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Kiddushin Daf 52

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The Law Follows Abaye

The *Gemora* challenges Rava’s opinion (that betrothal must allow for cohabitation) from the following braisa taught by Tavyumi: If a man has five sons and another fellow has five daughters, and he (the first man) says to other, “Let one of your daughters become betrothed to one of my sons” (and he accepts *kiddushin* to that effect), every one (of the daughters) requires five *gittin* (as they need a get from each brother). If (before the *gittin* were given) one of them died, every one (of the daughters) requires four *gittin* (one from each brother) and *chalitzah* from one of the brothers. [But why should this be? It is a case where the marriage does not have the possibility of cohabitation. This is a refutation of Rava for he holds that such types of *kiddushin* are not effective!?!]

The *Gemora* notes: And if you will say that this too is talking about a case where it (the husband and wife) was originally recognized and it was only later that they became intermingled; [this cannot be] as the braisa explicitly taught: “Let one of your daughters become betrothed to one of my sons.” [This terminology shows that the married couple was clearly unknown from the outset. It is therefore a regular case of “*kiddushin she’ainan misurin l’biah*” -- “*kiddushin* that does not have the possibility of cohabitation,” which Tavyumi says is valid!] This is indeed a refutation of Rava.

The *Gemora* rules: The law is in accordance with Abaye in six cases (whenever he argues with Rava). The acronym

for these six cases is “YAL KGaM.” [The “K” stands for “*kiddushin she’ainan misurin l’biah*.”] (52a)

Betrothing with Stolen Objects

The *Mishna* had stated: It once happened with five women.

Rav said: We may derive four laws from our *Mishna*, three of which Rav took in his hand (as part of his teachings).

We derive that if a person betroths a woman with *shemitah* produce, the betrothal is valid. [Although produce of *Shemitah* is ownerless – that is while it is growing; one, however, may pick it up and acquire it for himself.] We also derive from here that if someone betroths a woman with stolen goods, it is invalid, even if it is stolen items that belong to her.

The *Gemora* asks: How is this apparent from the *Mishna*?

The *Gemora* answers: This is indicated by the fact that the *Mishna* said that they (the figs) belonged to them and they were grown during *shemitah*. This implies that the *kiddushin* is valid because it was *shemitah* produce, for they were ownerless, but if they would have grown during others years of the *Shemitah* cycle, it (the *kiddushin*) would not be valid (for the produce is stolen).

Rav continues: We also derive from the *Mishna* that a woman can be an agent for her friend, even if she will become a co-wife with her.



The *Gemora* asks: What is the other law (that we may derive from the *Mishna*?)

The *Gemora* answers: It is the law regarding a marriage which does not have the possibility of cohabitation (and we see that it would be effective).

The *Gemora* asks: Why didn't Rav include this as well?

The *Gemora* answers: This is because he was unsure if it (the reading of the *Mishna*) is like Abaye or Rava.

When Rabbi Zeira went up (to *Eretz Yisroel* from Bavel), he said this (Rav's) statement (*that kiddushin with stolen items is not effective*) to Rabbi Yochanan. Rabbi Yochanan said to him: Did Rav really say this?

The *Gemora* asks: Did Rabbi Yochanan himself not say this? Rabbi Yochanan himself said: If someone stole an object, and the owner had not despaired of retrieving it, neither the thief nor the owner can consecrate the object. The thief cannot because it is not his, and the owner cannot because it is not in his possession.

The *Gemora* answers: Rather, Rabbi Yochanan said, "Does Rav indeed agree with me?"

The *Gemora* asks a question from a *braisa*: If someone betrothed a woman with something that he obtained through robbery, extortion or thievery, or if he grabbed a *sela* (*large denomination of coin*) out of her hand and betrothed her, the *kiddushin* is valid. [*This is unlike the second conclusion of Rav based on the Mishna.*]

The *Gemora* answers: There (the *braisa*) is referring to a case where he stole the money from her (and evidently, she has consented to allow her 'husband' to acquire these items). [*This answer will be scrutinized further later in the Gemora.*]

The *Gemora* asks: Being that the last part of the *braisa* says, 'or he grabbed a *sela* from her,' the implication is that the first part of the *braisa* is talking about a case where he stole from others!?

The *Gemora* answers: The end of the *braisa* is explaining the first part of the *braisa*. If someone betrothed a woman with something that he obtained through robbery, extortion or thievery. What is the case? The case is for example, if he grabbed a *sela* out of her hand and betrothed her.

The *Gemora* asks: But our *Mishna* is referring to a case where he stole from her, and Rav says that she is still not *mekudeshes*.

The *Gemora* answers: The case of the *braisa* is where they had already agreed to marry (*so she accepts what he stole from her as kiddushin*). The *Mishna* is referring to a case where they had not agreed, and therefore the *kiddushin* is invalid.

There was a woman who was washing her foot in a barrel of water. A man grabbed some coins from his friend and threw it to her and said, "Become betrothed to me." The man came before Rava. Rava said to him that none of the scholars are concerned with Rabbi Shimon's opinion who says that in general, the assumption regarding a robbed item is that the owner already gave up hope of retrieving it (and therefore the *kiddushin* is ineffective).

There was a sharecropper who betrothed a woman with a handful of onions. He went before Rava. Rava asked him, "Who waived to you" (i.e., "Did the owner say that he relents on his share in these vegetables"?)

The *Gemora* qualifies: This applies only to a handful; however, if he would have taken a bundle (and betrothed her with it), he could tell the owner, "Just as I took one



bundle, you take one bundle, for one bundle is just like another bundle.”

There was a brewer (*he made the beer and split the profits with the owner*) who betrothed a woman with the sediments from a batch of date beer. When the owner of the beer saw this, he said to him, “Why didn’t you betroth her with better sediments?” He came before Rava. Rava told him: It is only regarding *terumah* that we say that (the owner’s statement of) “Why didn’t you separate from the better produce?” (is an indicator that he has approved of the fellow’s unsolicited separation of his *terumah*).

For it was taught in a *braisa*: How does someone separate *terumah* without the owner’s knowledge and have it be considered as a valid *terumah*? If someone goes into his friend’s field and he gathers and separates *terumah* without permission, the *halachah* is as follows: If the owner acts as if he stole, the *terumah* is invalid. If not, the *terumah* is valid. How do we know if he acts as if he was stealing? If the owner arrived and told him to take off better quality *terumah* and there indeed is better quality, the *terumah* is valid. Otherwise, the *terumah* is invalid (*as he was just being sarcastic*). If the owner was helping to gather and add *terumah*, the *terumah* is valid. However, Rava concludes, in this case the owner only told him to take better sediments because he was embarrassed to say otherwise, and she is not *mekudeshes*. (52a – 52b)

Mishna

If a *Kohen* gave a woman *kiddushin* from his portion of the *korbanos*, whether it was from *kodshei kodoshim* or *kodshim kalim*, the *kiddushin* is invalid. If someone betrothed a woman with *ma’aser sheini*, whether he did so knowingly or unknowingly, the *kiddushin* is invalid. This is the opinion of Rabbi Meir (*who holds that ma’aser sheini is regarded as Divine property*). Rabbi Yehudah says: If he did so unknowingly, the *kiddushin* is invalid. If he did so knowingly, the *kiddushin* is valid. If he betroths

her with *hekdesh*, the *kiddushin* is valid, if he did so knowingly. If he did so unknowingly, it is invalid. This is the opinion of Rabbi Meir. Rabbi Yehudah says: If he did so unknowingly, it is valid. If he did so knowingly, it is invalid. (52b)

Kodshim Kalim

The *Gemora* asks: Let us surmise that our *Mishna* is unlike the opinion of Rabbi Yosi HaGelili. He says in a *braisa*: It is written: “*If he will commit a treachery against Hashem (by lying to his fellow)*.” This includes *kodshim kalim*, which are considered his money. [*Our Mishna said one cannot be mekadesh with kodshim kalim, implying that they are not his money.*]

The *Gemora* answers: Our *Mishna* could even be according to Rabbi Yosi HaGelili. Rabbi Yosi might only hold that *kodshim kalim* that is alive is considered a person’s own money. However, after it is slaughtered, it is not, because the person now has it given to them (*the Kohanim and the owner*) “from the table of Hashem” (*the altar*). This is also implied in the *Mishna*, which says, “If a *Kohen* gave a woman *kiddushin* from his portion of the *korbanos*, whether it was from *kodshei kodshim* or *kodshim kalim*, the *kiddushin* is invalid.” The implication of the *Mishna* is that it only gave a case of “from his portion,” and not in general from *kodshim kalim* because it does not apply when the animal is alive.

The *braisa* states: After Rabbi Meir died, Rabbi Yehudah instructed his students not to let Rabbi Meir’s students into the study hall because they were seeking to argue. He understood that they were not seeking to argue for the sake of Heaven, but rather to try to show that they were smart. Sumchus pushed his way in anyway. He said: Rabbi Meir told me that if a *Kohen* gave a woman *kiddushin* from his portion of the *korbanos*, whether it was from *kodshei kodshim* or *kodshim kalim*, the *kiddushin* is invalid. Rabbi Yehudah got angry at his

students. He said: Didn't I tell you that you should not allow them to come in as they are not seeking to argue for the sake of Heaven, but rather to try to show that they are smart. What is a woman doing in the *azarah* (where the *kodshei kodshim* are located)? Rabbi Yosi said (to himself that he must answer): People will say, Meir died, Yehuda got angry, Yosi was quiet, what is going to be with the Torah? He therefore said: Couldn't a man accept *kiddushin* for his daughter in the *azarah*? Can a woman not appoint a messenger to accept *kiddushin* on her behalf in the *azarah*? What if she merely pushed her way in? [In all of these cases, it is possible for a woman to accept *kiddushin* in the *azarah*.] (52b)

INSIGHTS TO THE DAF

It's Worth a Perutah to Her

Rav said: We see four lessons from our *Mishna*, three of which Rav held of clearly. One is that a person who betroths a woman with *shemita* fruit has done a valid *kiddushin*.

Rashi explains that the novelty is that even though the produce is ownerless because of *shemita*, nevertheless, once he picks it up and takes it for himself, he acquires it, and he can use it for *kiddushin*.

The *Mishnah* *Lamelech* poses the following question: Can a man betroth a woman with something that to him is not valued at a *perutah*, but to the woman, it is worth a *perutah*? He resolves this from a *Rashi* in *Avodah Zarah* which seems to indicate that she would be *mekudshes*.

However, from *Rashi* in our *Gemora*, it would seem otherwise. What compelled *Rashi* to say that the man had acquired the *shemita* produce before he gives it to the woman? Even if he does not acquire it first, she should be *mekudshes*, for she acquires it!?

The *Chedvas Yaakov* explains that with respect to the produce of *shemita*, if it is not regarded as being in his possession, it will not be hers either, for we would say that it is regarded as Divine property (and it belongs to nobody). However, something that belongs to the man, but it is not worth a *perutah*, may be used to effect *kiddushin*, if to the woman, it is worth a *perutah*.

DAILY MASHAL

Rav Zilberstein related the story of Rav Eliyahu Dessler who came home from his wife's *levaya* and on Friday night did not use the *Kos* that was his wife's sacred family heirloom and came from Rav Yisroel Salanter but rather a different *Kos*. His *talmidim* were surprised as this was a *Kos* he used for so many years. Why now after his wife's *petira* did he choose not to use it? He answered that his wife's *Kos* had a more lenient *shiur* of *revi'is*, while the one that he chose that night contained a larger *shiur*. While his wife was alive he did not want to insult her, and chose to use her *Kos* since the *Kos* was clearly accepted by her illustrious ancestor. However now that she passed on he wanted to be *machmir* and use a *kos* that held a bigger *shiur*.