



## Why not Chalitzah?

The *Mishnah* (16:1) discusses a case where a woman's husband and *tzara* (co-wife) went oversea. She later received word that her husband had passed away. The *Mishnah* teaches that the wife that remained would not be able to have *yibum* performed or remarry without *chalitzah* until it is determined whether the *tzara* was pregnant. We shall try to understand this *Mishnah*.

The wife would not be able to remarry since if the *tzara* did not have children, she would require *yibum* or *chalitza*. *Yibum* however cannot be performed out of concern that the *tzara* had a child, which would exempt her from *yibum* or *chalitza*, thereby ensuring that the brothers-in-law or *yabam* remains *assur* to her. The wife is therefore stuck until the *tzara*'s status is determined.

The *Gemara* notes that one might think that she could rely on the *rov*; that most married women have children. Nonetheless there is a *chazakah*; her current assumed status is that she requires *yibum*. Consequently, the *mi'ut* (minority possibility) combines with the *chazaka* to counter the *rov*.

Interestingly the *Gemara* stresses that the *mi'ut* is that some women miscarry. There is another *mi'ut* that is not mention which is that some women do not fall pregnant. The *Rashba* explains that we only say that the *mi'ut* combines with a *chazaka* when the *mi'ut* detracts from the *rov* itself. In other words, there is a *mi'ut* within the *rov* that undermines the position. In other words, in this case, even though the majority fall pregnant, a minority of those women miscarry.

The *Baretnura* cites the following question from the *Gemara*, why do we not allow *chalitzah* to be performed? The *Tosfot R' Akiva Eigar* explains that if we allow her to have *chalitzah* after nine months, then either the *tzara* has a had a child and the woman would be able to marry without *chalitzah*, or the *tzara* did not have a child and *chalitza* would free the wife to remarry. The *Gemara* explains that that is not an option since if it was discovered later the *chalitza* was unnecessary then she would be able to marry a

*kohen*. The concern is that even if it was announced that *chalitza* was unnecessary, if she then married a *kohen*, there could be people that were aware of the *chalitza* and not the announcement. If they later discover that she married a *kohen*, they would mistakenly conclude that a *kohen* is allowed to marry a *chalutzah*.

The *Tosfot Chad Mikamai* (*Yevamot* 36a) draws two conclusions from this *Gemara*. Firstly, if the woman was a divorcee and could not marry a *kohen* anyway, then performing *chalitzah* would be a solution. Furthermore, if *chalitza* was performed to this woman, even if she was not a divorcee, then (*be'di'eved*) she would be able to remarry. His proof comes from the case where *chalitza* was performed on a pregnant woman who then had a child. The *chalitzah* was meaningless, and the *Mishnah* explains that they would be able to marry the relatives of each other, who would have been prohibited had *chalitzah* been necessary.

The *Ritva* (36a), however, explains that our case is different. In the case of a *chalitzah me'uberet*, she has a child that is clear and present proof that the *chalitzah* was meaningless. In our case however, the child belongs to the *tzara* in a different country.

The *Taz* (156:8) however rules that if, *be'di'eved*, she received *chalitza* and then it was discovered that the *tzara* had a child she would even be able to marry a *kohen*. The *Taz* points to the debate between *Beit Shamai* and *Beit Hillel* regarding *chalitzat tzarat erva*. Recall that if one of the *yevamot* was an *issur erva*, then according to *Beit Hillel* the other *yevama* does not require *yibum* or *chalitza*. Even if *chalitza* was performed, they maintain that she would be able to marry a *kohen* since the *chalitzah* was meaningless. He notes that there is no mention of the concern discussed in our *Mishnah*. The *Taz* explains that the concern is only to prevent *chalitzah* from being performed. However once *chalitzah* is performed and it is proven that it is meaningless the concern falls away.

*Yisrael Bankier*

## Revision Questions

יבמות י"ד: ז' – ט"ז: ז'א:

- Regarding the previous two questions, what is the law if the wives were not related? (י"ד: ז')
- What is the law if two brothers, both *pikchim*, marry unrelated women, one a *pikachat* and the other a *chereshet*, and the husband of the *chereshet* dies? (י"ד: ח')
- Regarding the previous case, what if the husband of the *pikachat* dies instead (without any children)? (י"ד: ח')
- What is the law regarding a case with two brothers, one a *pikachat* married to a *pikachat* and the other a *chereshet* married to a *chereshet*, the wives being unrelated, and the *chereshet* dies without any children? (י"ד: ט')
- Regarding the previous case, what if the *pikachat* dies instead (without any children)? (י"ד: ט')
- In what situation do we not trust a woman who returns from overseas saying her husband passed away overseas? (Include both opinions) (י"ד: ט"ו)
- In what circumstance does *Beit Hillel* maintain that we trust a woman when she says her husband has died? (י"ד: ט"ו)
- What was the debate between *Beit Shammai* and *Beit Hillel* regarding, in a case where they both agreed that she is trusted to say her husband has died? (י"ד: ט"ו)
- Who conceded in the argument described in the previous question? (י"ד: ט"ו)
- Which five people are not trusted to testify that a woman's husband has died? (י"ד: ט"ו)
- If a woman remarried on the basis of a single witness's testimony, can she remain married if another single witness testifies that her original husband is still alive? (י"ד: ט"ו)
- What is the law regarding a case where a person's two wives return from overseas and: (י"ד: ט"ו)
  - One says the husband died, and the other says the husband is alive?
  - One says the husband died, and the other says the husband was killed?
- If a woman and her husband travel overseas and she returns saying that her husband has died, can she remarry? Can the co-wife remarry? (י"ד: ט"ו)
- Regarding the previous question, if the co-wife was a *bat Yisrael* married to a *Kohen*, can she continue to eat *trumah*? Explain. (י"ד: ט"ו)
- What case is raised that shares the same ruling as in the previous two questions? (י"ד: ט"ו)
- What should one do if they married one of five women, and they do not know who, yet all the women claim it was them? (י"ד: ט"ו)
- What case does *R' Tarfon* claim is similar to the case in the previous question and why does *R' Akiva* argue that it is different? (י"ד: ט"ו)
- If a woman returns from overseas claiming that both her husband and only child died, in what situation (regarding the order of the deaths) is she believed and when are we concerned? (י"ד: ט"ו)
- Regarding the previous question, with what change to the detail of the case is the law reversed? (י"ד: ט"ו)
- When is a woman trusted to say that her *yabam* died? (Careful) (י"ד: ט"ו)
- Regarding which relatives is a man not trusted about, if he claims they died and in what circumstance? (י"ד: ט"ו)
- What is the law regarding a woman, whose co-wife and husband went overseas, and then she received word that her husband had died – can she remarry? Does she require *yibum* or *chalitzah*? (י"ד: ט"ו)

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Yevamot 16:2-3	Yevamot 16:4-5	Yevamot 16:6-7	Ketubot 1:1-2	Ketubot 1:3-4	Ketubot 1:5-6	Ketubot 1:7-8

