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Food for the Orphan Girl

There was an orphan boy and girl that came before Rava. Rava said to their guardian: Provide extra food for the orphan boy in order that he can sustain his sister.

The Rabbis challenged Rava: Aren't you the one who has said that sustenance, the *kesuvah* obligations and provisions for the dowry are only collected from land and not from moveable property?

Rava replied to them: If the boy would want a maid to care for him, would we not provide her with food even from the moveable property? Certainly here, where there are two reasons to give her (*she will care for him and she is his sister*), we may provide her with food from the moveable property. (51a)

Land and Moveable Property

The *Gemora* cites a *Baraisa*: Both land and movable property may be seized (*from the orphans*) for the maintenance of the wife and for the daughters; these are the words of Rebbe. Rabbi Shimon ben Elozar ruled: Land may be seized for the daughters (*for maintenance and their dowry*) from the sons, for (*the younger*) daughters (*for the inheritance which is split equally among all the daughters*) from (*the older*) daughters, for (*the younger*) sons (*for the inheritance which is split equally among all the sons*) from (*the older*) sons and for the sons from the daughters where the estate is large, but not where it is small (*if it is not sufficient for the maintenance of the sons and the daughters until they become a bogeres; in such a case the estate belongs to the daughters while the sons may go begging*). Movable property may be seized for the (*younger*) sons from the (*older*) sons (*as inheritance*), for the (*younger*) daughters from the (*older*) daughters and for the sons from the daughters (*as inheritance*), but not for the daughters (*for their maintenance*) from the sons.

The *Gemora* notes: Although we have an established rule that the *halacha* follows Rebbe where he differs from his colleague, the *halacha* here follows Rabbi Shimon ben Elozar. For Rava stated: sustenance, the *kesuvah* obligations and provisions for the dowry are only collected from land and not from moveable property. (51a1 – 51a2)

Mishnah

(*This Mishnah is based on the legal principle that the kesuvah is a "condition of the Court," i.e., all the statutory obligations of the kesuvah are binding on the husband, even if they are not expressly written in the kesuvah.*)

The *Mishnah* states: If he did not write her a *kesuvah*, a virgin collects two hundred, and a widow a *maneh*, because this is a condition of the Court. If he wrote her a field worth a *maneh* instead of two hundred zuz, and he did not write her, "All the property that I own are pledged

for your *kesuvah*," he is obligated anyway, because this is a condition of the Court.

If he did not write for her, "If you will be taken captive, I will ransom you, and I will take you back to me for my wife"; and for a *kohen's* wife, "I will return you to your town (*since she is forbidden to remain with him*), he is obligated anyway, because this is a condition of the Court.

If she was taken captive, he is obligated to ransom her. And if he said, "Here is her *get* and her *kesuvah*, let her ransom herself," he is not allowed (*because he was obligated to redeem her as soon as she was taken captive*). If she fell ill, he is responsible for her healing (*this is regarded as sustenance*). If he said, "Here is her *get* and her *kesuvah*, let her heal herself," he is allowed. (51a2)

Property Pledge

The *Gemora* asks: Who is the *Tanna* of our *Mishnah* (*who maintains that the wife collects her kesuvah even though the husband did not write a kesuvah*)?

The *Gemora* answers: It is Rabbi Meir, for he said (*in a Mishnah*) that anyone who undertakes to give his virgin wife less than two hundred *zuz* or for his widow less than a *maneh*, it is regarded as if the husband is cohabiting promiscuously. For if the *Mishnah* would be following Rabbi Yehudah's opinion, he said the following: The husband may write for his wife a *kesuvah* of two hundred and she writes to him a receipt which states, "I received from you a hundred" (*she is forfeiting a portion of the kesuvah*), or he writes to a widow a *kesuvah* of one hundred and she writes to him a receipt which states, "I received from you fifty."

The *Gemora* asks: Let us examine the next *halachah* stated in the *Mishnah*: If he wrote her a field worth a *maneh* instead of two hundred *zuz*, and he did not write her, "All the property that I own are pledged for your *kesuvah*," he is obligated anyway, because this is a condition of the Court. This would seemingly be following the opinion of Rabbi Yehudah, who holds that the omission of pledging property in a contract is deemed to be the scribe's oversight (*and not that he is not guaranteeing this pledge*). For if you say that it is Rabbi Meir, he says that the omission of pledging property in a contract is not regarded as a scribe's oversight. For we learned in a *Mishnah*: If a man found notes of indebtedness, if they contain a clause pledging property, they should not be returned to the creditor, for *Beis Din* will seize properties based on these documents (*even when the borrower admits that he still owes the money, collusion with the object of robbing purchasers may be suspected*). However, if they do not contain a clause pledging property, they may be returned to the creditor, for *Beis Din* will not seize properties based on these documents; these are the words of Rabbi Meir. The *Chachamim* (*Rabbi Yehudah, who frequently argued with Rabbi Meir*) hold that the documents should not be returned in either case, for *Beis Din* will seize properties based on these documents (*even when they do not contain a clause pledging property; for we assume it was a scribe's oversight*). How can it be that the first *halachah* of the *Mishnah* follows Rabbi Meir's opinion and the second *halachah* follows Rabbi Yehudah's opinion?

Perhaps, you will answer that the *Mishnah* is following Rabbi Meir's opinion completely, and Rabbi Meir differentiates between an ordinary document and a *kesuvah*. Rabbi Meir would hold that an omission of the property pledge by a *kesuvah* is regarded as a scribe's oversight because it is a stipulation of the court. It can be proven from the following *Baraisa* that Rabbi Meir does not make such a distinction. For we learned in a *Baraisa*: There are five cases where a creditor may only collect from properties currently owned by the debtor (*and not from properties that were sold to others*). They are: The fruits and the improvements of the fruits (*where a field with its produce was taken away from a buyer by the man*

from whom the seller had robbed it; the buyer who may recover the cost of the field itself from the seller's sold or mortgaged property may not recover the cost of the produce except from his free assets), one who obligates himself to support his wife's son or daughter, a document of a debt where the property pledge was omitted and a *kesuvah* without a property pledge. Now, who is the *Tanna* that holds that the omission of pledging property in a contract is not regarded as a scribe's oversight? Rabbi Meir; and yet we see that he makes no distinction between an ordinary debt document and that of a *kesuvah*! (*The Gemora's question remains; who is the Tanna of our Mishnah?*)

The *Gemora* answers: It can be Rabbi Meir and it can be Rabbi Yehudah.

Our *Mishnah* may be following Rabbi Yehudah's opinion. The reason why it was ruled upon in our *Mishnah* that the woman has the right to the full amount even though no *kesuvah* was written is because she did not write that she had received the money (*she never waived her right for the kesuvah*).

Alternatively, we can say that the *Mishnah* may be following Rabbi Meir's opinion. When the *Mishnah* says that she may collect the two hundred *zuz* even though he didn't write the property pledge in the *kesuvah*, the *Mishnah* is referring to the husband's unsold property. (51a2 – 51b2)

Consent at the End

The Mishnah had stated: If he did not write for her etc.

The father of Shmuel issued the following ruling: If a married woman has been violated, she is forbidden to her husband, for we are concerned that even though she was forced at the beginning of the cohabitation, perhaps she consented at the end.

Rav asked the father of Shmuel: But we leaned in a *Mishnah*: "If you will be taken captive, I will ransom you, and I will take you back to me for my wife"? (*We see from here that she would be permitted.*) He kept quiet. Rav cited the following verse regarding the father of Shmuel: Ministers would withhold their words, and place their hand to their mouth.

What does he have to say? Perhaps we are more lenient regarding a case of a woman that was held captive (*since we do not know for certain if she cohabited*).

The *Gemora* asks: According to the father of Shmuel, how is it possible for there to be a case where the wife would be permitted?

The *Gemora* answers: She would be permitted if there were witnesses that heard her shouting from the beginning to the end.

Rava disagrees and holds that even if she consented at the end, and even if she said at the end, "Leave him alone, for if he would not have violated me, I would have hired him to cohabit with me," she still would be permitted because the violator had plunged her into an uncontrollable passion.

The *Gemora* cites a *Baraisa* supporting Rava's opinion: And she was not seized [only then] is she forbidden, [from which it follows] that if she was seized she is permitted. But there is another class of woman who is permitted even if she was not seized. And who is that? Any woman who began under compulsion and ended with her consent.

Another Baraisa taught: 'And she was not seized' [only then] is she forbidden [from which it follows] that if she was seized she is permitted. But there is another class of

woman who is forbidden even though she was seized. And who is that? The wife of a Kohen.

Rav Yehudah stated in the name of Shmuel who had it from Rabbi Yishmael: 'And she was not seized', [then only] is she forbidden, but if she was seized she is permitted. There is, however, another class of woman who is permitted even if she was not seized. And who is that? A woman whose betrothal was a mistaken one, and who may, even if her son sits riding on her shoulder, make a declaration of refusal [against her husband] and go away. (51b2 – 51b3)

Rav Yehudah ruled: Women who are kidnapped are permitted to their husbands. 'But', said the Rabbis to Rav Yehudah, 'do they not bring bread to them?' — [They do this] out of fear. 'Do they not, however, hand them their arrows?' — [They do this also] out of fear. It is certain, however, that they are forbidden if [the kidnappers] release then, and they go to them of their own free will. (51b3)

Our Rabbis taught: Royal captives have the status of ordinary captives but those that are kidnapped by bandits are not regarded as ordinary captives. Was not, the reverse, however, taught? — There is no contradiction between the rulings concerning royal captives since the former refers [for example] to the kingdom of Achashveirosh while the latter refers to the kingdom of [one like] Ben Netzer.[1] There is also no contradiction between the two rulings concerning captives of bandits since the former refers to [a bandit like] Ben Netzer while the latter refers to an ordinary bandit. As to Ben Netzer, could he be called there 'king' and here is a 'bandit'? — Yes; in comparison with Achashveirosh he was a bandit but in comparison with an ordinary robber he was a king. (51b3 – 51b4)

INSIGHTS TO THE DAF

The Gemara (Bava Metzia 104a) states that a husband is obligated to supply the Korbanos which satisfy his wife's Korban obligations, and if he is wealthy, he must bring the wealthy category of Korban, despite his wife's lack of independent assets. Tosafos cites the Yerushalmi which includes Korbanos brought as a result of her eating Chailev (forbidden fat) or her unintentional Chilul Shabbos in this obligation. However, the Rash (Negaim 14:12) quotes the Sifri which disagrees, limiting a husband's obligation to 3 Korbanos – post-childbirth, post-Zivah and post-Negaim, all conditions where she cannot be considered negligent.

The Shulchan Aruch (Ch"M 177:2) rules that a partner may not use partnership money to heal himself, if he became ill through negligence. However, the Shach adds that this would not be true where a husband pays for his wife's medical treatment. Even if she became ill through negligence, he must pay. The Bach disagrees, and has support from our Mishnah, which states that if a woman is smitten by a disease, the husband must pay to heal her. The Ritva comments that the Mishnah used the word 'lak'sah' (smitten), rather than 'chal'sah' (taken ill) because 'chal'sah' implies becoming ill through neglect and negligence, in which case, the husband would not be obligated to heal her. However, the Rema (E"H 91:4) states that if a community enacted certain decrees where non-compliance would require payment of a penalty, a husband is obligated to pay for his wife's infractions. The implication is that as long as she didn't violate them intentionally, albeit negligently, he must pay.

[1] Who was a robber and self-made ruler. A woman might well entertain the hope that such a man would consent to marry her and she might consequently allow intimate relations.

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The Ein Yitzchok (E"H 1:70) reconciles these conflicting opinions by pointing out that the Sifri uses a verse: "this is the laws of those afflicted with tzara'as" to obligate a husband in the wife's Korbanos, which is limited to only 3 Korbanos. By the same token, providing medical treatment is a Rabbinic enactment (part of sustenance) and Chazal did not extend it to negligence-based illness. However, a husband's obligation to pay a wife's other expenses, including paying for her community penalties is based on clauses in the Kesubah, whose language extends to negligence as well.

DAILY MASHAL

Our Gemara states that when a man marries, all his property becomes mortgaged to his wife's Kesubah. If he cannot pay the Kesubah, if and when it becomes due, the wife may seize as payment, even property that was sold during the marriage. The Mishnah (Gittin 55b) states that as a result, when one purchased real estate from a husband, in addition to paying the husband for the property, the buyer would often pay the wife as well to relinquish her lien on the property. However, if the buyer did so, i.e. pay the husband first and then the wife, the Mishnah says that the purchase of the wife's lien is invalid, since she could argue that she only acquiesced to please her husband. The Rashbam explains that had she refused, she would fear that her husband would accuse her of "planning" (or hoping) to somehow obtain the property imminently for her Kesubah payment, through divorce or (his) death. If the buyer paid the wife first, the lien would end.

The Mishnah (Arachin 24a) states that if a man consecrates all his possessions to Hekdesh, those items which he purchased for his wife, even if she hasn't worn them yet, are exempt from the donation, as they are deemed "hers" from the moment of purchase. The Chasam Sofer suggests that for this reason, the verse states: the men came together with, but slightly after the women, to donate to the Mishkan. They had to come together because husbands could not unilaterally donate items belonging to the wife; the husbands had to come slightly after the wives so that the wives would donate first. Had the husbands donated first, the apparent acquiescence of the wives to relinquish their Kesubah lien on the donations would have been void, under the claim that they had only done so to please the husbands.

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