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Kiddushin Daf 48

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Kiddushin Via a Loan

The *Gemora* asks: What are they arguing about regarding an oral loan?

The *Gemora* answers: They argue regarding a statement made by Rav Huna in the name of Rav. He says: If someone says, “You owe me a *maneh*, give it to So-and-so,” if he does so in the presence of all three of the parties involved, So-and-so acquires the *maneh*. One opinion is that Rav only stated this works when the *maneh* was originally given as a deposit, not as a loan. The other holds that whether it is a deposit or a loan, it is valid.

The *Gemora* asks: Let us say this is an argument among the *Tannaim* (*whether or not one can be mekadesh with a loan*). If someone says, “Become betrothed to me with this document (*the Gemora will discuss the nature of the document below*),” Rabbi Meir says that she is not *mekudeshes*. Rabbi Elozar says: She is *mekudeshes*. The *Chachamim* say: We evaluate the paper. If it is worth a *perutah*, she is *mekudeshes*. If not, she is not *mekudeshes*.

The *Gemora* asks: What is the case of the document? If it is a loan document that states someone else owes him money, this would mean that Rabbi Meir contradicts himself! [*He previously stated that being mekadesh with this is valid.*] Rather, it must be talking about him giving her a loan document stating that she owes him money, and they are arguing about being *mekadesh* with such a loan.

Rav Nachman bar Yitzchak answers: The case is where he was *mekadesh* her with a *kiddushin* document that does not have witnesses signed on it (*but there were witnesses that it was given over*). Rabbi Meir says that she is not *mekudeshes* as he holds that the witnesses signed on a document make it take effect. Rabbi Elozar says it is valid, as the witnesses of the giving of the document make it take effect. The *Chachamim* are unsure who the law is like, and therefore say that the paper should be evaluated.

Alternatively, the *braisa* may be discussing a case where the *kiddushin* document was not written *lishmah*, and the *Tannaim* argue regarding the law of Rish Lakish. Rish Lakish asks: What is the law about a *kiddushin* document that is not written *lishmah*? Do we compare *kiddushin* to *gittin* and say that just as a get has to be *lishmah*, so too, a *kiddushin* document has to be *lishmah*? Or do we say that just as *kiddushin* with money does not have to be *lishmah*, so too, *kiddushin* with a document does not have to be *lishmah*? After he asked the question, he himself answered it. The verse compares *get* to *kiddushin* (*and therefore it must be written lishmah*). One opinion agrees with Rish Lakish and one does not.

Alternatively, everyone agrees with Rish Lakish. The case here is where the document was written *lishmah*, but it was written without her knowledge. Rava and Ravina say she is *mekudeshes* (*with such a document*), while Rav Papa and Rav Shrivya say she is not. For it was stated: If he wrote it (a *kiddushin* document) for her but without her knowledge, Rava and Ravina say: She is *mekudeshes*,

whereas Rav Pappa and Rav Shravva says: She is not *mekudeshes*.

The *Gemora* asks: Let us say that this discussion (*being mekadesh with a loan*) is dependent on the following argument among the *Tannaim*. The *braisa* states: If a woman says to a man, “Make for me bracelets, earrings (or nose rings), and rings and I will be *mekudeshes* to you,” once he makes them, she is *mekudeshes*, according to Rabbi Meir. The *Chachamim* say: She is not *mekudeshes* until she receives the money. What money are they referring to? If it refers to the money that she gave him and he made into jewelry, does the *Tanna Kamma* hold this is a valid *kiddushin* even if she never receives the jewelry? How is he being *mekadesh* her?! It must be that the *Chachamim* mean that more money must be given to her, and they argue regarding being *mekadesh* with a loan. Everyone agrees that a worker constantly accumulates earnings when he works, which is essentially a loan his employer takes from him until he is paid. The argument between Rabbi Meir and the *Chachamim* is whether one can be *mekadesh* a woman with a loan.

The *Gemora* answers: Everyone agrees that one cannot be *mekadesh* a woman with a loan. Their argument is whether wages are paid as described above (*Chachamim*), or whether wages are only owed to the employee at the end of the job (*Rabbi Meir*). [The commentaries discuss why this too is not regarded as a loan. See Rabbi Akiva Eiger who explains at length that the man acquires part of the objects as collateral.]

Alternatively, the *Gemora* answers: It could be that everyone agrees that wages are owed continuously and one cannot be *mekadesh* with a loan. Here, the argument is whether or not a worker acquires what he improves in a vessel. One opinion says he does, and one says he does not (and therefore it is considered a loan).

Alternatively, the *Gemora* answers: It could be that everyone agrees that a worker does not acquire what he improves, wages are owed continuously, and one cannot be *mekadesh* with a loan. They argue regarding a case where he added his own materials. One opinion is that if someone is *mekadesh* with a loan and a *perutah*, the *kiddushin* is valid because the woman understands the *perutah* is her *kiddushin*. [Similarly, the woman understands here that the *kiddushin* is the material or metal he added.] The other opinion holds that in such a case she thinks the loan is the *kiddushin*, and does not think of the *perutah* as her *kiddushin*.

This is like the (*end of the*) argument between the following *Tannaim*. The *braisa* states: If a man says to a woman that she should be *mekudeshes* to him with the wages she owes him, she is not *mekudeshes*. If he says, with the wages that she will owe him, she is *mekudeshes* (when he finishes and gives the finished product to her). Rabbi Nassan says: If he says, with the wages that she will owe him, she is not *mekudeshes*, and this is certainly true if he says she should be *mekudeshes* for the wages that she owes him currently. Rabbi Yehudah Ha’Nasi says: Truthfully, they have said that in both cases she is not *mekudeshes*. However, if he adds his own materials she is *mekudeshes*. The *Tanna Kamma* and Rabbi Nassan argue how wages are calculated (continuously or at the end), while Rabbi Nassan and Rabbi Yehudah Ha’Nasi argue regarding the case of being *mekadesh* with a loan and a *perutah*. Rabbi Nassan holds it is invalid, while Rabbi Yehudah Ha’Nasi holds it is valid. (48a – 48b)

Mishna

The *Mishna* lists six cases. One is where a man says to a woman, “Be *mekudeshes* to me with this cup of wine,” and it ended up being honey. A man says to a woman, “Be *mekudeshes* to me with this cup of honey,” and it ended up being wine. A man says, “Be *mekudeshes* to me with this silver dinar,” and it ended up being gold. A man says,

“Be *mekudeshes* to me with this golden dinar,” and it ended up being silver. A man says, “Be *mekudeshes* to me on condition that I am rich,” and he is actually poor. A man says, “Be *mekudeshes* to me on condition that I am poor,” and he is actually rich. In all of these cases, the *kiddushin* is invalid. Rabbi Shimon says: If he led her to believe it/he was worth less and it/he was worth more, she is *mekudeshes*. (48b)

Kiddushin with a Cup

There are three *braisos* that discuss a man who proposes *kiddushin* with a cup. One *braisa* states: The *kiddushin* is a combination of the cup itself and what it is in. Another *braisa* states: It is specifically the cup, not what is in it. Another *braisa* states: It is specifically what is in the cup, not the cup itself. They are not arguing. One *braisa* is referring to a cup of water (*only the cup itself is important*). Another is referring to a cup of wine (*where the drink is expensive*). Another is referring to a cup of brine (*where the brine stays in the cup for a while, and therefore it is clear that the cup and brine are hers*). (48b)

Vinegar and Silver

The *Gemora* asks: Does Rabbi Shimon not agree that if a sale was for wine and the seller in fact supplied vinegar, or visa versa, that either one (*buyer or seller*) may back out of the sale? This is because some people like vinegar and some like wine. Here, too, we should say that some like silver and do not like gold!

Rav Simi bar Ashi says: I found Abaye was sitting and teaching his son that the case is where a man says to a messenger that he should lend him a silver coin and be *mekadesh* a woman. Instead, the messenger loaned him a gold coin and was *mekadesh* a woman. The *Tanna Kamma* says the *kiddushin* is invalid, as he did not want to be *mekadesh* with silver. Rabbi Shimon says it is valid, as he was just trying to tell him to be *mekadesh* (*and didn't*

want to burden the messenger by making him lend him a gold coin).

The *Gemora* asks: The terminology used in the Mishna (*i.e. be mekudeshes to "me" not "him"*) implies that a messenger is not being used!

Rather, Rava answers: I and the lion in the group, Rabbi Chiya bar Avin, explained that the case is where she asked a messenger to accept *kiddushin* of a silver *dinar* from So-and-so, who actually gave the messenger a golden *dinar*. The *Tanna Kamma* says the *kiddushin* is invalid, as he did not want to be *mekadesh* with silver. Rabbi Shimon says it is valid, as he was just trying to tell him to be *mekadesh*. What does the *Mishna* mean when it says that it was “found” to be gold? [*Why wasn't this realized immediately?*]

The *Gemora* answers: It was given over in a rag.

DAILY MASHAL

Tevilah for a Silver Cup Repaired by a Non-Jew

Our *Daf* deals with a silversmith who turned a chunk of silver received from a customer into a splendid-looking silver cup, and discusses the various opinions regarding the concept that “improvement to a *keli* belongs to the craftsman.” Who owns the value added to the lump of silver? Some maintain that although the craftsman improved the lump of silver with his own hands and increased its value, he does not own any of the silver cup itself. Others disagree, saying until the customer pays the craftsman’s wages, the value added to the customer’s cup belongs to the craftsman. Therefore if a woman gives a craftsman a lump of silver, he can give her the silver cup for *keseif kiddushin*, since part of the cup—the improvement—is his.

A goldsmith who broke a gold chain: According to the Gemara (*Bava Kamma* 98b) this difference of opinion has a practical implication when a craftsman damages the *keli* after repairing it. If the added value of the *keli* belongs to the craftsman, he only needs to pay the owners for the damage done to the *keli* according to its previous value. However, if the added value does not belong to the craftsman, he must pay the owners the value of the *keli* after the repairs. The craftsman owns no portion of the *keli* and the added value belongs to the owners. The *Rishonim* also disagree about this *halacha* (see Rambam, *Hilchos Sechirus* 10:4, Rif *Bava Kamma* ibid, R"l and Rabbeinu Tam cited in the *Rosh* of our *sugya*, *Smag*, *Asein* 89). The *Shach* (C.M. 306:2 S.K. 3) rules that since this *halacha* remains unclear, we must act as in cases of doubt.

A silver cup made by a non-Jew: When a Jew buys a *keli* from a non-Jew he must *tovel* it [immerse it in a *mikveh*]. The *Shulchan Aruch* and the *Remo* (Y.D. 120:10) disagree over the question of a *keli* made by a non-Jewish craftsman with materials supplied by a Jew. According to the *Shulchan Aruch* we do not need to *tovel* the *keli*, but the *Remo* says it must be immersed without a *berachah*. Apparently the dispute depends on the dispute in our *sugya* whether “the improvement to a *keli* belongs to the craftsman.” If so, the silversmith becomes a partner in the *keli*. Later, when the Jew pays him for his work he is buying the non-Jew’s share, meaning he must *tovel* the *keli* just like any other *keli* or portion of a *keli* bought from a non-Jew. However, if the improvement **does not** belong to the craftsman, the silversmith does not own part of the *keli* and there is no need to *tovel* it.

However, the *Taz* (ibid, S.K. 12) explains that the dispute between the *Shulchan Aruch* and the *Remo* does not apply to the question at hand, but only to the *halachos* of *tevilas keilim*. Even if “the improvement to a *keli* belongs to the craftsman,” the *Shulchan Aruch* would rule that there is no need to *tovel* the *keli*. The fact that the added

value belongs to the non-Jew until he is paid his wages does not mean ownership is transferred to the non-Jew. The *keli* itself belongs to the Jew and only the **improved value** belongs to the non-Jew. However, the *Remo* disagrees with this line of reasoning and maintains that we must *tovel* any *keli* that belonged to a non-Jew, even in part.

The difference between glass and metal utensils: The *Tuv Taam VeDaas* (*Responsa Tuv Taam VeDaas Tannina*, §181) explains that even according to the *Shulchan Aruch*, when a Jew gives sand to a non-Jewish glassblower the *halacha* is different. While a silversmith only modifies the form of the material he receives, a glassblower creates a new material—glass from sand—and in such a case the *keli* belongs to the non-Jew and must be immersed.

How to avoid the need to *tovel* a *keli*: The *Shiboli HaLeket* (§207) writes that when we pay the non-Jewish craftsman before he begins work we do not have to *tovel* the *keli*. The value added to the *keli* only belongs to the craftsman before he is paid for the improvement. When the customer pays in advance the craftsman does not own the added value at any point [see *P’nei Yehoshua*, *Gittin* 20a, who disagrees].

Giving a knife to a non-Jew to sharpen: The *Minchas Yitzchak* (IV 28:6) rules that even according to the *Remo* a knife sharpened by a non-Jew does not need to be immersed. “The improvement to a *keli* belongs to the craftsman” only applies when the non-Jew improves the *keli* **fundamentally**. Sharpening a knife is only considered an improvement in efficiency.

Based on the law of the land: It should be noted that according to the Chazon Ish (Chazon Ish, *Choshen Mishpat Likutim* §16), in a country where the law does not recognize a craftsman’s acquisition of the improvement to a *keli*, it need not be immersed. Since the non-Jew is



subject to the laws of his country, he does not own any of the *keli*.

Practical Difference Between Contractor and Employee

Contracts signed with non-Jewish workers in Thailand or in the Netzarim Industrial Zone have an effect on Jews' obligation to do *mitzvos*. Our *Daf* cites an opinion that "the improvement to a *keli* belongs to the craftsman." As noted in the previous section, the added value belongs to the craftsman until his wages are paid, and according to the *Remo*, we must *tovel keilim* repaired by a non-Jew since he owns part of the *keli* until it is purchased by paying his wages.

Accordingly the *Chochmas Adam* (*Klal* 73:4) rules that *keilim* manufactured by non-Jewish workers in a factory owned by a Jew also require immersion since the non-Jewish workers manufacture the factory owner's *keilim*.

But the *Aruch HaShulchan* (Y.D. 120:55) and the *Darkei Teshuvah* (ibid. 81) point out that according to the Gemara (*Bava Metzia* 112a), we must distinguish between a salaried employee paid by the hour and a craftsman paid according to output. The latter is considered a partner in the *keli* since he is paid for the actual work he puts into it. On the other hand an employee who is paid according to how much time he devotes to his employer has no direct link to the *keli*, and it does not require immersion.

Utensils made by industrial machines: According to *Igros Moshe* (O.C. III §4), when utensils are made by machine and the job of the non-Jewish workers is to ensure that the machines function properly, the non-Jewish workers do not have any ownership in the *keli*. They did not add any value to it and the *keilim* belong entirely to the Jewish factory owner.

A pregnant cow fattened by a non-Jew: The *Minchas Yitzchak* (*Responsa Minchas Yitzchak* II §38) used similar

reasoning in the case of a Jew whose cow gave birth to a *bechor* [first-born bullock], which the Torah deems holy and forbidden for use. The owner of the cow gave several reasons why the calf should be permitted. One of reasons cited was that when the cow was pregnant it had been taken care of by a non-Jew whose job was to fatten it up. Therefore, the Jew claimed that the non-Jew had a share in the animal he had fattened since he is like a craftsman who improved a *keli*. Thus the cow was owned in part by a goy and should have no *kedushah*.

HaRav Yitzchak Weiss *zt'l*, however, writes that since the non-Jew's task is merely to place large quantities of food in front of the animal, and the improvement is rendered by the cow itself when the food is digested, the non-Jew does not become a partner in the animal and the calf is considered a *bechor*.

DAILY MASHAL

The custom in Yeshivas Mir at the end of the Zman was to receive a small loan for travel expenses from the Mashgiach, R' Yerucham Levovitz. This loan would then be repaid at the beginning of the next Zman. R' Shimon Schwab ZTL related that as a young bochur, he approached R' Yerucham for the loan at the end of his first Zman in the Yeshiva. After receiving the money, R' Shimon said "A Dank" (Thank you). R' Yerucham began to berate him for saying Thank you, which could constitute Ribis-Devarim, a form of interest. At the end of the next Zman, when R' Shimon received the loan, he had learned his lesson, and he turned away without saying a word. To his surprise, R' Yerucham said harshly "Are you not embarrassed? You've received a loan and yet you do not say Thank you?!" The Mashgiach went on to explain to the confused R' Shimon: "One must feel gratitude and be prepared to express it. Since the Shulchan Aruch forbids it, one cannot say it. However, you apparently understood from my earlier Psak simply that one may not say Thank you. That is not correct".