

1 Elul 5783  
August 18, 2023



Kiddushin Daf 5

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**Kiddushin with a Document**

The *Gemora* asks: How do we know that *kiddushin* may be effected even through a document?

The *Gemora* answers: We can derive this using a *kal vachomer*: If money, which cannot release a woman (from a marriage; it cannot be used to divorce), nevertheless, it can bring her in (it may be used for *kiddushin*), then a document, which can release a woman (from a marriage), is it not logical that it can be used to bring her in!

The *Gemora* asks: How can money be used as a proof, as it can be used to redeem consecrated items and *ma’aser sheini*, while a document cannot be used to redeem consecrated items and *ma’aser sheini*? This is as the verse states: *And he shall give the money, and it shall become his* (which indicates that it is money alone that can effect redemption).

The *Gemora* answers: The Torah says: *And she will leave (upon divorce)...and she will be (betrothed)*. [This teaching is often used to derive laws of *kiddushin* from *gittin* and *vice versa*.] The Torah compares “being” to “leaving.” Just as “leaving” is effective through a document, so too “being” as well, is effective through a document.

The *Gemora* asks: Why don’t we also compare “leaving” to “being,” and say: Just as “being” is effective through money, so too “leaving” can be effected through money?

Abaye answers: This is because people might say, “Money brings a woman into marriage, money takes her out! Can a defender become a prosecutor?”

The *Gemora* asks: If so, a document as well! People might say, “Money brings a woman into marriage, money takes her out! Can a defender become a prosecutor?”

The *Gemora* answers: The words (i.e., the text) of this (*kiddushin*) document is distinct, and the words of this (divorce) document is distinct (and therefore people will not compare the two).

The *Gemora* asks: Here as well, the money of this (*kiddushin*) is distinct, and the money of this (divorce) is distinct (for he must state the reason why he is giving the money)!?

The *Gemora* answers: The imprint of the coin is the same (*while the two documents contain very different wording*).

Rava says: The verse: *And he shall “write for her,”* teaches us that through “writing,” a woman is divorced, but she cannot be divorced through money.

The *Gemora* asks: But let us say: Through “writing,” a woman is divorced, but she cannot become betrothed through “writing”?

The *Gemora* answers: This is because it is written: *And she will leave...and she will be*. The Torah compares [“being” to “leaving”].



The *Gemora* asks: And what have you seen (to expound the verse in such a manner)?

The *Gemora* answers: It is logical to assume that a verse discussing divorce is coming to exclude a law regarding divorce; is it logical to assume that a verse discussing divorce is coming to exclude a law regarding Kiddushin?

The *Gemora* asks: And according to Rabbi Yosi HaGelili who uses this verse to teach us another exposition<sup>1</sup>, from where does he know that a woman cannot be divorced with money?

The *Gemora* answers: The Torah states: *a document of severance* A document can sever her (from him), but nothing else (*such as money*) can sever her (from him).

The *Gemora* asks: What do the *Chachamim* (who argue on Rabbi Yosi) derive from the word *severance*?

The *Gemora* answers: They understand it to teach the law that (a divorce must be) something that severs (completely) between him and her, as presented in the following *Baraisa*: If someone says to his wife, "This is your *Get* on condition that you do not drink wine," or, "on condition that you do not go to your father's house," if (he said) forever, this is not a severance; if (he said) for all of thirty days, this is a severance.

The *Gemora* asks: From where does Rabbi Yosi HaGelili derive this teaching (that a divorce is effective only if there is an absolute severance)?

The *Gemora* answers: He derives this from the word *kares* (severance) within the word *kerisus* (severances).

The *Chachamim*, however, did not hold that the word *kares* within the word *kerisus* could be teaching us a different law. (5a1 – 5a3)

The *Gemora* asks: One (method of effecting kiddushin) cannot be derived from another, but let us derive one from the other two? [*We would say that just as these two methods of acquisition generally are effective and they are effective for Kiddushin as well, this third method that generally is effective, also should be effective for kiddushin.*]

The *Gemora* responds: Which one shall we derive? If the Torah would leave out (that *kiddushin* is effective) through a document, and we would derive it from the other two (money and cohabitation), we would say (in rebuttal) that the other two methods exclusively are effective, as they involve a great benefit (*money or pleasure from cohabitation*). If the Torah would leave out (that *kiddushin* is effective) through cohabitation, and we would derive it from the other two (money and a document), we would say (in rebuttal) that the other methods are effective, as their acquisition (regarding other things, such as slaves and land) is great. If the Torah would leave out money, and we would derive it from the other two (cohabitation and a document), we would say (in rebuttal) that they are different, as they can be effective against one's will (*by yibum and divorce respectively*). And if you will say that money is also used against one's will - in a case of a Jewish maidservant (whose father can sell her against her will), in matrimonial law, at least, we do not find (that money is effective). [*A maidservant is not in a context of marriage (see Tosfos regarding the question from a father accepting kiddushin for his daughter who is a minor).*] (5a3)

### **Chupah as Kiddushin**

<sup>1</sup> That a Get may be written on any material except foodstuff and animals

Rav Huna says: We can derive that *chupah* (the act where a man takes a woman into his domain for the sake of marriage) is a method of *kiddushin* from a *kal vachomer*. If money given as *kiddushin* (by a *Kohen*) does not enable a woman to eat *terumah*, but it is effective *kiddushin*, certainly *chupah* that enables a woman to eat *terumah* is an effective *kiddushin*!

The *Gemora* asks: Does money not allow the woman to eat *terumah*? Didn't Ulla state: Concerning an *arusah* daughter of an Israelite, who had been betrothed by a *Kohen*, she was not allowed to eat *terumah*, although, Biblically, she is allowed to eat *terumah*, as it is written [Vayikra 22:11]: *But if a Kohen buy any soul, the acquisition of his money, he may eat of it*, and the *arusah* is an "acquisition" effected by him with the money of the *kiddushin*; nevertheless, since she lives in her father's home, the Rabbis prohibited her from eating of the *terumah* lest they pour a cup of *terumah* for her in her father's home, and she offer it to her brothers and sisters.

Rather, Rav Huna could say the following: If money that does not complete the acquisition (as it just creates *kiddushin* (betrothal), not *nisuin* (marriage) is an effective *kiddushin*, certainly *chupah* which completes the acquisition (as *chupah* is effective to create *nisuin*) should establish *kiddushin*!

The *Gemora* asks: How can we compare to money, as it is special, as it can be used to redeem consecrated items and *ma'aser sheini*!

The *Gemora* answers: Cohabitation could be used to prove this instead (using the method above).

The *Gemora* asks: Cohabitation also has a special characteristic, as it is the sole mode of acquisition for a *yevamah*.

However, it can be said that the common denominator between money and cohabitation is that they are modes of acquisition that establish *kiddushin*. We can therefore say that just as they establish *kiddushin*, so too *chupah*, which is a mode of acquisition, establishes *kiddushin*.

The *Gemora* asks: Money and cohabitation have a common denominator in that they provide instant benefit, as opposed to *chupah*.

The *Gemora* answers: Documents that work for *kiddushin* and do not provide instant benefit demonstrate that this is not a reason that something cannot be used for *kiddushin*.

The *Gemora* asks: Documents are special, though, as they can be used for divorce.

The *Gemora* answers: However, money and cohabitation are not used for divorce and are still modes of *kiddushin*. We can therefore state that the common denominator amongst the three standard modes of *kiddushin* is that they are modes of acquisition that establish *kiddushin*. We can therefore say that just as they establish *kiddushin*, so too *chupah*, which is a mode of acquisition, establishes *kiddushin*.

The *Gemora* asks: However, all three are different than *chupah* in that they can all be used in at least one case against someone's will.

The *Gemora* asks: How does Rav Huna answer this question?

The *Gemora* answers: Rav Huna understands that this cannot be said about money regarding marriage. [See *Rashi and Tosfos 5a DH "she'kein yeshnan."*]

Rava says: There are two ways to refute Rav Huna. One, our Mishna explicitly says "three ways," implying there

are not four ways. Additionally, *chupah* only finishes a marriage because *kiddushin* was done first. Is it possible to derive that *chupah* works without *kiddushin* from the fact that *chupah* works with *kiddushin*!?

Abaye answered (for Rav Huna): Regarding the first question, it is possible the Mishna only listed types of *kiddushin* that had a source from a Torah verse. Regarding the second question, Rav Huna is essentially saying: If money is valid for *kiddushin* even though it cannot create marriage even after the *kiddushin* stage, *chupah* that can finish the marriage, should certainly be a valid mode of *kiddushin*! (5a3 – 5b2)

### Language of Kiddushin

The *Baraisa* states: What are examples of *kiddushin* with money? If a man gives a woman money and says, “Behold, you are *mekudeshes* (*betrothed*) to me,” or “Behold, you are *me’ureses* to me,” or “Behold, you are a wife to me,” the *kiddushin* is valid. If she gives the money and says, “Behold, I am *mekudeshes* (*betrothed*) to you,” or “Behold, I am *me’ureses* to you,” or “Behold, I am a wife to you,” the *kiddushin* is invalid.

Rav Pappa asked: The reason that the first case is valid is because he both gave the money and made the statement. This implies that if gave the money and she made the statement, it is invalid. However, the second case implies that it is invalid because she did both. If he gave the money and she made the statement, it should be valid!?

The *Gemora* answers: It must be that the correct deduction is from the first part of the *Baraisa*, while the second part is not meant to be deduced from, but just conveniently used similar language.

The *Gemora* asks: Would the second case use terminology implying a different conclusion from that implied by the first case?

The *Gemora* answers: Rather, when he gives and says, it is obviously valid. If he gives and she says, it is as if she did both, and it is invalid. [*The Baraisa was constructed to imply that the case excluded from the beginning of the Baraisa has the law of the second case of the Baraisa.*]

Alternatively, the *Gemora* answers: If he does both, it is valid. If she does both it is invalid. If he gives and she says, it is doubtful, and we have a Rabbinical suspicion that perhaps she is *mekudeshes*.

Shmuel says: Regarding *kiddushin*, if a man gives a woman money or its equivalent and says, “Behold, you are *mekudeshes* (*betrothed*) to me,” or “Behold, you are *me’ureses* to me,” or “Behold, you are a wife to me,” the *kiddushin* is valid. If he says, “Behold, I am *isheich* (*your spouse*),” or “Behold, I am your *boalayich* (*your husband*),” or “Behold, I am your *arusayich* (*your arus*),” it is invalid. Similarly regarding divorce, if a man gives his wife a *Get* and says, “Behold, you are sent away,” or “Behold, you are divorced,” or “Behold, you are permitted to any man,” it is valid. If he says, “I am not your *isheich* (*your spouse*),” or “I am not your *boalayich* (*your husband*),” or “I am not your *arusayich* (*your arus*),” it is not a divorce at all.

Rav Pappa said to Abaye: It would seem that Shmuel maintains that a partial declaration which is inconclusive (*in respect to its meaning, for he may mean to betroth the woman to someone else*) is effective (*and is a valid yad*).

But it was taught in a Mishnah: If someone says, “I shall be,” he becomes a *nazir*. And the *Gemora* asked: Perhaps he is saying, “I shall be in a state of fasting”? [Why should we say that it is referring to becoming a *nazir*?] And Shmuel answered: The *Mishnah* is referring to a person



who sees a *nazir* passing by before him. The *Gemora* noted: Thus, it is only because a nazir was passing before him, but not otherwise.<sup>2</sup> — The circumstances here are that he said “to me.” If so, what is the novelty? — His teaching is with respect to these last expressions. By *kiddushin*, it is written, “When a man takes a wife” — this teaches us that he cannot take himself to her. By divorce, it is written, “and he sent her from his house” — this teaches us that he should not send himself away from her. (5b2 – 6a1)

### INSIGHTS TO THE DAF

#### ***Prosecutor becoming a Defender***

The *Gemora* had asked: Why don't we say that just as money can be used for *kiddushin*, it can be used as a method of divorce?

Abaye answers: This is because people will say, “Money brings a woman into marriage, can money take her out? How can a defender become a prosecutor?”

The *Gemora* elsewhere uses this reason as to why the *Kohen Gadol* cannot wear his gold garments into the Holy of Holies when performing the *Yom Kippur* service. This is based on the rule *ein kategor na'aseh sanegor* - a prosecuting attorney cannot become a defense attorney.

The *Turei* even asks that this does not explain why the *avnet*, the belt of the *kohen gadol* on *Yom Kippur* was different than the one he wore during the year. During the year, the belt consisted of wool and linen and on *Yom Kippur*, it was made only out of linen. Since there wasn't gold anyway, what was the purpose for the change?

<sup>2</sup> Which proves that Shmuel holds that declarations must be beyond doubt. Why then by *kiddushin* is the language of “behold you are betrothed” valid without specifying “to me”?

It is written in *Vayikra* “You shall observe My statutes: You shall not crossbreed your livestock with different species. You shall not sow your field with a mixture of seeds, and a garment which has a mixture of *shatnez* shall not come upon you.”

The Ramban cites the Rambam in *Moreh Nevuchim* to explain the reason for this prohibition. It was well known that the clothes that the sorcerers used to wear when they were performing their black magic were made out of wool and linen. Their activities were performed for the sake of their idols and demons. The Torah wanted *Klal Yisroel* to distance themselves from idolatry and therefore prohibited the wearing of clothes that contained wool and linen. The *Chinuch* uses a similar analogy to explain the prohibition.

Rav Elyashiv Shlita says that it emerges from these *Rishonim* that one of the concepts behind the prohibition of wearing *shatnez* is based on idolatry. Perhaps this can explain why the *kohen gadol* does not wear the belt of *shatnez* into the Holy of Holies on *Yom Kippur*. A garment consisting of wool and linen is regarded as a *kategor* – a prosecutor since it bears resemblance to the idolaters clothing.

The *Gemora* in *Yoma* explains that this principle only applies inside the Holy of Holies for that is where the *Shechinah* resides.

The *Ritva* writes that one would be permitted to wear on *Yom Kippur* a *tallis* that contains gold in it since this is regarded as “outside” and not “inside.” The principle of *ein kategor na'aseh sanegor* only applies “inside.”





Reb Akiva Eiger in his gloss on Shulchan Aruch (O"C 610) quotes from the Pri Megadim that are certain localities that have the custom not to wear gold on Yom Kippur, but women and Levi'im are not included in this since they did not donate any gold for the golden calf.

In the sefer, Avodah Berurah, a question is asked that we do not find the principle of ein kategor na'aseh sanegor by tefillah since tefillah is regarded as "outside" and not "inside."

Sefer Chasidim (249) writes that the principle of ein kategor na'aseh sanegor does apply by tefillah. He is referring to a case where one wrote a siddur for his friend but he didn't write the siddur for the sake of Heaven and the friend's prayers were never answered when using this particular siddur.

Beis Halevi in his droshos (15) explains why the principle of ein kategor na'aseh sanegor does apply by tefillah even though the tefillah is not recited inside the Holy of Holies. It is based on the Gemora in Brochos 28b which rules that one who prays should always turn his heart towards the Holy of Holies and therefore tefillah is considered "inside."

#### **DAILY MASHAL**

Decorating the place of the chupah: Some are accustomed to decorate the place of the chupah, for the Zohar writes (Terumah 169a) that it is proper to do for kabbalistic reasons. When a Jewish couple do nesu'in, thereby laying the basis for another Jewish home, a new dwelling place for the Shechinah is being built, so it is proper to decorate the place of the chupah. The "Chaim VeShalom" (II:28) adds that the place of the chupah is decorated so that the assembled will honor the event and stand on their feet for it. Likewise, people should be careful not to smoke or act with frivolity during the chupah for it is a momentous and special time (Shulchan HaEzer" II pg. 32).

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

Q: Can a Kohenes, who has a grandchild (*her child died*) return to her father's house to eat *terumah*?

A: No.

Q: Which two places in the Torah does it say "*me'ein*," meaning is "no" and is spelled without a *yud*. [*It must be that when such a word has a yud, it is meant to convey another teaching.*]

A: "*Me'ein Bilam*" and "*Me'ein yevami*."

Q: Why doesn't the verse (*teaching us that these people do not eat terumah if they are owned by a Kohen*) merely say "*toshav*" and we will know that if he doesn't eat *terumah*, certainly a *sachir* does not eat *terumah*!

A: If so, we would think when the verse would say "*toshav*," it would mean someone within his six years. The word *sachir* therefore is stated to teach us what *toshav* means.