

OVERVIEW of the Daf

1) **MISHNAH:** The Mishnah concludes with a case of a woman who sent an agent to accept kiddushin for her and then she went and accepted kiddushin for herself.

2) Clarifying the Mishnah

The Gemara explains why it is necessary for the Mishnah to present two examples to teach the same principle.

3) A girl and her father accepting kiddushin

Rav and Shmuel disagree about a case where a father accepted kiddushin for his daughter while on the road and she accepted her own kiddushin on the same day and upon examination she is discovered to be a **בוגרת**. Rav says that her kiddushin will be valid whereas Shmuel rules that we are concerned for both of them.

The circumstances of the cases that are under dispute are clarified.

Two unsuccessful attempts to refute Shmuel are presented.

It is suggested that the dispute between Rav and Shmuel parallels a dispute between Tannaim.

The Gemara rejects this parallel.

Another dispute between Tannaim is seen as a parallel for the dispute between Rav and Shmuel but this suggestion is also rejected.

As a result of the Gemara's response it is suggested that perhaps Rav and Shmuel also do not disagree and they merely refer to different circumstances.

This suggestion is refuted and the Gemara rules in accordance with Rav's position.

4) **MISHNAH:** The Mishnah addresses many circumstances of a man going out of the country and discusses when he has credibility to identify children as his own or a woman as his wife.

5) Clarifying the Mishnah

Rabbah bar R' Huna explains that when the Mishnah rules that proof is unnecessary to prove that the children belong to the mother is where they seem attached to her.

A Baraisa is cited that elaborates on the discussion of the Mishnah. ■

Distinctive INSIGHT

Judging conflicting conditions of status

היה בודק את החבית וכו'

A father may accept kiddushin for his daughter as long as she is still a **נערה** but not when she is a **בוגרת**. The Gemara had presented a case where a father who was traveling had accepted kiddushin for his daughter, and she had accepted kiddushin for herself that same day. When the father came back home, it was discovered that the girl was now a **בוגרת**. It was unknown, however, if this maturity had occurred before the father accepted kiddushin, and father's act was worthless, or whether at that moment she was still a **נערה**. Rav and Shmuel argue regarding how to rule in this case. Rav says that being that she is now a **בוגרת**, we assume that this current situation is established, and the father's acceptance of kiddushin is not valid. Shmuel states that when trying to determine the status of the girl, we do not say that her current status plays any significant part in evaluating her earlier condition. Therefore, we must suspect that there is merit to the kiddushin of both the father and the daughter. Both "husbands" must issue the girl a **גט**.

The Gemara points out what seems to be an inconsistency within the opinion of Shmuel. A person set aside a barrel of wine which he uses to designate teruma for other wine that he drinks. The person checks this barrel regularly to see that it has not turned into vinegar, at which point he could no longer use it as teruma for wine. At one point, he finds that it has changed

into vinegar. According to the Gemara's analysis, the Rabbanan rule that we must assume that the wine changed into vinegar from the last moment we checked it. In other words, the status we find is the status we use. In our case, as well, if the girl is now a **בוגרת**, we should use this current status for the halacha.

The Gemara answers that in the case of the wine, we find vinegar now, and the **טבל** we wish to fix has its status of not yet having the teruma taken properly. This double hurdle (**תרתני לריעותא**) is judged strictly. The girl, however, is now a **בוגרת**, and that is the only issue at hand. Here, we can rule leniently.

Rabbi Akiva Eiger explains that the problem of **תרתני לריעותא** means that we have two contradictory assumptions. We had a barrel with wine, which would mean that the tithing was valid. On the other hand, we also have the wine which is **טבל** until we know otherwise. Therefore, with these conflicting signals, we cannot rely upon a **חזקה**—an assumption. ■

HALACHAH Highlight

Observing shiva and sheloshim in cases of doubt

מאן דקא מפיך נפשיה מחזקה הוי עליה לאיתויי ראייה

The one who wishes to take himself out of his chazakah has the burden of proof that the chazakah does not apply

Shulchan Aruch¹ rules that if one receives delayed news (defined as more than thirty days after the fact) of the death of a relative he is not obligated to observe *shiva* or *sheloshim*. What happens when there is uncertainty whether it is more or less than thirty days since the relative dies? Should one observe a regular *shiva* and *sheloshim* in a case of doubt or not? Taz² wrote that it is improper for a person to observe *shiva* and *sheloshim* under such conditions since it is a stringency that leads to a leniency (חומרא דאתי לידי קולא). The leniency is that as a mourner he will be forced to observe the prohibition against Torah study.

Much of Taz's discussion relates to whether we presume the deceased was alive until the last possible moment, thus indicating that the death happened more recently and *shiva* and *sheloshim* should be observed, or not. One proof that we do not assume that the relative died at the last possible moment is a Mishnah in Pesachim (91a). The Mishnah teaches that if someone is searching for missing bodies in a pile of rubble he is considered *tahor* and others can slaughter the *Korban Pesach* on his behalf. If, however, a dead body is discovered he must bring a *korban* on *Pesach Sheni* since we assume that he stood over the dead body when he first came upon the rubble. Tosafos³ asks why we assume that the deceased was dead all along, it is also possible that when the searcher began his mission the

REVIEW and Remember

1. Why is it necessary for the Mishnah to cite two examples of the same principle?
2. Explain the rationale behind the dispute between Rav and Shmuel.
3. How did Shmuel respond when he heard that R' Yosef ruled like Rav?
4. When is a man believed to say that children are his?

deceased was still alive and died some time in the middle of the search. Tosafos answers that once we find the deceased we assume that he has been in this state retroactively to the time that he was last known to be alive - שכל הטמאות כשעת מציאתן. Rav Ovadiah Yosef⁴ notes that many Poskim question the proof from Tosafos since Tosafos in Niddah⁵ writes that the principle שכל הטמאות כשעת מציאתן applies only to matters related to *korbanos* and cannot be applied to a case of *aveilus*. Rav Ovadiah Yosef answers that challenge by citing authorities who point to the fact that other Rishonim apply this principle even to non-*korban* related matters and included in that list is Tosafos Rid to our Gemara where he writes explicitly that this principle applies even to areas beyond that of *kodashim*. ■

1. ע' שר"ע י"ד סי' ת"ב
2. ט"ז יו"ד סי' שצ"ז סק"ב
3. תוס' פסחים צ"א ד"ה שהיה טמא
4. שו"מ יביע אומר ח"ה יו"ד סי' ל"ח אות ג'
5. תוס' נדה ד ד"ה שכל הטמאות ■

STORIES Off the Daf

"Everyone is assumed to be healthy..."

"דכולי עלמא בחזקת בריאים עומדת..."

Acertain person wished to violate a Torah prohibition. Of course, this was not a question at all, but when a doctor approached Rav Avraham the Av Beis Din of Shmende, זת"ל, and claimed that if his patient was not allowed to violate the prohibition he would surely sicken and die, the case did not seem so open and shut. "Doesn't Jewish law state that one may violate any prohibition besides the cardinal three in order to save a human life?" prompted the doctor.

The Rav asked to see the person who was supposedly in such dire straits but could discern no noticeable sign of danger. On the other hand, the general rule is that we violate Torah laws even if the issue of saving human life is merely in doubt. But if this was permitted, what would prevent any unscrupulous person from publicly violating any Torah prohibition for his own satisfaction by claiming that this was *pikuach nefesh* for him? Surely doctors can be fooled.

Rav Avraham consulted with the Chasam Sofer, זת"ל. "We certainly do not believe this person. I learn this from Kid-dushin 79. There we find that every person's status quo is considered to be healthy barring evidence to the contrary. Unless

we have a solid indication, we cannot just trust the sick person to tell the doctor his trouble and then permit him to eat on Yom Kippur or profane Shabbos. But although the people confronted with such paltry evidence may not believe this since no symptom is evident, this is not true regarding the sick person himself. Since he knows how he is feeling and whether he is truly in danger if he does not eat on Yom Kippur or violate Shabbos, he may save his life in this way if the need actually arises. We learn this from the verse which states, "The heart knows the bitterness of its soul."¹ ■

1. שו"ת חתם סופר אבן העזר סימן פ"ב