



לע"נ ברוך בענדיט וברכה גרוס ע"ה  
by Mr. & Mrs. Duvy Gross

לע"נ אסתר אביגיל בת חיה רבקה וציפורה רחל בת אסתר מחלה THE DIMONT FAMILY EDITION

# THE SHABUOT MATTERS

שבת קודש פרשת שלח | מסכת יבמות דף ק"י

לע"נ קראסל בת ר' נתן  
לע"נ בילא בת ר' שמואל

לע"נ רבקה בת ר' נתן  
לע"נ צביה בת ר' אברהם צבי

לע"נ מלכה בת ישראל זאב הי"ד  
לע"נ משה בן ישראל זאב הי"ד

## INSIGHTS FROM OUR CHABUROS

### The Minor and the Deaf-Mute

מי שהיה נשוי לשתים יתומות קטנות ומת ביאתה או חליצתה של אחת מהם פוטרת צרתה

The first part of the Mishnah presents the case where Reuven was married to two orphaned minor girls (otherwise not related to each other). Reuven dies, and his brother, Shimon, is presented with these two yevamos. The ruling is that his doing yibum with one or his performing chalitzah with one of the girls releases the other, the צרה. Ritva explains that however we consider the status of a marriage to a minor is shared equally by these two minor girls, so the resolution of the relationship with one will release the other. This is also the case where Reuven was married to two deaf-mute girls (adults) and then Reuven died. Here, too, when Shimon his brother either does yibum or chalitzah with one, and the other is released. The Mishnah then states that if Reuven was married to two women, one a minor and the other a deaf-mute, and Reuven dies, here the yibum or chalitzah of one does not release the other. The reason for this is a matter of dispute in the Gemara between Amoraim, R' Ada bar Ahava and Rav Chisda. According to Rashi, we do not know which of the two wives was considered to be the preferred wife of the first husband, Reuven. Which ever of these two rabbinically recognized marriages was preferred by Reuven is the one where yibum (or chalitzah) should be performed. This is according to R' Ada bar Ahava's understanding. In the Gemara, on the bottom of עמוד ב', Rav Chisda explains the ruling of the Mishnah differently. Rav Chisda says that the marriage of a minor is uncertain whether she is rabbinically acquired completely or not at all. The limited competence that she has is not defined as to whether it establishes a marriage or not. A deaf-mute is "partially acquired and partially not acquired." Keren Orah notes that we always find that a minor girl does have a status of being acquired rabbinically, and the uncertainty of the Gemara seems puzzling. Yam Shel Shlomo (beginning of סימן כ"א) explains that, in fact, in general, a minor is acquired rabbinically. It is only here, in contrast to the (adult) deaf-mute, that we introduce this uncertainty.

## STORIES OFF THE DAF

### Measure for Measure

הוא עשה שלא כהוגן לפיכך עשו בו שלא כהוגן

On this week's daf we find a situation where the kiddushin status of a certain minor girl was in doubt because of the inappropriate actions of a second man. Although it would have appeared as though this second man's proposal should have uprooted the process of kiddushin in which she was already involved, the Chachomim penalized the second man for insinuating himself where he should not have. Because of his improper action, the Chachomim treated him "improperly" and uprooted his own kiddushin rather than that of the first man. We see from here that sometimes the sages react in kind to the person who has broken the bounds of propriety in order to punish him in a fitting manner. Special appointees of beis din of the Chakrei Lev, ז"ל, were in charge of ensuring that the decisions and fines of the beis din were executed. They would be furnished with all relevant details and would do whatever it took to carry out the psak. Sometimes, they might threaten the recalcitrant litigant, and if even this was ineffective they would report to the beis din. In extreme cases of intransigence, the beis din could authorize the appointees to summon the culprit to non-Jewish courts to ensure that the beis din's decision was carried out. Everyone knew that to take a Jew to the non-Jewish courts without permission of the beis din was a very heinous crime. As a matter of fact, anyone who does so is considered unfit to be chosen to lead the communal prayer during the Yomim Noraim. (See Mishnah Berurah 53:82) The only time such an action is permitted is if the innocent party would suffer a loss by waiting for the beis din to deal with the non-compliance itself. Once, a litigant in whose favor the beis din of the Chakrei Lev had already decided lost patience with the process and took the matter into his own hands. The messengers of beis din were incensed that he had summoning his opponent to the non-Jewish courts without obtaining permission, since this would cheapen this serious prohibition in the eyes of the rest of the community. In response, the appointees testified before the authorities that the guilty party was actually innocent. Naturally, the case was thrown out.

## PARSHA CONNECTION

In this week's daf we learn about the הלכות of חרש וחרשת with regards to יבום and חליצה, marriage. The word חרש which means being deaf, also means being quiet, which is the context used in this week's הפטרה. When יהושע sent spies to יריחו it says יהושע בן-נון מן השטים שנים אנשים מרגלים חרש לאמר וכו' and וישלח. The two words of חרש and לאמר seem contradictory, because if it's saying that they should be quiet, why is followed by לאמר? The אלשיך הקדוש addresses this question in this week's Parsha, as well as explaining the overall difference between the spies that משה רבינו sent and the ones that יהושע sent. Why did יהושע send spies after seeing the terrible results that occurred when משה רבינו sent spies? An important part of the answer is explaining the two words: חרש and לאמר. When sending his spies, יהושע had one clear objective, which was to find out what is the mindset of the people of כנען. They were not assessing the land, like משה רבינו's spies, but rather looking for insight into their mindset. Hence חרש means the spies should listen and לאמר is referring to what the people in כנען are saying. This is why as soon as they were told by רחב that everyone is terrified of ישראל, they left. (See אלשיך for a full fascinating overview).

## HALACHA HIGHLIGHT

### Uprooting Kiddushin

ר' אשי אמר הוא עשה שלא כהוגן לפיכך עשו בו שלא כהוגן ואפקעינהו רבנן לקידושי מיניה

*R' Ashi explained that since he behaved improperly Chazal dealt with him improperly and uprooted his kiddushin from him*

There was once a woman who, following witness testimony that her first husband died, married and had a child with a second husband. It then became known that the testimony was false. The halacha is that she must divorce both husbands and the child is a mamzer. However, due to the anguish this would cause the woman in addition to other factors, Torah scholars searched for a leniency so that this child should not be considered a mamzer. Rav Shalom Mordechai Schwadron<sup>1</sup>, the Maharsham, wrote that a theoretical leniency (להלכה ולא למעשה) can be suggested based on a Tosafos in Gittin<sup>2</sup>. One of the cases where Chazal applied the principle of nullifying kiddushin is a case when a husband sent a messenger to deliver a get to his wife and while the agent was en route to deliver the get the husband changed his mind and nullified the messenger's authority in the presence of a single witness. Accordingly, if the woman's first husband will appoint a messenger to deliver a גט and then nullify that agency in the presence of a witness the ruling of Chazal that the original kiddushin is nullified will apply. Once the original kiddushin is uprooted the child born to her second husband cannot be deemed a mamzer since she did not have what was originally thought to be an adulterous affair.

Rav Shlomo Zalman Auerbach<sup>3</sup> wrote that there were many instances when it was suggested to apply this reasoning of Maharsham to save a child from being deemed a mamzer but he always hesitated since Maharsham himself wrote that it was a theoretical analysis rather than a practical ruling. After a lengthy discussion of the matter he concluded that there were six primary weaknesses to this reasoning which renders the ruling of Maharsham as theoretical rather than practical. One of the reasons for hesitancy is that the only precedent that is found in the Gemara of Chazal uprooting kiddushin is a case where a person behaved improperly. We do not find that a person who behaves according to the instructions of Beis Din can have his kiddushin uprooted. Consequently, it is not possible for Beis Din to instruct the first husband to follow the above mentioned procedure to uproot the original kiddushin because Chazal do not uproot kiddushin from a person who follows the instructions of Beis Din.

1. שו"ת מהרשם ח"א סי' ט'
2. תוס' גיטין לג. ד"ה ואפקעינהו
3. שו"ת מנחת שלמה ח"א סי' ע"ו

## IYUN ON THE DAF

By Rabbi Yitzchok Gutterman

The גמרא says that if a person steals away a קטנה who was married from under the חופה and gives her קידושין that the חכמים were עוקר his קידושין. The תוספות here ד"ה לפיכך and the תוספות ד"ה ע"ב מ"ח דף ב"ב are מסופק what the mechanics are for the עקירת קידושין: is it because the חכמים have a power to be התורה מן התורה, עוקר דבר מן התורה, or is it the fact that they have the ability to be עוקר קידושין via הפקר ב"ד הפקר? The ד"ה תינח in ריטב"א adds a third possibility—that all people are נקדש and אדעיתיה דרבנן. Therefore, the חכמים can be עוקר anything since it is as if the person said that he only wants his קידושין to be חל on condition that the חכמים approve. The ראשונים ask that according to either the פשוט that the חכמים can be התורה מן התורה or that people are נקדש, how would you explain the גמרא's next question of תנח דקדיש בכספא קדיש בביאה מאי? If the point is that people are תולה their קידושין on someone else's דעת or that the חכמים can be עוקר דבר מן התורה then what difference does it make how they were עוקר? תוספות ב"ב answers that the reason של ביאה are worse is that surely the רבנן would not agree to be עוקר the קידושין if it would result in an עברה like all the ביאות are. The קמ"ל is that they would in that case. The ריטב"א mentioned above asks (by implication) why the גמרא doesn't ask about קידושי שטר? He answers that based on the way we just explained the גמרא it makes sense since the חכמים have the power to be עוקר any form of קידושין and the only question was about ביאה since they wouldn't want to cause an עברה through their קידושין.

## POINT TO PONDER

ד"ה וחרשת write that a חליצה of a קטנה can work once she becomes an adult, without doing it again. Would the same be true by a חרשת who later became a פקחת?

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

רש"י ד"ה גדלי בהדה ואע"ג דלא בעל writes that the original קידושין which was done when she was little, will now become fully binding and will remove the זיקה. Since the problem with doing a קנין with a קטנה is a lack of דעת, how can this work retroactively?

The קטנה that were done when she was a קטנה were conditioned on her accepting when she becomes an adult. Even though the money for the קידושין was given a long time ago they can still be used when she matures, because they were given originally on the תנאי that she will accept. (See רשב"א)

ר' יוסף שמואל שמעלקא ב"ר יצחק מערמעלשטיין ז"ל, Shelly Mermelstien ל"ע נ' Yevamos has been dedicated in

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