

OVERVIEW of the Daf

1) Dividing the estate in cases of doubtful paternity (cont.)

The Gemara concludes demonstrating that the dispute between R' Abba in the name of Rav and R' Yirmiyah is not related to a dispute between Admon and Rabanan.

The Gemara resumes its presentation of rulings concerning the division of property in a case that began with a circumstance of doubtful paternity.

2) MISHNAH: The Mishnah discusses the outcome of property a yevama inherits while she awaits yibum. Part of this discussion revolves around a dispute between Beis Shamai and Beis Hillel concerning what is done in the event the yevama dies.

3) Clarifying the Mishnah

The Gemara notes that in the first case there is agreement that the property belongs to the yevama, and in the last case this matter is debated.

Ulla explains that the first case refers to an ארוסה whereas the second case refers to a נשואה and that זיקה of an ארוסה makes the yevama a possible ארוסה to the yavam and the זיקה of a נשואה makes the yevama a possible נשואה to the yavam.

Rabbah refutes this explanation and offers an alternative explanation as to why the dispute is limited to the Mishnah's second case.

Abaye unsuccessfully challenges this explanation and the Gemara proves that according to Beis Shamai a document that awaits collection is considered as if it was already collected.

The Gemara offers alternative sources that Abaye could have used to challenge Rabbah and explains why he did not choose these sources.

R' Ashi demonstrates how the language of the Mishnah supports the explanation presented that the dispute relates specifically to מלוך property.

Abaye offers an alternative explanation for the Mishnah. ■

REVIEW and Remember

1. What happens to property that a yevama inherits and sells?

2. Explain ארוסה עושה ספק ארוסה זיקת?

3. How does Rabbah explain the difference between the two rulings of the Mishnah?

4. What is the source that a contract that awaits collection is treated as if it was collected?

Distinctive INSIGHT

The yavam and the father divide the property

מה יעשו בכתובתה ובנכסים הנכנסים ויוצאים אעמה? בית שמאי אומרים יחלקו יורשי הבעל עם יורשי האב

The Mishnah deals with the details of how the property of a yevama should be divided as inheritance should she die while living back in her father's house waiting to be taken as a wife by the yavam. Beis Shamai argue with Beis Hillel regarding the נכסי מלוך, which is the property which the woman brings into the marriage. The husband guarantees their principal value, but during the duration of the marriage they remain the property of the wife, while the husband derives all profit and revenue the property generates. When the woman dies as a yevama awaiting yibum by the brother, Beis Hillel rules that this property is inherited completely by the woman's family, while Beis Shamai holds that the property is divided between the family of the woman (her father's household) and the family of the yavam.

The Rishonim explain the rationale of Beis Shamai. Rashba, Ritva and Tosafos explain that the automatic זיקה association creates a situation where the yevama is in a state of semi-אירוסין or semi-נישואין. This unclear, doubtful condition is as a result of our not knowing whether the yavam will take the woman as a wife or if he will dismiss her with chalitza.

Rabeinu Avraham min Hahar explains that the זיקה does not create a doubt, but rather it causes a definite status of a weak marriage, very much in the same way that a doubt is weaker than a certainty. He notes that this seems to be the opinion of Rashi (ד"ה שהיא), who says that the woman is not fully married, but that "she is only connected by זיקה." This suggests that the condition of זיקה is a weak one, not necessarily one of doubt.

The Gemara explains that even Beis Shamai agrees that the kesuba remains in the possession of the husband's family, from where it would have been paid. Rashi explains that the reason for this is that a kesuba is not payable during the husband's life, which in this case includes the life of the yavam. Therefore, when the woman predeceases the yavam, the kesuba was not hers yet to bequeath to her heirs. ■

HALACHAH Highlight

Yibum with the intention to immediately divorce

כנסה הרי היא כאשתו לכל דבר

Once he has relations she becomes his wife for all matters

There was once a case of a young yavam and yevama that came to Beis Din to arrange a chalitzah. After interviewing the couple it emerged that the yavam was left-footed which creates a difficulty concerning chalitzah, since there is a dispute amongst the Poskim regarding the chalitzah procedure for a left-footed yavam. The conclusion of Rav Yosef Karo¹ is that in such a circumstance it is necessary to have the yevama remove the two shoes from the yavam's two feet simultaneously. In this particular circumstance Rav Ovadiah Yosef² was concerned that the yevama may not be adept enough to do two chalitzah's simultaneously, which could lead to a different set of issues, and therefore sought an easier solution for this couple. He asked the yavam whether he would be willing to do yibum rather than chalitzah in order to avoid the difficulties related to doing a left-footed chalitzah. The yavam agreed on condition that he would be permitted to immediately divorce her after the yibum. The yevama also agreed to this condition and the question was whether this is an acceptable course of action.

Rav Yosef begins by observing that there are communities that encouraged yibum rather than chalitzah because they felt unqualified to properly follow all the procedures necessary for the chalitzah to be valid. He begins his own analysis by noting that it is clear that for the mitzvah of yibum to be performed correctly it is not necessary to have a child; rather once yibum is performed the yevama becomes the wife of the yavam for all matters, as stated in our Gemara, and nothing further is necessary for the mitzvah. Proof for this can be found in Tosafos' discussion of the possibility of allowing a Kohen Gadol to do yibum with a widow from betrothal³. The only relations that would be permitted would be the one act related to the mitzvah of yibum, and the Gemara taught that a woman cannot become pregnant from the first time she has relations. Nonetheless, it is considered a fulfillment of the mitzvah of yibum. Consequently, it is clear that having a child is not necessary to fulfill the mitzvah of yibum; therefore, there should be no issue for this couple to do yibum and immediately divorce⁴. ■

1. ע' סדר חליצה סע' מ'
2. שו"ת יביע אומר ח"ה אה"ע סי' י"ח
3. ע' תוס' לעיל כ ד"ה יבא
4. ע"ע בבית שמואל סע' קע"ד סק"א ■

STORIES Off the Daf

The second wife

כנסה הרי היא כאשתו לכל דבר

Like many communities throughout the world, the original community in Eretz Yisrael never accepted the cherem of Rabbeinu Gershom Meor HaGolah, zt"l, and men were permitted to marry more than one wife. For this reason, out of a concern for their daughters' happiness, many families would only agree to a match if the prospective suitor swore that as long as the two were married he would not take a second wife.

Centuries ago, a young man in Eretz Yisrael was introduced to just such a family, and since the match was

otherwise acceptable in all respects, he agreed to the stipulation and swore that he would not marry any woman other than his bride.

The couple married, but soon afterwards the young man's brother died childless. The groom approached Rav David ben Zimra, the famous Ridbaz, zt"l, to ask if he could do yibum with his brother's widow.

The Ridbaz answered that he could, since yibum is a mitzvah. "Yibum is a special process that is for the benefit of the soul of the departed. It is not like a regular marriage into which one enters of his own volition, for his own interests. Your oath only included marriage, not yibum."

The Beis Yosef, zt"l, however, prohibited this. "It is a clear Mishnah in Yevamos 38b, that as soon as one

incorporates a yevama into his household (כנסה), she is like a normal wife in all respects. Practically speaking, yibum is therefore the same as marriage."

Rav Avraham Sachnidranei, zt"l, argued on the Beis Yosef, though. "Quite the contrary! Since the term used is כנסה, we see that it is not synonymous with נישואין. The man only swore not to do נישואין, with other women, not כניסה. The proof for this is in the Mishnah in Moed Katan where it says that on Chol HaMoed one may not marry בעולות or בתולות and one does not do yibum. If yibum was נישואין, it should have said that one does not do נישואין with בתולות, or yevamos. Instead, it says ואין מייבמין. Clearly yibum is not "נישואין" ■

