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**Kiddushin Taking Effect**

The *Gemora* asks: Let us see: It is possible to compare all forbidden relations to *niddah* (that *kiddushin* does take effect), and they can also be compared to the prohibition of one’s wife’s sister (that *kiddushin* does not take effect). How do we know that we should compare them to the case of one’s wife’s sister?

The *Gemora* answers: When there is a choice, we always compare in manner that will lead to a stringency, not a leniency.

Rav Acha bar Yaakov presents a different source teaching us that *kiddushin* does not take effect with an *ervah*: It can be derived through a *kal vachomer* from a *yevamah*: If a *yevamah*, who is merely forbidden to marry another man (besides her *yavam*) with an ordinary prohibition, nevertheless, *kiddushin* does not take effect with her; so, it should certainly not take effect with women where relations are forbidden and are punishable by execution or *kares*!

The *Gemora* asks: If so, the same *halachah* should also apply by other ordinary prohibitions!?

Rav Pappa answers: It is written [Devarim 21:15]: *If a man has two wives, one beloved, and the other loathed*. The *Gemora* asks: Is there a beloved or loathed wife before Hashem? Rather, the Torah is referring to their marriage. Beloved means that he is married to a permitted woman and loathed means that he is married to a prohibited woman and nevertheless, the Torah states regarding them “*If a man has two wives.*” We derive from here that if a man marries a woman that is forbidden to him merely by a negative

commandment, the Torah recognizes and validates the marriage.

The *Gemora* asks: According to Rabbi Akiva, who holds that *kiddushin* does not take effect with a woman that is forbidden to him merely by a negative commandment, what does he do with the verse of “*If a man has two wives*”?

The *Gemora* answers: The verse will be teaching us that the *kiddushin* of a widow to a *Kohen Gadol* will not take effect. This follows Rabbi Simai’s teaching, for we learned in a *Baraisa*: Rabbi Simai said: Any woman who is subject to a negative prohibition (even if she is not a relative) will produce a *mamzer* except for a widow to a *Kohen Gadol*. This is proven from the fact that the Torah writes: *The Kohen Gadol shall not take a widow for a wife, and he shall not profane his seed*. This teaches us that if he would marry a widow, the children will be *chalamim*, but not *mamzeirim*.

The *Gemora* asks: But what about according to the opinion of Rabbi Yesheivav, who said that we should protest against Akiva the son of Yosef (for according to him, there will be an abundance of *mamzeirim* in Klal Yisroel), who said: If a man cohabits with any woman forbidden to him, the offspring will be a *mamzer* (and accordingly, a *Kohen Gadol*’s *kiddushin* with a widow will not take effect).

The *Gemora* explains: If Rabbi Yesheivav is merely disagreeing with Rabbi Simai (and Rabbi Yesheivav would hold that the child produced from a union of a widow and *Kohen Gadol* is indeed a *mamzer*), then all will be fine (for Rabbi Yesheivav was only arguing with Rabbi Simai’s exception of a widow to a *Kohen Gadol*; however, he would agree that *kiddushin* could take effect with a man prohibited to her

through a positive commandment, and that would be the explanation of the verse)! However, if Rabbi Yesheivav is offering his own explanation of Rabbi Akiva's opinion, and he maintains that Rabbi Akiva would hold that any child produced from a forbidden union is a *mamzer*, even if it is only by a positive commandment, what would he do with the verse of "If a man has two wives" (for *kiddushin* does not take effect with any forbidden woman)?

The *Gemora* answers: The verse will be referring to the case of a *Kohen Gadol* marrying a non-virgin (that the *kiddushin* takes effect).

And what is the difference? - The *Gemora* explains that this prohibition is different because it is a positive commandment which is not applicable to all (only to a *Kohen Gadol*; therefore, we rule leniently that the *kiddushin* takes effect).

The *Gemora* asks: Why do the Rabbis use the verse to teach us that *kiddushin* takes effect with women that are forbidden by a negative prohibition? Perhaps the verse is referring to women who are forbidden based upon a positive commandment!?

The *Gemora* answers: It is because the verse cannot be discussing any of the women subject to a positive commandment. For if both wives mentioned in the case are Egyptian women, why would the Torah state that one wife was beloved and the other was loathed? They are both loathed! And the case cannot be where the loathed one was an Egyptian woman and the beloved one was a Jewish woman, for the Torah is discussing two women from the same nation. And it cannot be discussing the case of a non-virgin to a *Kohen*, for the Torah does not say specifically a *Kohen* (it therefore would seem that we are dealing with a prohibition that applies to all).

The *Gemora* notes that Rabbi Akiva was forced to interpret the verse to be referring to women subject to a positive prohibition. (68a1 – 68a3)

### **Child from a Slave or an Idolater**

The *Mishnah* had stated: And in a case where the woman cannot have *kiddushin* with a specific man and from anyone else, the child has her status. What is the case? It is a child of a Canaanite slavewoman and a gentile.

The *Gemora* asks: What is the source that *kiddushin* does not take effect with a Canaanite slavewoman? Rav Huna answers: It is written [Breishis 22:5]: *Stay here by yourselves with the donkey*. We understand that to mean that a slave is similar to a donkey.

The *Gemora* asks: How do we know that her child is accorded her status? The *Gemora* answers: It is written: *The woman (the slavewoman) and her children shall belong to the master*.

The *Gemora* asks: What is the source that *kiddushin* does not take effect with a gentile? The *Gemora* answers: It is written: *You shall not make marriage with them*.

The *Gemora* asks: How do we know that her child is accorded her status?

Rabbi Yochanan said in the name of Rabbi Shimon ben Yochai: It is written [Devarim 7:4]: *For he will turn away your son from following Me, that they may serve other gods*. We derive from here that your son who comes from a Jewish woman is called your son (*he is considered Jewish*), however, your son who comes from an idolatrous woman is not called your son, but rather, he is called her son.

Ravina said: We may derive from Rabbi Yochanan's teaching that your daughter's son, who comes from a father who is an idolater, is called your son (*and he is Jewish, but your son's son, who comes from a father who is an idolater, is not called your son*).



It would seem that Ravina holds that a Canaanite slave or an idolater who cohabits with a Jewess, the child born will be a *mamzer*. [For since he is not accorded the status of his father, the idolater, but rather his mother, it would stand to reason that just as someone who is born in sin, in a case when *kiddushin* does not take effect, is ruled to be a *mamzer*, so too, this child will be a *mamzer*; and accordingly, he will not be able to marry a Jewish woman!]

The *Gemora* disagrees and states that although the child is not legitimate, he is not a *mamzer* either; rather, he is called “disqualified” (and if the child is a girl, she will be disqualified for *Kehunah*). (68a4 – 68b2)

### **Other Nations**

The *Gemora* above had cited the verse: *You shall not make marriage with them* as the source which teaches us that *kiddushin* does not take effect with a gentile.

The *Gemora* asks: But that verse is discussing the Seven Nations of Canaan. How do we know that *kiddushin* does not take effect with members of the other nations? The *Gemora* answers: It is written (with respect to marrying them): *For he will turn your son away*. This would include all those who would turn the Jewish people away from Hashem.

The *Gemora* asks: This is fine according to Rabbi Shimon, who expounds the reason behind the Torah’s laws. [According to Rabbi Shimon, the verse “for he will turn your son away” is superfluous, for since the Torah invalidates marriages with idolaters, it is probably because they will turn their spouse away from Hashem, so why is it necessary for the Torah to say that? It must be to teach us that this halachah applies to all the nations of the world.] However, according to the *Chachamim*, how would they know this?

The *Gemora* answers: It is written (with respect to a *yefas to’ar*): *And afterward you may go unto her and cohabit with her*. Evidently, up until then (her conversion), *kiddushin* did not take effect.

The *Gemora* asks: How do we know that her child is accorded her status?

The *Gemora* answers: It is written: *If a man has two wives...and they bore him children*. We derive as follows: Whenever “if a man has two wives” (the first part of the verse – indicating marriage) applies, then, “and they bore him children” (the second part of the verse) applies (the children will be accorded the status of their father). But whenever “if a man has two wives” does not apply (*kiddushin* did not take effect), “and they bore him children” does not apply as well.

The *Gemora* asks: If so, we may also derive from here that the child of a Canaanite slavewoman is not accorded the father’s status!? – The *Gemora* concedes that this is indeed so.

The *Gemora* asks: So, what do we learn out from the verse “the woman (the slavewoman) and her children shall belong to the master”?

The *Gemora* answers: It is used as a source for the following *Baraisa*: If one says to his slavewoman, “Behold, you are free (with this document), but your child will remain a slave,” the child is free like her; these are the words of Rabbi Yosi HaGelili. The *Chachamim*, however, say: His words are valid, for it is written: “the woman (the slavewoman) and her children shall belong to the master.” What is the teaching of this verse? – Rava said: this verse actually supports the opinion of Rabbi Yosi HaGelili. (68b2 – 69a1)

### **INSIGHTS TO THE DAF**

#### ***Kiddushin with a Slavewoman***

Rav Nachman bar Yitzchak explains a *Baraisa* (*Gittin* 40a) to be dealing with the following case: The master told her, “Become free with this deed (of betrothal) and be betrothed to me with this.” [In this case, she was obviously not freed

from beforehand.] Rabbi Meir holds that this expression (*be betrothed*) includes emancipation (*for she cannot become betrothed to him unless he frees her first*), and the *Chachamim* maintain that it does not include emancipation.

Tosfos in Yevamos (47b) asks: How can the *kiddushin* be effective if the slave did not immerse herself in a *mikvah* beforehand? The *halachah* is that after a slave becomes free, he is immersed in a *mikvah* to become a complete Jew. If so, this woman is still a slave, and *kiddushin* is not effective with a slave!?

Tosfos answers that we are dealing with a case where she immersed herself prior to the *kiddushin*.

The Nimukei Yosef states that the requirement for this immersion is only Rabbinical, and therefore, the *kiddushin* will be Biblically effective even if she did not immerse beforehand.

Reb Chaim Brisker asks that both of these answers will not resolve the issue according to the Rambam. He proves that the Rambam holds that this immersion is a Biblical requirement. This is because the Rambam maintains that this immersion is a completion of her conversion process. If so, asks Reb Chaim, it is obviously a Biblical requirement and it also cannot be done before she becomes free, for it is part of her conversion process and that can only be accomplished after she becomes free! How would the Rambam understand our *Gemora*? How can the *kiddushin* be effective with a slavewoman?

He answers as follows: A freed slave requires immersion in order to accept upon himself those *halachos* that he was lacking while he was still a slave, for at that time, he was not a complete Jew. This, however, has no bearing on the fact that *kiddushin* is not effective with a slave or a slavewoman. That, our *Gemora* in Kiddushin (68a) explains, is because a slave does not have any lineage (*yuchasin*). A slave, in this respect, is inferior to an idolater, for an idolater does have lineage. As soon as the slave is freed and he is no longer a

slave, he does have lineage, even though his conversion was not completed, for even an idolater has lineage. It is for this reason that *kiddushin* can be effective in this case even though she did not immerse in the *mikvah* yet. For in order for the *kiddushin* to be effective, it is not necessary for her to have a completed conversion; as long as she is not a slave is sufficient, and since at the moment she becomes free, she is no longer a slave, *kiddushin* may take effect.

### **CONCEIVED FIRST OR BORN FIRST - WHO IS THE FIRSTBORN?**

The *Gemora* states: We have learned that *kiddushin* does take effect with women that are forbidden merely by a negative commandment. It is written [Devarim 21:15]: *If a man has two wives, one beloved, and the other loathed*. The *Gemora* asks: Is there a beloved or loathed wife before Hashem? Rather, the Torah is referring to their marriage. Beloved means that he is married to a permitted woman and loathed means that he is married to a prohibited woman and nevertheless, the Torah states regarding them "*If a man has two wives.*" We derive from here that if a man marries a woman that is forbidden to him merely by a negative commandment, the Torah recognizes and validates the marriage.

The verse mentioned above continues and states that if the loathed wife becomes the mother of the man's firstborn son, the father is forbidden to deny that son the right to the double portion and give it instead to the son from the beloved wife.

How can the Torah refer to one of the wives as "a loathed one"? Why would it enter our mind that the father can deprive the son of the loathed one if he in fact is the firstborn? It would seem from the order of the words in the verse that the son of the beloved woman was actually born first.

The following explanation is written in the name of the Gr" a. The Torah is referring to a case where a man divorced a

woman and that is why she is called “the loathed one.” He married another woman soon afterwards. His present wife gave birth to a son seven months after the marriage. The divorced woman gave birth to a son after nine months. One might think that the double portion designated for the firstborn should go to the son of the beloved woman because he was born first; the Torah teaches us that this is not the case. Since the son of the loathed woman was conceived first, by rights, he is deserving of the double portion. This is what the Torah means when it says “*for he is the first-fruits of his strength.*”

There are those (the Netziv) who question if the Gr”a ever said this. One of the questions that they ask is from Rashi in Bereishis (25:26), who writes from a Medrash: The interpretation is in accordance to its simple meaning: Yaakov held onto Esav’s heel lawfully, to restrain him. Yaakov was formed from the first drop and Esav from the second. We can learn from a tube that has a narrow opening. If one would insert two stones into it, one after the other, the one that entered first will emerge last, and the one that entered last will emerge first. The result is that Esav, who was formed last, emerged first, and Yaakov, who was formed first emerged last, and Yaakov came to restrain him so that he should be the first to be born as he was the first to be formed, and he would open her womb and take the birthright by law.

According to the Gr”a, this leaves us with a question: If Yaakov was the true firstborn, why was it necessary for him to purchase the birthright from Esav?

The Kli Chemda differentiates between the birthright for inheritance, which is related to the time of conception (*since it is based on a relationship with the father*) and between the rights to serve in the Beis Hamikdash, which is dependent on the time of birth. This is what Yaakov wished to purchase from Esav.

## DAILY MASHAL

When Avraham Avinu arrived at Mount Moriah, the site where he planned to sacrifice Yitzchok, he instructed his servant Eliezer and his son Yishmael to wait for him together with the donkey.

The Tiferes Shlomo notes that it is out of character for Avraham, the paragon of kindness, to address his servant and son in a disparaging manner and questions why he did so. Furthermore, after the story of the Akeidah, we are told that he returned to them and they all travelled together back to Beersheba, indicating that he once again accorded them the respect and courtesy he extended to everyone.

He answers that although it is the norm for tzadikim to minimize their accomplishments, in this case Avraham was purposely publicizing the difficulty of the test he was facing. It would have been an easier test if Avraham had two sons, and was being asked to sacrifice one of them. Notwithstanding the tremendous sacrifice this would have entailed, he still would have had the offspring promised to him by Hashem who would be the fulfillment of the promise that he would be the forefather of the Chosen Nation. However, that was not the context of this test, and Hashem had instructed him to sacrifice his *only* son, Yitzchok. Avraham wanted to completely subjugate his desires to the will of Hashem. To that end, he deliberately specified verbally that Eliezer the custodian of his household who was a principal disseminator of Avraham’s teachings, and his biological firstborn Yishmael, were to stay behind with the donkey. With this he reinforced his acceptance that only Yitzchak was the designated offspring who would fulfill his destiny, and yet he was willing to sacrifice him if Hashem so commanded.