

Conditional Marriage to Prevent Suffering: Rav Yehudah Amital's Approach

By: SARA WEINSTEIN and BERNARD L. WEINSTEIN

During the summer of 2007, a young I.D.F. officer serving in a combat position in the Second Lebanon War was soon to be married. Leading his men in battle put his life at risk on a daily basis. As he had only one brother who was six years old at the time, he appealed to us for help. He was concerned that if he were to be killed, his wife would be left as an *agunah* (i.e., a “*shomeret yavam*” in this case) for the next seven years, unable to remarry until his six-year-old brother reached the age of thirteen—old enough to perform *chalitzah* (*Shulchan Aruch, Even HaEzer* 167:3).

A number of prominent rabbis were consulted. Their reaction was that there was no halakhic solution to the problem; if the *chatan* were to die, the young kallah “would, unfortunately, have to wait.” It was then recommended to us to call R. Yehuda Amital ר"צ"ל, one of the two *Roshei Yeshiva* of Yeshivat Har Etzion. R. Amital responded in a very positive manner, immediately inviting us to his Jerusalem apartment to explain his solution to the problem.

In his apartment, R. Amital related to us how he himself had solved a similar problem in the past by conducting conditional marriages on two occasions. The purpose of this article is to present R. Amital ר"צ"ל's solution to this problem of potential *iggum*, by describing the two conditional marriages (i.e., both *kiddushin* and *nisuin al t'nai*)¹ that he himself

¹ As is well known, the terms *kiddushin* and *eirusin* are halachically interchangeable. Neither denote *nisuin* (*Yad Habaẓakah, Hilbot Isbut* 1:3, 12:1–3). For the sake of brevity, the term “conditional marriage” will be used in this article to include both *kiddushin* (= *eirusin*) *al t'nai* and *nisuin al t'nai*. It should be noted that the general topic of *nisuin al t'nai*—as opposed to *kiddushin al t'nai*—is worthy of a far more expansive discussion than entailed by this article. This article will

Dr. Sara Weinstein is a lecturer in Rabbinic Studies and Tanakh at Efrata Teachers College in Jerusalem.

Rabbi Bernard L. Weinstein M.D. is a child, adolescent and adult psychiatrist in private practice in Jerusalem. He also works as a private consultant for Haredi special educational facilities in Jerusalem and Ashdod.

had performed in prior years as well as the conditional marriage that was performed for this young couple in 2007 under his direction. The conversations we had with R. Amital in 2007 regarding the issue were written down at the time and are now being presented in English.²

Halachic Background

The conversion of Jewish men (male apostasy) in the Middle Ages to Islam or Christianity led to the tragic phenomenon of the wives of these men being left as *agunot*. The apostates would often disappear or simply refuse to give their wives a *get*. When a married Jewish man died childless, leaving behind him an apostate brother, the halachic requirement of *yibum*/*chalitzah* created additional difficulties.

As is well known, a childless widowed sister-in-law has the halachic status of a *shomeret yabam*, i.e., she cannot re-marry until she either undergoes *yibum* with her deceased husband's brother, or the deceased brother performs *chalitzah*. In the case of the deceased brother being an apostate, the option of *yibum* (which effectively meant marrying a non-Jew), needless to say, was undesirable. Alternately, the apostate would likely disappear from the Jewish community with his whereabouts being unknown—thereby making *chalitzah* impossible.³ In other cases, even though his whereabouts were known, he may have refused (perhaps out of resentment to his former family and/or religion) to perform the *chalitzah*.⁴

Two positions are quoted by the Tur and Shulchan Aruch with regard to the problem of a married Jewish man dying childless while having a surviving apostate brother. The first, that of R. Yehudai Gaon, is that the halachic problem actually vanishes as long as the brother's apostasy occurred prior to his Jewish brother's wedding (*Tur. Even Haezer* 157). In such a case, R. Yehudai simply exempts the widow from the need for *yibum* or *chalitzah*. His *psak* is based on the principle that the

deal with "conditional marriage" to prevent *iggun* caused exclusively by a potential need for *yibum*/*chalitzah*.

² This article is based on the Hebrew article published by these authors in *Tebumin* 37 (2017), pp. 248–255. It appeared as one of a series of articles devoted to solving problems of *iggun* and *get* refusal (Broyde and Levmore, pp. 228–239, Reiss pp. 240–247, and Bin-Nun, pp. 256–267).

³ See for example *Teshuvot haGeonim Sha'arei Zedek* part 3, *sh'ar* 1: 50, *Otzar HaGeonim, Yevamot bateshuvot* 22a 77-78 p. 34, *Shut Chayim She'al* part 1: 74, 26.

⁴ *Otzar HaGeonim, Yevamot* 22a pp. 34–37, *Teshuvot HaGeonim Sha'arei Zedek* 3 *sha'ar* 1: 28, 53, *Or Zarua* 1:655, Yitzchak Dov Gilat, *Perakim Behishtalshelut Halachah*, Ramat Gan: Bar-Ilan, 1992, pp. 187-188, 210–212.