



# THE SHABUOT MATTERS

שבת קודש פרשת משפטים | מסכת יבמות דף ל"ט

לע"נ ברוך בענדיט וברכה גרוס ע"ה  
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לע"נ החבר דוד בן החבר מרדכי

## INSIGHTS FROM OUR CHABUROS

Chalitzta or Yibum  
May be Done

אמר להו אי בעית חליץ אי בעית ייבם, בדידך לתא רחמנא

Rabbi Tzvi Rabinovitz, the Chief Rabbi of Kovno was approached by a representative group of enlightenment intellectuals with what they believed was a reasonable request. They asked him if he could simply nullify the procedure for chalitzta. They explained that times were now modern and more progressive and that it was no longer respectful for a woman to spit in front of a man. The esteemed Rabbi listened patiently to their words, and he mentioned that he would consider their request if they could satisfy one condition. The maskilim were excited as they agreed to hear his request, which they eagerly hoped to fulfill to the best of their ability. The rabbi responded, "I would like you to summon a doctor who will consult with his colleagues, and see if they can agree to eradicate death from the world."

The representatives of the maskilim were shocked that the rabbi would mention such a silly request. "Do you think that the doctors have any control over death itself? It is preposterous to even suggest such a thing!"

The Rabbi then explained. "Of course it is absurd to talk about eradicating death. But, at the same time, what makes you think that you understand the mechanism of chalitzta that you suggest that it be abolished? The effect such a procedure has upon the soul of the departed brother in the upper worlds and the people and families is beyond our comprehension! We have been given this mitzvah at Sinai by Hashem, and we do not consider ourselves in a position to evaluate this mitzvah or any other mitzvah in terms of the impact it makes in the heavens and upon the souls which dwell in their respective places."

## PARSHA CONNECTION

**In this week's daf**, the Gemara describes a יבמה as a wife bestowed on the יבם from heaven. (אשה הקנו לו מן השמים). A similar idea is presented in the Parsha, whereby a Jewish slave is given a gentile slave as a wife, so that they can produce offspring. (אם אדוניו יתן לו אשה וכו'). This is implicitly understood by the Alshach Hakadosh (בדרך רמז) as a reference to the מנשנה that is given to every Jew for the purposes of producing good deeds. Interestingly, when an עבד עברי is a bachelor the master is not permitted to give him a non-Jewish wife, only a married slave is provided a non-Jewish wife. This begs a question; wouldn't it make more sense to provide a single slave with a wife rather than provide one to a slave who is already married to a Jewish wife? The answer is that the Torah was concerned lest the slave becomes too attached to his new non-Jewish wife, it therefore only provided the option to a married slave who already became attached to a Jewish wife, and will most likely not become attached to this second one. (Based on אלשיך הקדוש).

## STORIES OFF THE DAF

חליצה קודם ליבום  
"Chalitzta is Preferable to Yibum..."

Once, there were two "free-thinking" brothers, and one of them died suddenly without children. The surviving brother was an avowed maskil, and both he and the widow decided that they would like to marry. The surviving brother went to Rav Tzvi Hirsch Levine, zt"l, the Rav of Berlin, to request a dispensation so that he could marry his dead brother's wife in accordance with the Torah's dictum.

The man stated his claim, "The widow is more than willing to marry me, and I am perfectly willing to marry her, too. Will you permit us to perform the mitzvah of yibum?"

The Rav refused. "It says in jYevamos 39b that since nowadays people's intentions are not for the sake of heaven, chalitzah is preferable to yibum."

The maskil protested vehemently. "How do you know that my intentions aren't for the sake of heaven? They certainly are! Why shouldn't I be permitted to perform the mitzvah?!"

The man's protests fell on deaf ears. Disgruntled, the surviving brother decided to denounce Rav Tzvi Hirsch to the government. The authorities sent a delegate to the Rav asking him for a justification for his ruling.

"Rabbi, from what we hear, you have prohibited a marriage which is permitted by our own law, is legal according to the Torah itself, and was even sanctioned by the Rabbis of the Talmud. How can you justify your refusal of the man's request on the basis of mere custom?"

The Rav adopted a very grave expression and said, "Actually, this marriage is absolutely prohibited by the standard of Torah law. I didn't want to be insensitive so I cited the custom, but there is a much stronger reason why one may not perform yibum with the widow of a maskil."

Intrigued, the government's representative asked, "And what is that Rabbi?" The Rav explained, "It is only permitted to perform yibum with one's brother's widow if we are certain that the brother had no children at all. Unfortunately, these 'freethinkers' are known to be very lax in their morals. It is quite possible that this man had a child with another woman! In that case, it is prohibited from the Torah for the surviving brother to marry his former sister-in-law."

The government representative could only admit that the Rav's assessment of the moral level of the maskilim was correct—and the authorities upheld the Rav's ruling!

## MUSSAR FROM THE DAF

What's Right With Not Waiting?

תלה בקטן עד שיגדיל או בגדול עד שיבא ממדינת הים או חרש או שוטה אין שומעין לו אלא אומרים לו עליך מצוה או חלוץ או ייבם

The Gemara tell us that if one of the younger brothers attempts to push off the Mitzvah of Yibum in order to wait for his older brother to arrive back from the מדינת הים to perform the Mitzvah, Bais Din tells him he should not wait rather he should perform Yibum or Chalitzah immediately based on the principle שהווי מצוה לא שמהינן (we don't push off mitzvos). The novelty here is that we do not push off the mitzvah even if it can be done in a fashion which is Min HaMavchur (ideal) at a later time. What is the reason behind this principle of not pushing off a Mitzvah and what can we learn from it to our daily Avodas Hashem?

There is a Machlokes as to what is the reason behind לא שמהינן. Each reason has an important daily application.

The Terumas Hadeshen writes that we do not want to push off the opportunity to do the mitzvah because it may not be available later for whatever reason. (The Terumas Hadeshen applies this principle to other mitzvos such as kiddush levana as well). This is a great lesson. Many distractions and life situations tend to suddenly appear, therefore remembering the Klal of the Terumas Hadeshen could be a helpful way to motivate a person to do a mitzvah as soon as the opportunity arises even if it may not be the best way of doing the mitzvah.

The other approach learns that this din of לא שמהינן is not necessarily because one may miss the opportunity to do the mitzvah, rather there is a preference in doing the mitzvah itself as soon as the opportunity arrives (Rama, Magen Avraham). What is this מעלה? Rav Shlomo Wolbe זצ"ל in his introductory Vaad on Zrizus, explains that he heard from his Rebbe, Rav Yerucham Levovitz זצ"ל that if one does a mitzvah with zrizus, then the Shechina rests with the person during that mitzvah. However, as a person delays doing the mitzvah, there is then the risk that the Yetzer Hara will enter and the Shechina will leave him even if he performs the Mitzvah at a later time. When a person realizes that by pushing off doing a mitzvah it will cause a degradation in the mitzvah itself, even if he knows it will ultimately be performed, that knowledge should serve as a motivating factor for doing the mitzvah promptly.

## POINT TO PONDER

The Mishna says that the Mitzvah of Yibum is on the oldest brother. If the oldest refuses, is there a preference for the next oldest, or are the rest of the brothers all equal?

### Response to last week's Point to Ponder:

Where a ספק and a יבם are arguing about an inheritance from the יבם's father, why does the Gemara say that the יבם gets everything rather than saying to split it equally between them like all ממון המוטל בספק where we say יחלוקו?

The type of מוחזק (possession) which is relevant to inheritances is unique. We view the party that is definitely entitled to part of the inheritance as having possession of the entire inheritance, as it relates to the opposing party, who only has a MAYBE claim to any part of the inheritance. (See ע"א ב' ע"א דין תוס' בבא מציעא דף ב' ע"א דין (ד"ה וזה נוטל רביע וריטב"א בסוגיא דין

## HALACHA HIGHLIGHT

Waiting to Perform a Mitzvah in a More Enhanced Fashion

כל שהווי מצוה לא שמהינן

*We Do Not Delay the Fulfillment of a Mitzvah*

Shulchan Aruch<sup>1</sup> rules that although it is appropriate to put on the talis before putting on tefillin, nevertheless, if one has tefillin that are available but does not have a talis he should put on the tefillin immediately, and when the talis arrives he can don the talis. Rav Avrohom Avli Gombiner<sup>2</sup>, the Magen Avrohom, writes that our Gemara is the source for this ruling. Our Gemara rules that one does not delay the fulfillment of a mitzvah even if delaying its fulfillment will allow a more enhanced fulfillment of the mitzvah.

Rav Yaakov Reisher<sup>3</sup>, the Shvus Yaakov, seemingly does not subscribe to this principle when he addressed the following issue. A man was about to recite Hallel on Sukkos with a kosher lulav and esrog which were available. Yet the man chose to wait to fulfill the mitzvah until later when a more beautiful lulav and esrog would be available. The question was whether the decision this man made to delay the fulfillment of the mitzvah in order to fulfill the mitzvah in a more enhanced fashion was the correct choice or if the principle that mitzvos should be done as early as possible should have been applied. Shvus Yaakov concludes that the principle of our Gemara that one does not delay the fulfillment of mitzvos applies only when there will be no qualitative difference if the mitzvah is fulfilled now or later. If, however, the quality of the mitzvah will improve by delaying its fulfillment it is appropriate to delay fulfillment of the mitzvah.

A ruling of Rav Dovid ben Zimra<sup>4</sup>, the Radvaz, indicates that he agrees with the explanation of Magen Avrohom that one should not delay the fulfillment of a mitzvah in order to fulfill the mitzvah in a more enhanced fashion. A person who was imprisoned was granted one day to leave prison and the question was which would be the best day to leave to be able to daven with a minyan. Radvaz ruled that he should not wait until Yom Kipur or Purim but should take advantage of the first available day in accordance with the principle that one should delay the fulfillment of a mitzvah even if performing the mitzvah later will allow a more enhanced fulfillment of the mitzvah.

1. שו"ע אר"ח סי' כ"ה סעי' א'
2. מג"א שם סק"ב
3. שו"ת שבות יעקב ח"א סעי' ל"ד
4. שו"ת הרדב"ז ח"ד סעי' י"ג

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