

## OVERVIEW of the Daf

### 1) Yibum for a remarried divorcée (cont.)

Two unsuccessful attempts are made to resolve the inquiry about yibum for the remarried divorcée and her co-wife.

### 2) The co-wife of the married orphaned minor

Shmuel is cited as ruling that the co-wife of a married orphaned minor is prohibited for yibum.

Following a clarification of Shmuel's ruling the ruling is unsuccessfully challenged.

### 3) The co-wife of an איילוניית

R' Assi ruled that it is prohibited to do yibum to the co-wife of an איילוניית.

Two unsuccessful challenges to R' Assi's ruling are presented.

Rava disagrees and rules that the co-wife of an איילוניית is permitted.

Ravin cites R' Yochanan as ruling that the co-wives of a married orphaned minor, an איילוניית, and remarried divorcée are permitted for yibum.

### 4) Can a mother-in-law do מיאון?

A Baraisa related to the use of contraceptives is cited and explained in a way that indicates that a minor could become pregnant which contradicts our Mishnah, which indicates that a minor could not become pregnant.

One resolution is suggested and rejected.

Two other resolutions from R' Safra are presented, the first maintains that giving birth to children is the equivalent of showing signs of maturity and according to the second version, giving birth to children is better than showing signs of maturity.

The difference between these approaches is identified. ■

## REVIEW and Remember

1. Why is the co-wife of a ממאנת prohibited for yibum?

2. What is the reason the co-wife of an איילוניית is prohibited for yibum?

3. What three women are permitted to use contraceptives and why?

4. Can a girl who is a minor give birth to a viable child?

## HALACHAH Highlight

### Yibum for a co-wife of an איילוניית

אמר רבא הלכתא צרת איילוניית מותרת ואפילו הכיר בה

The Tosefta states that if the brother's wife who is an ערוה is found to be an איילוניית, the co-wives are permitted for yibum. This is true, explains the Tosefta, whether this condition was discovered while the husband was still alive or even after he died.

Tosafos notes that the Tosefta's ruling is significant if viewed from the perspective of R' Assi, who states that a co-wife of an איילוניית is prohibited to be taken for the mitzvah of yibum. When the Torah describes yibum, it does so together with the eventuality of the wife being married by the surviving brother and giving birth to a son who will carry on the name of the deceased husband. Yet an איילוניית is incapable of having a child. Therefore, R' Assi rules that the איילוניית remains a "brother's wife who cannot perform yibum," and her disqualification results in exemptions for the co-wives from yibum, as well. R' Assi would explain that the Tosefta teaches that if this wife was found to be an איילוניית while her original husband was alive, the co-wives are allowed to do yibum. We might have thought that knowing of her condition, the husband considered her physical limitation and nevertheless accepted her as his wife. The lesson of the Tosefta is that even if the husband knew of it, he was not accepting of it (מקח טעור), and her status as a full-fledged wife is rejected. In this case, the co-wives are therefore not affected by her ערוה relationship, and yibum may be done. In other words, the chiddush of the Tosefta is that yibum may be done even if the wife was known to be an איילוניית while the husband was alive. This is how we can understand the Tosefta from the perspective of R' Assi.

Rava, however, is of the opinion that the co-wives of an איילוניית are always allowed to do yibum. The only time any צרה is affected is when the mitzvah of yibum could have applied, had it not been that the one wife is an ערוה to the surviving brother. Accordingly, when a woman is found to be an איילוניית, it is irrelevant whether she is an ערוה or not, because yibum cannot be done in her case. She is removed from the equation, and a co-wife is even permitted to be taken for yibum. What,

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# Distinctive INSIGHT

## Is begetting a child a sign of physical maturity for boys?

בנים הרי הם כסימנים

Children are a sign of physical maturity

Rashi's<sup>1</sup> comments indicate that even if a girl is less than twelve years old she is considered an adult once she gives birth to a child. Rambam<sup>2</sup>, on the other hand, writes that a girl who is twelve, but has not yet produced the physical signs of maturity, is considered an adult if she gives birth to a child. This indicates that a girl who is less than twelve years old is not considered an adult even if she gives birth to a child. Rav Chaim Halevi Soloveichik<sup>3</sup> explains that even though the Gemara declares that children are a sign of maturity, the sign is meaningless if the girl has not yet reached the age of maturity. Giving birth is only significant in conjunction with having reached the proper age.

Poskim inquire whether this sign applies for males as well. There was once a thirteen-year-old boy who despite not having produced physical signs of maturity, did yibum and the yevama became pregnant. The young man intended to divorce her but the question arose whether he should do chalitzah after he develops the physical signs of maturity. One could argue that chalitzah is required because yibum performed by a minor is meaningless and since he hasn't yet produced physical signs of maturity he is a minor. On the other hand it could be argued that having children is the same as producing physical signs of maturity and it can be assumed that he is, in fact, an adult and the yibum was valid. Teshuvos Maharitatz<sup>4</sup> wrote that although the claim that

(Insight. Continued from page 1)

then, is the lesson of the Tosefta?

Tosafos answers that the חידוש according to Rava is in the case where the wife was discovered to be an איילונית after the death of the first husband. Here, we might have thought that the co-wives should not be able to do yibum, because at the moment of death, when yibum is to be considered, this woman was not known to be an איילונית. This might appear very suspicious to later allow the cowives to perform yibum based upon our discovery of the ערוה being an איילונית. The חידוש is that yibum is nevertheless allowed. ■

this young man should be treated as an adult has merit, nonetheless, his tendency is to rule stringently and require chalitzah after the young man produces physical signs of maturity.

Teshuvos Dvar Avrohom<sup>5</sup> cited opinions who maintain that the rule that children are a sign of maturity applies even for boys under the age of thirteen. He challenges this opinion from our Gemara. Even if one were to accept the assumption that regarding this matter there is no distinction between males and females, nonetheless, there is a dispute whether this rule applies for minors or only young adults who have not yet produced physical signs of maturity. Therefore, Teshuvos Dvar Avrohom also hesitates to follow the opinions who would apply this rule to boys who are minors. ■

1. רש"י ד"ה הרי הן
2. רמב"ם פ"ב מהל' אישות ה"ט
3. חידושי רבינו חיים הלוי שם ד"ה ולפמש"נ
4. שו"ת מהריט"ץ ישנות סי' כ"ג
5. שו"ת דבר אברהם ח"ג סי' י' סק"ה ■

# STORIES Off the Daf

## Minor marriages

שלש נשים משמשות במוך קטנה מעוברת ומניקה

Rabbi G. does outreach at a community college on the East coast, but found his efforts with a certain student thwarted when a non-observant acquaintance challenged the newcomer about one of the issues discussed on today's daf. Citing Yevamos 12b, this other person framed the issue of the possibility of a minor pregnancy posed in the Gemara as proof that the Chachomim sanctioned sexual abuse, chalilah. Not knowing how to respond, Rabbi G. deferred the question to a more advanced scholar from Yerushalayim.

After outlining the problem, Rabbi G.

said, "Of course I have emunah that there is an answer, but I can't pretend that these questions don't bother me too. Why is kedeshei ketanah permitted to begin with? Surely the child doesn't know her own mind. I have heard that earlier generations were different, but how can I explain that to someone with no background?"

The other Rav explained, "First of all, see the Aruch Hashulchan (37:33) where it clearly states that nowadays one should not marry off a ketanah, as we find in Kiddushin 41a. Even if the girl is clearly willing, it is still better to refrain if we have a choice. Earlier generations married their children off very young only when they had no other option! Constant persecution meant that a Jew could lose his property suddenly or be forced into exile. From that perspective, it was seen as the

better of two evils to arrange marriages while children were young and the dowry was still at hand than to wait on an uncertain future. Also, during times when people lived more circumscribed lives, it was harder to find a prospective chosson. If a suitable person was found, it was seen as more provident to secure the match early than wait and lose the opportunity. A third reason was to avoid the cruel draft laws, because youngsters who were married were exempt. And a fourth reason was to protect girls from abduction and forced marriage to the gentiles.

The Rav added, "Don't think that this only took place long ago. I have a neighbor down the street who was married off at twelve in Algeria to her second cousin and sent on foot to Israel to escape the attentions of the local Arab nobleman. This was only sixty-five years ago!" ■