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Kiddushin Daf 19

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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

### **Yiud For a Minor**

Rish Lakish asked: Can a person give his maidservant in *yiud* for his son (*meaning – to give the maidservant as a wife to his minor son, just as he is permitted to do for his adult son*) who is a minor? The Torah says that one can do so for his son, and therefore possibly means even a minor. Or perhaps it means a son like him; just as he is an adult, his son must be an adult?

Rabbi Zeira attempts to prove this from a *braisa*. The *braisa* states: “A man,” this excludes a minor. “Who will commit adultery with his friend’s wife,” this excludes the wife of a minor. If you will say that a minor can perform *yiud*, this explains how the *braisa* can discuss excluding the wife of a minor. If he cannot perform *yiud*, how is it possible that a minor can have a wife that we would need a special verse to exclude this case? Let us resolve from here that his maidservant may be given in *yiud* to his minor son.

Rav Ashi says: The case of the *braisa* is where a *yavam* who is nine years old cohabits with his *yevamah*. According to Torah law, she is attached to him even before the marriage (*she cannot marry anyone else until he performs yibum or she submits to chalitzah*). One might therefore think that since she is Biblically attached to him, and his (*a nine year old*) act of copulation is legally recognized, the *yevamah* should be regarded as a married woman, and one who commits adultery with her should be punished like a regular adulterer. This is why the verse

is needed. [*There is therefore no proof that a minor can perform yiud.*]

The *Gemora* asks: What is the law? The *Gemora* attempts to answer this from the following statement. Rabbi Ayvu says in the name of Rabbi Yanai: *Yiud* can only be done by an adult (*and not for a minor*), and only with knowledge.

The *Gemora* asks: Aren’t these two the same thing? Rather, he is saying, “Why must *yiud* be done only by an adult? This is because it requires knowledge.”

Alternatively, the knowledge refers to her knowledge. This is as Abaye the son of Rabbi Avahu taught that the *braisa* states: “That he did not perform *yiud* with her,” teaches that he is required to notify her (*when he is performing the yiud*). Abaye explained that this refers only to the *kiddushin* of *yiud* (*and not an ordinary kiddushin with a minor, when the father accepts the kiddushin on her behalf*) and it is according to Rabbi Yosi the son of Rabbi Yehudah, who says that the original money from the sale of the maidservant is not money earmarked for *kiddushin* of *yiud* (*and the kiddushin is not valid retroactively; rather she herself is accepting the kiddushin; this is why he is required to tell her that he is performing yiud with her and that he is using a perutah of her value for yiud*).

Rav Nachman bar Yitzchak says: Even if they (*the original money*) are for *kiddushin* of *yiud*, she nevertheless must be told as the Torah says, “*y’adah*” (*which also implies that she should know*). (19a)

### **Original Money**

The *Gemora* asks: What is the *braisa* where this opinion of Rabbi Yosi is stated? The *braisa* states: *She will (not) have yiud and he shall cause her to become redeemed.*" This teaches that if one wants to do *yiud*, there still must be time in the day (*at the end of six years*) for her to be redeemed (*meaning, she still has slave value of a perutah that she owes him*). From here Rabbi Yosi b'Rabbi Yehudah deduced: If there is still time in the day that she can do for him a *perutah* of work, the *yiud* can still be valid. If not, it cannot be valid. This implies that the first money from the sale was not given for *kiddushin* (*as if it was, we would not be concerned about how much value is left*).

Rav Nachman bar Yitzchak says that the proof above is not conclusive. It could be that the first money is for *kiddushin* of *yiud*, but the Torah said, "*he shall cause her to become redeemed,*" indicating *yiud* only takes place when redemption is feasible.

Rava says in the name of Rav Nachman: A person can say to his daughter who is a minor, "Go and get your *kiddushin*," based on Rabbi Yosi's opinion. Didn't Rabbi Yosi say that the first money was not for *kiddushin*, but if a *perutah* was left the *yiud* is valid? Here, too, this is the case (*and no further involvement from the father would be necessary*).

Rava says in the name of Rav Nachman: If a man performs *kiddushin* with a loan (*if he forgoes on it*) that has a security, it is valid based on the law of Rabbi Yosi. Didn't Rabbi Yosi say that the first money was not for *kiddushin*, but if a *perutah* was left the *yiud* is valid? This is essentially a loan (*for he is relinquishing her from her debt of service to him*) and she is the collateral, and whenever the master leaves a *perutah* and performs *yiud* it is valid. Here, too, it is valid.

The *Gemora* cites a *braisa*: How is the *mitzvah* of *yiud* done? He says before two witnesses, "You are betrothed to me," even if he does so at the end of the six years right before sundown. He acts with her as do married people from then on, not as with his maidservant. Rabbi Yosi the son of Rabbi Yehudah says: If there is still time in the day that she can do for him a *perutah* of work, the *yiud* can still be valid. If not, it cannot be valid. This is like someone who says, "Become betrothed to me from now, starting after thirty days." If someone else gives her *kiddushin* within those thirty days, she is betrothed to the first person (*for his kiddushin is retroactively valid*).

The *Gemora* asks: What is "like" this case regarding thirty days? If Rabbi Yosi's law is like this, this is difficult, as he implies that everything is down to the last minute (*and not retroactive*)!

Rav Acha the son of Rava says: It is parallel to the opinion of the *Chachamim*.

The *Gemora* asks: This is obvious!

The *Gemora* answers: One might think that being that the master did not say to the father he is doing *yiud* "from now" (*when he takes the money*) and the *yiud* is still valid, that if someone would not say to a woman "from now" that the law would still be that his *kiddushin* supersedes that of the second person who betroths her within thirty days. The *braisa* therefore says that a regular person still requires "from now" (*in order for it to be retroactively valid*).

Another *braisa* states: If someone sells his daughter, and then he went and betroths her to someone else, he "played around" with the first person and she is indeed betrothed to the second. These are the words of Rabbi Yosi the son of Rabbi Yehudah. The *Chachamim* say: If the first person wants to perform *yiud*, he may. This is like a

person who says to a woman that she should become betrothed to him after thirty days, and someone else betroths her within thirty days, that she is betrothed to the second person.

The *Gemora* asks: What is “like” this case regarding thirty days? If the *Chachamim’s* law is like this, this is difficult, as they said the first person can do *yiud*!

Rather, Rav Acha the son of Rava says: It is referring to Rabbi Yosi’s law.

The *Gemora* asks: This is obvious!

The *Gemora* answers: One might think that being that he did not tell the father immediately that he wanted to do *yiud* after thirty days (*i.e. a certain time*) his purchase is pushed aside. The *braisa* therefore makes clear that even this would not be sufficient as long as he didn’t say “from now” (*and it would therefore not be retroactively effective*).

Another *braisa* states: If someone sells his daughter, but makes a condition that *yiud* cannot be performed, the condition is upheld. These are the words of Rabbi Meir. The *Chachamim* say: If the master would like to perform *yiud*, he can, because this condition is against what is written in the Torah, and any such condition is invalid.

The *Gemora* asks: According to Rabbi Meir, is this condition valid? Doesn’t the *braisa* state: If someone says to a woman that she is betrothed to him on condition that he does not owe her support, clothes, or marital relations, the *kiddushin* is valid, but the conditions are invalid; these are the words of Rabbi Meir. Rabbi Yehudah says: In monetary matters, the condition is upheld.?

Chizkiyah answers: The case of a maidservant is different, as the verse states, “*For a maidservant.*” This implies that

she can also be sold only to be a maidservant (*with no potential of yiud*). (19a – 19b)

## INSIGHTS TO THE DAF

### MAKING A CONDITION AGAINST SOMETHING WRITTEN IN THE TORAH

The Gemara cites a Machlokes between Rabbi Meir and Rabbi Yehudah regarding whether a person may make a Tenai modifying the obligations stipulated by the Torah regarding monetary law ("Masneh Al Mah she'Kasuv ba'Torah"). Rabbi Meir says that if a man is Mekadesh a woman on condition that he not be obligated to give her She'er, Kesus, and Onah, the Tenai is invalid and the Kidushin takes effect fully (and he is obligated to provide her with She'er, Kesus, and Onah). Rabbi Yehudah says the Tenai is valid, and the Kidushin takes effect and he is not obligated to provide her with She'er, Kesus, and Onah. Rabbi Meir's view is difficult to understand. If the Tenai is null and void, then why should the Kidushin take effect at all? The man was Mekadesh the woman on condition that if he is not obligated to give her She'er, Kesus, and Onah, then he wants the Kidushin to take effect, and conversely, if he will be obligated in She'er, Kesus, and Onah, then he does not want the Kidushin to take effect! (Rabbi Meir requires a "Tenai Kaful" -- both sides of the condition stated explicitly -- whenever a Tenai is used, as the Mishnah says in Kidushin 61a.) Since the man specified clearly that he does not want the Kidushin to be valid if he will be obligated to give She'er, Kesus, and Onah, then how can the Kidushin take effect and obligate him in She'er, Kesus, and Onah? He did not have in mind for the Kidushin to take effect under such circumstances! (TOSFOS DH Harei Zu)

**ANSWERS:**

(a) The **RI** explains that we learn all the laws of Tenai, including the very fact that one may make a Tenai, from a verse (in Kidushin, *ibid.*) If not for the fact that the Torah teaches that there is such a thing as making a Tenai, we would not have known that there is a concept of Tenai at all. Had the Torah not taught us the concept of Tenai, that one may make a stipulation when making a Kinyan, we would have thought that when a person makes a Tenai as a precondition to a certain Kinyan, we just ignore the Tenai and the Kinyan takes effect. By teaching that a Tenai does work, the Torah is teaching that if the condition is not fulfilled, the Kinyan is annulled retroactively. In the situations in which the Torah does not teach that a Tenai works (such as a situation in which the Tenai counters that which is written in the Torah), we revert back to the original way we would have ruled had the Torah not taught us the concept of Tenai, and the Kinyan works regardless of the fulfillment of the Tenai.

This answer of Tosfos is very difficult to understand. Even without the Torah teaching us the laws of Tenai, we should know, logically, that if a person sells an item to his friend and stipulates that the sale should not be valid unless his friend gives him something or does something, then if the friend fails to fulfill the Tenai the sale should not be valid, since the person did not fully commit himself to the sale!

To answer this question, we must first analyze a related Halachah -- the Halachah of Bereirah. In many places in the Gemara we find the view that holds "Ein Bereirah," which means that a Kinyan cannot be effected if -- at the moment that it takes effect -- it is not clear upon *what* it takes effect. For example, a person cannot pick up an item in order to be Koneh it and say, "If it rains tomorrow, I want this act of Kinyan to be for Reuven, and if it does not rain tomorrow, I want this act of Kinyan to be for Shimon." If a person does make such a stipulation, then even if it rains the next day, the object will not belong to Reuven. Similarly, a person cannot eat fruits today, "The portion that I will choose to separate tomorrow will be Terumah on these fruits starting from now." If he does so, then

even if he separates a portion tomorrow, it will not serve as Terumah.

The logic for this, as the **RAN** explains in Nedarim (45b), is that "it is not appropriate for a Kinyan to take effect in a way that leaves a doubt as to how it took effect." This means that the Kinyan must take effect at the same moment at which the action which accomplishes the Kinyan is performed (such as the act of Hagba'ah (lifting up an item) in the case of a purchase, or Dibur (speech) in the case of making something Terumah). The Kinyan cannot take effect after the act, because the act which makes the Kinyan is no longer present. Thus, if at the moment that the act is performed, the Kinyan "does not know" where to take effect, the Kinyan does not take effect (or it takes effect on one of the two, regardless of what happens the next day; see Insights to Eruvin 37b). The Kinyan cannot see into the future, so to speak.

What is the difference between Bereirah and a Tenai? No Tenai should ever work if we say "Ein Bereirah," because the Kinyan cannot know what will happen in the future (whether the Tenai will be fulfilled or not) in order to be able to take effect now!

**RASHI** and **TOSFOS** (Gitin 25b, DH u'l'Chi Mayis) explain that when a person makes a Tenai, it is in his ability, and it is his intention, to fulfill the condition (for otherwise he would not have made the Kinyan in the first place). Hence, the Kinyan is not taking effect in a matter that leaves doubt. Rather, it takes effect *for certain* at the time the act of Kinyan is made, since he intends to fulfill the Tenai. What, then, is it that revokes the Kinyan retroactively when the condition is not fulfilled? The Kinyan has already been made and completed; it took effect, so how can it be revoked retroactively? The answer is that this is the reason why the Torah has to teach us the novel concept of Tenai -- even though the Kinyan was made, it can be revoked through not fulfilling the condition. This is what the Ri means to say -- since the Torah did not teach the concept of Tenai in a case where the Tenai contradicts the obligations of the Torah, then we revert to saying that the Kinyan is completed and nothing can uproot it

retroactively, since it has already been done and has already taken effect. The person who made the Kinyan *did* intend for the Kinyan to take effect for certain, since he was expecting the Tenai to be fulfilled.

For this reason, when a man makes a Kidushin on condition that he not be obligated to give She'er, Kesus, and Onah, he obviously thinks that he is able to create such a Kidushin and he has in mind that the Kidushin should be completed, except that it should be uprooted if it turns out that he is obligated to give She'er, Kesus, and Onah. But by that time, it is too late to revoke the Kidushin, since it already took effect.

(b) **RABEINU TAM** (cited by the Tosfos Yeshanim and the Tosfos ha'Rosh), the **RITVA**, and the **RASHBA** (cited by the Shitah Mekubetzes) explain that when a person makes a Tenai that contradicts the Torah, he does not really mean it, but he is just being "Mafligah b'Devarim" -- he is just frightening her with words. The Beraisa in Gitin (84a) teaches such a concept with regard to a person who says to his wife that he is giving her a Get on condition that she does something that is physically impossible to do (see Rashi there, DH Mafligah). Since he knows that the Halachah of the Torah requires that Kidushin be done in a certain way with certain obligations, it must be that he is not serious about his condition to alter those obligations, and therefore he probably has in mind to make a Kidushin, and he is just saying this condition in order to frighten her.

Rabeinu Tam might have rejected the explanation of the Ri because his explanation is logically sound only when the condition is something that will be fulfilled or not fulfilled at a point *after* the Kinyan is completed. In the case of Kidushin, though, the Kidushin takes effect *at the same time* that the obligations of She'er, Kesus, and Onah take effect (or do not take effect). Thus, since the Kidushin does not depend on a future event but on a present event, the Kidushin should not take effect (since he did not have in mind to make such a Kidushin that obligates him in She'er, Kesus, and Onah). (See also Rebbi Akiva Eiger.)

The Ri might have explained like the Rashba, who says that the condition that the husband was stipulating was not that Kidushin should take effect without the obligations of She'er, Kesus, and Onah. Rather, the husband was stipulating that Kidushin should take effect only if the woman *forgoes her entitlement* to She'er, Kesus, and Onah. This can take place after the Kidushin is effected. (This is not like the opinion of Rabeinu Elchanan as quoted later in Tosfos.)

The Ri, on the other hand, did not accept Rabeinu Tam's explanation, because "Mafligah b'Devarim" can only be applied to a Tenai made against something written in the Torah, but not when any of the other details of Tenai were omitted. However, we find that if a person makes a Tenai in the wrong order ("Ma'aseh Kodem le'Tenai"), then the Kinyan takes effect and we ignore the Tenai even though the logic of "Mafligah b'Devarim" does not apply (as the **RE'AH** points out)!

#### INSIGHTS INTO THE DAILY DAF

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#### QUESTIONS AND ANSWERS FROM YESTERDAY'S DAF

to refresh your memory

Q: What three things apply to a Jewish maidservant, but not to a servant?

A: She goes free when she becomes an adult; she cannot be sold again; she is redeemed against his will.

Q: Why don't we force a servant's relatives to redeem him?

A: Because he can sell himself again.

Q: Does *yiud* accomplish *erusin* or *nisuin*?

A: *Erusin*.