

OVERVIEW of the Daf

1) A husband's claim that his wife was not a בתולה

R' Elazar rules that if a husband claims his wife was not a בתולה he is believed to make her forbidden to him.

This ruling is challenged on the basis that there is a double doubt that indicates that she is permitted.

Two resolutions to this challenge are presented.

The necessity for R' Elazar's ruling is explained.

This ruling is challenged from another, seemingly contradictory, ruling of R' Elazar.

The second ruling of R' Elazar is revised so that it no longer contradicts the first ruling.

Two explanations are offered to explain why Dovid Hamelech and Bassheva were permitted to marry.

Abaye suggests that our Mishnah is proof to R' Elazar's ruling.

The suggested proof is refuted.

R' Yehudah in the name of Shmuel rules that if a husband claims his wife was not a בתולה he is believed to cause her to lose her kesubah.

R' Yosef challenges the necessity for this ruling since there seems to be an earlier source to this principle.

This challenge is refuted. ■

REVIEW and Remember

1. Under what condition does a woman become prohibited when her husband claims פתח פתוח מצאתי?
2. Why was Dovid HaMelech permitted to marry BasSheva?
3. What did soldiers in Dovid HaMelech's army do before going to war?
4. Does a woman whose husband claims she is not a בתולה receive a kesubah?

Distinctive INSIGHT

The case of a double doubt—ספק ספיקא—is treated leniently

ואמאי ספק ספיקא הוא וכו'

Our Gemara reports that a case of a double doubt (ספק ספיקא) is treated leniently. The claim of the husband that his wife was not a בתולה would therefore be dismissed because even if the husband is accurate in his observations, we do not know if the act was done during the engagement, which would be problematic, or beforehand. And even if it did take place during the engagement, we still do not know if she participated willingly, which would be problematic, or if it was done against her will. Because most women are only prohibited to their husbands if the act took place both during the engagement and if she participated willingly, the Beis din would not rule her to be prohibited.

The Gemara concludes that the rule of R' Elazar, that the husband's report alone is enough to make his wife prohibited from him, is speaking about where there is only one element of doubt. This would be where the woman is the wife of a kohen, where the only doubt is whether the act happened before or during the engagement, or where the father of the woman married her off before she was three years old, where the only doubt is whether the woman participated willingly or not.

Why is a double doubt treated leniently? Rambam explains that the fact we rule stringently (לחומרא) even in a case of a single doubt in a case of Torah law is a rabbinic guideline. From the Torah's perspective, a single doubt could have been treated leniently, if, for example, we have other mitigating factors. When we have a double doubt, this reverts to being a doubt in a rabbinic realm, and we can now rule leniently. Rashba explains that a single doubt is a 50-50 case, while a second level of doubt diminishes the case to a statistical minority, where the argument to be strict is less than half. Here, we can be lenient.

Rav Shimon Shkop, in his sefer שער יושר, explains that the status of this woman is that we do not know if she is prohibited to her new husband. The Torah only disallows us to proceed when there is a doubt whether our action is prohibited—ספק איסור. Here, however, the nature of the problem is whether the man may continue to take this woman. The man is not confronted with doing anything wrong, but rather with whether or not he needs to be cautious. In this case, when there is a doubt whether he needs to be cautious, he is allowed to proceed. ■

HALACHAH Highlight

Mourning for an estranged wife

מאי "ואת ערבתם תקח" תני ר' יוסף דברים המעורבים בינו לבניה

What is meant by "And take their arubah?" It refers to the things that commingled between him and her

There was once a Talmid Chacham who did not merit to have a child with his wife of twenty years. Following a physical exam it was discovered that the impediment came from her and the husband decided to divorce his wife so that he could fulfill the mitvah of פרו ורבו. The wife refused to accept the גט and Beis din allowed him to marry a second woman with a Heiter Meah Rabbanim. The husband deposited the גט by a third party and some time later his first wife died. The husband inquired whether he is obligated to mourn for his wife since technically they never divorced due to the fact that she never accepted the גט. Rav Shlomo Luria¹, the Yam Shel Shlomo, addressed a similar case in which a couple agreed to divorce but before they had a chance to have a גט written the woman died. He ruled that husband should not observe mourning practices, and it seems reasonable that he would rule

the same in our case.

Pischei Teshuva² asserted that the two cases are not parallel. In the case addressed by Yam Shel Shlomo, there was discord in the marriage. How, then, could it be possible to require the man to mourn for someone for whom his heart does not mourn? In addition, he was actually in the process of divorcing her. In contrast, our case involves a man who loved his wife and was divorcing her merely to be able to have children. Since he still maintained strong feelings for her it is logical that since they were not yet divorced that he should mourn following her death.

Teshuvos Machanah Chaim³ writes that the lenient ruling of Yam Shel Shlomo can be understood in the context of the time when a man could divorce his wife without her consent. Under such conditions one could assert that once a man decided to divorce his wife it could be considered as if they are divorced and he does not have to mourn if she dies. Nowadays, a person may not divorce his wife without her consent. Therefore, they remain married as long as the wife has not accepted her גט regardless of how much they disliked one another. ■

¹ מובא דבריו בפת"ש דלקמן.

² פת"ש אה"ע סי' צ סק"ח.

³ שו"ת מחנה חיים ח"ג יו"ד סי' ל"ט. ■

STORIES Off the Daf

Divorce in preparation for war

"כל היוצא למלחמת בית דוד גט כריתות כותב לאשתו..."

After the Holocaust, many of the survivors in the DP camps were terribly broken and some fell away from Jewish observance altogether. Others held fast, however, and one group of survivors decided to make a minyan for the first yomim noraim after liberation. Among them was one survivor who, since the war had ended, never wasted a second from his learning. Understandably, the minyan requested that this man share some inspiring words of chizuk but the masmid refused. Rosh Hashanah and the intervening days of repentance passed,

and Yom Kippur arrived. After the davening on Yom Kippur night, the minyan again begged the masmid to say a few words. This time, he acquiesced.

"Chazal say that the evil inclination is called our enemy since he is always trying different strategies to cause us to fall into gehinnom. The yetzer hara has many methods to overcome us. Sometimes he uses money; by chasing money or some other worldly need, one can lose a lot of valuable merit. A person might forgo davening with a minyan, he might be tempted to take interest, or steal, or cheat, or even violate the holy Shabbos!

The masmid continued, "But at times we all want to improve. During the times that we feel inspired, the yetzer hara uses his strongest tactic of

all. He tells us to start tomorrow! The Gemara in Kesuvos 9b states that the custom was for Jewish soldiers to give their wives a writ of divorce before going into battle. The Kotzker Rebbe, zt"l, taught a powerful lesson based on this idea to help us win the war against the evil inclination. The soldiers didn't only give their wives a גט in anticipation of dying in battle and possibly rendering them agunos. It was also because we fear that a mental connection with the sweetness of marriage might distract the soldier from his task at hand. Likewise, we too must sever all emotional connection to distracting and damaging behaviors before we will be able to defeat the yetzer. How do we do this? By resolving to change, not tomorrow, but today!" ■

