

OVERVIEW of the Daf

1) A sister who is the daughter of one's father's wife (cont.)

The Gemara continues its unsuccessful challenges to R' Yosi ben Yehudah's exposition, namely, that there is no liability for cohabiting with a sister born to the father from a non-Jewish maidservant or any non-Jewish woman.

Rabanan identify a source for this ruling and R' Yosi ben Yehudah explains why both sources are necessary.

Rabanan are forced to identify another source that the daughter of a non-Jewish woman is excluded.

Ravina expands on the exposition that excludes from liability one who cohabits with a sister from a non-Jewish woman.

The exposition is unsuccessfully challenged.

2) MISHNAH: The Mishnah presents the halachic ramifications for one who betrothed one of two sisters and it is not known which of them he betrothed. The next case discusses the ramifications for two people who betrothed two sisters, not knowing who was betrothed to which sister.

3) Kiddushin that does not allow for relations

The Gemara infers from the Mishnah that kiddushin that does not allow for relations is a valid kiddushin.

This inference is rejected and the Gemara demonstrates how a careful reading of the Mishnah supports this interpretation.

It is noted that the novelty of the Mishnah is not the halacha regarding divorce, but the halacha that the chalitzah must be performed before the yibum.

The Gemara attempts to infer from the second case of the Mishnah that kiddushin that does not allow for relations is a valid kiddushin.

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REVIEW and Remember

1. What is the source that kiddushin takes effect on women prohibited by a negative command?

2. What is the source that a person's yichus follows the mother?

3. Explain קידושין שאין מסורין לביאה.
4. Why in the first case of the Mishnah must chalitzah be performed before yibum is done?

HALACHAH Highlight

The question of the Gemara from the Mishnah of the four brothers

מאי שנא מהא דתנן ארבעה אחים שנים מהם נשואין שתי אחיות ומתו הנשואין את האחיות הרי אלו חולצות ולא מתייבמות

The Mishnah had illustrated the halacha of a person who offers kiddushin to one of two sisters but he does not know which one. The Mishnah continues to deal with the applied consequences of this case where the man died, and how his brother(s) would respond to the yibum situation.

The Mishnah then illustrates the same case, but with two men, each of whom offered kiddushin to one of these sisters, and they do not know which man gave kiddushin to which sister. Finally, the Mishnah analyzes what would happen after the death of these two men if each of had a brother, what would happen if one of them had two brothers, and what the halacha would be if each of the men each had two brothers.

In reflecting upon the final case, where each of the two men had two brothers, the Gemara questions why this case is different from the case in the Mishnah at the beginning of the third perek (26a), where there are four brothers. Two of them are married to sisters, and these two brothers die childless. The wives must be given chalitzah from the surviving brothers, as yibum is not an option, due to the prohibition of doing yibum with the sister of a woman who is זקוקה.

Rashi (ד"ה מאי שנא) explains the precise nature of the Gemara's question. In our case of two strangers, each of which offered kiddushin to an unspecified sister, the surviving brothers must give chalitzah. If they did not consult with beis din, and they each married one of the sisters, they may remain married (קדמו וחלצו אין מוציאין מידיים) However, in the case of the four brothers, if the surviving brothers marry the two widowed sisters, the marriages must be terminated (אם קדמו וכנסו יוציאן).

Tosafos notes the obvious flaw with this explanation, in that if the question was from the statement at the end of the Mishnah, the Gemara should have cited that phrase. Rather, the question, explains Tosafos, is that in our Mishnah, we do not allow yibum, but in the Mishnah on 26a one brother may do yibum while the other gives chalitzah.

It is interesting to note that the very next comment of Rashi (ד"ה חולצות ולא מתייבמות) explains the question in the manner Tosafos understood, which is apparently inconsistent with the previous comment of Rashi himself. Aruch Lanair explains that Tosafos apparently knew that these are not the words of Rashi. ■

Distinctive INSIGHT

The mitzvah of writing a Sefer Torah

הניחא לרא שמעון דדריש עטמא דקרא

This explanation is acceptable according to R' Shimon who expounds the reason of the verse

The Rosh¹ writes that although it is certainly a mitzvah to write a Sefer Torah, that mitzvah is limited to previous generations when people studied Torah directly from a Sefer Torah. Nowadays people study out of books rather than Sifrei Torah, so the mitzvah is to write [e.g. publish or purchase] sefarim so that a person and his children will be able to study Torah. Commentators debate the intention of Rosh. The Beis Yosef² writes that Rosh did not intend to uproot the original mitzvah of writing a Sefer Torah. His intention was to add to that mitzvah and rule that writing sefarim is greater than writing a Sefer Torah. The Derisha³ disagrees with Beis Yosef, and writes that Beis Yosef's understanding of Rosh cannot be reconciled with his words. Furthermore, if one follows his reasoning, namely, the purpose of the mitzvah is to have texts from which one could study Torah it is only logical that nowadays the mitzvah will be fulfilled with sefarim rather than a Sefer Torah since people do not study Torah from a Sefer Torah.

The Chasam Sofer⁴ asserts that the reason Beis Yosef felt the need to interpret the language of Rosh that the mitzvah to write a Sefer Torah still applies is that Rosh's rationale applies only if one accepts the principle of R' Shimon of expounding the rationale of the verse (דרשינן טעמא דקרא) If, on the other hand, one follows R' Yehudah, which is the generally accepted posi-

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This inference is rejected and the Gemara demonstrates how a careful reading of the Mishnah supports this interpretation.

Two novel points derived from the second case are noted.

4) Clarifying the Mishnah

The necessity for the Mishnah's case where each person had two brothers is identified.

The Gemara contrasts the rulings in our Mishnah with a Mishnah in the following Perek. ■

tion, the mitzvah of writing a Sefer Torah cannot be replaced due to the fact that people no longer study Torah from a Sefer Torah. Rav Ovadiah Yosef⁵ expresses astonishment at Chasam Sofer's assertion because all opinions agree that when the Torah explicitly presents a reason we do expound the halacha in accordance with the stated reason. Rav Yosef then challenges his own assertion from our Gemara and the parallel Gemara in Kiddushin which limits the verse "You shall not make marriages with them etc." to the seven nations of Canaan despite the fact that the Torah presents the rationale for the mitzvah. He resolves this question by citing numerous authorities who write that there is indeed a conflict between different sugyos but the sugyos, that expound the rationale of the verse when the reason is presented is the more authoritative approach. ■

1. רש"א ריש הלכות ספר תורה
2. ב"י יו"ד סי' ע"ר ד"ה וכתב א"א ז"ל
3. דרישה שם אות ד'
4. שו"ת חת"ס יו"ד סי' רנ"ד
5. שו"ת יביע אומר ח"ח יו"ד סי' ל"ו אות ב' ■

STORIES Off the Daf

The newborn convert

גר שנתגייר כקטן שנוולד דמי

The Chid"א, zt"l, quotes Chazal as stating that even the souls of future converts were at Sinai during Matan Torah, so a convert's true place is within the Jewish people. He never really belonged to the non-Jewish world. The act of conversion is proof that he never had an essential spiritual connection with the people from whom he sprang. He is truly newly born.

It was 1942, and Operation Barbarossa had brought the Nazis deep into the Ukraine. The Ukrainians were more than pleased to serve in the mobile killing units, the Einsatzgruppen, so that they could kill

the Jews themselves. In them, the Nazis found the most willing helpers. Indeed, the Ukrainian sadists were often reported to be worse than their German overlords. Virtually everywhere the Nazis went they were applauded for killing Jews. It was commonplace for a town to be filled with the peal of church bells when the removal of the last Jew of the town was verified. Informants were commonplace, and hardly any Jews successfully escaped the murderous sweeps of the Einsatzgruppen through the Ukraine.

In the town of Uman, there was a man known as Reb Doniel the Ger. As a non-Jew he had been well liked by his fellow Ukrainians and his decision to become Jewish had been a major surprise. Conversion was exceedingly rare in those years, especially in that part of the world. Never-

theless, he was known and respected by the non-Jews of the town as well as among his fellow Jews.

When the Nazis arrived in Uman, there was no pity and virtually no escape. Over the two days of Rosh HaShanah, 1942, the Jews were confined to a makeshift ghetto and were then led away to the forest to be shot. The Ukrainians collaborators directed the German soldiers to every Jew in town. The only person they didn't turn in was Reb Doniel, the convert.

When Reb Doniel realized what was happening, he begged to be led to his death along with his Jewish wife and children. Surprisingly, the killers refused him, "You are one of us and should not die as a Jew!" How could the murderers know that Reb Doniel's conversion had made him as much a Jew as any of the victims? ■