

OVERVIEW of the Daf

1) The effect of cohabiting with someone who is genealogically unfit (cont.)

The Gemara concludes citing a Baraisa that discusses the effect of cohabiting with someone who is genealogically unfit.

R' Yochanan identifies the practical difference between Tanna Kamma's and R' Yosi's opinions.

The basis of each opinion is explained.

Ulla identifies the difference between R' Yosi's and R' Shimon ben Gamliel's respective opinions.

The basis of each opinion is explained.

R' Chisda points to a case about which all opinions agree that the woman becomes disqualified.

The novelty of R' Chisda's teaching is explained.

2) R' Elazar's position

R' Yehudah in the name of Rav rules in accordance with the opinion of R' Elazar that those of uncertain status are prohibited from marrying others of uncertain status.

Shmuel challenged this ruling.

Another dispute between Rav and Shmuel is cited in which Rav and Shmuel adopt the opposite positions than they did in the first dispute.

The Gemara answers that the names in the second dispute should be reversed.

The necessity for Rav and Shmuel to argue this point in two contexts is explained.

Alternatively, the Gemara suggests that it is not necessary to reverse the names of Rav and Shmuel in the second teaching and another resolution to the contradiction is offered.

This explanation is challenged and the Gemara is forced to slightly revise its understanding of Shmuel.

This explanation is also challenged and the Gemara finally arrives at a clear explanation of Shmuel's position.

An alternative explanation of Shmuel's position is offered.

This explanation is unsuccessfully challenged.

A Baraisa cites R' Elazar's opinion that a כותי may not marry a כותית.

R' Yosef suggests a rationale behind R' Elazar's position.

Abaye rejects this explanation and R' Dimi offers an alternative explanation which connects R' Elazar's opinion with R' Yishmael and R' Yishmael's opinion with R' Akiva's position.

This explanation is rejected and an alternative explanation is suggested. ■

Distinctive INSIGHT

The status of the Cutheans

כותים גירי אריות הם

The Mishnah (74a) ruled that the Cutheans (כותים) are among the groups who are prohibited from marrying among the Jewish people. Rabbi Elazar stated that "ודאן בודאן מותר" — those who are definitely prohibited from marrying may marry others who are definitely prohibited." This leads the Mishnah to report that when there is some element of uncertainty, marriage is not permitted between the undefined groups. Rashi on the Mishnah explains that we do not allow mixing of the groups, as one group may actually be kosher, while the other is disqualified.

Our Gemara elaborates upon why the Cutheans have an uncertain status. There are three opinions regarding this matter and why the rabbis declared that they should not marry among the Jews. Rabbi Yishmael holds that they are "גירי אריות" — converts of the lions." Based upon his interpretation of the verse (2 Melachim, 17:32), Kohanim who were mamzerim married and mixed among them. To prevent further confusion and intermingling of these mamzerim among the Jews, the rabbis disqualified the Cutheans from marrying among the Jews. It is noteworthy that the Cutheans were allowed to marry among each other. Although this would possibly lead to a Cuthean marrying a child of one of the kohanim mixed among them, and we might have a non-Jew marrying a Jewish girl, the Mishnah allows ספיקן בספיקן.

Rabbi Akiva holds that the Cutheans were "גירי אמת" — true converts." His interpretation of the verse (ibid.) is that the choice kohanim married among them. The only reason the rabbis disqualified the Cutheans from marrying among the Jews was a different problem, that the Cutheans used a distorted application of the laws of yibbum, as they only practiced yibbum to a woman engaged to a man who died, but not to a married woman whose husband died. The rabbis had to disallow marriage with the wider community as there were women among the Cutheans who the rabbis ruled were required to perform yibbum.

Finally, Rabbi Elazar is of the opinion that the Cutheans were not well versed in the laws of marriage and divorce. The rabbis had to disallow them from marrying among the Jewish population, as there were concerns that women among them were unknowingly married to their husbands, and they might have gone to marry other men, resulting in mamzerim from subsequent marriages. ■

HALACHAH Highlight

The deathbed gift of a *shtuki*

שבדקין את אמו ואומרת לכשר נבעלתי נאמנת

We question the mother [and if] she states, "I had relations with someone who is kosher," she is believed.

Although Chazal enacted that a person can distribute his property on his deathbed there are Rishonim who maintain that a convert (who did not marry or have children after his or her conversion) was not included in this enactment. The reason is that the enactment was only put in place for those who have heirs but not for those people without heirs. Terumas Hadeshen¹ writes that a *shtuki* should also not have the capacity to distribute his estate as a deathbed gift since he also does not have heirs. Even if the mother identifies the father of this child she is only believed as far as establishing that the child is כשר but not to the extent that the "father" or his relatives would be able to inherit the property of the *shtuki*.

Ketzos Hachoshen² challenges Terumas Hadeshen's explanation. Even though the woman is not believed to name the exact identity of the father of the *shtuki*, she is believed, however, that she had relations with a Jew rather than a gentile. Accordingly, the *shtuki* should have the ability to distribute his estate from his deathbed. Even though we cannot point out who are the relatives of the *shtuki* we are certain that he has relatives, based on the reliable testimony of his mother that she had relations with a Jew. This case should not be any different than a stranger who came to town and died. Although we don't

REVIEW and Remember

1. What is the dispute between R' Yosi and R' Shimon ben Gamliel?
2. What is the reason a כותי may not marry a כותית?
3. Are Cutheans considered Jews?
4. According to R' Akiva, why is there a decree against marrying Cutheans?

know where he was from to be able to track down his relatives, nonetheless, knowing that he has relatives is sufficient to afford him the ability to distribute his estate on his deathbed. The *shtuki* should also have the capacity to distribute his estate even though we cannot identify his relatives.

Nesivos Hamishpat³ suggests that there is a difference between the case of an out-of-towner and a *shtuki*. In the case of the out-of-towner we do not know the identity of the deceased's relatives but they do exist and it is possible that they will show up and positively identify themselves. In contrast, it is impossible for the relatives of the *shtuki* to identify themselves and we consider it as if his heirs have lost hope (יאוש) on recovering their property. ■

1. שו"ת תרומת הדשן סי' שני"ב.
2. קצות החושן סי' רנ"ו סק"א.
3. נתיבות המשפט שם. ■

STORIES Off the Daf

Wrongful circumcision

"כותים גירי אריות הן..."

A certain man, completely ignorant of the Torah's commands, married a non-Jewish woman. However, he did know that a Jew must be circumcised, so when his son was born, he hired a mohel to do it properly. Although the mohel was religious, he didn't ask particulars about his jobs so that people would not be put off. After all, if people felt insulted, they might well go to a non-religious mohel for their Jewish child.

When the young man grew up, he journeyed to Yerushalayim and was inspired to return to his heritage. The yeshi-

va he attended found out about his non-Jewish mother and explained gently that if he wished to be Jewish he needed to convert. The young man agreed, but the Rav who was working with him was astounded to hear that he was already circumcised. Since the Rav was unsure if the earlier bris needed hatafas dam or not, he consulted with Rav Eliashiv, zt"l.

Rav Eliashiv answered, "Rav Shmuel of Salant, zt"l, writes that he does not require הַטַּפַּת דָּם בְּרִית. This seems to come out of the words of the Ramban in Kidushin 75. The Gemara writes there that kusim are insincere converts since they only converted to avoid being eaten by lions. Ramban comments that he heard that this is only regarding the first generation. Regarding later generations, since they accept upon themselves the obligation

of mitzvos and their circumcision was l'shem Yisrael, they are complete converts. So we see that if one is circumcised for the sake of being a Jew, he is a complete convert.

The gaon concluded, "But I rule that this young man does require הַטַּפַּת דָּם בְּרִית for two reasons. First of all, non-religious people today often look upon a bris as a kind of ceremony and are not thinking about the Torah's commandment to circumcise. Secondly, the child of a non-Jew is not halachically his Jewish father's son. It follows that the father's intentions were meaningless. You surely cannot learn from the intention of a Cuthean father, since the boy circumcised is halachically a non-Jew son of a non-Jewess, that the father's intentions l'shem mitzvah count!" ■

הערות במסכת קידושין, דף ע"ה