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Kiddushin Daf 10

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Daf Notes is currently being dedicated to the neshamot of

Moshe Raphael ben Yehoshua (Morris Stadtmauer) o”h

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May the studying of the Daf Notes be a zechus for their neshamot and may their souls find peace in Gan Eden and be bound up in the Bond of life

Acquiring Through Cohabitation

The *Gemora* inquires: Is the beginning of cohabitation (*either when the male organ makes contact with the female organ, or the first stages of penetration*) the part that acquires, or is the end of copulation the part that acquires? The difference would be if he began to cohabit with a woman, and she then accepted *kiddushin* from someone else. Alternatively, this would make a difference regarding whether or not a *Kohen Gadol* may acquire a (*virgin*) wife through cohabitation. [*If it is the completion of the act that acquires, he may not do so, as she will not be a virgin when the kiddushin takes effect, and the Torah commands that he must marry only a virgin.*] What is the law?

Ameimar answered in the name of Rava: Whoever cohabits does so with the intent of completing intercourse (*and therefore it is the end of cohabitation that effect kiddushin*). (10a)

What does Cohabitation Accomplish?

The *Gemora* inquires: Does cohabitation effect marriage (*nisuin*), or does it effect only betrothal (*erusin*)? The difference would be whether he inherits her, can become impure to her (*if she dies and he is a Kohen, who may only become impure to dead close relatives, and this would include a wife after nisuin*), and annul her vows. If it effects *nisuin*, then he inherits her, he may become impure to her and he annuls her

vows, while if it effects only *erusin*, he does not inherit her, he may not become impure to her and he may not annul her vows. What is the law?

Abaye attempts to answer this question by quoting the following *Mishna* (*in Kesuvos 46b*): A father has jurisdiction over his daughter (who is a *na'arah* or younger) regarding her betrothal; he receives the money, he accepts the document, or he can give his daughter to him for cohabitation. The father is entitled to that which she finds, and to her earnings and to annul her vows. He receives her *get*, but he does not eat the fruit of her property during her lifetime (*if she had inherited property from her mother's family*). Once she is married (*nisuin*), the husband exceeds the father in that he does eat the fruit of her property during her lifetime. Abaye points out that the first part of the *Mishna* gave a case where she was acquired through cohabitation, and then gives a contrasting case where she is married. [*This implies that it only effects betrothal!*]

The *Gemora* answers: It is possible that the contrasting case of marriage was when the other methods of *kiddushin* listed in the *Mishna* are used.

Rava attempts to answer this question from a *Mishna* (*in Nidah 44b*): A girl who is at least three years old can become betrothed through cohabitation, and if a *yavam* cohabits with her, he has acquired her, and if she is married and someone else cohabits with her, he

would be liable for cohabiting with a married woman, and if she is a *niddah* and someone cohabits with her, he will become *tamei* to such an extent that he will contaminate a bottom mattress (with the same degree of tumah, just as a cloth which was spread) over a zav (but not to the same degree applicable to the niddah herself). If a *Kohen* marries her (*with nisuin*), she is entitled to eat *terumah*. If one of the arayos listed in the Torah cohabit with her, they are executed on her account, but she is exempt. And if she is a daughter of a *Kohen* and a disqualified person cohabits with her, she becomes disqualified from eating *terumah*. Rava points out that the *Mishna* first discusses her being acquired through cohabitation, and then gives a contrasting case of when she is married. [*This implies that it effects only betrothal!*]

The *Gemora* answers: This is what it was saying: If this nisuin (which was accomplished through cohabitation) was with a *Kohen*, she may eat *terumah*. [*The case of marriage is a continuation, not a contrast.*]

The *Gemora* attempts to answer this by quoting the following: Yochanan ben Bag Bag already sent to Rabbi Yehudah ben Beseirah in Netzivin: I heard about you - that you say that a betrothed Jewish girl (*to a Kohen*) may eat *terumah* (*even prior to nisuin*). He sent back: You do not say this way? It is well established that you are an expert in many areas of the Torah. Do you not know how to expound a *kal vachomer*? If regarding a Canaanite slavewoman, where the law is that a *Kohen's* cohabitation with her would not enable her to eat *terumah*, but his acquisition of her with money would make her eligible to eat *terumah*; then a woman (*the wife of a Kohen*), where the law is that a *Kohen's* cohabitation with her enables her to eat *terumah*, is it not logical that betrothing her with money should allow her to eat *terumah*! However, what can I do, as the

Chachamim have already instituted a decree that a daughter of an Israelite who is betrothed (to a *Kohen*) may not eat *terumah* until after she was brought into the *chupah*.

The *Gemora* asks: What are the circumstances of the cases (*of the money and cohabitation*)? If the cases are when the cohabitation was performed together with *chupah* and (he deduces regarding a case where) money was given together with *chupah*, in both of these cases she is permitted to eat *terumah*! It must be that the case is when the cohabitation was performed together with *chupah*, and (he deduces regarding a case where) money was given without *chupah* (*she should be eligible to eat terumah*). This is not a good comparison, as in the first case, there are two acts (*cohabitation and chupah*) and in the second only one!?! Rather, the cases must be when the cohabitation was performed without *chupah* and (he deduces regarding a case where) money was given without *chupah*.

Accordingly, if we say that cohabitation effects nisuin, it is understandable why it was more obvious to him that (the case of) cohabitation is stronger than a *kiddushin* of money (*as cohabitation effects both kiddushin and nisuin, whereas an acquisition through money only effects erusin*). However, if cohabitation effects *kiddushin* only, why here (*in the case of cohabitation*) is it obvious to him (that she may eat *terumah*) and here (in the case of money) it is doubtful to him?

Rav Nachman bar Yitzchak answers: The case is where the cohabitation was performed together with *chupah* and (he deduces regarding a case where) the money was given alone without *chupah* (*that this should enable her to eat terumah*). And that which you asked

that this is not a good comparison, as in the first case, there are two acts (*cohabitation and chupah*) and in the second only one, the *kal vachomer* is still valid as follows: If regarding a Canaanite slave woman, where the law is that a *Kohen's* cohabitation with her would not enable her to eat *terumah* – even when it is performed together with *chupah*, but his acquisition of her with money without *chupah* would make her eligible to eat *terumah*; then a woman (*the wife of a Kohen*), where the law is that a *Kohen's* cohabitation with her, when it is performed together with *chupah*, enables her to eat *terumah*, is it not logical that betrothing her with money without *chupah* should allow her to eat *terumah*! However, what can I do, as the *Chachamim* have already instituted a decree that a daughter of an Israelite who is betrothed (to a *Kohen*) may not eat *terumah* until after she was brought into the *chupah*, on account of Ulla. [A woman betrothed to a *Kohen* might have some *terumah* when she is still in her father's house, and mistakenly give it to her brothers or sisters.]

The *Gemora* asks: Why didn't Ben Bag Bag agree to this reasoning?

The *Gemora* answers: Regarding a Canaanite slave woman, he (the buyer) leaves nothing (behind) in her acquisition (as money finalizes the act). Here (with respect to the betrothed woman), he (the husband) leaves something (behind) in her acquisition (as money is not sufficient to effect *nisuin*).

Ravina said: According to Torah law, it is obvious to him (*Ben Bag Bag*) that she (a woman betrothed to a *Kohen*) eats *terumah*. He sent him (R' Yehudah) regarding Rabbinic law. And this is what he sent him: I heard about you - that you say that a betrothed Jewish girl (to a *Kohen*) may eat *terumah* (even prior to *nisuin*),

and you are not concerned of "*simpon*" – "something that can force a cancellation" (*that a blemish will be found and the kiddushin will retroactively be nullified, meaning that she was never allowed to eat terumah*). He sent back: You do not say this way? It is well established that you are an expert in many areas of the Torah. Do you not know how to expound a *kal vachomer*? If regarding a Canaanite slave woman, where the law is that a *Kohen's* cohabitation with her would not enable her to eat *terumah*, but his acquisition of her with money would make her eligible to eat *terumah*, and we are not concerned for "*simpon*"; then a woman (*the wife of a Kohen*), where the law is that a *Kohen's* cohabitation with her enables her to eat *terumah*, is it not logical that betrothing her with money should allow her to eat *terumah*, and we should not be concerned for "*simpon*"! However, what can I do, as the *Chachamim* have already instituted a decree that a daughter of an Israelite who is betrothed (to a *Kohen*) may not eat *terumah* until after she was brought into the *chupah*, on account of Ulla.

Ben Bag Bag objects to this *kal vachomer*, for "*simpon*" does not apply by slaves (*there is no blemish that will invalidate the purchase*).

The *Gemora* explains: A blemish does not nullify a sale by a slave, for if the defect is recognizable from the outside, the buyer has seen it (*and he nevertheless purchased the slave*). If the defect is on the inside, what difference does it make; a slave is meant to work and this type of blemish should not hinder the slave from working at all. If the slave is found to be a thief or kidnapper, the sale is valid anyway. What can there be that would nullify a sale? If he was found to be an armed bandit or a person sentenced to death by the government (*which would nullify the sale*), such characters are generally public knowledge. (*Thus, there*



is no reason to prohibit a Kohen's slave from eating *terumah*.)

The *Gemora* asks: What is the practical difference between the two reasons?

The *Gemora* answers: The difference between them is in the following cases: If her intended husband accepted the *kiddushin* even if she has defects, or where her father delivered her to the intended husband's agents or where the father's agents went together with the groom's agents to deliver her to him. (10b – 11a)

DAILY MASHAL

EXPERT IN MANY AREAS

Rabbi Yehudah ben Beseira sent back to Ben Bag Bag: You do not hold this way? I understand that you are an expert in many areas of the Torah. Don't you know how to derive a *kal vachomer*?

Why must he be an expert in many areas of the Torah in order to expound a *kal vachomer*? Isn't a *kal vachomer* based upon logic?

Reb Elchonon Wasserman cites from Reb Chaim Brisker who explained as follows: One need not be an expert to expound a *kal vachomer*; however, the *kal vachomer* might be refuted from another area of Torah. In order for one to expound a *kal vachomer* that will not be refuted from anywhere else in the Torah, he must be an expert in all areas of Torah.

QUESTIONS AND ANSWERS FROM YESTERDAY'S DAF to refresh your memory

Q: From where is it derived that a bill of sale is written by the seller?

A: Either from the verse, "And he will sell from his ancestral heritage," or from a *halachah l'Moshe mi'Sinai*.

Q: Why does Rish Lakish disqualify a betrothal document when it is not written *lishmah*?

A: We learn out the *halachos* of *kiddushin* from *gittin* (*v'yatzah...v'haysah*).

Q: How can we find a case of a betrothed virgin *na'arah* if the verse "u'va'alah" teaches us that *kiddushin* will only be valid after *kiddushin* and *bi'ah*?

A: If he was *mekadesh* with a document without *bi'ah*.