

OVERVIEW of the Daf

1) Chalitza to a pregnant woman (cont.)

Rava suggests an alternative resolution to the challenge against R' Yochanan.

A Baraias is cited that supports Rava's explanation of the Baraias.

The Gemara suggests that this second Baraias refutes

Reish Lakish's position but the Gemara is able to explain how Reish Lakish could explain the Baraias differently.

R' Elazar offers a Mishnah that could be used as a support to Reish Lakish's position.

Two refutations to this proof, the second from Abaye, are presented.

A Baraias is cited that supports Reish Lakish's position.

Rava states that halacha will follow Reish Lakish on three matters: The first matter is that yibum or chalitza to a pregnant woman is valid and the other two relate to matters concerning inheritances.

The second dispute concerning inheritances is explained.

2) A yevama found to be pregnant with a non-viable child

R' Eliezer disagrees with the Mishnah's ruling that it is permitted for the yavam to remain with the yevama if it is determined that she is carrying a non-viable child and rules that they must divorce.

Rava suggests a connection between R' Eliezer's opinion and a seemingly similar ruling of R' Meir.

Abaye refutes the suggestion that their rulings are related.

3) Marrying another man's pregnant or nursing ex-wife

Rava clarifies that according to Chachamim one who marries another man's pregnant or nursing ex-wife must divorce her with a גט.

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REVIEW and Remember

1. At what point does a baby exempt his mother from yibum and chalitza?

2. According to Rava's conclusion, is chalitza performed on a pregnant woman valid?

3. Why, according to R' Eliezer, must the yavam divorce the yevama when it is discovered that she was pregnant with a non-viable child?

4. Is a woman who lost her child who would be the sole survivor of her deceased husband within thirty days of his birth permitted to marry a stranger?

Distinctive INSIGHT

The obligation for yibum if the son dies

שמה לא יהא הולד בן קיימא

We see from this Gemara that if the child is not viable, its existence is not considered to be a child, and it does not release its mother from yibum.

Based upon this comment, Meiri explains the famous ruling of Shlomo Hamelech (Melachim 1, 3:27) in the case of the two women who came before him with their sons, one alive and one dead. Each woman claimed that her son was the living child, and that the dead was the other's child. Shlomo ruled that the living child should be taken and cut in half, with each mother receiving half. Suddenly, one of the women cried out, "Give her the living child, and do not cause him to die." The second woman scoffed and said, "He will be neither for me, nor for you! Cut the child!" Shlomo ruled that the woman who expressed great compassion was the real mother, and that the child should be given to her. Meiri wonders how could Shlomo rule based upon such statements, especially the foolish remarks of the woman who agreed to have the child killed.

Rather, the case was one of a woman and her daughter-in-law. The husbands of these two women had died, and the only children left were these two baby boys in the story. The one that had died was really the son of the younger woman, the daughter-in-law, and as a result she was to have to wait until the surviving baby, her husband's brother, would grow up and release her from yibum. She, however, did not want to wait thirteen years as a yevama. She therefore switched her dead son with the live son of her mother-in-law, her husband's brother. She now claimed to be exempt from yibum for two reasons. First of all, she had a son. Secondly, her husband's only brother was now dead. When Shlomo ruled that the surviving child should be cut in half, Shlomo detected a certain degree of relief on the part of this daughter-in-law, for now, if the child who she knew to be her husband's brother would die, she could legitimately marry at will. Based upon this lack of sensitivity, Shlomo was able to conclude that the live child was actually the son of the mother-in-law, and the dead was that of the daughter-in-law. ■

HALACHAH Highlight

Marrying one's wife's sister when one's wife disappeared

הא לא שהא ספיקא הוי

If the child did not survive for thirty days its viability was uncertain.

Tosafos¹ mentions in his comment to the Gemara that concerning matters related to arayos, halacha adopts a strict approach in matters of doubt even when רוב indicates that one could be lenient. This principle is utilized by Dayan Yitzchok Yaakov Weiss², the Minchas Yitzchok to resolve a difficult inquiry. A woman once disappeared in water that did not have a visible end. The presumed widower was interested in marrying his wife's sister and inquired whether he was permitted to marry her under the assumption that his wife is dead and thus permitted to marry her sister. The background to the question is that given the same circumstance a woman would not be permitted to marry under the assumption that her husband was dead and the question is whether we would adopt a similarly strict approach for a prohibition that carries the punishment of kares rather than capital punishment from Beis Din.

Minchas Yitzchok cites our Tosafos which emphasizes that the salient issue is whether the possible prohibition relates to arayos and the relative severity of the different ervah prohibitions is not relevant. He cites as support for this approach, earli-

er authorities³ who apply this stringency to the restriction against a yevama marrying a stranger and it is logical to assume it will apply to the more severe prohibition against marrying one's wife's sister.

Rav Yehoshua Leib Diskin⁴, on the other hand, writes that the stringent approach regarding waters without a visible end is limited to the case of releasing a woman from marriage. The reason is that there a presumption of prohibition (חזקה) for a married woman and she cannot be released from that presumption if the husband fell into water that has no visible end. If that principle was to be applied to the case of the prohibition against marrying one's wife's sister we would be forced to arrive at an absurd conclusion. Since the stringent approach is applied only when there is a presumption of prohibition, only those sisters who were alive when the married sister disappeared can be prohibited but sisters born after that event could not be prohibited since there was never a presumption of prohibition. Since it would be perceived as absurd for some sisters to be restrained by the prohibition against marrying a sister's husband and others unrestrained by that prohibition, Chazal did not apply this stringency to the case of the prohibition against marrying one's wife's sister. ■

1. תוס' ד"ה הא

2. שו"ת מנחת יצחק ח"א סי' ו'

3. שו"ת מהר"ם מלובלין ועוד

4. שו"ת מהרי"ל דיסקין סי' מ"ב אות ל' ■

STORIES Off the Daf

The guards of the Torah

חכמים עשו חיזוק לדבריהם

Rav Yonasan Eibshitz, zt"l, was known to be the champion of the Jews in his region. Time and time again he defended the statements of Chazal and foiled the plans of the church authorities who always seemed to be seeking a pretext to exile the Jews from Vienna.

One time the ruler of the city asked Rav Yonasan, "I am told that the Talmud writes that the punishment for a Rabbinical transgression is death. (Eiruvin 21b) Most Torah prohibitions are merely punishable by lashes, if that. Why are Rabbinical laws be so much more stringent than what is written in the actual Torah?"

"Simple," replied the Gadol immediately. "Let's take your Excellency as an

example. As ruler of this city your word is law. However, if you were to ask me to leave the room and I were to refuse, I would be liable to severe punishment. But if you were to kill me for this you would be prosecuted, since this is not an appropriate punishment merely for refusing to leave a room. Also there may have been extenuating circumstances prompting my refusal. I might have to sit in a dungeon to await a hearing or you could demand that I state why I refused to obey.

"But if someone was to attempt to walk through the open castle doors and a guard was to command that he halt and he disregarded the guard's command, the stranger would be shot. And the guard will get a commendation for doing a good job! The reason for this discrepancy is obvious. If the guard is not empowered to kill intruders, the castle will be flooded with people who do not belong there at all. If this is not checked then every no-

bleman will be endangered, since access to the great would be open to anyone at all. Rav Yonasan continued, "Your Excellency's eminence is enough of a safeguard; there is no need for extreme retribution in most cases. But, by the same token, Rabbinic decrees are the "guards" of the Torah—they lay the boundary that cannot be crossed and that is why they are punishable by death. This also explains another statement in Yevamos 36b, that the Sages empowered their words more than the Torah's laws. The Rabbinic laws guard against fools and unscrupulous people transgressing the Torah!" ■

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Mar Zutra infers that explanation from the language of Chachamim.

R' Ashi begins to formulate the question of whether a kohen who improperly marries the pregnant or nursing ex-wife of his friend will be required to divorce her since he will be unable to remarry her. ■

