

5 Iyar 5776
May 13, 2016



Kiddushin Daf 63

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Daf Notes is currently being dedicated to the neshamot of

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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

Double Conditions

Abaye said: Rabbi Eliezer ben Yaakov, Rebbe and Rabbi Meir all hold that one can sell something that is not yet in this world.

That Rabbi Eliezer ben Yaakov holds like that can be proven from what was stated before (*even if someone says that the fruit of this row that is detached should be terumah for the fruit of this row that is still attached or visa versa, and he stipulates that this should happen when they are one third grown and they become detached, it is valid*).

That Rebbe holds like this can be proven from the following *braisa*: If a person buys a Canaanite slave on the condition that when he buys the slave, the slave will retroactively be set free, he is indeed not allowed to use him for any labor after the purchase. According to Rebbe, this is the meaning of the prohibition “Lo Sasgir Eved El Adonav” -- “do not deliver a slave unto his master” (*Devarim 23:16, meaning that a master cannot work his slave once he has already been freed*). This demonstrates that Rebbe must hold that one can sell something that is not yet in this world, as otherwise, the condition would not be valid.

That Rabbi Meir holds like this can be proven from the following *braisa*: If a man said to a woman, “You shall be betrothed to me after I convert,” or “After you shall convert,” or “After I shall have been set free from slavery,” or “After you have been set free,” or “After your husband dies,” or “After your sister (*my wife*) dies,” or

“After your *yavam* has submitted to *chalitzah* from you,” she, Rabbi Meir ruled, is legally betrothed! [*The kiddushin is effective when the respective conditions are fulfilled, though at the time of the betrothal they were still unfulfilled; this indicates that an act that involves something that is not yet in existence is nevertheless, valid.*] Rabbi Yochanan HaSandlar said: She is not betrothed. Rabbi Yehudah HaNasi said: She is betrothed except in two cases, where she is not betrothed. What is the reason that the Rabbis decreed that she is not betrothed? It is because we are concerned of hatred (*whenever the kiddushin is based upon someone’s death*).

The *Gemora* asks: Why didn’t Abaye include Rabbi Yehudah HaNasi in his list?

The *Gemora* answers: Rebbe is Rabbi Yehudah HaNasi.

The *Gemora* asks: Why didn’t he include Rabbi Akiva, for we learned in a *Mishna*: If a woman vows that her husband should not benefit from her work, he does not have to revoke the vow (*as she is already bound to give him the proceeds of her work*). Rabbi Akiva says: He should revoke the vow, as she might produce more than she must give to him (*and he will not be able to benefit from it*). [*Evidently, Rabbi Akiva considers monies that do not currently exist to effect vows. Seemingly, he would hold that one can sell something which is not yet in this world.*]

The *Gemora* answers: Did we not learn regarding this that Rav Huna the son of Rav Yehoshua said that the case of

our *Mishna* must be where she said, “My hands (*that perform the work*) should be *hekdesh* to Heaven!” Being that he hands are extant, this is not a question of making *Hekdesh* something that is not extant. (62b – 63a)

Mishna

If a man said to a woman, “Become betrothed to me on condition that I will speak about you (*on your behalf*) to the governor,” or “that I work one day for you as a laborer,” if he spoke about her to the governor, and he worked for her as a laborer, she is betrothed; and if not, she is not betrothed. (63a)

Betrothing with his Services

Rish Lakish said: She is betrothed only if he gives her a *perutah* (*and the speaking to the governor or the working for her is only a condition*). [If he would say, “You are betrothed to me with the money you owe me for speaking about you to the governor,” or “with the money you owe me for my working for you as a laborer,” the *kiddushin* is not valid, since the *Tanna* of our *Mishna* holds that “a worker’s wages are earned from the beginning to the end,” i.e., the worker does not earn his wages at the end of his work, but rather, he accumulates them from the beginning of his work until its conclusion; therefore, wages at the conclusion of his work are like a loan, and when a person betroths with a loan, *kiddushin* is not valid.]

The *Gemora* asks: But he cannot betroth her with his services!? Did we not learn in a *braisa*: If a man said to a woman, “Become betrothed to me with the service that I had driven you on a donkey,” or “that I placed you on a wagon or boat,” she is not betrothed (*for he is betrothing her with a loan*). However, if he said, “Become betrothed to me with the service that I will drive you on a donkey,” or “that I will place you on a wagon or boat,” she is betrothed!?

And we learned in another *braisa*: If a woman said to a man, “Sit with me as a companion, and I will become betrothed to you,” or “amuse me,” or “dance before me,” or “make something for me similar to this structure,” we evaluate the service. If it is worth a *perutah*, she is *mekudeshes*. [Evidently, one can be *mekadesh* with a service!?] This is a refutation of Rish Lakish!

The *Gemora* answers: Rish Lakish could answer that the *Tanna* of the *braisa* holds that wages are only owed to the employee at the end of the job (*and therefore it is not regarded as a loan*), and our *Tanna* holds “a worker’s wages are earned from the beginning to the end” (*and therefore it is regarded as a loan and the kiddushin is not valid*). (63a)

Mishna

If someone says to a woman, and says, “Become betrothed to me on condition that my father consents,” if the father agrees, the *kiddushin* is valid; otherwise, it is not. If the father died, she is *mekudeshes*. If the son died, we teach the father to say that he does not want (*for this will retroactively uproot the kiddushin, and she will not fall for yibum*). (63a)

Based upon the Father’s Consent

The *Gemora* asks: What does it mean when the *Mishna* said, “if the father agrees”? If it means that that the father must actually say “yes,” let us consider the *Mishna*’s middle case: If the father died, she is *mekudeshes*. But why should that be, being that he never said “yes”? Rather, the son must have meant, “on condition that my father will remain silent (*when he hears about it*).” [And now, the ruling of the middle case is understandable, for the father died before he heard, and he didn’t protest.] However, let us consider the last case of the *Mishna*: If the son died, we teach the father to say that he does not want. Why does his protest help now, but he was quiet (*when he heard about it*)? Rather, the middle and the last ruling must be referring to a case where he said, “on

condition that my father does not protest” (and since he did not specify a time for the protest, the father can protest forever, even if he was silent when he heard about it; and this would explain the middle case as well – if the father died, she is mekudeshes, for he will never protest).

The Gemora asks: It emerges that the first part of the Mishna is dealing with one case (on condition that the father remains quiet) and the last two parts of the Mishna are dealing with another case (on condition that the father should not protest)!?

Rabbi Yannai answered: Yes! That is correct.

Rish Lakish observed: We see from Rabbi Yannai that when faced with a Mishna that teaches two halachos (that cannot be resolved unless we say that they are dealing with two different cases or that they were authored by two different Tannaim), it is preferable to say that the Mishna is dealing with two different cases, rather than say that it was authored by two different Tannaim.

Rav Yosef the son of Ami said: Really, the Mishna is dealing with one case, and when the Mishna says “on condition that my father wants,” it means “on condition that my father does not protest from today until thirty days.” [The following is the explanation of the Mishna: in the first case – “if the father agrees” means that thirty days have passed and he didn’t protest, the kiddushin is valid. If he protested within thirty days, it is not valid. In the middle case, the explanation is that if the father died within thirty days, she is mekudeshes, for the father cannot protest any longer. In the last case, where the son died, we teach the father to protest within thirty days, for the father has the ability to revoke the kiddushin within this time period.] (63a – 63b)

Mishna

If a father said, “I accepted kiddushin for my daughter, but I do not know to whom it was from,” (he is believed and

she is forbidden to marry anyone), and a certain man comes and says, “I am the one who betrothed her,” he is believed. If two people come, and they each say, “I am the one who betrothed her” (she is forbidden to both of them, and to the entire world), they are both required to give a get, and if they want, one can give the get and the other one can marry her. (63b)

I Married Her

Rav said: The man is believed to give a get (and she may now remarry any man), but he is not believed to marry her (if he does not want to give a get). He is believed to give the get, for a man will not sin if he is not gaining. He is not believed to marry her, for we suspect that his Evil Inclination grabbed him (for he wishes that she should be married to him).

Rav Assi said: He is even believed to marry her. However, he admits that if the woman said, “Someone betrothed me, but I do not know who,” and a certain man comes and says, “I am the one who betrothed her,” he is not believed to marry her (for in this case, he will not need to be concerned about meeting up with the father, and as far as the woman is concerned, she will cover up for him).

The Gemora challenges Rav from our Mishna: If two people come, and they each say, “I am the one who betrothed her” (she is forbidden to both of them, and to the entire world), they are both required to give a get, and if they want, one can give the get and the other one can marry her. This is a refutation of Rav!?

The Gemora answers: Rav could say that in that case, it is different, for since there is another man with him, he is afraid (that the father will recognize that it is the other man who really married her).

The Gemora cites a braisa, which supports Rav: If a father said, “I accepted kiddushin for my daughter, but I do not know to whom it was from,” (he is believed and she is



forbidden to marry anyone), and a certain man comes and says, "I am the one who betrothed her," he is believed even to marry her.

If he married her, and another man came and said, "I betrothed her," we do not believe him to prohibit the woman to her first husband.

if the woman said, "Someone betrothed me, but I do not know who," and a certain man comes and says, "I am the one who betrothed her," he is not believed to marry her, for he knows that she will cover up for him. (63b)

Believing for Stoning

The *Gemora* inquires: Would we execute someone by stoning (*if she has relations with a man*) based upon the father's testimony (*that he married her off*)?

Rav said: We would not. We only believe the father with respect to a prohibition, but not for execution. Rav Assi said: We would. We believe the father for everything.

Rav Assi admits that if she would say, "I got married," we would not stone anyone.

Rav Assi notes the apparent contradiction in his rulings: If in a case (*the father said that he married her off*) where we believe a man that he is able to marry her (*if he comes saying that he was the one who married her*), and we rule that we would execute someone by stoning (*for having relations with this woman*). Then, in a case (*where she was the one who said that she got married*) where we do not believe a man to marry her (*if he comes saying that he was the one who married her*), shouldn't the *halachah* certainly be that we would execute someone by stoning (*for having relations with this woman*)!?

Rav Assi answers: There is a clear distinction. The Torah believed the father, but not her. [*The only reason that she is forbidden to every man is because of the principle of*

"shavya anafshei chaticha d'issura" i.e. she has made for herself a forbidden piece; she is compelled to abide by her declaration.]

Rav Chisda said: Even when it was the father testifying, we still would not execute someone by stoning (*for having relations with this woman*). He follows his own reasoning, for he stated: If a father said, "My son is nine years and one day old," or "my daughter is three years and one day old" (*which is when a cohabitation is legally recognized*), he is believed with respect of a *korban* (*if someone unknowingly had forbidden relations with them; this is because he is no worse than an ordinary one witness*), but not with respect to lashes and other punishments (*for two witnesses are needed for this*).

The following *braisa* supports Rav Chisda: If a father said, "My son is thirteen years and one day old," or "my daughter is twelve years and one day old," he is believed with respect of vows, *charamim*, consecrations and *arachin*, but not with respect to lashes and other punishments. (63b – 64a)

INSIGHTS TO THE DAF

Kinyan Kesef for an Idolater

The *Gemora* proves that Rabbi Meir holds a man may sell something that is not yet in existence from the following *braisa*: If a man said to a woman, "You shall be betrothed to me after I convert," or "After you shall convert," or "After I shall have been set free from slavery," or "After you have been set free," or "After your husband dies," or "After your sister (*my wife*) dies," or "After your *yavam* has submitted to *chalitzah* from you," she, Rabbi Meir ruled, is legally betrothed! [*The kiddushin is effective when the respective conditions are fulfilled, though at the time of the betrothal they were still unfulfilled; this indicates that an act that involves something that is not yet in existence is nevertheless, valid.*]



The Acharonim ask: The *Gemora* in Bava Kamma (70b) explains that the acquisition using money (*kinyan kesef*) functions in the following way: When the seller receives the money, he becomes obligated to give the item being exchanged with the money. Now according to those that hold that it is permitted to steal from a gentile, how can the idolater betroth this woman with money after he converts? The woman is not obligated to return the money, and if she will lose the money, she would not be required to compensate him! If so, where is the *kinyan*?

Reb Shimon Shkop answers based upon the opinion of the Yereim, who says that even according to those that hold that it is permitted to steal from a gentile, one cannot fulfill his *mitzvah* with an esrog that he stole from a gentile. This is because it is not regarded as "his," for the Torah did not render their money ownerless that anyone has the right to possess their money. "Stealing from an idolater is permitted" means that there is no prohibition against keeping that which was stolen from them. However, since it does not belong to the Jew, he still has an obligation to return it to its rightful owner, and he would be liable to compensate the gentile if he would lose it. Accordingly, the *kinyan* of money would still apply to an idolater.

Perhaps they Repented

The *Gemora* inquires: Would we execute someone by stoning (*if she has relations with a man*) based upon the father's testimony (*that he married her off*)?

Rav said: We would not. We only believe the father with respect to a prohibition, but not for execution. Rav Assi said: We would. We believe the father for everything.

Rav Assi admits that if she would say, "I got married," we would not stone anyone.

Rav Assi notes the apparent contradiction in his rulings: If in a case (*the father said that he married her off*) where

we believe a man that he is able to marry her (*if he comes saying that he was the one who married her*), and we rule that we would execute someone by stoning (*for having relations with this woman*). Then, in a case (*where she was the one who said that she got married*) where we do not believe a man to marry her (*if he comes saying that he was the one who married her*), shouldn't the *halachah* certainly be that we would execute someone by stoning (*for having relations with this woman*)!?

Rav Assi answers: There is a clear distinction. The Torah believed the father, but not her. [*The only reason that she is forbidden to every man is because of the principle of "shavya anafshei chaticha d'issura" i.e. she has made for herself a forbidden piece; she is compelled to abide by her declaration.*]

The Maharik (shoresh 33) writes concerning a case where one witness testifies that a certain *shochet* was slaughtering improperly and the *shochet* himself contradicts the witness; since the witness is not believed, he himself is permitted to eat all future meat slaughtered by this *shochet*. This is not comparable to a case where a witness testifies regarding wine that is forbidden on account of it being *yayin nesech* because here there is a possibility that the *shochet* will repent and slaughter properly.

The Pri Chadash (Y.D. 1, 14) asks: Why don't we apply the principle of "*shavya a'nafshei chaticha d'issura*," one who states that something is forbidden, even if he is not believed in respect to everyone else, renders the object forbidden to him (*as is evident from the Gemora in Kesuvos 9a*)? All the meat slaughtered by this *shochet* should be forbidden to this witness!?

The Pri Megadim (Sifsei Daas, *ibid*, 41) answers that the Maharik is referring to a case where the witness retracted and said that he had testified falsely. In such cases, the



principle of “*shavya a’nafshei chaticha d’issura*” does not apply.

Rav Elyashiv answers: The reason why one can render the object forbidden with the principle of “*shavya a’nafshei*” is not because he is believed in respect to himself; rather, it is because it is regarded as an oath. The witness is taking a vow forbidding himself from this particular object. Accordingly, he explains that the witness who testified regarding the *shochet* it making a vow that he will not eat the meat from this animal, however, he will not be prohibited, on account of his vow, against eating from any other animal that this *shochet* slaughters.

The *Mishna* Lemelech (Hilchos Shechitah 1:26) challenges the ruling of the Maharik from a *Gemora* (Kesuvos 44a) which discusses a case where two deeds were given over regarding the same field. The ruling is that the second deed cancels the first one. Rafram explains that the recipient has admitted to the other that the first deed is invalid. Accordingly, the *Gemora* continues that these witnesses must be regarded as legally unfit for further evidence concerning this recipient since he is stating that they put their signatures to an invalid document. We do not say that they should be valid witnesses later, for perhaps they repented. What is the difference between the two cases?

The Shaar Hamishpat (92:7) answers: The Maharik rules that all meat slaughtered by this *shochet* will be permitted to eat by the witness because there is a double doubt; perhaps, he has slaughtered the animal properly and perhaps he repented. Just because he slaughtered improperly (*according to the witness’ testimony*) one time, it is not logical that we should prohibit his slaughtered meat forever. However, in respect to testimony, once the recipient has stated that these witnesses testified falsely, they will be disqualified to offer testimony for him forever. Even according to those that hold that we can apply the principle of a double

doubt in regards to monetary judgments, here, it will not apply. What can be said? Perhaps the witnesses will testify truthfully and perhaps they repented. This logic is not applicable by testimony, for testimony functions as a proof, and if we are uncertain if the witnesses repented or not, they cannot be accepted as witnesses because we have no proof that they are testifying truthfully. Therefore, they will not be believed for all future testimonies regarding this recipient.