

OVERVIEW of the Daf

1) A minor and deaf-mute who fall for yibum (cont.)

After R' Chisda finishes his explanation of the underpinnings of Rav's ruling related to marriage with a minor and a deaf-mute, R' Sheishes cites proof that this explanation is correct.

R' Sheishes' proof is unsuccessfully challenged and the conclusion is that the Baraisa does support R' Chisda's explanation of Rav's rulings.

R' Ashi unsuccessfully offers another reason why the challenge to R' Sheishes's explanation should be rejected.

2) **MISHNAH:** The Mishnah continues to discuss cases of yibum for Rabbinical marriages and the effect yibum has on the co-wife.

3) R' Elazar's position

R' Yehudah in the name of Shmuel and R' Elazar rule in accordance with R' Elazar in the Mishnah that we instruct the minor to do **מיאון**.

The necessity for R' Yehudah in the name of Shmuel and R' Elazar to issue this ruling in two cases is explained.

4) **MISHNAH:** The Mishnah discusses the case of two minors doing yibum and then presents cases where the yavam is compelled or asked to do chalitza.

5) Minors doing yibum

The Mishnah that seems to recognize yibum performed by a minor is seemingly inconsistent with R' Meir who assigns no validity to yibum done by a minor.

An attempt is made to reconcile the Mishnah with R' Meir, but the attempt fails.

The Mishnah's ruling that yibum could be performed by a minor is challenged from the fact that a minor cannot establish his brother's name.

Abaye and Rava offer expositions that allow for a minor to do yibum.

6) A husband restraining from relations

The Gemara infers from the Mishnah that a man can restrain from having relations with his new wife for up to thirty days.

R' Yochanan asserts that the Mishnah reflects the opinion of R' Meir.

Rabbah maintains that the Mishnah could even reflect the opposing opinion of R' Yosi, since there is a difference between one's **ארוסה** and a yevama. ■

Distinctive INSIGHT

A minor is not excluded from eligibility

אמר קרא כי ישבו אחים יחדו

The Mishnah discussed the consequences of a minor yavam who has relations with the yevama who is an adult. The Gemara challenges the validity of this case from the verse in the Torah which declares (Devarim 25:7) that the objective of yibum is "to establish a name for his brother," and this cannot be achieved by a minor who cannot yet beget children. The Gemara gives two answers to this challenge.

Abaye explains that we also have a verse **במה יבא עליה** which indicates that the yavam is fit at any age (**כל דהו**), and his being a minor is not a critical factor.

Rava points out that if we would consider a minor as being ineligible, then he would necessarily be disqualified forever, even upon attaining majority. The rule is that if we cannot apply the statement **יבמה יבא עליה** the first moment when the brother dies, this woman would be prohibited forever, just as if she was a brother's wife who has children. However, we also know that the verse **כי ישבו יחדו אחים** specifically excludes "a brother who was not in the world" with the deceased, which implicitly teaches that if the surviving brother was even a day old when the married brother died, yibum must be done by the infant when he grows up. Therefore, we see, says Rava, that a minor is not a disqualified yavam.

Tosafos notes that the lesson of Rava is not derived from the word **יחדו** for if so, even a **סריס** would be included, as well as the minor. Rather, Rava's point is derived from the fact that an infant brother is included, as opposed to a brother born after the first brother died. ■

REVIEW and Remember

1. What is the difference between **קנויה** and **קנויה ומשוירת** and **ואינה קנויה**?

2. What is a **בניאה פסולה**?

3. Why must minors who did yibum remain married until adulthood?

4. When does a husband have to register his complaint regarding his wife's virginity?

HALACHAH Highlight

Is Chalitza dangerous?

לאחר שלשים יום מבקשים ממנו שיחלוץ לה

After thirty days we request of him to do chalitza.

Historically there has been a fear about doing chalitza due to its reputation as a dangerous activity. Rabbeinu Shlomo ben Aderes¹, the Rashba, addressed a case of a married yavam who was prepared to do chalitza but was told by kabbalists that it is dangerous for a man to do chalitza. This report scared the man and he refused to do chalitza until Rashba would respond. Rashba wrote that although he is not a kabbalist, he does not think the report is accurate. The proof he cites for this assertion is the fact that the Torah allows for chalitza, and if it was dangerous the Torah would not instruct the yavam to do yibum. Furthermore, Chazal² inferred from a verse that Beis Din is obligated to properly advise the yavam which course of action to take, yibum or chalitza, and if it seems to them that the relationship is inappropriate they should recommend chalitza. If it were true that performing chalitza is dangerous it would be better for a person to do yibum and marry a woman even if she was not a suitable match rather than engage in a dangerous activity. Another proof is that the Gemara³ earlier recognized the validity of deceiving the yavam into doing

chalitza. If chalitza was dangerous it would not be permitted to deceive a person into participating in an activity that was dangerous.

Rav Ovadiah Yosef⁴ suggests that the mistaken belief that chalitza is dangerous may be based on the position that even nowadays yibum is the primary mitzvah. Accordingly, someone who does chalitza rather than yibum is not fulfilling a mitzvah and may be susceptible to punishment for passing the opportunity to establish his brother's name. He proceeds to cite numerous sources that clearly assign mitzvah status to chalitza and thus since "all of her paths are pleasant," it is not possible that the Torah would advise a dangerous activity. Rav Tzvi Hirsh Eisenstadt⁵, the Pischei Teshuvah, cites Tosafos⁶ as proof that chalitza is not a dangerous activity. Tosafos mentions that the reason a yavam is not compelled to do chalitza is because it is embarrassing to him. Since embarrassment rather than danger is the reason mentioned by Tosafos, it would seem that danger is not an issue. ■

1. שו"ת הרשב"א כ"י המובא בשו"ת יביע אומר ח"ד אה"ע סי' ט"ו אות ב'
2. גמ' לעיל מ"ד וק"א
3. גמ' לעיל קו
4. שו"ת יביע אומר הנ"ל
5. פת"ש סוף סדר חליצה אות צא
6. תוס' קי"א: ד"ה לאחר שלשים וע' בשו"ת יביע אומר הנ"ל אות ג' שחולק על הוכחה זו ■

STORIES Off the Daf

Brother Eisav

כל יבמה שאין אני קורה בה בשעת נפילה
יבמה יבא עליה הרי היא כאשת אח שיש לה
בנים ואסורה

A certain man died suddenly with no children, and it appeared as though the widow would require chalitza from her deceased husband's only brother. Unfortunately, the yavam was a מומר.

Both Rav Nachshon Gaon, זת"ל, and Rav Yehudai Gaon, זת"ל, ruled that the wife was free to marry whomever she wants without chalitza from the מומר. They reasoned that just as it is permitted to lend money with interest to a מומר because lending money with interest is only prohibited to one's spiritual brother, one's brother in observing Torah and mitzvos, the same is true regard-

ing the mitzvah of yibum. This mitzvah is only with a spiritual brother who observes Torah and mitzvos, not a מומר. And even if the מומר subsequently does teshuva, he is still exempt from yibum and chalitza. This is learned from the Gemara in Yevamos 111b which states that a yevama who may not do yibum is like the widow of a brother who had children and is thenceforth forbidden to do yibum. Since the repentant מומר couldn't do yibum at the time that his brother died because he was not a spiritual brother to his own biological sibling, even if he repented later he cannot do yibum subsequently either.

The Terumas Hadeshen, זת"ל, completely opposed this psak. "There is an essential difference between the word brother used in the context of the prohibition against lending with interest and the commandment to give charity, as opposed to the word brother used with

regards to yibum. The word brother in connection with ribis and tzedakah is אחיך, which connotes brotherhood—any fellow Jew with whom one shares a spiritual bond of loving communion—since it certainly doesn't mean to apply these mitzvos only to one's biological brother. Therefore, the word brother in these contexts alludes to a person who should be treated with cooperation and compassion. Namely, one who is your brother in observing Torah and mitzvos. In the context of the mitzvah of yibum, however, the word brother does indeed refer to one's biological brother. Therefore, there is an obligation to perform yibum regardless of the brother's spiritual level.

The Terumas Hadeshen concluded, "The proof of this is in Eisav. Although he was thoroughly evil, the Torah still refers to him numerous times as the brother of Yaakov!" ■

