

OVERVIEW of the Daf

1) Rejecting kiddushin (cont.)

An incident is cited that discusses whether a woman's response to a proposal of kiddushin conveys acceptance of the proposal.

Two similar incidents are presented.

The Gemara inquires whether the meaning of the earlier-cited responses would change if the woman had not repeated her words.

Ravina and R' Sama bar Rakta disagree on this matter and the Gemara rules that there is no kiddushin even when the woman does not repeat her words.

Three rulings related to earlier discussions are recorded.

2) Kiddushin by contract

A Beraisa is cited that describes the procedure for performing kiddushin with a contract.

The Gemara inquires why the kiddushin contract works differently from a sale contract.

Rava suggests an explanation but it is rejected.

Rava and the Gemara offer alternative explanations.

Rava presents different halachos related to kiddushin by contract.

Reish Lakish inquired whether the kiddushin contract must be written for the sake of the woman to whom it is given.

After presenting both sides of the inquiry Reish Lakish answers that it must be written for the sake of the woman to whom it is given.

A dispute is presented whether a kiddushin contract written without the knowledge of the woman is valid and each Amora explains the rationale behind his opinion.

The opinion that maintains that the kiddushin contract is valid is unsuccessfully challenged.

3) Kiddushin by cohabitation

R' Avahu in the name of R' Yochanan suggests a source that kiddushin can be made by cohabitation.

The necessity for this source is unsuccessfully challenged since Rebbi had already identified an alternative source.

The Gemara explains what exposition R' Yochanan makes from the word **ובעלה** since he does not use it as the source for kiddushin.

The theoretical exchange between R' Yochanan and Rebbi is presented.

Rava, who uses the word **ובעלה** for another exposition, explains how it is possible to derive all three expositions from the word **ובעלה**.

The Gemara analyzes what exposition Rebbi will derive from the words **בעולת בעל**. ■

Distinctive INSIGHT

The תנאים – The formality of the financial commitments

דאמר רב גידל אמר רב כמה אתה נותן לבנך כך וכך, לבתך כך וכך, עמדו וקדשו קנו. הן הן הדברים הנקנין באמירה

The Gemara presents the halacha of the **תנאים**—the financial agreement—which is made between the fathers of the chasan and kallah, in order to formalize their agreement to prepare for the upcoming marriage. When the father of the chasan and kallah each declares how much they will contribute to the couple's new house, and kiddushin is agreed upon, these commitments are binding even without a formal transaction (**קנין**) needing to be done. The verbal statements under these circumstances are binding.

Tosafos cites Rashbam who explains that the verbal statements are only binding when the families agree upon the kiddushin at that same meeting. The words of Rav Gidal in the name of Rav indicate this to be the case, as he says, "If they then conclude and declare kiddushin (**עמדו** וקדשו)," the oral agreement is binding.

Ritva, however, learns that the oral financial agreement is binding whenever the arrangement ultimately concludes with kiddushin, even if it not be done at the very meeting. As long as the couple agrees to kiddushin at any time, the financial promises are valid. However, if kiddushin is arranged first, any subsequent financial agreement must be concluded with a formal **קנין**.

Quoting Rabeinu Tam, Tosafos adds that this dispensation to allow the commitments to be binding without a formal **קנין** is only true when the kiddushin is the first for the young woman. This is where feelings of the girl's father are most enhanced, and he agrees to the financial obligations to the proposed son-in-law. Meiri here also writes that this halacha only applies to a first wedding, but he explains it in terms of the father of the chasan. A man has no direct expectation to give anything for his son, but for the first wedding of his son, here even the father is overwhelmed with gratitude, and he agrees to contribute eagerly, even with an oral declaration. For a subsequent marriage of his son, the father only is committed if he performs a formal **קנין**.

Tosafos also notes that this halacha only applies to promises made by the father, but any arrangements made by the mother or the brother of the kallah are only binding if concluded with a formal **קנין**. ■

HALACHAH Highlight

Taking a false oath on the head of the king

ר' סמא בר רקתא אמר תגא דמלכא

R' Sama bar Rakta said, "By the crown of the king..."

Rav Yosef Chaim of Baghdad¹, the Ben Ish Chai, was asked whether it is permitted for a person to take a false oath "on the head of the king - בראש המלך" if the king is not Jewish. He responded that it is certainly prohibited to take a false oath on the head of the king even if he is the king of another nation. The reason, he explains, is that we are taught in Pirkei Avos² that there is an obligation to daven for the well-being of the king so it is only logical to conclude that it would be prohibited to take an oath that is false on the head or by the life of the king.

Ben Ish Chai also cited our Gemara as further evidence that it is prohibited to take a false oath by the head of a non-Jewish king. Ravina maintained that if the woman only says, "Give," or "Pour me," without repeating herself it indicates that she is accepting the offer of kiddushin. R' Sama bar Rakta disagreed with that position and he introduced his comments with the words תגא דמלכא—By the crown of the king." Rashi³ explains that he took an oath on the crown of the king which indicates that in the time of Chazal they had such great respect for the non-Jewish king that they would take oaths by his name even in the course of learning in the Bais Midrash and it was understood that the oath was serious and not a sar-

REVIEW and Remember

1. Is it necessary for the contract used for kiddushin to have monetary value?
2. How does a kiddushin contract differ from a contract to purchase land?
3. Is it necessary for the kiddushin contract to be written with the woman's knowledge?
4. Why does R' Yochanan reject Rebbi's source for kiddushin by cohabitation?

castic comment.

He notes that the Midrash Tanchuma⁴ writes that when Yosef took a false oath he did so on the life of Pharaoh which seemingly contradicts the assertion that it is prohibited. To resolve this challenge he writes that Pharaoh is categorized differently from other non-Jewish kings. Since Pharaoh considered himself to be a god he is treated with less respect than other kings, therefore, it is permitted to privately disrespect him and even take a false oath by his life. ■

1. שו"ת תורה לשמה סי' שצ"ה.

2. פרקי אבות פרק ג' משנה ב'.

3. רש"י ד"ה תגא דמלכא.

4. מדרש תנחומא מקץ סי' י"ז. ■

STORIES Off the Daf

A Fumbled Phrase

"אין כותבין שטרי אירוסין ונישואין..."

The words of the Gemara in Kiddushin are well known: no one should officiate at divorces or marriages unless he is an expert in their intricate halachos. Even a seemingly slight difference can make all the difference between a valid or invalid ceremony.

One young chosson chose a family friend to officiate at his marriage. Unfortunately, this man, although a talmid chacham, was not proficient in the complexities of Even Haezer. As is so often the case, the chosson was nervous. Instead of saying "הרי את מקודשת לי" (You are hereby mekudeshes /consecrated to

me...") he said, "הרי את נשואה לי" (You are hereby nesuah/married to me...").

After the wedding, someone told this story to a Rav who did know Kiddushin and ended with the offhand remark, "...Interesting how he sort of fumbled the words."

"He what?" the horrified Rav interjected. "The Rema brings an opinion that the phrase he used does not effect a marriage!"

They decided to consult with Rav Yitzchak Zilberstein, shlit"a, on this matter. He answered, "The מקנה explains that this opinion is only discussing one who uses the expression "הרי את נשואה לי" while expressly proposing קידושין—the first stage of marriage. If he is making both stages at once, however, the language of nisuin is perfectly applicable.

"He proves this from a discussion on Kiddushin 9. There we find that we only write documents of betrothal/eirusin and marriage/nisuin with the consent of both parties. The Gemara at first presumes this means with the consent of the man and woman. But the obvious question in light of this is, what exactly are 'documents of nisuin' when one can only effect nisuin through the ceremony of chuppah? The only way to learn this is to explain that if one wishes to do both stages at once he writes, 'הרי את נשואה לי' in the document of marriage."

Rav Zilberstein concluded, "The same holds true here. If the chuppah we use today is what makes the second stage of marriage, there is no problem whatsoever."¹ ■

¹אבני חושן, חלק ג', עמוד תקכ"ו