taught: If one did chalitzta to his yevama and then betrothed her, Reish Lakish said that he is not subject to kares for marrying her but the brothers are subject to kares etc. And R' Yochanan said that neither the yavam nor the brothers will be subject to kares for marrying the chalutzta etc.

There was once a woman who lived in a house with her husband and his brother and a second brother lived elsewhere. The married brother died without children and since they lived in an Ashkenazi land,¹ one of the brothers was going to do chalitzta. The obvious choice would be for the brother who shares a house with the widow to do chalitzta, except that Rema² rules that the widow and her husband's brother may not live in the same house if they had a relationship (לנו) (גס בה) because they are considered like an engaged couple who may not sleep in the same house out of concerns of seclusion. Since in this case it was not possible for the widow to move to another home the question was which of the two brothers should do the chalitzta.

Rav Yehoshua Heshel of Tornipol³ suggested that the brother who lived elsewhere should do the chalitzta. One of the reasons he gave for his position is that the prohibition against one of the brothers cohabiting with the widow is less

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chalitzta is not subject to kares whereas according to R' Yochanan once the yevama received chalitzta none of the brothers is subject to kares for marrying her.

Reish Lakish and R' Yochanan present the source for their respective positions.

R' Yochanan unsuccessfully challenges Reish Lakish from a Baraisa. ■

severe than the prohibition against the one who did the chalitzta cohabiting with the widow. Therefore, if the widow is going to continue to share a house with one of her husband's brothers it is preferred that he should not be the one who does the chalitzta.

Teshuvos Beis Ephraim⁴ challenges this position from our Gemara. All opinions agree that the one who did chalitzta does not receive kares for cohabiting with the widow and there is a dispute between Reish Lakish and R' Yochanan whether the other brothers will receive kares for cohabiting with the widow. Consequently, it is preferable for the brother who shares a home with the widow to do the chalitzta since it is certain that they will not become subject to kares. A second reason offered by Teshuvos Beis Ephraim is that it is preferable for the one who may, at some point in the future, be suspected of wrongdoing to do an act of formally rejecting the widow rather than another brother. ■

1. ע' אה"ע ריש סי' קס"ה
2. רמ"א שם סיק קנ"ז סע' י'
3. מובא דבריו בשו"ת בית אפרים המובא לקמן
4. שו"ת בית אפרים ח"ד סי' קמ"א ■

STORIES Off the Daf

Missed opportunities

כיון שלא בנה שוב לא יבנה

Today's daf features the idea that once an opportunity to perform a mitzvah is lost, more often than not it cannot be made up.

The chasidim of Ger had become accustomed to study intensely and prepare extensively before davening each day, and the start of the minyanim had slowly shifted later and later. When the Sfas Emes assumed his role as the Chief Rebbe of Ger, he issued instructions that all prayer services should commence promptly at the proper halachic

times.

One of his chasidim approached the Rebbe, and he appealed to him. "Rebbe!" he cried, "I do not have the opportunity to inspire and prepare myself for davening anymore, and I no longer feel the sweetness of the words as I pronounce them. What should I do?"

The Rebbe poignantly answered his well-meaning follower by quoting the Yerushalmi (Yoma 4:5): "Furthermore taught Bar Kappara: If they had added the smallest amount of honey [to the incense], no one would have been able to withstand its beautiful fragrance." If so, why didn't they, in fact, add honey to it? It is because the Torah says (Vayikra 2:11) "Any meal-offering that you offer to Hashem shall not be pre-

pared leavened, for you shall not cause to go up in smoke from any leavening or any honey as a fire-offering to Hashem." This teaches us, he explained, that although the outcome may seem desirable, we are never to act contrary to the halacha. "It is because the Torah says..."

When the chasid left, the Rebbe turned to his attendant and commented. "This man is worried about the lost opportunity to prepare for his prayers, and he notices the difference. I am sure that he will soon find an answer to his quest. Unfortunately, there are others who do not even detect that anything has changed, and they do not feel any loss at all to the quality of their davening." ■