

Daf Notes

Insights into the Daily Daf

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Kiddushin Daf 5

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Daily Daf

Kiddushin with a Document

The *Gemora* asks: How do we know that *kiddushin* can be done with a document?

The *Gemora* answers: We can derive this using a *kal vachomer*. If money cannot be used to divorce, but it can be used for *kiddushin*, a document that can be used for divorce should certainly be able to be used for *kiddushin*!

The *Gemora* asks: Money cannot be used as a proof, as it can be used to redeem consecrated items and *ma'aser sheini*, while a document cannot be used in this fashion. This is as the verse states, “*And he will give the money, and it will become his.*”

The *Gemora* answers: The source is the following: “*And she will go out (be divorced)...and she will be (betrothed).*” [This teaching is often used to derive laws of *kiddushin* from *gittin* and *visa versa*.] Just as a document can be used to divorce, it can also be used for *kiddushin*.

The *Gemora* asks: Why don't we use this teaching and 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* asks: If so, how can documents be used for both?

The *Gemora* answers: One is a *kiddushin* document and one is a divorce document.

The *Gemora* asks: The same could be said about *kiddushin* money versus divorce money!

The *Gemora* answers: The coins are the same coins (*while the documents contain very different wording*).

Rava says: The verse, “*And he will write for her,*” teaches us that she is only divorced through a document, not money.

The *Gemora* asks: Why don't we derive from this verse instead that she can only be divorced with a document, and cannot become betrothed through a document?

The *Gemora* answers: This is because of the teaching of “*And she will go out...and she will be*” (*stated above*).

The *Gemora* asks: Even so, why derive the verse in this fashion?

The *Gemora* answers: It is assumed that if a verse is discussing divorce, it is coming to teach laws regarding divorce, not *kiddushin*.

The *Gemora* asks: According to Rabbi Yosi HaGelili who says that this verse teaches us something else, how does he know that one cannot be divorced with money?

The *Gemora* answers: He derives this from the verse, “*sefer krisus*,” which teaches that only a “*sefer*” -- “document” divorces, nothing else (*such as money*).

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

The *Gemora* answers: They understand it as presented in the following *braisa*. The *braisa* states: If someone says to his wife, “This is your *Get* on condition that you do not drink wine, or that you do not go to your father’s house forever, this is not a severance.” If he only says she cannot go for thirty days, this is a severance.

The *Gemora* asks: Where does Rabbi Yosi HaGelili derive this teaching from?

The *Gemora* answers: He derives this from the word “*kares*” within the word “*kerisus*.” The *Chachamim*, however, did not hold that the word “*kares*” within the word “*kerisus*” could be teaching us a different law.

The *Gemora* asks: Why didn’t the Torah only teach us two out of these three ways to perform *kiddushin*, and we would derive the third from the other two? [*We would say that just as these two methods of acquisition generally work and they work for kiddushin, also this third method that generally works, also works for kiddushin.*]

The *Gemora* answers: Which two would we derive from? If it would leave out *kiddushin* by document, we would say that the other two methods exclusively work as they involve an immediate benefit (*money or pleasure from cohabitation*). If it would leave out cohabitation, we would say that only money and documents work, as they are normally used to acquire many things (*not just women*). If it would leave out money, we would say that only documents and cohabitation work, as they can be effective against one’s will (*by divorce and yibum respectively*). If you will say that money is also used against one’s will in a case where a father sells his daughter as a maidservant, it is still not like documents and cohabitation, as they are used against one’s will in a context of marriage. [*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).*] (5a)

Chupah as Kiddushin

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*! (5a – 5b)

Language of Kiddushin

The *braisa* 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 Papa 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 *braisa*, 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 braisa was constructed to imply that the case excluded from the beginning of the braisa has the law of the second case of the braisa.*]

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.

The *Gemora* explains Shmuel: 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. (5b – 6a)

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 that 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?

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.”

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'ain*,” 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'ain Bilam*” and “*Me'ain 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.