



Yibum of a Katan

The *Mishnah* (13:12) taught that if a *katan*¹ performed *yibum* to a *ketana* or a *gedola* then they must stay together until they both reach adulthood before a *get* can be presented. The *Bartenura* explains that the reason is because a *katan* is unable to give a *get*; similarly a *ketana* cannot receive one. One question that should be asked is what is the status of the *yibum* of a *katan*?

Rashi (*Kidushin* 19a) understands that *yibum* of a *katan* is *koneh* (acquires) on a biblical level. The *katan* would inherit her property in the event of her passing and would be allowed to become *tameh* in that case even if was a *kohen*. In *Gemara Nidah* (45a), *Rashi* explains that the *katan* would also acquire his deceased brother's estate. Even though ordinarily a minor cannot acquire property, in this case it is already considered acquired for him.

The *Mishnah* in *Nidah* (45a) also teaches that if a *katan* performs *yibum* he must wait till he is a *gadol* prior to giving a *get*. The *Gemara* there asks, how is it possible that a *get* would suffice? The *Beraita* taught that the *Chachamim* decreed that the *bi'ah* of a *katan* is considered like a *maamar*. The *Gemara* continues that indeed the *katan* would require *bi'ah* again after he became a *gadol* in order to be able to deliver a *get*. The *Ramban* understands from this *Gemara*, like *Rashi*, that *yibum* acquires for a *katan* on a biblical level. The question of the *Gemara* relates to the *Chachamim*'s effect on the *yibum* of a *katan* having reduced it to be like a *ma'amer*.

The *Tosfot* (*Kiddushin* 19a) however argue that *yibum* of a *katan* is defined as *yibum* only on a rabbinic level. They base their assertion on the *Gemara* (*Yevamot* 96b) that explains that the *Chachamim* instituted that the *yibum* of a *katan* be considered like a *maamar*. The *Baalei Tosfot* understand that really the *yibum* holds no weight on a biblical level. It is only with respect to *yibum* being considered like a *maamar* to exclusion of any other matter (*yerusha*, etc) that the *Chachamim* gave it weight.

HaRav Moshe Hershler (in his footnotes to the *Ramban* on *Niddah*) explains the debate as follows. The *Gemara* (*Kiddushin* 19a) excludes a *katan* from marriage based on a *passuk*. The question is, what is the effect of this exclusion. There are two ways to understand it. One is that the *katan* is excluded from the legal area of *kiddushin* (much like a *goi*). The other way to understand the exclusion is that he simply does not have the capacity to perform *kiddushin* – he is not a *bar daat*. It appears that the *Tosfot* maintain the first understanding. Having been excluded from the world of *ishut*, the *yibum* of a *katan* on a biblical level is meaningless. The *Ramban* and *Rashi* however would maintain the second understanding. The lack of *daat* prevents him from performing *kiddushin*. With *yibum* however since it acquires even in the case of *shogeg*, it does not require the *yibam* initiate the legal change; the acquisition is from *Shamayim*. Consequently since the *bi'ah* of a *ben tessa* has legal weight, on a biblical level the *yibum* is considered *yibum*.²

Yisrael Yitzchak Bankier

¹ The *katan* referred to in this article is at least nine years old. He will be referred to as simple a *katan* for the sake of brevity.

² See the *Shut Oneg Yom Tov*, who resolves a number of seemingly contradictor commentaries of *Rashi*. He explains that

while *Rashi* maintains the *yibum* of a *katan* is a complete *kinyan*, he has not yet fulfilled the *mitzvah* of *yibum* (as he is not yet *ra'ui l'holid*). Another *bi'ah* would be required when he becomes a *gadol* in order to fulfil this *mitzvah*.

Revision Questions

במות י"ג ד' י"ד ד'

- If a girl underwent *mi'un* can she still marry a *Kohen*? (י"ג ד')
- Complete the follow rule and explain: (י"ג ד')
"זה הכלל: ___ אחר ___, אסורה לחזור לו. ___ אחר ___ מותרת לחזור לו"
- If the *ketanah* left a number of husbands, some of which through *mi'un* and the others through a *get*, which can she remarry? (י"ג ה')
- Explain the debate regarding *yibum* for a woman that had previously divorced and then remarried her husband. (י"ג ו')
- If two brothers marry two sisters, one of which a *ketanah* (*yetomah*), and the brother married to the *gedolah* dies (without children), what is the law regarding *yibum*? (Include the three opinions.) (י"ג ז')
- If a person married to a *pikachat* and a *chereshet* dies without any children, to whom should *yibum* be performed? (י"ג ח')
- If a person married to two *ketanot* (*yetamot*) dies, and one brother performs *yibum* to one and then another brother tries to perform *yibum* to the other, can the first brother stay with the *ketanah*? (י"ג ט')
- What is the law if a man married to a *pikachat* and a *chereshet* dies (without any children) and one brother first performs *yibum* to the *chereshet* and then another brother performs *yibum* to the *chereshet*? (י"ג י')
- What is the law if a man marries a *gedolah* and a *ketanah* (arranged by her brother) and dies (without any children) and one brother first performs *yibum* to the *ketanah* and then another brother performs *yibum* to the *gedolah*? (י"ג י"א)
- What is the law regarding a minor that performs *yibum*? (י"ג י"ב)
- When do we force the *yabam* to divorce the *yavamah*? (י"ג י"ב)
- When do we request that the *yabam* perform *chalitzah*? (Include two cases) (י"ג י"ג)
- What has happened to a man such that he can never divorce his wife? (י"ד א')
- Is the law the same if these things happened to the wife? Explain. (י"ד א')
- What case does *R' Yochanan ben Gudgedah* bring to support the answer to the previous question? (י"ד ב')
- What is the law if two brothers, one a *pikeach* and the other a *cheresh*, marry two sisters that are *chershot*, and one brother dies without children? (י"ד ג')
- If a *yavamah* is a *chereshet*, what should the *yabam* do - *yibum* or *chalitzah*? (י"ד ג')
- What is the law if two brothers, one a *pikeach* and the other a *cheresh*, marry two sisters that are *pikchot* and the *cheresh* dies? (י"ד ד')
- Regarding the previous case, what if the *pikeach* dies instead (without any children)? (י"ד ד')

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Yevamot 13:4-5	Yevamot 13:6-7	Yevamot 13:8-9	Yevamot 13:10-11	Yevamot 13:12-13	Yevamot 14:1-2	Yevamot 14:3-4

