

OVERVIEW of the Daf

1) Clarifying the Mishnah (cont.)

Rava disagrees with Abaye's explanation of the Mishnah and offers a different explanation.

It is noted that the positions of Abaye and Rava were stated by R' Elazar and R' Yosi the son of R' Chanina.

The Gemara challenges whether R' Elazar follows the position of Rava.

According to one approach, the challenge is accepted and the attributions of R' Elazar and R' Yosi the son of R' Chanina must be reversed. According to a second approach, R' Elazar qualifies his opinion which avoids the challenge.

R' Pappa notes that the language of the Mishnah is consistent with Abaye's explanation.

2) The yevama becomes the yavam's wife

R' Yosi bar Chanina teaches that when the Mishnah states that the yevama becomes his wife, the intention is that he divorces her with a get and is permitted to remarry her.

These two halachos are explained.

3) The yevama's kesubah

The Gemara explains why the yevama's kesubah is payable from the deceased husband's estate, and adds that if there is no kesubah from the first husband she receives a kesubah from the yavam.

4) MISHNAH: The Mishnah describes the process of choosing which brother will perform the yibum or chalitzah.

5) Yibum of a younger brother vs. chalitzah of an older brother

R' Yochanan and R' Yehoshua ben Levi dispute whether the yibum of a younger brother is preferable to the chalitzah of an older brother or not.

The rationale behind the two opinions is explained.

Two unsuccessful attempts to resolve the dispute are presented.

According to a second version, everyone agrees that yibum from the younger brother is preferable, and the dispute relates to whether there is a preference concerning chalitzah.

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6) Performing yibum or chalitzah

A Mishnah in Bechoros teaches that nowadays chalitzah is preferred to yibum.

Rav notes that if a couple chooses to do yibum they are permitted to do so.

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Distinctive INSIGHT

Chalitzah or yibum may be done

אמר להו אי בעית חליץ אי בעית ייבם, בדידך לתא רחמנא

Rabbi Tzvi Rabinovitz, the Chief Rabbi of Kovno, was approached by a representative group of enlightenment intellectuals with what they believed was a reasonable request. They asked him if he could simply nullify the procedure for chalitzah. They explained that times were now modern and more progressive, and that it was no longer respectful for a woman to spit in front of a man. The esteemed Rabbi listened patiently to their words, and he mentioned that he would consider their request if they could satisfy one condition. The maskilim were excited as they agreed to hear his request, which they eagerly hoped to fulfill to the best of their ability. The rabbi responded, "I would like you to summon a doctor who will consult with his colleagues, and see if they can agree to eradicate death from the world."

The representatives of the maskilim were shocked that the rabbi would mention such a silly request. "Do you think that the doctors have any control over death itself? It is preposterous to even suggest such a thing!"

The Rabbi then explained. "Of course it is absurd to talk about eradicating death. But, at the same time, what makes you think that you understand the mechanism of chalitzah that you suggest that it be abolished? The effect such a procedure has upon the soul of the departed brother in the upper worlds and the people and families is beyond our comprehension! We have been given this mitzvah at Sinai by Hashem, and we do not consider ourselves in a position to evaluate this mitzvah or any other mitzvah in terms of the impact it makes in the heavens and upon the souls which dwell in their respective places." ■

REVIEW and Remember

1. What is the consequence of the fact that a yevama becomes the yavam's wife "in all respects"?
2. What happens if none of the brothers want to do yibum?
3. Why did Chazal decide that the mitzvah of chalitzah is preferable to yibum?
4. What is the dispute between Abba Shaul and Rabanan?

HALACHAH Highlight

Waiting to perform a mitzvah in a more enhanced fashion

כל שהיית מצוה לא שמהינתן

We do not delay the fulfillment of a mitzvah

Shulchan Aruch¹ rules that although it is appropriate to put on the talis before putting on tefillin, nevertheless, if one has tefillin that are available but does not have a talis he should put on the tefillin immediately and when the talis arrives he can don the talis. The Magen Avraham² writes that our Gemara is the source for this ruling. Our Gemara rules that one does not delay the fulfillment of a mitzvah even if delaying its fulfillment will allow a more enhanced fulfillment of the mitzvah.

The Shvus Yaakov³ seemingly does not subscribe to this principle when he addressed the following issue. A man was about to recite Hallel on Sukkos with a kosher lulav and esrog which were available. Yet the man chose to wait to fulfill the mitzvah until later when a more beautiful lulav and esrog would be available. The question was whether the decision this man made to delay fulfillment of the mitzvah in order to fulfill the mitzvah in a more enhanced fashion was the correct choice or perhaps the principle that mitzvos should be done as early as possible should have been applied. Shvus Yaakov concludes that the principle of our Gemara that one does not delay the fulfillment of mitzvos applies only when there will be no qualitative difference if the mitzvah is fulfilled now or later. If, however, the quality of the mitzvah will improve by delaying its fulfillment it is appropriate to delay fulfillment of the mitzvah.

A ruling of the Radvaz⁴ indicates that he agrees with the ex-

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It is demonstrated that R' Yehudah also maintains that a couple has the option to choose yibum.

On a side note, a dispute is recorded regarding the confirmation of the yavam as the paternal brother of the deceased.

Rami bar Chama in the name of R' Yitzchok reports that Chazal reversed their original position and advocated yibum rather than chalitzah.

Rami bar Chama related to R' Nachman bar Yitzchok that the reason for this change was due to a change in which opinion to follow, rather than to people improving.

The Gemara inquires after the authorship of a Baraisa.

R' Yitzchok bar Avdimi explains how the Baraisa is consistent with Abba Shaul who maintains that yibum done for ulterior motives is unacceptable, but Rava demonstrated how it is even consistent with Rabanan. ■

planation of Magen Avrohom that one should not delay the fulfillment of a mitzvah in order to fulfill the mitzvah in a more enhanced fashion. A person who was imprisoned was granted one day to leave prison and the question was which would be the best day to leave to be able to daven with a minyan. Radvaz ruled that he should not wait until Yom Kipur or Purim but should take advantage of the first available day in accordance with the principle that one should delay the fulfillment of a mitzvah even if performing the mitzvah later will allow a more enhanced fulfillment of the mitzvah. ■

1. שו"ע או"ח סי' כ"ה סע' א'

2. מג"א שם סק"ב

3. שו"ת שבות יעקב ח"א סע' ל"ד

4. שו"ת הרדב"ז ח"ד סע' י"ג ■

STORIES Off the Daf

"Chalitzah is preferable to Yibum..."

חליצה קודם ליבום

There were two "free-thinking" brothers, and one of them died suddenly without children. The surviving brother, an avowed maskil, and the widow decided that they would like to marry. The surviving brother went to Rav Tzvi Hirsch Levine, zt"l, the Rav of Berlin, to request a dispensation so that he could marry his dead brother's wife in accordance with the Torah's dictum.

The man stated his claim, "The widow is more than willing to marry me, and I am perfectly willing to marry her, too. Will you permit us to perform the mitzvah of yibum?"

The Rav refused. "It says in Yevamos

39b that since nowadays people's intentions are not for the sake of heaven, chalitzah is preferable to yibum."

The maskil protested vehemently. "How do you know that my intentions aren't for the sake of heaven? They certainly are! Why shouldn't I be permitted to perform the mitzvah!?"

The man's protests fell on deaf ears. Disgruntled, the surviving brother decided to denounce Rav Tzvi Hirsch to the government. The authorities sent a delegate to the Rav asking him for a justification for his ruling.

"Rabbi, from what we hear, you have prohibited a marriage which is permitted by our own law, is legal according to the Torah itself, and was even sanctioned by the Rabbis of the Talmud. How can you justify your refusal of the man's request on the basis of mere custom?"

The Rav adopted a very grave expression and said, "Actually, this marriage is absolutely prohibited by the standard of Torah law. I didn't want to be insensitive so I cited the custom, but there is a much stronger reason why one may not perform yibum with the widow of a maskil."

The Rav explained, "It is only permitted to perform yibum with one's brother's widow if we are certain that the brother had no children at all. Unfortunately, these 'freethinkers' are known to be very lax in their morals. It is quite possible that this man had a child with another woman! In that case, it is prohibited from the Torah for the surviving brother to marry his former sister-in-law."

The government representative could only admit that the Rav's assessment of the moral level of the maskilim was correct—and the authorities upheld the Rav's ruling! ■