

16 Nissan 5776
April 24, 2016



Kiddushin Daf 44

Produced by Rabbi Avrohom Adler, Kollel Boker Beachwood

Daf Notes is currently being dedicated to the neshamot of

Moshe Raphael ben Yehoshua (Morris Stadtmauer) o”h

Tzvi Gershon ben Yoel (Harvey Felsen) o”h

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

Na’arah and her Father

[The Gemora had cited a Mishna: A betrothed na’arah and her father can accept a Get (for the na’arah). Rabbi Yehudah says: Two hands cannot both accept as one, but rather her father alone can accept the Get. Anyone who cannot guard over her Get cannot get divorced. Rish Lakish said: Just like they argue with respect to divorce, so too, they argue with respect to kiddushin. Rabbi Yochanan says: They only argue by divorce, but by kiddushin, everyone agrees that the father accepts her kiddushin, but not her.] Rabbi Yosi the son of Rabbi Chanina explains the opinion of the Rabbis according to Rabbi Yochanan: Since kiddushin requires the consent of the woman, it is only the father who may accept it. However, regarding divorce, which can be effective against her will, she or her father can accept the get.

The Gemora asks: But with respect to ma’amar (when a yavam betroths his yevamah; it is regarded as a Rabbinical kiddushin), which requires the woman’s consent, and yet we learned in a braisa that ma’amar can be performed through the na’arah or through her father!?

The Gemora answers: The braisa is discussing a case where the ma’amar was performed against her will, and it is following the opinion of Rebbe. For we learned in a braisa: Rebbe holds that a forced ma’amar is valid, and the Chachamim disagree.

The Gemora explains this dispute: Rebbe compares ma’amar to yibum. Just like, one may perform a yibum

without the consent of the yevamah, so too, a ma’amar without her consent is valid. The Chachamim compare ma’amar to a regular betrothal between a man and a woman. Just like a betrothal is only effective if the woman agrees, so too, ma’amar will only be valid with the consent of the yevamah.

The Gemora proves that Rabbi Yochanan’s interpretation of the argument is the correct one. For the braisa (which stated that the na’arah or her father may accept the ma’amar) concludes by saying: This halachah does not apply by kiddushin (implying that only the father can accept her kiddushin).

The Gemora asks: This braisa should seemingly be a refutation of Rish Lakish’s opinion!?

The Gemora answers: Rish Lakish would answer that this braisa is following Rabbi Yehudah’s opinion, who said that two hands cannot both accept as one (but rather her father alone can accept the get, and therefore, he would hold that only the father can accept her kiddushin).

The Gemora asks: Why is ma’amar different according to Rabbi Yehudah (that only there can the na’arah accept it, but not by kiddushin or divorce)?

The Gemora answers: It is because she was attached to the yavam before the ma’amar (as soon as her husband died childless, she is forbidden to marry any man besides her deceased husband’s brothers; therefore it is easier for the yavam to complete this bond; that is why Rabbi

Yehudah holds that even the na'arah can accept the ma'amar).

The *Gemora* asks on Rish Lakish from our *Mishna*: A man can accept *kiddushin* for his daughter when she is a *na'arah*, both by himself or via an agent. It can be inferred from here that she or her agent cannot accept the *kiddushin*. This refutes Rish Lakish's opinion!?

The *Gemora* answers: Rish Lakish would answer that this *Mishna* is following Rabbi Yehudah's opinion (*who holds that only the father can accept her kiddushin*).

The *Gemora* asks: Can the *Mishna* be following Rabbi Yehudah's opinion? But let us consider the end of the *Mishna*: If a man says to a woman, "Become betrothed to me with this date" (*which he gives her*), and then (*giving her another date*), he says, "Become betrothed to me with this one." [*The Mishna concludes that if any one of the dates was valued as a perutah, she is mekudeshes. But if not, even if together they equal a perutah, she is not mekudeshes. Evidently, the fact that he said, "become betrothed to me" each time, they are viewed as separate acts of kiddushin.*] And we asked: Who is the *Tanna* who holds that by saying "become betrothed to me" each time, they are viewed as separate acts of *kiddushin*? Rabbah answered: It is Rabbi Shimon, for he says (*regarding one who falsely swears to a group of depositors*) that it is regarded as one oath unless he states "I swear" to each and every one of them. [*Now if the latter part of the Mishna is Rabbi Shimon, it stands to reason that the former part follows his opinion as well!?*]

Perhaps you will answer that the *Tanna* of our *Mishna* is in fact Rabbi Yehudah, but he holds like Rabbi Shimon regarding separate pronouncements. But does Rabbi Yehudah hold like Rabbi Shimon? We learned in a *braisa*: This is the rule (*regarding one who is disputing five claims against him with one oath*): If he swore falsely by including all of them in one oath, he will only be liable to

bring one *chatas*. If he swore five times separately, he will be liable for each and every oath. These are the words of Rabbi Meir. Rabbi Yehudah says: If he said, "I swear that I do not owe you money, nor to you, nor to you," he will be liable for each and every oath (*but if would have said "and" in between each denial, it would be regarded as one oath*). Rabbi Eliezer said: If he said, "I do not owe you money, nor to you, nor to you; I swear on this," he will be liable for each and every oath. Rabbi Shimon says: It is regarded as one oath unless he states "I swear" to each and every one of them. [*Evidently, Rabbi Yehudah and Rabbi Shimon disagree on this issue!?*]

The *Gemora* answers: The *Tanna* of our *Mishna* is Rabbi Shimon, but he holds like Rabbi Yehudah regarding agency (*that the father can accept the kiddushin, but not the na'arah*).

Rabbi Assi did not attend the Beis Medrash one day. Upon finding Rabbi Zeira, he asked him, "What was said in the Beis Medrash today?" Rabbi Zeira replied, "I too was not there today, but Rabbi Avin did go and he told me that everyone agreed with Rabbi Yochanan's interpretation and Rish Lakish screamed like a crane (*a type of bird*), 'but it is written: *and she will go out...and she will be (and therefore the halachos of kiddushin should be the same as divorce)*,' but nobody paid any attention to him." Rabbi Assi asked Rabbi Zeira, "Is Rabbi Avin reliable?" He replied, "Yes, for it is like (*a fish caught*) from the sea (*and placed immediately*) into the frying pan (*he had no time to forget what transpired in the Beis Medrash*)."

Rav Nachman bar Yitzchak said: It was not Rabbi Avin the son of Rabbi Chiya and it was not Rabbi Avin the son of Kahana. It was Rabbi Avin. The *Gemora* notes that this information is important, in order to ask contradictions from his other statements. (43b – 44a)

Na'arah Appointing an Agent



Rava inquired of Rav Nachman: Can a *na'arah* (according to the Chachamim who hold that she herself can accept her *get*) appoint an agent to accept her *get* from her husband?

The *Gemora* explains: Is she like the hand of her father, and just as her father can appoint an agent, so too, she can appoint one? Or is she like the courtyard of her father, and therefore she will only be divorced if the *get* actually reaches her hand?

The *Gemora* asks: Is Rava actually in doubt regarding this matter? But Rava said: If a husband wrote a *get* for his wife and he gave it to her slave; if he was sleeping at the time and she was guarding him, the *get* is valid. If he was awake, the *get* is not valid, as the slave is considered a guarded courtyard but not by her guarding (as the slave has a mind of its own). Now if you will say that the *na'arah* is like her father's courtyard, she should not be divorced even once the *get* reaches her hand, for she should be considered a guarded courtyard but not by his guarding (as she has a mind of her own)!?

Rather, it is obvious that she is like the hand of her father, and this is the inquiry: Is she as strong as her father's hand and she can appoint an agent, or not?

Rav Nachman responded: She cannot appoint an agent.

The *Gemora* asks on this ruling from a *Mishna*: If a minor girl said, "Accept the *get* on my behalf," the divorce is not effective until it reaches her hand. We can infer from here that if she would have been a *na'arah*, she could have appointed an agent to accept her *get*!?

The *Gemora* answers: The *Mishna* is discussing a case where her father is no longer alive (and then she would be able to accept her own *get*). (44a – 44b)

It was stated: If a minor accepted *kiddushin* without the knowledge of her father, Shmuel said: She requires a *get* and *mi'un* (A girl whose father had died could be given in marriage while still a minor (under the age of twelve) by her mother or older brother. This marriage is only valid Rabbinnically. As long as she has not attained the age of twelve, she may nullify the marriage by refusing to live with her husband. This act of refusal, referred to as *mi'un* nullifies the marriage retroactively.). Karna asked: If she needs a *get*, why is *mi'un* necessary? And if *mi'un* is needed, why do we require a *get*?

Other Amoraim replied to him: Mar Ukva and his *Beis Din* are in Kafri (let's ask him). They switched the opinions of Shmuel and Karna and sent it to Rav (they did this on purpose, for Rav was a close friend of Shmuel and they wished to see if Rav would agree to Karna's ruling if it was said in the name of Shmuel).

Rav said to them: Hashem! She requires a *get* and *mi'un* and Heaven forbid that the son of Abba bar Abba (Shmuel) should say such a thing!

The *Gemora* asks: And what is the reason for this (that she requires both)?

Rav Acha the son of Rav Ikka explains: She needs a *get* because maybe the father consented when he heard about it, and a *mi'un* is required because maybe the father did not consent and people will say (if there was a *get*, but no *mi'un*) that *kiddushin* will not take effect with her sister (by the same man).

Rav Nachman said: This *halachah* would only apply if this match was previously arranged.

Ulla said: She does not even require *mi'un* (the *kiddushin* is not valid at all).

A Minor Accepting Kiddushin

The *Gemora* asks: Did Ulla rule like this even if the match was previously arranged?

The *Gemora* answers: If Ulla's teaching is taught, Rav Nachman's qualification cannot be taught!

The *Gemora* cites another version: Ulla said: If a minor accepted *kiddushin* without the knowledge of her father, she does not even require *mi'un*. [*He was not discussing Rav and Shmuel and therefore we can assume he meant that the kiddushin is invalid in all cases.*]

Rav Kahana asks on this from a *Mishna*: However, regarding all these women (*a relative to the yavam*), if they died, or if they refused (*a woman's annulment of a Rabbinical marriage contracted for her in her minority*), or if they were divorced, or if they were found to be an *aylonis* (*an adult woman who did not develop any signs of female puberty and is incapable of bearing children*), their co-wives are permitted. [*One of the cases mentioned in this Mishna is where the yevamah is the daughter of the yavam. The case would be that a man married his niece who was a minor. She then performed mi'un, and then he died. The yavam (the minor's father) is permitted to marry in yibum the co-wife, for they were not co-wives at the time of the husband's death.*] Now, who accepted the *kiddushin* for this minor? If it was the father, she would not be able to leave with *mi'un*; a *get* would be required! It must be that she accepted the *kiddushin* herself, and nevertheless, the *Mishna* stated that she requires *mi'un*!?

Rav Kahana answered the question himself: We are discussing a case where she was an orphan in her father's lifetime (*she was previously married and then she became widowed or divorced, in which case, the father loses his authority to marry her off any longer*). (44b)

INSIGHTS TO THE DAF

Transposing the Opinions

It was stated: If a minor accepted *kiddushin* without the knowledge of her father, Shmuel said: She requires a *get* and *mi'un* (*A girl whose father had died could be given in marriage while still a minor (under the age of twelve) by her mother or older brother. This marriage is only valid Rabbinically. As long as she has not attained the age of twelve, she may nullify the marriage by refusing to live with her husband. This act of refusal, referred to as mi'un nullifies the marriage retroactively.*). Karna asked: If she needs a *get*, why is *mi'un* necessary? And if *mi'un* is needed, why do we require a *get*?

Other Amoraim replied to him: Mar Ukva and his *Beis Din* are in Kafri (*let's ask him*). They switched the opinions of Shmuel and Karna and sent it to Rav (*they did this on purpose, for Rav was a close friend of Shmuel and they wished to see if Rav would agree to Karna's ruling if it was said in the name of Shmuel*). Rav said to them: Hashem! She requires a *get* and *mi'un* and Heaven forbid that the son of Abba bar Abba (*Shmuel*) should say such a thing!

The Reshash asks: How can it be that they would think that Rav would be influenced to rule according to Shmuel, for he was his friend? And besides, Rav and Shmuel argue throughout Shas!? He shows that Rashi elsewhere understands the word "switched" to mean "by mistake."

Some say that Rashi did not write this, but rather, one of his students mistakenly inserted this explanation into his commentary.

The Reshash also asks: Why doesn't the *Gemora* mention what Mar Ukva answered?