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Kiddushin Daf 13

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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

### **When Quiet Means No**

There was a man who betrothed a woman with a mat of myrtle branches. People asked him: But this is not worth a *perutah*! He answered: She should become betrothed with the four *dinar* that are tied onto it. She took (*kept it in her hand*) it and was quiet.

Rava said: This is a case of keeping quiet after the acceptance of *kiddushin*, and is therefore invalid (*she did not know that it had four dinar tied to it when she accepted the kiddushin*).

Rava cites a *braisa* which provides support for this ruling. The *braisa* states: If a man said to a woman, “Hold this *sela* for me (*watch it*),” and then he said, “Become betrothed to me with it,” the *halachah* is as follows: If he said this as he was giving her the money, she is *mekudeshes*. However, if he told this to her after the money was already given to her, it would depend. If she said, “Yes” (*according to Rava’s explanation of the braisa*), she is *mekudeshes*; however, if she remained quiet, she is not *mekudeshes*. This proves that remaining quiet after the money was given is not a sign of consent, but rather, it is meaningless.

In *Pum Nahara*, they asked a question on this in the name of Rav Huna, the son of Rav Yehoshua: Are the two cases comparable? In the case where she originally received the item to watch over it (and therefore it is logical that she holds onto it even after he said that it should be for *kiddushin*), for she thinks, “If I throw it

down and break it, I will be obligated to pay for it.” In the case where the man gave her the money (*tied to the myrtle mat*), he gave her the mat for *kiddushin*. If she didn’t want to marry him (*when he informed her that there is money in the mat*), she should have thrown it down (*for she would not be liable if something would happen to it before he takes it*).

Rav Achai asked: Do all women know the laws? She thinks in this case as well that if she throws it down and it breaks, she will be obligated to pay!

Rav Acha bar Rav sent to Ravina: What is the law in this case (*with the myrtle mat*)? He replied: We did not hear Rav Huna’s (*the son of Rav Yehoshua*) law. However, you, who heard him say this, you should take it into account (*and require her to receive a Get*).

There was a woman who was selling silk ribbons. A man grabbed a ribbon away from her. She said, “Give it back to me.” He said, “If I give it back to you, will you become betrothed to me?” She took it back and was quiet. Rav Nachman ruled: She could say, “Yes, I took it, but it was my thing that I took!” (*and therefore the kiddushin is not valid*).

Rava asked Rav Nachman a question from a *braisa*. The *braisa* states: If he betrothed her with something that he had stolen brazenly, or with something that he extorted from another, or with something that he had stole secretly (*without the owner knowing*), or he

grabbed a *sela* from her hand and betrothed her, she is *mekudeshes*!

The *Gemora* answers: The case there is when she had already agreed to marry him.

The *Gemora* asks: Why should we think it makes a difference?

The *Gemora* answers that this is apparent from a *braisa*. The *braisa* states: If someone tells a woman to take a *sela* that he owes her, and then he said, "Become betrothed to me with it," the *halachah* is as follows: If he said this as he was giving her the money, the *halachah* is as follows: If he said this to her as the money was being given, it depends. If she consents, she is *mekudeshes*. If she does not, she is not *mekudeshes*. However, if he told this to her after the money was already given to her, even if she consents, she is not *mekudeshes*.

Rav Nachman explains the *braisa*: What does the *braisa* mean when it says that it depends on whether she consents or not? If "she consents" means that she said "yes" and "she does not consent" means that she said "no," and this would imply that if she is simply quiet, the *kiddushin* is valid, then the *braisa* should just say that she is *mekudeshes* (as it did previously (see 12b) even if she didn't explicitly consent)!? It must be that the case of her "consenting" is that she explicitly said "yes," and when she "doesn't consent," it means that she remained quiet. If so, why isn't she *mekudeshes* in that case? This is because she could say, "Yes, I took it, but it was my thing that I took!" However, we still have the question from the *braisa* above that states that if he betrothed her with something that he had stolen brazenly, or with something that he extorted from another, or with something that he had stole secretly

(without the owner knowing), or he grabbed a *sela* from her hand and betrothed her, she is *mekudeshes*!?

It must therefore be that the difference is when she already agreed to marry him (*stolen object*), and the first *braisa* is discussing a case when she did not agree to marry him beforehand (and that is why the *kiddushin* is not valid). [We have therefore proven that when the woman remains quiet after money which was rightfully hers was given, the *halachah* would depend on whether they arranged to be married beforehand or not.] (12b – 13a)

#### **Statements of Rav Assi**

When Rav Assi died, the *Chachamim* tried to gather the statements that he said from those who had heard them. One of the Rabbis named Rabbi Yaakov said in the name of Rav Assi in the name of Rav Mani: Just as a woman cannot be acquired with less than a *perutah*, so too a piece of land cannot be acquired with less than a *perutah*.

They asked him a question from a *braisa*. The *braisa* states: Even though a woman cannot be acquired with less than a *perutah*, a piece of land can be acquired with less than a *perutah*!

He answered: That *braisa* is referring to *chalifin*. This is as the *braisa* states: One can acquire with a vessel (through *chalifin*), even though it is worth less than a *perutah*.

They were sitting (the Rabbis trying to gather statements of Rav Assi), and one of them mentioned Rav Yehudah's statement in the name of Shmuel that whoever does not know the laws of *kiddushin* and *gittin* well should not deal with them (in these matters). Rav Assi had stated in the name of Rabbi Yochanan: These

people are worse to the world than the generation that brought about the flood (*that wiped out the world in the time of Noach*). This is as the verse states, *“In swearing falsely, murdering, stealing and adultery they broke out, and blood touched blood.”* What does this mean? It is as Rav Yosef translated: They had children from their friend’s wives, and thereby added sins to their sins. The verse continues, *“Because of this sin, the land will be destroyed, and those who dwell in it will be displaced along with the animals of the field and the birds of the sky, and also the fish of the sea will be die.”*

And regarding the generation of the flood, we know that the fish were not wiped out, as the verse states, *“From all that was on the land died.”* This clearly implies that the fish did not die. However, these evildoers even cause the fish to be wiped out.

The *Gemora* asks: Perhaps these punishments will only apply to people who do all of the sins listed in the verses above (*not people who “only” cause promiscuity*)?

The *Gemora* answers: The verse states, *“On account of swearing falsely the land will be destroyed”* (proving that the punishments will occur even for one of those sins).

The *Gemora* asks: Perhaps it means for this (*swearing falsely*) and for the others (*all the rest of them collectively*)?

The *Gemora* answers: The verse states, *“They broke out,”* implying that adultery causes this to happen. Otherwise, it would have said, *“And they broke out (including the previous sins in the “breaking out”).”*

They sat again and quoted a *Mishna*. The *Mishna* states: If a woman (*who gave birth*) brought her *chata*s and died, her inheritors should bring her *olah*. Rav Yehudah said in the name of Shmuel: This is only if she designated the *olah* when she was alive. If she didn’t, they do not bring it.

This implies that he holds that there is no Biblical lien on one’s obligations (*since otherwise, the heirs are not required to use the inherited property for her obligation*).

Rav Assi said in the name of Rabbi Yochanan: Even if she did not designate it when she was alive (*they bring the olah for her*). This implies that he holds there is a Biblical lien on one’s obligations.

The *Gemora* asks: Didn’t Shmuel and Rabbi Yochanan already argue about this? Rav and Shmuel said: A loan undertaken orally cannot be collected from inheritors or purchasers. Rish Lakish and Rabbi Yochanan said: It can be collected from both. [*Isn’t this argument dependent on the very same issue discussed above: Is there a Biblical lien on his property for his debt?*]

The *Gemora* answers: Both cases are necessary. If they only said the latter case, we would think Shmuel holds this way because it is not a debt mentioned by the Torah. However, perhaps Shmuel would agree that a debt mentioned in the Torah does create a lien on one’s property (*and therefore the inheritors must bring the korban even if she did not designate it while she was alive*). If only the former case would be mentioned, we would think that perhaps only there Rabbi Yochanan stated that the lien exists, because when the debt (*for the korban*) is mentioned in the Torah, it is as if it was written in document, but when it is due to one’s private

loans, the lien does not exist. This is why the latter case was also necessary.

Rav Papa says: The law is that a loan undertaken orally can be collected from inheritors, but not from purchasers. It can be collected from inheritors, as we rule that the debt indeed creates a lien according to Torah law. However, we do not say it can be collected from purchasers, as the purchaser could not have heard about it (*the debt and that it would result in the seizure of his field, and therefore the Rabbis instituted that his field should not be seized*). (13a – 13b)

The *Mishna* had stated: She acquires herself by receiving a *Get* or if her husband dies.

The *Gemora* asks: It is understandable that she acquires herself through receiving a *Get*, as the verse states, “*And he will write for her a book of severance.*” However, how do we know a woman acquires herself (*and may remarry*) if her husband dies?

The *Gemora* answers: It is logical! He forbade her, and he now permits her.

The *Gemora* asks: We see that there are some forbidden relationships (*i.e. a stepmother*) where this logic does not apply! [*Despite the fact that his father’s marriage to this woman forbids her to him, when his father dies, she is still forbidden to him!*]

The *Gemora* answers: Rather, the source is from a *yevamah*. Being that the Torah states that a *yevamah* without children may not remarry anyone (*only the brothers of her husband*), the implication is that if she did have children, she would be able to marry anyone!

The *Gemora* asks: Perhaps we would have said that if she did not have children, she is forbidden to all besides her husband’s brothers, but if she has children, she is forbidden to all!

The *Gemora* answers: Rather, it is from the Torah’s forbidding a widow to a *Kohen Gadol*. This implies that a widow may marry a regular *Kohen*.

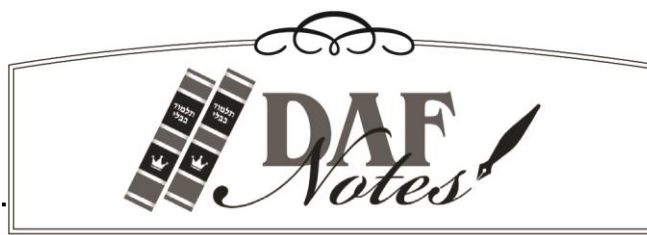
The *Gemora* asks: Perhaps we would state that she is forbidden to the *Kohen Gadol* with a negative prohibition, but to a regular person with a positive prohibition. Which positive commandment would still be valid? If the death of her husband is effective (*to remove her married status*), she should be totally permitted to all, and if not she should be totally forbidden to all!

The *Gemora* asks: Why can’t this be (*that she would have part of her married status removed*)? It could be like animals designated for a *korban* who are redeemed (*after they get a blemish*). Before they are redeemed, they are prohibited from anyone using them, working them, or shearing them (*and using the wool*). Afterwards, they can be used, but not worked or sheared!

The *Gemora* answers: Rather, the source is the verse, “*Lest he will die in war, and a different man will take her.*”

Rav Sheisha, the son of Rav Idi, asked: Why don’t we say that the verse refers to his brother, the *yavam*? [*This would mean that there is no proof that she can marry anyone she wants.*]

Rav Ashi answered: There are two answers to this question. One answer is that a *yavam* would not be



described as “a different (*man*).” Secondly, the verse states, “*And the latter man will hate her and he will write for her a book of divorce, or the latter man will die.*” Death is therefore compared to divorce. Just as a divorce would permit her to remarry, so too, death would permit her to remarry. (13b)

## INSIGHTS TO THE DAF

### PERMISSION FOR A WIDOW

It is written in the sefer Siach Sarfei Kodesh: The Rebbe Reb Bunim was learning with his students. Amongst them was Reb Hersh Temishvar. He was one who would listen intently, but never once did he ask or answer anything.

One day, the other students came over to Reb Hersh and informed him of the new policy: If he wouldn't contribute anything to the class, he would be asked to leave.

They were learning that day the portion in *Gemora Kiddushin* dealing with the question of where is the source that teaches us that the husband's death completely permits the wife to remarry.

The Kotzker Rebbe asked his students: Why can this not be derived from the fact that Dovid HaMelech married the wife of Naval after he died? If the husband's death does not allow the wife to remarry, how could Dovid have married her?

Reb Hersh spoke up and answered as follows: It would not be a proof from that incident, for Naval was considered a rebel against Dovid's Kingdom, and therefore all of his possessions legally belong to Dovid. Accordingly, even if we would say that a husband's death would not permit the wife to remarry, Dovid

would still be permitted to marry his wife, for he is the owner of all of Naval's possessions. We would have thought that Naval's wife would have been included in his possessions, and that would have allowed Dovid to marry her.

## Chalipin

Objects are acquired through *kinyanim*, and one type of *kinyan*, called *chalipin* [exchange], is carried out through the transfer of any *keli* [article] from the buyer to the seller. By virtue of the seller receiving the *keli*, the merchandise is acquired by the buyer in “exchange.” The *gemara* (Bava Metzia 47a) cites *Megillas Rus* (4:7) as the source of the *kinyan chalipin*, where it says, “Formerly this was done in Israel . . . one would remove his shoe and give it to the other.” Unlike a *kinyan kesef*, which involves payment for the merchandise by the buyer to the seller, *chalipin* is neither a complete payment nor an advance payment for the acquired object, but rather the very act of transferring the *keli* establishes a *gemirus daas* [a final decision to sell] and indicates mutual consent for the execution of the transaction.

Our *Daf* reveals that *chalipin* can also be carried out with a *keli* worth less than a *perutah* since the *keli* is not intended to be used as exchange value for the acquired article, but only to establish consent between the two parties for the transfer of ownership of the merchandise. For this purpose a *keli* worth less than a *perutah* is sufficient. Nonetheless, the *gemara* (Bava Metzia 47a) teaches us that *chalipin* can only be done with a *keli*. Transferring fruit, wood, or stones from one person to another does not represent an agreement between the sides since people do not consider such objects to have the importance of a *keli*.





We use the kinyan chalipin in a variety of situations. One example is during a tana'im [an engagement party] when both sides—the chassan's and kallah's—commit themselves through a kinyan performed by raising a handkerchief. Since they must be sure to use a suitable keli, we write in the shtar [written agreement] of the tana'im: "And we made a kinyan with a keli that is suitable for acquisitions."

### DAILY MASHAL

A kinyan at a tana'im using a plate made of chocolate: The Mishpat Shalom (Choshen Mishpat 195:2) was asked what the halacha would be in the case of a keli made out of sugar or chocolate, as is customarily made for Purim. On the one hand, the plate is made out of food that is unsuitable for a kinyan chalipin, but on the other hand, since the food is designed like a keli, perhaps it is considered no less important than the type of keli normally used to execute a kinyan chalipin. The Mishpat Shalom rules (based on the Shitah Mekubetzes Bava Metzia, ibid.) that a keli made from material that cannot withstand hot water is not considered a keli, and therefore is unfit for a kinyan chalipin.

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

Q: How many *perutos* are there in an Italian *issar*?

A: Either six or eight.

Q: If a man betroths a woman with an item that is not worth a *perutah* here, but it might be worth a *perutah* in a different location, what is the *halachah*?

A: Shmuel holds that the woman is considered betrothed (*mi'safek*), and Rav Chisda maintains that there is nothing to be concerned about.

Q: What are some examples where Rav would administer lashes?

A: For one who would betroth a woman in the marketplace, and for one who betroths a woman with cohabitation (*without giving money or a document beforehand*), and for one who would betroth a woman without a prior arrangement to marry her, and for one who would nullify a *get*, and for one who would pronounce that the *get* is being written without his consent, and for one who is disrespectful towards a messenger from the Rabbis, and for one who has been under an excommunication for thirty days and does not come to *Beis Din* to have it nullified, and a groom who lives in his father-in-law's house.