

OVERVIEW of the Daf

1) Kiddushin with a loan (cont.)

The Gemara continues to present alternative explanations of the Baraisa that was thought to contain a dispute concerning the validity of a betrothal done with a loan.

The point of dispute in the Baraisa's second case is explained.

It is again suggested that the ruling of Rav is subject to a debate amongst Tannaim.

R' Nachman bar Yitzchok rejects the assertion that the dispute in the Baraisa relates to Rav's ruling about kiddushin with a loan.

Two other interpretations of the Baraisa are presented.

It is again suggested that the ruling of Rav is subject to a debate amongst Tannaim.

This suggestion is rejected and three alternative explanations of the Baraisa are offered.

The Gemara notes that the third explanation of the Baraisa is in fact a dispute between Tannaim in another Baraisa.

A point in the Baraisa is clarified.

2) **MISHNAH:** The Mishnah presents a discussion regarding the validity of a kiddushin that was performed when the woman was misled regarding the item used to effect the kiddushin.

3) Kiddushin with a cup

Three Baraisos are cited concerning a case where a man proposes kiddushin with a cup and there is a difference of opinion whether the intent was to effect kiddushin with the cup, the contents or both.

4) Clarifying R' Shimon's position

The rationale behind R' Shimon's position is questioned.

R' Shimi bar Ashi in the name of Rav explains the rationale behind R' Shimon's position.

This explanation is challenged.

Rava offers an alternative explanation.

Tangentially, Abaye asserts that R' Shimon, R' Shimon ben Gamliel and R' Elazar maintain that when the principal gives instructions he does not intend to exclude other ways of fulfilling his agency. ■

Distinctive INSIGHT

He promised her silver, but she received gold

בדינר זה של כסף ונמצא של זהב

The Mishnah taught that if a man gives a woman a coin, telling her that it was silver, and it turns out to be gold, the kiddushin is not valid. Rabbi Shimon says that if the mistake is for the benefit of the woman, the kiddushin is valid.

Rashba was asked a question regarding a man who told a woman he was giving her a ring of gold for kiddushin, and he gave her a cup or a garment instead. Is the kiddushin valid? Rashba responded by saying that if the woman was unaware of what she was being given, for example where her face was covered, or the item was in a closed box, the kiddushin is not valid. The woman certainly expected to receive the ring she was promised. And even if the cup or garment which she was given was worth more than the ring she expected, we rule according to the Rabanan of our Mishnah, and the item she actually received was not what she agreed to accept. However, if the woman clearly saw that she was not being given a ring, and she extended her hand and willingly accepted the cup or the garment instead, it is reasonable (*מסתבר*) to say that the kiddushin is valid.

Rashba brings a proof to his opinion from a Gemara cited earlier (8a), where a man offers a woman "this *מנה*", but the money he gave turns out to be a *דינר נחשת*. The kiddushin is not valid. The Gemara there asks that if the woman saw what was happening, and she still accepted the money, why is the kiddushin not valid? The Gemara answers that, in fact, if she sees it, the kiddushin is valid. The case is where she was given the money at night, and she did not realize that the money was not what she expected. We see, notes Rashba, that even if a woman is promised one thing, but she is given something else, the kiddushin is valid if she realizes what is happening and is still willing to accept the exchange.

Rashba adds that even in our case, it is better if the man re-gives kiddushin to the woman in a manner which is unquestionable, in order to avoid a situation where the woman might accept kiddushin from a different man, and a *bais din* would question the legitimacy of the first kiddushin.

Tur (E.H. 38) also writes that if a man promises a woman a jar of wine, and it turns out to be a jar of honey, the kiddushin is not valid if the jar is closed and the woman cannot see that she received honey. If, however, the jar is open, and the woman sees that she is receiving honey instead of wine, the kiddushin is valid. ■

HALACHAH Highlight

Kiddushin with an object whose value is derived from its use as a mitzvah object

וחכמים אומרים שמין את הנייר אם יש בו שוה פרוטה מקודשת וכ"ו

Chachamim assert that we appraise the value of the paper, if it is worth a perutah the kiddushin is valid

Later¹ authorities discuss whether a woman can be betrothed with a mitzvah item that has no resale value but the benefit one has from using it to fulfill a mitzvah is worth at least a perutah. A similar question is found in the Mishnah Lamelech². If a person stole an esrog that was beautiful (מהודר) and disqualified it while it was in his possession, is it sufficient for the thief to return a simple kosher esrog even though it is lacking the beauty of the first or perhaps the esrog owner can claim that he wants to fulfill the mitzvah in a beautiful fashion and the thief should return to him a beautiful esrog? Mishehh Lamelech cites the opinion of Maharam Mintz who demonstrates that the thief's obligation is to give the victim a kosher esrog and he does not have to provide an esrog that is beautiful. Sefer B'nei Chai³ infers from the position of Maharam Mintz that the value of an item that results from its use as a mitzvah object is not considered to be actual value. Therefore, if a man betroths a woman with an esrog that is worth a perutah only because it can be used for a mitzvah, the kiddushin is not valid since he did not give her something that has actual value.

REVIEW and Remember

1. What is the mechanism of the acquisition called מעמד שלשתן?
2. Is it necessary for the betrothal document to be written for the sake of the woman (לשמה)?
3. What is the point of dispute between Tanna Kamma and R' Shimon?
4. Who is described as "the lion of the group?"

Mishnah Lamelech rejects the position of Maharam Mintz and maintains that the thief is obligated to repay the value of a beautiful esrog since at the time it was stolen it was worth more than a regular esrog. Accordingly, if a man gave such an object to a woman as kiddushin, the kiddushin would be valid. Minchas Shlomo⁴ suggests that Maharam Mintz referred to a circumstance where the esrog could not be sold, e.g. in a town where everyone owned an esrog. In such a circumstance the esrog does not have value as a mitzvah object, since it is not needed for that purpose, thus its only value is as a fruit. Consequently, the thief does not have to pay any more than the value of a regular esrog. ■

1. עי' נוי"ב מהדו"ת אה"ע סי' ס"ז ומנחת חינוך מצוה תצ"ו.
2. משנה למלך פט"ז מהל' מעשה קרבנות ה"ז.
3. ספר בני חיי סי' מ'.
4. שו"ת מנחת שלמה תנינא סי' קל"ה. ■

STORIES Off the Daf

A strange claim

”עשיר ונמצא עני עני ונמצא עשיר אינה מקודשת...”

Chazal explained the verse that we must “love Hashem with all our hearts, lives and possessions” to be referring to two different individuals. One person loves his life more than his money, while the second person values his possessions more than his life. Rav Yaakov Galinsky, zt”l, explained that to the miser, it feels easier to cut off his arm than to give money even to the most worthy of causes.

When referring to such a miser who refused to part with one penny of his ample fortune to benefit the community, a certain Rav commented tongue in cheek, “This man has enabled me to understand the Gemara in Kiddushin 48 in a new light. There we find that one may not marry a woman under false pretenses. If a man marries a woman on condition that he is rich and he is really poor, or marries a woman on condition that he is poor and he is actually rich, the kiddushin does not take effect. I can understand why the marriage is void if he said he is rich and he is really poor, but if he said he is poor and he is actually rich, why shouldn't the marriage take effect?”

“But, if we contemplate the lifestyle of this miser the answer is clear. The Gemara is talking about a man who is wealthy but lives like a pauper because he hoards his money. Who else would make a condition that he is poor when he is actually wealthy? Such a person hardly provides bread for his household despite his monumental wealth. Such complete servitude to money is shameful! For this reason, even a woman who had been willing to live the life of pauper is not married to such a miser. Such a marriage does not take effect since he cannot even be compared to an honest beggar!”¹ ■

1. אוצר שיחות צדיקים, עמוד רס"ט