

OVERVIEW of the Daf

1) Kiddushin through contract

A Baraisa is cited that identifies the source that allows a man to betroth a woman with a contract.

In light of the Baraisa it is suggested that a man should be able to divorce his wife with money.

Abaye explains why it is not possible to use money to effect a divorce.

This explanation is challenged and Abaye is forced to explain why a contract could be used for marriage and divorce but money could not be used for both purposes.

Rava offers an alternative explanation why it is not possible to use money for divorce.

This explanation is unsuccessfully challenged.

An alternative source that money can not be used for divorce is identified to account for R' Yosi HaGalili who uses the earlier pasuk for another exposition.

The exchange between R' Yosi HaGalili and Rabanan about this matter is recorded.

2) The three methods of kiddushin

It is suggested that it is only necessary for the Torah to present two of the three methods and the third should be derived from the other two.

It is demonstrated that it would not be possible to derive any one of the methods of kiddushin from the other two.

3) Kiddushin through chupah

R' Huna asserts that based on the logic of a קל וחומר chupah should be a valid means of kiddushin.

The logic of the קל וחומר is challenged and an alternative logic is presented.

This logic is also rejected and the Gemara suggests that a צד השוה should teach that chupah is a valid means of kiddushin.

An unsuccessful attempt is made to refute the צד השוה.

Another unsuccessful attempt is made to refute the צד השוה.

Rava presents two challenges to R' Huna's suggestion that

(Overview...Continued on page 2)

REVIEW and Remember

1. Why is it not possible, according to Abaye, to use money to divorce?

2. What is the rationale that would allow chupah to make kiddushin?

3. Why is kiddushin invalid if performed by the woman?

4. Explain ידים שאין מוכיחות.

Distinctive INSIGHT

The halacha where the man did not say "לי"

הכא במאי עסקין דאמר "לי"

The Gemara finally determined that the opinion of Shmuel is that non-conclusive indications are inadequate to be relied upon. This is ascertained from Shmuel's statement regarding nazir, where a statement to adopt a condition of nazir by saying "אהא—I will be" is only binding if the observer is watching a nazir walk before him. Without the nazir walking by, the statement "I will be" is too inconclusive to mean anything. Similarly, if a man says to a woman, "You are betrothed," the identity of the husband is undetermined, and the betrothal is therefore void, even though indications are that it is the speaker himself who intends to be the husband. This indication is inconclusive, and Shmuel rules that it is inadequate. If we are dealing where the betrothal is valid, it must be where the speaker clearly said, "You are betrothed to me."

The Rishonim write that the halacha is that "indications that are inconclusive are not adequate—ידים שאינם מוכיחות אינם ידים," following the rule that we rule according to Rava versus Abaye who argue about this issue in Nedarim (5a). Nevertheless, regarding kiddushin we conduct ourselves more strictly, and we require the man to issue a גט to the woman, as a precaution; perhaps there is validity to the inconclusive words of kiddushin which were uttered. Rosh disagrees, and he writes that if a man proposed kiddushin to a woman, and he did not say "לי—to me," the kiddushin has no validity whatsoever. Rosh explains that when a man says, "הרי את מקודשת"—You are betrothed," without saying "to me," this is even less substantial than "indications which are not conclusive." Without the man specifying who the husband is, it is not at all clear that the man intends himself to be the fiancé. In fact, this is the reason the Gemara felt that in this case (of kiddushin) the statement of the man is inadequate (לא הויין ידים) although Shmuel normally holds that such inconclusive indications are indeed adequate regarding vows.

Rosh adds that if the man and woman were discussing the issue of marriage, and in this context the man says, "הרי את מקודשת" without saying "לי," the kiddushin is certainly valid. The fact they were speaking about this topic is more of an indication that his intent was for himself to be the fiancé more than if a nazir was walking by as someone said, "I will be," which we consider to be an adequate degree of certainty. ■

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לע"נ מרת רחל בת ר' יוסף הכהן, ע"ה

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HALACHAH Highlight

Chupah

אמר ר' הונא חופה קונה מקל וחומר

R' Huna stated that chupah should make an acquisition based on the logic of a *קל וחומר*

Shulchan Aruch¹ follows the opinion of Rambam² who explains that chupah is defined as the husband bringing his wife into seclusion in his home. Rema³ cites three other definitions for what constitutes “chupah.” The first explanation is that “chupah” is defined as the husband bringing his wife to his home even if they do not go into seclusion into the home. A second definition is the act of spreading a veil of sorts (סודר) over the head of the bride while the Birchos Nisuin are recited. The third possible meaning is that it refers to a veil that a previously unmarried bride (בתולה) wears on her head when she is taken to the wedding. Rema adds that the common custom is to refer to the canopy held up by poles over the heads of the couple when the kiddushin and nissuin are performed. Afterwards, the couple is taken to a private location to eat with one another.

Nowadays⁴, Ashkenazim incorporate three different procedures into the wedding ceremony to fulfill the different opinions mentioned earlier. The head of the bride is covered with a veil, a canopy is erected under which the groom and bride stand during the kiddushin and the recitation of the sheva berachos and the couple goes to a room for seclusion. Since these different procedures are performed for the sake of “chupah” it is appropriate for the groom to have in mind at each step that he is performing the act of acquisition of “chupah.” Some Poskim even maintain that the room the groom uses for seclusion must be his property (קנין) and question whether it is sufficient to rent or borrow

chupah can affect kiddushin.

Abaye defends R' Huna's ruling.

4) Kiddushin with money

A Baraisa describes the method of betrothal with money and declares that if the woman gives money to the man and makes the declaration the kiddushin is not valid.

R' Pappa notes that there are contradictory implications within this Baraisa.

An explanation is suggested but rejected.

Two possible resolutions are offered.

Shmuel issues a similar ruling about the proper method of kiddushin and divorce.

R' Pappa infers from Shmuel's ruling that partial declarations that are inconclusive (ידיים שאין מוכיחות) are valid and proceeds to challenge this position.

The Gemara defends Shmuel's position by suggesting that the person made a full declaration.

If so, the Gemara asks, what is the novelty of Shmuel's ruling? ■

someone else's room.

Most Sephardim do not have the custom to cover the head of the bride with a veil but they do use a talit to make a canopy over the couple for the kiddushin and recitation of the sheva berachos. Another difference between Sephardi and Ashkenazi custom is that amongst Sephardim it is common that the couple does not go into seclusion (יחוד) with one another until after the wedding rather than after the ceremony but before the meal. ■

1. שוייע אהייע סיני נ"ה סעי' א'.

2. רמב"ם פ"י מהל' אישות ה"א.

3. רמ"א אהייע סיני נ"ה סעי' א'.

4. ע' בספר נשואין כהלכתם פרק ט'. ■

STORIES Off the Daf

The second wife

”דבר תורה ארוסה בת ישראל אוכלת בתרומה...”

It is well known that a second marriage can often be far more difficult than a first. The difficulty can be compounded if there are children from an earlier marriage. Either the children or the step-parent may become jealous of the time spent with the other parent and vie for his or her attention. Sadly, this sometimes results in divorce or in having to send the children to live elsewhere.

One man with children decided to

marry again and found a woman who seemed suitable. Where he lived, it was still customary in some circles to do halachic אירוסין. So the man offered his intended some money and said, “הרי את מקודשת לי בכסף זו”. The woman gladly agreed but it was soon all too clear that his younger children could not get along with her. Within a few weeks, they divorced.

Some time later, this man's oldest son wished to marry the same woman who was around his age. They asked their rabbi if this could be arranged. Clearly, a son is forever forbidden to marry a woman who had been his father's wife but in this case they had only done אירוסין. They wondered if the son could marry her.

This rabbi wasn't certain, so he con-

sulted with the Rashba, zt'l. The Rashba answered with a note of incredulity. “What kind of question is this? Aren't you yet aware that אירוסין is a complete קנין which even allows a woman to eat terumah, as we find in Kiddushin 5? It is true that rabbinically she is prohibited, but an ארוסה is otherwise completely married. The only exceptions are that the husband-to-be doesn't inherit her estate in the event of her death, and if he was a kohein he cannot defile himself to attend her funeral.

“It is obvious that the son may not marry this woman in the same way that he may not marry a נשואה.”¹ ■

1. שו"ת הרשב"א, חלק א', סימן אלף רי"ד

