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Kiddushin Daf 41

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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

Mishna

A man can betroth a woman by himself or via his agent. A woman can accept *kiddushin* by herself or via an agent. A man can accept *kiddushin* for his daughter when she is a *na’arah*, both by himself or via an agent. (41a)

Betrothing through an Agent

The *Gemora* asks: If he can betroth through an agent, he can certainly betroth himself!?

Rav Yosef answers: It is a *mitzvah* for him to do so rather than his agent (*as by all mitzvos it is preferable for one to perform them oneself than send an agent*). This is like Rav Safra who would personally sing the head of the animal and Rav who would personally salt the fish (*before Shabbos in order to honor Shabbos themselves*).

Some answer that the *Mishna* is telling us that there is a possible transgression involved in betrothing through an agent. Rav Yehudah said in the name of Rav: It is forbidden for a person to betroth a woman until he sees her, as perhaps he will see something unseemly about her and she will become disgusting to him. The Torah states, “*And you should love your friend as yourself.*”

According to those who answer in this fashion, Rav Yosef’s statement was regarding the second part of the *Mishna*. The *Mishna* states: A woman can become betrothed on her own and via an agent.

The *Gemora* asks: If she can become betrothed through an agent, she can certainly become betrothed on her own!?

Rav Yosef answers: It is a *mitzvah* for her to accept her *kiddushin* rather than her agent. This is like Rav Safra who would personally sing the head of the animal and Rav who would personally salt the fish. However, there is no prohibition for her to accept the *kiddushin* through an agent, as per Rish Lakish’s dictum regarding a woman: “It is better to sit together with two (*a husband*) than to sit by yourself.” (41a)

See her First

The *Gemora* asks: The implication of the *Mishna* when it says, “A man can accept *kiddushin* for his daughter when she is a *na’arah*,” is that he should not do so when she is a minor. [*However, we know that he can!?*]

The *Gemora* answers: This is proof to Rav’s viewpoint that a person should not be *mekadesh* his daughter when she is a minor, but rather, he should wait until she gets older and chooses to marry a certain person. (41a)

Shlichus

The *Gemora* asks: How do we know that agency works?

The *Gemora* answers: The verse says, “*And he will send,*” implying that he can make an agent. When it adds, “*her*” it implies that she can also make an agent. The fact that it



says these words again indicates that the agent can make an agent.

The *Gemora* asks: These verses are discussing divorce. How do we know that this also applies to *kiddushin*?

The *Gemora* answers: We derive it from divorce. If you will tell me that this is problematic because divorce can even be done against her will, we can answer with the teaching of, “*And she will go out...and she will be.*” This teaching tells us that we always compare *kiddushin* to *gittin*. Just as by *gittin* an agent can be made, so too, by *kiddushin* an agent can be made.

The *Gemora* asks: There is a *Mishna* that states that if an agent goes to separate *terumah*, he should take off the amount that the owner would want. If he does not know how much the owner wants to separate, he should assume the amount a normal person would separate, which is one in fifty. If he took off one in forty or one in sixty, his taking of *terumah* is still valid. How do we know that an agent can take *terumah* for someone else? If you will say we derive this from divorce, it is possible to ask that divorce is different, as it deals with the mundane (as opposed to *terumah* which is holy).

The *Gemora* answers: The verse, “*Also you (plural) shall separate terumah,*” implies that even an agent can take off *terumah*.

The *Gemora* asks: Why didn’t the Torah suffice with this extra verse regarding *terumah*, and let us derive *gittin* and *kiddushin* from there?

The *Gemora* answers: *Terumah* is possibly different, as it can even be designated via one’s thoughts.

The *Gemora* asks: What about the following *Mishna*? The *Mishna* states: If a group of people lose their *korban pesach*, and they tell someone to go slaughter a *korban*

pesach for them, and they also went and slaughtered their own *korban pesach*, the law depends on the circumstances. If his *korban pesach* was slaughtered first, they must eat together with him. How do we know this (*that agency works for a korban pesach*)? If you will say that this is derived from the previous sources, they are considered mundane in comparison to a *korban pesach*! [*Even though terumah is holy, it is considered less holy than a korban pesach.*]

The *Gemora* answers: This is derived from Rabbi Yehoshua ben Korchah. He states: How do we know that a person’s agent is like himself? The verse states, “*And all of the group of the congregation of Israel will slaughter it between the evenings.*” Does everyone slaughter? Only one person slaughters! Rather, from here we derive that a person’s agent is like himself.

The *Gemora* asks: Why didn’t the Torah allow us to derive this from the *korban pesach* to all of the aforementioned topics?

The *Gemora* answers: *Kodoshim* (like the *korban pesach*) are not proof, as most actions done with *kodoshim* are through an agent (as they are done primarily through *Kohanim*).

The *Gemora* asks: While we could not have derived this concept from one single source, why couldn’t we have derived it from two sources and applied it to other things? Which two? The *Gemora* suggests that the Torah could have stated this by *terumah* and *gittin*, and we would derive that this applies to *kodoshim*. However, this cannot be, as *kodoshim* is holier than either of these (as mentioned above). The *Gemora* suggests that the Torah could have stated this by *kodoshim* and *terumah*, and we would derive this applies to *gittin*. However, this cannot be, as both of these are affected by a person’s thoughts (*kodoshim also are dedicated by definite thought*). The *Gemora* suggests that the Torah could have stated this by



kodoshim and *gittin*, and we would derive that this applies to *terumah*.

The *Gemora* answers: This is indeed possible.

The *Gemora* asks: If so, what is the verse, “*Also you*,” teaching us (as we no longer need it to teach us that agency is effective for *terumah*)?

The *Gemora* answers: It is used for the teaching of Rabbi Yannai. Rabbi Yannai says: “*Also you*,” teaches that just as you are Jewish, so must your agents to take off *terumah* be Jewish.

The *Gemora* asks: Why is a verse necessary to teach us this lesson? We can derive this from Rabbi Chiya bar Abba’s statement in the name of Rabbi Yochanan. He states: A Canaanite slave cannot be made into an agent to accept a *get* for a woman from her husband, as he is not himself partial to the topic of *gittin* and *kiddushin*. [Similarly, a gentile is not partial to *terumah*, as he is not obligated in *terumah*.?]

The *Gemora* answers: The verse is still necessary. A slave who cannot take part in *kiddushin* at all is different from a gentile whose *terumah* is indeed considered valid. The *Mishna* states: If an idolater or a Cuthean separates *terumah*, the *terumah* is considered *terumah*. We would therefore have thought they can be messengers to separate *terumah* for a Jew. This is why the verse must tell us that they cannot in fact be agents to separate *terumah* for a Jew.

The *Gemora* asks: How does this fit with the opinion of Rabbi Shimon? The *Mishna* says: The *terumah* of an idolater which is mixed with regular grain is prohibited by admixture (*dimua* - the entire mixture becomes forbidden to all non-Kohanim unless there is a ratio of more than one hundred *chulin* produce to one *terumah*) and an ordinary Jew who accidentally eats it must pay an extra fifth. Rabbi

Shimon says: He is exempt (for an idolater cannot Biblically separate *terumah*)!?

The *Gemora* answers: According to Rabbi Shimon, the verse is still required. One might think that because Mar states: “*You*” and not sharecroppers, partners, caretakers, or someone who takes off *terumah* from what is not his, one might also think that agency does not work. This is why the verse tells us that it does work. (41a – 41b)

DAILY MASHAL

Honoring Shabbos Yourself

The *Gemora* asks: If he can betroth through an agent, he can certainly betroth himself!?

Rav Yosef answers: It is a *mitzvah* for him to do so rather than his agent (as by all *mitzvos* it is preferable for one to perform them oneself than send an agent). This is like Rav Safra who would personally sing the head of the animal and Rav who would personally salt the fish (before *Shabbos* in order to honor *Shabbos* themselves).

The Shaar Hatziyon (250:9) asks: Why did these Amoraim prepare the food for *Shabbos* themselves? The *halachah* is that one is not permitted to be interrupt his Torah studying in order to perform a *mitzvah* that is possible to be performed by others! These Amoraim should have instructed others to prepare the *Shabbos* food on their behalf!?

He answers that this is only true by a *mitzvah* that does not have to be performed by the person himself. However, the *mitzvah* of honoring *Shabbos* must be performed by the person himself, and therefore, they prepared the food themselves, for it is a greater *mitzvah* when it is done by the person himself.

The sefer Shulchan Shlomo explains that the Shaar Hatziyon does not mean that honoring *Shabbos* is a *mitzvah* similar to *tefillin* and *sukkah*, for if so, it cannot be given over to an agent at all (*one cannot ask someone else to sit in a sukkah on his behalf*). Rather, it is a *mitzvah* that is incumbent upon him, and therefore he himself must be involved with the *mitzvah*.

Alternatively, the Shaar Hatziyon answers that because of the severity of *Shabbos*, they prepared the food themselves even though it could have been accomplished through another.

The sefer Lev Yam asks that if the *mitzvah* of honoring *Shabbos* is different than any other *mitzvah*, and one should perform it himself even if someone else can do it, how does our *Gemora* bring a proof from these Amoraim that it is a greater *mitzvah* when he personally performs it more than when he does so through an agent? Perhaps the reason they prepared the food themselves is because of the uniqueness associated with the *mitzvah* of honoring *Shabbos*, but it will not prove anything with respect to other *mitzvos*!?

He cites a Shulchan Aruch Harav that answers this question.

INSIGHTS TO THE DAF

Terumah More than a Sixth

The *Gemora* cites a *Mishna*: If one tells an agent, "Separate *terumah* for me (*without specifying an amount*), he should separate according to what the agent perceives is the mindset of the owner (*either one-fortieth, one-fiftieth or one-sixtieth*). If he cannot ascertain what the owner would want, he should separate one-fiftieth. If the agent has separated one in forty or one in sixty as *terumah*, the *terumah* is nevertheless is valid.

The *Gemora* in Kesuvos asks: It is evident that although the agent has made a mistake, his actions are nevertheless valid! Is that correct?

The *Gemora* answers: By the *terumah*, the agent has a valid excuse; he can say that he figured that the owner would separate *terumah* in a stingy manner or generously; however, in this case (*where the agent charged too little for the property*), the owner may tell the agent, "You should not have made a mistake."

The Beis Yaakov asks: Isn't the case of *terumah* a case where the agent erred in an amount which is more than a sixth; everyone would agree that the sale is invalid?

He answers: Since it is extremely common to err in this regard when separating *terumah*; even more than a sixth is regarded as having the same *halacha* as precisely a sixth.