

HALOCHOSCOPE

This week's question:

A couple married in a civil ceremony. Their religious children would like the parents to go through a religious ceremony. May they do this on *Chol Hamoed*?

The issues:

- A) Jewish wedding ceremony and marriage
- B) *Halachic* status of civil marriage
- C) Weddings on *Chol Hamoed*

A) Jewish wedding and marriage

Marrying is a Scriptural positive *mitzvah*. In addition, many poskim consider intimate living together without a formal wedding ceremony to be a violation of a negative *mitzvah*. In fact, there are two *mitzvos*, one for the male and the other for the female. Each is also facilitating the other's violation. This raises the issue of *lifnei ivair*, causing another to sin. There is a concept of a *pilegish*, having a common law wife. However, for various reasons, this is not an acceptable option for the modern era. In any event, a couple living together without a marriage that is recognized *halachically*, are considered singles. Their relationship, for the most part, does not create a *halachic* bond. A man who has an intimate relationship with the immediate blood relatives of his wife, such as her mother or daughter, is liable of the gravest violation. Singles in a relationship are not in violation of those serious issues when engaging in intimate relations with those relatives of their partners. [They still violate the *mitzvos* mentioned earlier, but the liability is less.] Singles are not liable for the *kesuba*, marriage contract that obligates each partner in specific financial and personal responsibilities to one another. If singles separate, they do not require a *get*, *halachic* divorce, to formalize it.

The wedding ceremony includes two parts, the *erusin* and the *nisuin*. These were originally spaced a few months apart. The interim was devoted to preparing and grooming the young couple for married life. During this period they are considered married in terms of forbidden relations, but may not yet live together. *Nisuin* concludes the marriage ceremony. Nowadays, both are held together. They are separated under the *chupah* by a ceremonial reading of the *kesuba*, marriage contract. The marriage contract must be given to the kallah before the couple can enjoy married life.

The *erusin* is also known as *kidushin*, consecration. The woman is consecrated to the man, and thus forbidden to anyone else. The Torah recognizes three formats for *kidushin*: *kesef*, the *choston* gives an item worth a minimum amount of money; *shtar*, the *choston* gives a document stating that he hereby consecrates this woman as his wife; *biah*, intimate relations, for this purpose. [*Biah* as the initiating act of *kidushin* is condemned.] In the prevailing practice, *erusin* involves the *choston* giving the *kalah* a ring in the presence

of witnesses. This is his formal bonding of the two in marriage. At this ceremony, in the presence of a *minyan*, quorum of ten men, *birchas chasanim*, part one, is recited. Four sources are cited for the *brochos*. The Torah makes reference to *brochos* at the time that Eliezer took Rivkah for Yitzchok, and at the time Hashem brought Adam and Chava together. In these instances there was no *minyan*. In the story of Boaz and Rus reference is made to a *minyan* at the time the ceremony took place. A fourth source interprets a *pasuk* in *Tehilim* as a reference to *brochos* for matters of marriage.

At both parts of the ceremony a cup of wine is used. Part one involves the *brocha* for wine and *birchas erusin*. *Nisuin* involves reciting seven *brochos*, the first of which is on wine. They are all primarily praises of Hashem and prayers for the restoration of true joy in the reuniting of Hashem with his people and home in this world, the *bais hamikdash*. This is the *chupa*. After the formal *nisuin* ceremony, the couple is left alone secluded together. This is called *yichud*. Some call this the true *chupa*. According to one Talmudic view, *chupa* also works to consecrate the marriage. We do not follow this view, but it is taken into account for certain issues.

When held separately, a *seuda*, festive meal, accompanies each ceremony. Nowadays, one *seuda* follows the double ceremony. This part of the ceremony also has Scriptural sources. It should be a proper bread based meal, in the company of guests. There should be ten men present. The *Shechina*, Divine Presence, is also present in a sense. When *bircas hamazon* is recited, the seven *brochos* are repeated. If either the *chason* or *kalah* is previously unmarried, any *seuda* during the following week is also considered part of the *seudas chasanim*. The same *brochos* would be recited at *bircas hamazon*. [See Yevamos 58a 97a Kidushin 2a-12b 65a-b Kesubos 7a-8b 57a Psachim 102b Sukah 25b Megilah 23b, Poskim. Kalah Rabasi 1. Pirka dR' Eliezer 12, 16. Rambam Ishus 1:1-4 etc. Tur, Sh Ar EH 1 15:30 26:1 33:1 42:2-5 55:2 61-62 66:1, commentaries.]

B) Civil marriage

If a couple live together as husband and wife without *kidushin* and *nisuin*, but with a formal legally binding marriage, it would appear that they are not considered *halachically* married. Each *biah* involves the aforementioned violations. However, this is the subject of major debate. There are two parts to the debate: the ceremony, or lack thereof, and the lifestyle. A civil ceremony lacks the basic elements of a Jewish wedding. The husband does not perform *kidushin* at all. He might give a ring as a formality, but might also receive one in return. There are no valid witnesses. There is no *brocha*. There is no valid *kesuba*, although this is only required in locations where a written *kesuba* is customary. Where no written *kesuba* is customary, it becomes obligatory automatically anyhow. The parties do not acknowledge the basic commitments of the Jewish marriage, nor the basic wedding format. While they might commit to each other in a secular sense, they do not recognize the gravity of a changed *halachic* status, that causes death penalties for its violation. Being registered usually affords certain legal privileges and liabilities. There is no *nisuin*. There is no witnessed *yichud*. There is no *minyan*.

On the marriage front, the couple has never formally given up their *halachic* status of singlehood. Every time they have *biah* they are in violation. *Halachically*, there are three categories of *biah*, in terms of the intent. To consecrate the marriage most poskim

maintain that it requires intent. It can be done outside marriage, for pleasure, sin or lust. It can be part of marital life, but not to formally consecrate it. A married couple could have in mind to live as married people, rather than for sin. However, this is all based on their perception that their original wedding was official.

Furthermore, the Talmud forbids a couple to have *biah* without the formal *brocha*. Some say this refers to the ceremony, rather than the actual *brocha*. This couple had neither. Some say that this refers specifically to a couple that had *kidushin* and have not yet had *nisuin*. Accordingly, the couple is not in violation of this specific prohibition, if we say they had no *kidushin*. The Talmud forbids *biah* when a couple has no valid *kesuba*. A verbal commitment sometimes implies a *kesubah*. This couple has neither of these.

Some poskim maintain that a civil marriage can be *halachically* binding to require a get. This has far-reaching consequences, but will it satisfy the *brocha* and *kesuba* requirements? The main bases for this view are the possibility that the secular commitment can constitute intent to live as a *halachic* couple, and that the subsequent lifestyle can constitute *biah* for the sake of consecration. The objections to the first idea are that the Torah specifies the acts of *kidushin*. Intent alone does not seem to be critical, let alone sufficient. There would have to be very specific circumstances to validate the witnesses. The entire ceremony is usually for legal purposes. The objections to the second idea are more detailed. The early poskim already raised the issue with regard to secular marriages. They were discussing apostate Jews. However, many of the same issues apply to irreligious or freethinking Jews. The basis for considering a *biah* to consecrate is based on a Talmudic concept. One faced with a choice of doing something forbidden or doing it in a permissible way, would certainly do the permissible thing. Thus, one who is with a partner in circumstances that could be permissible with intent for consecration, is automatically presumed to choose the permissible option. However, the Talmud uses this idea in specific circumstances. The question is whether they can be expanded to this case. In addition, the parties must be basically religious, regardless of the act in which they are engaged. An irreligious person, even if it is not ideological, could not be credited with this presumption. A critical issue is witnesses. While their *biah* is not actually watched, their life as a couple implies it. To consider this implied consecration, the neighbors must be acceptable for *halachic* testimony. If the couple live in secular or non-Jewish neighborhoods, this is not likely. There is also debate on whether the couple or witnesses need to be aware of the act of consecration. Some maintain that public knowledge is not quite the same as regular testimony, and it works differently.

In practice, the poskim either tend to stringency, or recommend it where possible. This usually applies when the marriage is dissolved. If they wish to remarry other partners, they should obtain a *get*. If this is impossible, many poskim maintain that the first marriage does not require a *get*. Our case involves a separate issue. Since they are currently in a relationship that involves various violations, they should be persuaded to validate their marriage *halachically*. Some poskim suggest that this depends on the culture and the lifestyle of the couple. If there is a chance that they will terminate the relationship without obtaining a valid *get*, or that they might be unfaithful, it is better that they remain in the current status. Since some poskim consider this an invalid marriage, violating it

will not lead to the serious consequences that violating a *halachic* marriage would. Another consideration is the shame and publicity.

Assuming that a *halachic* marriage is encouraged, some issues arise. If their current marriage is real, but without the *brocha* and the *kesuba*, should the *brocha* be recited? The issue is whether one can recite the *brocha* so long after the actual *kidushin* took place. Since we follow the view that the *brocha* need not be said prior to the *mitzvah*, some say that it may be recited long after it. However, some maintain that it should be within a reasonable time that they could be connected. If a *brocha* was recited but the *kidushin* was invalid for tangential reasons, the *kidushin* must be done over. In some cases, a new *brocha* is not recited, but the earlier one counts. In others, a new *brocha* is recited. Thus, we see that this *brocha* can be said in similar cases to ours, where the couple actually go through with an act of *kidushin*. If the marriage is considered null *halachically*, they may do the *kidushin* now, with the *brocha*. This is the accepted position. The *kesuba* reflects the single status of the parties before marriage. In this case, they were not single before this *kidushin*, or were they? Should we consider their status before their civil marriage and work retroactively? The poskim debate this with differing conclusions. [See Section A. Yevamos 107a Kesubos 73a Gitin 81a-b, Poskim. Tur BY DM Sh Ar EH 26:1 31:4 33:1 34:3 61:1 149:6, sources, commentaries. Maharam Shik EH:21. Peirushei Ivra I:1-5. Igros Moshe EH:I:74-77 II:19 III:6 20 23 25 IV: 1 13 46 59 75-78 80 81. Chelkas Yaakov I:71. Tzitz Eliezer II:19. Heichal Yitzchok EH:II:28. Minchas Yitzchok II:111. Avnei Shoham EH:64. Teshuvos Vehanhagos I:353 745 II:625 642.]

C) *Chol Hamoed*

There are four reasons to refrain from weddings on *Chol Hamoed*. The Talmud derives from various sources that one should not confuse the joy of two *mitzvos* together. One cannot devote himself to the joy of the wedding when trying to enjoy the *Chag*. In addition, the Torah specifies that one should rejoice with the *Chag*, rather than with a new wife. In addition, one should not busy himself with the bother of the wedding on *Chol Hamoed*. Finally, people might delay weddings for convenience to *Chol Hamoed*. This involves delaying the *mitzvah*. Some of these reasons are considered Scriptural by many poskim, while others are Rabbinically instituted.

One who remarries a woman he divorced may hold this wedding on *Chol Hamoed*. The joy is muted, since this is not really a new wife. The poskim raise the issue of redoing a wedding which was not done right the first time. This is similar to remarrying his divorced wife. They are not new to each other. In fact, they are still currently living as husband and wife. According to the view that this is also permitted, due to the muted joy, our case should be permitted. In our case, they consider themselves married. It should be similar to an invalid ceremony that is redone. [See Moed Katan 8b-9a, Poskim [Ksav Sofer sugia 9]. Tur Sh Ar OC 546:1-2, commentaries (ArH). Kedushas Bais Yisroel 10.]

In conclusion, the wedding may be held on *Chol Hamoed*.

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