

OVERVIEW of the Daf

1) **MISHNAH:** (cont.) The Mishnah concludes with another case of conflicting testimony concerning the husband's death.

2) Clarifying the Mishnah's first ruling

The novelty of the Mishnah's first ruling is explained.

3) Clarifying R' Meir's position

R' Elazar and R' Yochanan disagree whether R' Meir disagrees with the Mishnah's first ruling.

R' Yochanan's position that even R' Meir agrees with the Mishnah's first ruling is successfully challenged.

4) **MISHNAH:** Two disputes between R' Tarfon and R' Akiva related to how a woman's testimony concerning her husband's death effects others.

5) Clarifying the dispute

The Gemara explains why it is necessary to present the dispute between R' Tarfon and R' Akiva in two different cases.

R' Yehudah in the name of Shmuel rules in accordance with R' Tarfon.

Abaye cites the Mishnah as support for this ruling.

6) **MISHNAH:** Two additional disputes between R' Tarfon and R' Akiva are presented that relate to a person who doesn't know which of five women he betrothed and from which of five people he stole.

7) Clarifying the Mishnah

The Gemara infers that the Mishnah addressed the case of one who betrothed rather than cohabited and one who stole rather than bought. This leads the Gemara to assume that the Mishnah is inconsistent with Tanna Kamma and R' Shimon ben Elazar as presented in a Baraisa.

It is explained how the Mishnah could, in fact, be consistent with R' Shimon ben Elazar.

It is explained why R' Shimon ben Elazar felt compelled to present two examples in both the Mishnah and the Baraisa.

8) **MISHNAH:** The Mishnah presents a number of cases that involve questions of credibility for a woman to testify that she is free from zikah or subject to yibum. The Mishnah concludes with a list of circumstances where a man or woman does not have credibility to testify.

9) Granting a get to one's wife through a third party

Rava asked R' Nachman whether a man is allowed to grant his wife a גט through a third party so that his wife should not fall to yibum.

R' Nachman, based on our Mishnah, rules that the matter remains in doubt and she is prohibited to the yavam but requires chalitzah to marry a stranger.

Ravina asked Rava whether a man is allowed to grant his wife a גט through a third party when they are fighting.

The Gemara responds that despite the fighting she prefers marriage.

The Gemara digresses to present similar sayings that relate to a woman's desire to be married.

הדרן עלך האשה שלום

Distinctive INSIGHT

The woman tells us that she had a child that died

ניתן לי בן במדינת הים ואמרה מת בני ואח"כ מת בעלי נאמנת

The Mishnah teaches that if a married woman departed when she was childless, and she later returns and reports that while abroad she first had a child, but the child died and then her husband died, we believe her and allow her to marry the yavam. The reason is that her leverage to be believed is strong. As this woman walks into the court, she could have simply been silent about having a child, and the report of her husband's death would have automatically allowed her to marry the yavam. Now that she could have been silent, but yet she volunteered the information about having a child and that it died, she can certainly be believed. This is a classic case of a **מינו דאי בעי שתיק**—a legal strength of credibility based upon the person having the option of remaining silent if they had wished to be deceptive. It is also referred to as **הפה שאסר הוא הפה שהתיר**—the same mouth which prohibits (to say she had a child) is the same mouth which permits (to say the child died).

Rashba asks why the woman should be believed. There is a statistical majority which tells us that most married woman have a child. This woman should therefore have a status of being prohibited to the yavam, even without saying anything. Furthermore, the Mishnah continues to rule that if the woman reversed her report, saying that first her husband died and then the child which was born to her died, she is not believed to marry the yavam, but she must have chalitzah. Rashba notes that this same assumption that married women have a child should allow this woman to be believed and to marry at large (לשוק).

Rashba answers that because she left without a child, and she returned without a child, we cannot impose upon her a new status of a woman who most probably had a child in the interim. We do not assume that she both entered as well as exited a condition of being with a child. When she says that she had a child but that it predeceased her husband, she is believed based upon the **מינו**. And when she says that when her husband died when the child was still alive, she is admitting that she is not eligible to marry the yavam. When she then tells us that the child subsequently died, she is not believed to remove this status of being unable to marry the yavam. ■

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Rabbi and Mrs. Shiya Wechsler
In loving memory of his mother
מרת פרומט בת ר' אהרן ע"ה

HALACHAH Highlight

Testifying about a brother's death

ואין האיש נאמן חומר מת אחי שייבם אשתו

And a man is not believed to say, "My brother died," so that he should do yibum with his wife

Shulchan Aruch¹ rules in accordance with the Mishnah that a man is not believed to testify, "My brother died and I will do yibum with his wife." Rav Shmuel ben Moshe de Medina², the Maharashdam, notes that the language of the Mishnah indicates that the brother is not believed because he included in his testimony that he will do yibum with his brother's widow. This implies that the reason his testimony is not admissible is the concern that he is looking for a way to be able to marry his brother's wife. Therefore, if he testified that his brother died without mentioning yibum or if he mentioned that he will do chalitzah his testimony would be admissible. Furthermore, if the testifying brother was married at the time he filed this testimony he is believed even to perform yibum since under such conditions there is no suspicion that his testimony was to be able to do yibum. This is similar to the earlier ruling³ that a single witness is not permitted to marry the widow unless he was married at the time of his testimony.

Teshuvos Ginas Viradim⁴ challenges these rulings of Maharashdam from the earlier Gemara⁵ that rules that any witness who testifies that a woman's husband died is not permitted to marry the widow because of the concern that the witness is looking for a way to be able to marry the widow. Accordingly, there is no reason to think that the brother is different than any other

REVIEW and Remember

1. What is the source that a person is willing to suffer as long as others will also suffer?
2. Why is it necessary for R' Tarfon and R' Akiva to argue in two seemingly similar cases?
3. How does one repent for theft if he does not know from whom he stole?
4. According to the Gemara, does a woman prefer a difficult marriage or would she rather divorce?

witness and the halacha in both cases is that the one testifying is not permitted to marry the deceased but others would be permitted. He therefore suggests that the intent of Maharashdam is that if the yavam limits his testimony to the death of his brother, the testimony is accepted and others are permitted to marry the widow. On the other hand, if he included in his testimony a statement related to his intent to perform yibum even others would not be permitted to marry the widow. ■

1. שו"ע אה"ע סי' קנ"ח סע' א'
2. מהרשד"ם סי' ע"ה
3. גמ' לעיל כה
4. ספר גינת ורדים כלל ג' ס"א
5. גמ' לעיל כה ■

STORIES Off the Daf

The pain of being alone

טב למיתב טן דו מלמיתב ארמלו

On today's daf we find Chazal's dictum that women so much prefer marriage to being alone that they are often willing to remain married even when there is conflict between themselves and their husbands. "Better to live as a married pair than to be alone." In the following story, we see just what it can mean for a woman to forgive her husband for having consigned her to a life alone.

During the hostilities in Yerushalayim in 1967, the entire Mirrer Yeshiva was huddled in the dining room, its makeshift bomb shelter. The bombing

was very intense and everyone davened with all their concentration. Although the shelter did offer some protection, it would have been practically worthless if the building were to sustain a direct hit. After the spate of bombing ended, people checked the roof and found that no fewer than three bombs had failed to detonate!

While everyone stood astounded at this open miracle, Rav Chaim Shmuelevitz, zt"l, exclaimed, "Do you think this is in the merit of the bnei yeshiva? Incorrect! Let me tell you who saved us all. One of our neighbors is an agunah whose husband abandoned her and their five young children, and they took shelter with us. Since the room was very crowded, I was forced to stand near her and I inadvertently overheard her heartfelt prayer to Hashem during the worst of

the bombing. 'Master of the World! I am sure that when my husband finally comes to the next world I will have an ironclad claim against him. He left me in these difficult times to fend for our young defenseless children alone. I am forced to hire myself out to clean houses all day long for a pittance. I am sure that he will be found guilty and will have to make amends for what he has done. But Master of the World, let's make a deal! I am prepared to forgive my husband wholeheartedly for all the pain that he has caused me as long as You will forgive everyone here for our many sins. Let us all leave here healthy and well!'"

Rav Chaim concluded, "That woman's plea is what saved the Mirrer Yeshiva from destruction!" ■