

OVERVIEW of the Daf

1) Compelling the husband to do chalitzah

The Gemara questions why the Mishnah rules that he is compelled to perform chalitzah when he should be compelled to do yibum.

Rav explains that the Mishnah refers to a case where she already received a get.

This explanation is challenged.

R' Ami and R' Ashi offer alternative resolutions to the challenge against Rav.

A related incident is recorded.

R' Nachman, in response to an inquiry, rules that the co-wife remains permitted to marry others and concerning her status we assume that yibum was already performed.

2) Prohibiting herself to the yavam

A Mishnah is cited that teaches that by virtue of a Rabbinic enactment a woman who takes a vow against deriving benefit from other Jews should have her husband nullify his part of the vow so that she remains permitted to him.

Accordingly, the Gemara inquires about her status regarding the yavam, is he assigned the same status as the husband or not?

Rav maintains that the yavam is not like the husband and it is not even necessary to annul the vow for her to be permitted to the yavam.

Shmuel maintains that the yavam is like the husband and he must annul her vow for yibum to be permitted.

Abaye cites a Mishnah as support for Rav's opinion.

The proof is unsuccessfully challenged.

הדרן עלך בית שמאי

3) MISHNAH: The Mishnah discusses at great length the halachos of marriage and yibum for deaf-mutes and those who are insane.

4) Rabbinic marriages

The reason for establishing marriage for the deaf-mute rather than the insane is explained.

The reason marriage was established for female minors rather than male minors is explained.

The rationale for not enacting מיאון for a deaf-mute is explained. ■

Distinctive INSIGHT

The claim of the wife can be reversed with proper proof

האומרת טמאה אני לך תביא ראיה לדבריה

The situation here refers to a wife of a kohen who informs her husband that she was taken forcefully by another man. In effect, the woman thereby declares that she is prohibited to her kohen husband, and she is categorically believed and is legally prohibited to her husband. However, the Rabbis were concerned that this woman may be lying, and might be offering this claim simply because she has "set her sights upon another man," and she is using this ploy to exit from her current marriage. Therefore, when a woman does make this claim, the Rabbis of the Mishnah reversed the ruling and say that the woman is to remain with her kohen husband, and that she would only be believed if she can prove her assertion that she is prohibited to him. Ran (to Nedarim 90b) asks that if the woman's original claim technically is credible, thus resulting in her being prohibited, how can this legal condition be reversed by the Rabbis based upon a suspicion, thereby allowing this couple to remain together?

Ran in Nedarim brings a number of answers to this question. One approach is that the Rabbis did not want a woman to be able to "set her eyes upon another" and make flippant remarks to destroy her marriage and be able to escape and to marry another man. In order to prevent this scenario, the Rabbis acted to remove the prohibition created by her remarks, and, with proof, they allow her to return to her kohen husband. Admittedly, Ran notes that this would be a case of the rabbis ruling proactively against the law of the Torah, and this is beyond their normal powers.

Another way of explaining this is that the original kiddushin with the kohen was conditional (כדת משה וישראל), and in this case the rabbis nullify the marriage with the kohen husband. Therefore, she can return to him even if she was violated against her will (or even willingly according to this answer). If the one she claims to have been with was a פסול, this would preclude her returning to her kohen husband and from eating teruma.

Alternatively, Ran explains that a married woman is actually not believed to claim that she was taken forcefully, a claim which would ruin her marriage. Here, however, there is a compelling indication that she is truthful, due to the fact that women would not publicize such a thing if it was not true. This is לגלים לדבר. The later Mishnah rules that with proof, we disregard her initial confession, and we restore the matter to its original state of her not being believed. ■

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HALACHAH Highlight

The status of one who became deaf-mute after birth

חרש שנשא פקחת

A deaf-mute who married a woman with all her faculties

Rambam¹ writes: The deaf-mute mentioned by Chazal refers to mutes who neither hear nor speak. However, one who speaks but does not hear or hears but does not speak is like any other person. The reason for this halacha is that one who can not speak or hear is lacking da'as. Poskim debate whether a person who was born capable of hearing and speaking and only later became deaf-mute is considered deaf-mute for matters of halacha.

Rav Yosef Teomin², the Pri Megadim, writes that the status of one who becomes deaf-mute is not clear. He cites the comment of Rav Ovadiah Bertinoro to a Mishnah in Terumos³ who writes that the shortcoming of a deaf-mute is that since he was born deaf he never heard a person speak and consequently, he cannot speak. The implication of this explanation is that a person who was not born deaf but became deaf later in life would not fall into this category. Rav Yoel Sirkis⁴, the Bach, however, disagrees and writes that even a person who became deaf will be included in this categorization of one who is lacking da'as.

Others⁵ disagree with the inference Pri Megadim draws from Rav Ovadiah Bertinoro. They maintain that Rav Ovadiah Bertinoro was not explaining that the reason a deaf-mute is lacking da'as is that he cannot hear and as a result he cannot learn or understand. Instead, he was explaining why Chazal chose to call him deaf (חרש) even though he is also unable to speak (אלם). The reason for this, explained Rav Ovadiah Bertinoro, is that his inability to speak is a consequence of his inability to hear and that is the reason he is de-

REVIEW and Remember

1. Is a yevama believed when she claims that the yavam did not co-habit with her?

2. Why isn't a woman believed to claim that she is prohibited to her husband?

3. Why are the halachos of divorce different for a male deaf-mute and a female deaf-mute?

4. Why did Chazal enact marriage for a female minor but not for a male minor?

scribed as deaf (חרש). Rambam⁶ also explains that the term חרש refers to one who is deaf but Chazal chose that term to describe a person who is mute since it is the inability to hear that prevents a person from learning to speak. Accordingly, they explain that the uncertainty of this matter is whether someone who became deaf-mute after birth is categorized as definitively lacking da'as or perhaps the matter remains uncertain. One obvious difference would be whether a get would be necessary if this person gave kiddushin to a woman. ■

1. רמב"ם פ"ב מהל' אישות הכ"א
2. פמ"ג או"ח פתיחה כוללת ח"ב אות ד-ה
3. ברטנורא תרומות פ"א מ"ב ד"ה שאינו
4. ב"ח יו"ד סי' א'
5. קונטרס מלאכת חרש וספר מלאכת חרש ומובא דעתם בפניני הלכה לספר מתיבתא יבמות קיב
6. רמב"ם פירוש למשניות תרומות פ"א מ"ב ד"ה חרש ■

STORIES Off the Daf

Making change

שני אחיו אחד חרש ואחד פקח נשואין לשתים...פקחת

On today's daf we find the situation of two brothers, only one of whom is considered a חרש, who marry two sound women. Should the sound brother die childless, Chazal taught that the brother who is a חרש cannot do chalitzah.

Once, a childless widow from Lithuania found herself tied to a brother-in-law who was known to be insane and seemed unable to perform chalitzah. After consulting many great Rabbonim, she was finally steered toward the Tzemach Tzedek, ז"ל, by the Rada"l of Bichov, ז"ל. "The Tzemach Tzedek is a true genius and is also a great tzaddik. If he can find a way to permit chalitzah, I would

accept it. Furthermore, perhaps he will even be able to cure your brother-in-law!"

The Rada"l of Bichov provided the poor woman with traveling expenses and asked her to return to him after receiving her response. When the widow arrived, however, the Rebbe was inundated with visitors and she had no opportunity to speak with him. Her funds soon ran out, and she repaid the Rebbetzin the kindness of maintaining her by helping in the kitchen. Days passed, and finally the Rebbetzin herself approached her husband and appealed on the woman's behalf. The Tzemach Tzedek immediately said, "Send for the brother-in-law."

As soon as the man arrived, the Tzemach Tzedek asked, "Will you follow my instructions?"

"Certainly!" he said.

"Here I have ten kopeks. Go and buy me a pen worth one kopek, one kopek worth of paper, three kopek's worth of ink, and a

pencil worth two kopeks. How much change will you have to bring back?"

"Three kopeks!" answered the man.

"Then go ahead!" The man jumped through the window and went on his errand. When he returned, the Tzemach Tzedek asked the man to review the bill with him. He did this accurately, and the tzaddik immediately sent a message to the local Rav to arrange for chalitzah. It was carried out the next day. Before the widow left, she asked the Tzemach Tzedek to write down his solution:

"It says in the Yerushalmi (Sanhedrin 42a) that an insane person who can make a purchase and calculate the change is not considered insane." When the Rada"l saw the note, he exclaimed: "How great is true Talmud Torah! All of the other Rabbonim knew this fact, yet none of them applied it to this case!" ■

