



Volume 9. Issue 7

Chalitzah of a Cheresh

The *Mishnah* (12:4) teaches that if a *yavam* performs *chalitzah* to a *cheresh* (deaf-mute), then the *chalitzah* is invalid. We shall investigate this law.

The *Gemara* (104b) explains that it is invalid because of the *yavam*'s inability to recite the required sections outlined in the *Torah*. Now even though we have learnt that omitting reciting these *pesukim* does not invalidate *chalitzah*, the *Gemara* explains that that *Mishnah* is according to *R' Zeira* who maintains that the lack of recital is not essential provided that the *yavam* (or *yavamah*) has the capacity to recite it. In this case since *yavam* is not able to recite it, the *chalitzah* is invalid (*kol ha'rayui l'bila...*).

The *Tosfot* asks that a *cheresh* should have been considered invalid because, just like a *shoteh* and *katan*, he is not a *ben daat* – they lack legal understanding. The *Tosfot* answers that if that were the only issue then since *chalitzah* is performed in front of, and under the instruction of *Beit Din*, then it could be valid. We find that a *cheresh* can write a *get* if guided by an adult. Consequently the *pasuk*'s explicit exclusion is broader than the regular issue that is addressed with respect to a *cheresh*.¹

When the *Mishnah* teaches that *chalitzah* involving a *cheresh* is invalid, *Rashi* comments that it is invalid and does not release the *yavam* when there is another kosher brother. The *Tosfot Yom Tov* finds this comment difficult as it implies that if the *cheresh* was the only surviving brother then the *chalitzah* would be affective in releasing the *yavam*. Such an implication

however contradicts a later *Mishnah* (14:4) that teaches that the only option in the case where the only *yavam* is a *cheresh* is *yibum*. How then can we explain *Rashi*'s comment?

The *Aruch La'Ner* explains as follows. The *Gemara* in *Gittin* (24b) explains that anywhere the *Mishnah* teaches about a *chalitzah pesula* (invalid), while it is indeed ineffective in releasing the *yavamah*, it however does prevent any further possibility of *yibum*. The *Aruch La'Ner* explains that the same would be true in this case; the invalid *chalitzah* of a *cheresh* prevent further *yibum* from taking place. This is despite the fact the *chalitzah* is meaningless on a biblical level (as learnt above). This is because there is a concern that people might see that *yibum* followed (what looked like) *chalitzah* and wrongly think that *yibum* is permitted after *chalitzah*. If however the *cheresh* were the only brother and then there would not be any concern with the *cheresh* following his *chalitzah* with *yibum*. People understand that a *cheresh* is not a *ben daat* and would not derive anything from his circumstance.

If however there was another brother, the *chalitzah* of the *cheresh* would be *pesula*, i.e. invalidate the *kasher* brother from performing *yibum*. In other words, according to *Rashi*, whether or not the *cheresh* is the only brother, the *chalitzah* of the *cheresh* would not release the *yavamah*. If however there was another brother, that *chalitzah* would prevent him from performing *yibum*.

Yisrael Yitzchak Bankier

¹ Note that there is also an explicit *pasuk* excluding a *katan*. With respect to a *shoteh* however, the *Tosfot* explains that since they

have no *daat* at all, being guided by *Beit Din* would not help for *chalitzah*.

Revision Questions

יבמות י"א: ג' י"ג: ג'

- Regarding a case where five baby boys were mixed up, such that we don't know who their mothers are, and each grew up and got married and died without any children, describe how *yibum* is performed to each of their wives? (י"א: ג')
- What is the law regarding *yibum* and *chalitzah* if a woman's child and her daughter-in-law's child got mixed up, grew up and then: (י"א: ד')
 - Got married and died with without any children?
 - The other brothers married and died without any children?
- What is the law regarding a case where the child of the wife of a *Kohen* and her maid-servant's child got mixed up with regards to: (י"א: ה')
 - Eating *trumah*?
 - *Tameh met* if they are both "freed"?
 - *Zro'ah* and *lechayayim*?
- What is the law regarding a case where a woman remarried immediately after divorce and we are not sure about the paternity of her child, with respect to *yibum* and *chalitzah* if:
 - His mother had sons from both marriages?
 - Both of the husbands had sons from other marriages? (י"א: ו')
- Regarding the previous question, what is the law if one of the father's was a *Kohen* and the other was a *Yisrael*? (י"א: ז')
- Regarding the previous question, what if both father's were *Kohanim*? Which *mishmar* would he serve in? (י"א: ח')
- Where is *chalitzah* performed? (י"ב: א')
- What type of *sandal* can be used for *chalitzah*? (י"ב: ב')
- Which of the following is acceptable for *chalitzah*: (י"ב: ג')
 - Using a borrowed shoe?
 - Wearing the left shoe on the right foot?
 - Using a shoe that is the wrong size?
 - Performing *Chalitzah* at night?
- What are the three components of *chalitzah*? (י"ב: ד')
- Which of the three components: (י"ב: ה')
 - If left out is still acceptable?
 - May not be left out?
 - Is subject to debate whether it is acceptable if left out?
- Can a *cheresh* perform *chalitzah*? (י"ב: ו')
- What is the law regarding *chalitzah* that is performed before a *beit din* of two people? (י"ב: ז')
- Describe the process of *chalitzah*. (י"ב: ח')
- What is *mi'un*? (י"ב: ט')
- What are the five points of debate between *Beit Shammai* and *Beit Hillel* regarding when *mi'un* can be performed? (י"ב: י')
- Who qualifies for *mi'un*? (י"ב: י"א')
- According to *R' Eliezer ben Ya'akov* when is the *ketanah* considered "*ishto*"? (י"ב: י"ב')

Local Shiurim

Melbourne, Australia

Sunday -Thursday

10 minutes before *Mincha*
Mizrachi Shul
 Melbourne, Australia

Friday & Shabbat

10 minutes before *Mincha*
Beit Ha'Roeh
 Melbourne, Australia

Efrat, Israel

Shiur in English

Sunday -Thursday

Rabbi Mordechai Scharf
 9:00am
Kollel Magen Avraham
 Reemon Neighbourhood

ONLINE SHIURIM

Rabbi Chaim Brown
www.shemayisrael.com/mishna/

Rav Meir Pogrow
613.org/mishnah.html

Rabbi E. Kornfeld
Rabbi C. Brown
<http://www.dafyomi.co.il/calendar/myomi/myomi-thisweek.htm>

SHIUR ON KOL HALOSHON

Rabbi Moshe Meir Weiss
 In US dial: 718 906 6400
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Next Week's Mishnayot...

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	שבת קודש
17 th June כ"ז סיון	18 th June כ"ח סיון	19 th June כ"ט סיון	20 th June ל' סיון	21 th June א' תמוז	22 th June ב' תמוז	23 th June ג' תמוז
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

