The Chicago Center
Digest
Mishna Berura
THE DAILY RESOURCE FOR MISHNA BERURA YOMI
Sun, Jul 7 2024 ■ א' תמוז תשפ"ד
סימן של"ט סעיף ה'

Halacha Highlight

Marrying a widow

Shulchan Aruch Siman 339 Seif 5
הכונס את האלמנה
One who marries a widow

Shulchan Aruch rules that when marrying a widow or divorcee (מ"ב ס"ק ל"ב) the newly married couple should not have relations for the first time on Shabbos or Yom Tov. Mishnah Berurah (הנ"ל) explains that when marrying a woman who was previously married, the primary *kinyan* which gives the husband rights to his wife's wages and to inherit her property occurs when they have relations rather than when they stand under the *chupah*. Consequently, since Chazal prohibited business transactions on Shabbos, the *kinyan* of marriage is prohibited as well. Mishnah Berurah then notes that in Even HaEzer Shulchan Aruch writes that it is not necessary for the couple to actually have relations to affect the *kinyan*; rather it is sufficient for them to be in seclusion that allows them to have relations. Therefore, if a man marries a woman who was previously married on *erev* Shabbos and they go into seclusion that allows for relations, they have already affected the *kinyan* and are permitted to have relations for the first time on Shabbos.

Chazon Ish (אהע"ז סי' ס"ג ס"ק י"ח) writes that there is no fundamental difference between a woman who has never been married (*besulah)* and a woman who was previously married concerning the method by which the *kinyan* is affected. The difference is practical, but that difference finds expression *halachically*. When a woman marries for the first time, the *chupah* is adorned with all sorts of decorations and it is evident that the couple intends to affect marriage by standing together under the *chupah* and thus it constitutes a *kinyan*. When a woman has been previously married, they typically did not adorn the *chupah* so it is not evident that the couple intends to affect a *kinyan* by standing under the *chupah*. Therefore, the *chupah* does not affect the *kinyan* and it is marital relations that will affect the *kinyan*. However, if they adorn the *chupah* of a woman who was previously married, it would certainly affect a *kinyan* and the couple would then be permitted to have relations for the first time on Shabbos (ע' שעה"צ בשם הגאון).

Overview

Siman 339 Seif 5:

One who marries a widow may not have relations with her for the first time on Shabbos or Yom Tov (See above *siman* 280).

- The reason is that when marrying a widow or divorcee, since they have previously had relations the primary kinyan is relations rather than the *chupah* so it turns out that the *kinyan* is occurring on Shabbos. In Even HaEzer Shulchan Aruch rules that actual relations are not necessary and it is sufficient to be in seclusion where relations could occur. Therefore if a couple marrying on *erev* Shabbos were in seclusion before Shabbos it is permitted for them to have relations for the first time on Shabbos. Out of this consideration the wedding should be scheduled early enough for the couple to go into seclusion before Shabbos. Many later authorities maintain that even when marrying a *besulah* the couple should go into seclusion before Shabbos since there are authorities who maintain that standing under the *chupah* does not satisfy the *halachic* requirement of "*chupah*" and when they have relations on Shabbos the *kinyan* would be taking place at that time. However, for a *besulah* any seclusion is sufficient and it does not have to be seclusion that allows for relations since that would constitute "*chupah*" and they are considered fully married by virtue of that seclusion. Therefore, even when marrying a *besulah* the wedding should be scheduled early enough in the day for them to go into seclusion. (M.B. 32)