

OVERVIEW of the Daf

1) Explaining Rav's position (cont.)

The contradiction between two rulings of Rav is resolved.

It is explained why the dispute between Rav and Shmuel concerning marriage to a minor or with an adult that includes a condition, is presented twice.

The Gemara again notes a contradiction in Rav's position whether betrothal with a minor takes effect automatically when she becomes an adult.

R' Pappa and R' Ashi suggests different explanations to resolve the contradiction.

R' Ashi's suggestion is unsuccessfully challenged.

R' Yehudah in the name of Shmuel and R' Elazar rule in accordance with R' Eliezer's opinion.

2) **MISHNAH:** The Mishnah discusses different cases of a man married to two women and whether the yibum or chalitzah with one releases the other wife from her zikah.

3) Chalitzah with a deaf-mute

The inference that chalitzah can be performed with a deafmute is challenged.

R' Gidal in the name of Rav suggests one explanation.

Rabbah offers an alternative explanation.

On the third attempt to refute Rabbah he is silenced.

R' Yosef endeavored to defend Rabbah against this last challenge, but failed, and Rabbah's statement is left refuted.

4) A minor and deaf-mute who fall for yibum

R' Nachman reports a discussion he had regarding the halacha of the Mishnah when a minor and deaf-mute fall for yibum; the yibum or chalitzah of one does not release the other.

R' Chisda in the name of Rav suggests that the yavam should marry the deaf-mute and then divorce her. He should wait for the minor to become an adult before doing chalitzah with her.

R' Chisda begins to analyze the underpinnings of Rav's ruling. ■

REVIEW and Remember

1. Why is it necessary for Rav and Shmuel to disagree about two different types of conditional marriages?
2. When is a deaf-mute allowed to do chalitzah?
3. Is a man capable of divorcing his wife if he becomes insane after he is married?
4. Explain the term קנויה ומשוויירת.

Distinctive INSIGHT

The two yevamos—the minor and the deaf-mute

מי שהיה נשוי לשתי יתומות קטנות ומת ביאתה או חליצתה של אחת מהם פוטרת צרתה

The first part of the Mishnah presents the case where Reuven was married to two orphaned minor girls (otherwise not related to each other). Reuven dies, and his brother, Shimon, is presented with these two yevamos. The ruling is that his doing yibum with one or his performing chalitzah with one of the girls releases the other, the צרה. Ritva explains that however we consider the status of a marriage to a minor is shared equally by these two minor girls, so the resolution of the relationship with one will release the other. This is also the case where Reuven was married to two deaf-mute girls (adults) and then Reuven died. Here, too, when Shimon his brother either does yibum or chalitzah with one, the other is released.

The Mishnah then states that if Reuven was married to two women, one a minor and the other a deaf-mute, and Reuven dies, here the yibum or chalitzah of one does not release the other. The reason for this is a matter of dispute in the Gemara between Amoraim, R' Ada bar Ahava and Rav Chisda.

According to Rashi, we do not know which of the two wives was considered to be the preferred wife of the first husband, Reuven. Which ever of these two rabbinically recognized marriages was preferred by Reuven is the one where yibum (or chalitzah) should be performed. This is according to R' Ada bar Ahava's understanding.

In the Gemara, on the bottom of עמוד ב', Rav Chisda explains the ruling of the Mishnah differently. Rav Chisda says that the marriage of a minor is uncertain whether she is rabbinically acquired completely or not at all. The limited competence that she has is not defined as to whether it establishes a marriage or not. A deaf-mute is "partially acquired and partially not acquired."

Keren Orah notes that we always find that a minor girl does have a status of being acquired rabbinically, and the uncertainty of the Gemara seems puzzling. Yam Shel Shlomo (beginning of סימן כ"א) explains that, in fact, in general, a minor is acquired rabbinically. It is only here, in contrast to the (adult) deaf-mute, that we introduce this uncertainty. ■

Today's Daf Digest is dedicated by Mr. and Mrs. Eliezer Freid
In memory of their father
ר' יצחק ארי' בן ר' יעקב אליעזר, ע"ה

HALACHAH Highlight

Uprooting kiddushin to save a child from being a mamzer
 ר' אשי אמר הוא עשה שלא כהוגן לפיכך עשו בו שלא כהוגן ואפקעינהו רבנן לקידושי מיניה

R' Ashi explained that since he behaved improperly Chazal dealt with him improperly and uprooted his kiddushin from him.

There was once a woman who, following witness testimony that her first husband died, married and had a child with a second husband. It then became known that the testimony was false. The halacha is that she must divorce both husbands and the child is a mamzer. However, due to the anguish this would cause the woman in addition to other factors, Torah scholars searched for a leniency so that this child should not be considered a mamzer. The Maharsham¹ wrote that a theoretical leniency (להלכה ולא למעשה) can be suggested based on a Tosafos in Gittin². One of the cases where Chazal applied the principle of nullifying kiddushin is a case when a husband sent a messenger to deliver a get to his wife and while the agent was en route to deliver the get the husband changed his mind and nullified the messenger's authority in the presence of a single witness. Accordingly, if the woman's first husband will appoint a messenger to deliver a גט and then nullify that agency in the presence of a

witness the ruling of Chazal that the original kiddushin is nullified will apply. Once the original kiddushin is uprooted the child born to her second husband cannot be deemed a mamzer since she did not have what was originally thought to be an adulterous affair.

Rav Shlomo Zalman Auerbach³ wrote that there were many instances when it was suggested to apply this reasoning of Maharsham to save a child from being deemed a mamzer but he always hesitated since Maharsham himself wrote that it was a theoretical analysis rather than a practical ruling. After a lengthy discussion of the matter he concluded that there were six primary weaknesses to this reasoning which renders the ruling of Maharsham as theoretical rather than practical. One of the reasons for hesitancy is that the only precedent that is found in the Gemara of Chazal uprooting kiddushin is a case where a person behaved improperly. We do not find that a person who behaves according to the instructions of Beis Din can have his kiddushin uprooted. Consequently, it is not possible for Beis Din to instruct the first husband to follow the above mentioned procedure to uproot the original kiddushin because Chazal do not uproot kiddushin from a person who follows the instructions of Beis Din. ■

1. שו"ת מהרש"ם ח"א סי' ט'
2. תוס' גיטין לג. ד"ה ואפקעינהו
3. שו"ת מנחת שלמה ח"א סי' ע"ו ■

STORIES Off the Daf

Measure for measure

הוא עשה שלא כהוגן לפיכך עשו בו שלא כהוגן
 On today's daf we find a situation where the kiddushin status of a certain minor girl was in doubt because of the inappropriate actions of a second man. Although it would have appeared as though this second man's proposal should have uprooted the process of kiddushin in which she was already involved, the Chachomim penalized the second man for insinuating himself where he should not have. Because of his improper action, the Chachomim treated him "improperly" and uprooted his own kiddushin rather than that of the first man. We see from here that sometimes the sages react in kind to

the person who has broken the bounds of propriety in order to punish him in a fitting manner.

Special appointees of beis din of the Chakrei Lev, ז"ל, were in charge of ensuring that the decisions and fines of the beis din were executed. They would be furnished with all relevant details and would do whatever it took to carry out the psak. Sometimes, they might threaten the recalcitrant litigant, and if even this was ineffective they would report to the beis din. In extreme cases of intransigence, the beis din could authorize the appointees to summon the culprit to non-Jewish courts to ensure that the beis din's decision was carried out.

Everyone knew that to take a Jew to the non-Jewish courts without permission of the beis din was a very heinous crime. As a matter of fact, anyone who

does so is considered unfit to be chosen to lead the communal prayer during the Yomim Noraim. (See Mishnah Berurah 53:82) The only time such an action is permitted is if the innocent party would suffer a loss by waiting for the beis din to deal with the non-compliance itself.

Once, a litigant in whose favor the beis din of the Chakrei Lev had already decided lost patience with the process and took the matter into his own hands. The messengers of beis din were incensed that he had summoning his opponent to the non-Jewish courts without obtaining permission, since this would cheapen this serious prohibition in the eyes of the rest of the community. In response, the appointees testified before the authorities that the guilty party was actually innocent. Naturally, the case was thrown out ■