

OVERVIEW of the Daf

1) Kiddushin that does not allow for relations (cont.)

The Gemara finally succeeds at refuting Rava's position regarding kiddushin that does not allow for relations.

The Gemara rules like Abaye in the six cases of יע"ל קג"ם.

2) Lessons to be gleaned from the Mishnah

Rav notes that one could infer four lessons from the incident cited in the Mishnah but he only accepted three of those rulings.

The three rulings that Rav accepts are presented.

The Gemara identifies the fourth ruling and explains why it is rejected by Rav.

3) Kiddushin with stolen property

When R' Yochanan was told that Rav ruled that a thief cannot perform kiddushin with stolen property he expressed astonishment which the Gemara explains was surprise that Rav agrees with his ruling.

Rav's ruling that a thief may not do kiddushin with stolen property is unsuccessfully challenged.

Three incidents related to kiddushin with stolen property are presented.

Rava cites and explains a Beraisa that supports his ruling in the third incident.

4) MISHNAH: The Mishnah discusses the validity of kiddushin done with a person's portion of a korban, ma'aser sheni or hekdesch.

5) Kiddushin with a korban

It is noted that the Mishnah that invalidates kiddushin done with kodshim kalim is inconsistent with R' Yosi HaGalili who maintains that kodshim kalim are considered private property.

This assertion is rejected.

A Beraisa is cited that presents an incident related to the ruling that one may not do kiddushin with kodshim kalim.

A Beraisa presents a dispute between R' Yehudah and R' Yosi whether kiddushin with a korban is valid.

R' Yochanan asserts that both opinions drew their position from the same verse. ■

Distinctive INSIGHT

The parallel between an agent for teruma and one for kiddushin

אם נמצאו יפות מהם תרומתו תרומה, ואם לאו אין תרומתו תרומה

Tosafos notes that the Gemara in Bava Metzia (22a) explains that the case of the teruma being taken off is a case where the owner appointed an agent to designate the teruma from his grain. Nevertheless, the actions of the agent are referred to as being without the owner's consent in that the owner sent the agent with general instructions to remove teruma from the grain, and the agent proceeded on his own to take from the choicest quality products. Similarly, Maharsha explains that our Gemara, in a parallel fashion, is speaking about where the man appointed an agent to betroth a woman for him, but the man did not specify what item was to be used to be given to the woman. When the agent used the remnants of the dates which were used to make a beverage, the man responded with surprise, "Why did you not take from the better fruits?" The Gemara concludes that the man was actually disappointed, and his response indicated that the kiddushin was therefore not valid.

Ramban explains that the Gemara thought that the parallel between teruma and kiddushin was that when a man appoints an agent to give kiddushin without specifying what should be given, the expectation and intent is that average quality items should be given. Nevertheless, when the man later says that better quality produce should have been given, the kiddushin should be valid because the woman still received a decent item. In this same scenario, teruma specifically would not be valid, as the שליחות must fulfill the demands of the verse (Bamidbar 18:28), "also you - גם אתם" and that the agent perform the will of the sender.

Rambam seems to understand that the case of kiddushin is where the proposed husband did not appoint an agent. He writes (Ishus 5:8): "Someone walked into his friend's house and took an item or food and gave it to a woman for kiddushin (for the homeowner). If, when the owner of the house comes he declares, 'Why didn't you give this better item?' the kiddushin is not valid, as the homeowner only reacted due to embarrassment." This suggests that without this factor the woman is betrothed. We can ask several questions. Why does this case fail only due to the embarrassment factor? The later knowledge of the homeowner does not allow the earlier giving of kiddushin to be valid. Furthermore, if the case is where the "husband" was not an agent, what is the parallel in our Gemara to the case of teruma?

Among many who answer, Tosafos Ri'd explains Rambam to refer to a case where the homeowner saw the events as they were unfolding, and he told the man who was on his way, "Why not take better items?" Even here, the kiddushin will not be valid, due to the statement being made due to embarrassment. ■

HALACHAH Highlight

Kiddushin with a worthless object that belongs to someone else

ההוא סרסיה דקדיש בפרומא דשיכרא

A certain worker betrothed a woman with leftover dates that belonged to his employer

Rambam¹ rules that if someone betroths a woman with an object that his employer is not concerned about (אין (מקפיד עליו), e.g. a date or a nut, it is possible that the kiddushin is valid (הרי זו מקודשת מספק). Bach² explains that Rambam drew this conclusion based on the examples given in the Gemara. Since the Gemara discussed items that the employer is concerned about the implication is that if the kiddushin had been done with items that employers are, generally, not concerned with it is possible that the kiddushin is valid. Noda B'yehudah³ is troubled with this ruling. Even if we assume the employer is not particular about this object, nevertheless, it is his object. How then does it become the property of the one who is using it to betroth a woman? Noda B'yehuda suggests a number of explanations for this enigmatic ruling.

One explanation is that the employer saw the other person take the item from him. Once the employer saw the other person take his object and did not protest it is understood that he waived his ownership of the object thus allowing the other person to become its legal owner. Another explanation⁴ is that even though it is prohibited to take objects that belong to another person even though they are items that people are not concerned about, nonetheless, it should not be treated any worse than the law of יאוש. Therefore, when the man gives the

REVIEW and Remember

1. How did Rav infer from the Mishnah that one cannot betroth a woman with stolen property?
2. If a man steals something from a woman and gives it to her as kiddushin is the kiddushin valid?
3. What message does the phrase ככלך אצל יפות?
4. Why did R' Yehudah not want R' Meir's students to join his Beis Midrash?

object to the woman for kiddushin we have a case of יאוש and שינוי רשות a change of possession. Although it was improper to take someone else's object to betroth a woman, once the act was performed it could be recognized as valid. Avnei Miluim⁵ suggests that items that people are generally not concerned about are treated like a gift to the one who takes it. Therefore, when it is taken and used for kiddushin the kiddushin is valid. However, since ownership of the object is being transferred as a gift the object does not actually leave his possession until it reaches the possession of the recipient and thus, before the object was taken, the employer would have the right to change his mind and keep the item for himself. ■

1. רמב"ם פ"ה מהל' אישות ה"ח.
2. בי"ח אה"ע סי' כ"ח סעי' ט"ו.
3. שו"ת נודע ביהודה מהדו"ק אה"ע סי' נ"ט.
4. שו"ת נודע ביהודה מהדו"ת אה"ע סי' ע"ז.
5. אבני מילואים סי' כ"ח ס"ק מ"ט. ■

STORIES Off the Daf

The right time and the right place

"וכי אשה בעזרה מנין..."

It is often with good reason that many couples wait an extended period between their engagement and their marriage. Just finding a hall and making the myriad other technical preparations for the wedding can take time. Even the placement of the chuppah can be a trying subject. And both the ceremony and the reception must obviously be in an affordable place that will accommodate all the guests.

A certain man had a brilliant idea: why not just make the chuppah and reception in shul? In this simple way, he could solve the problem of affordable space with relative ease. When this question was posed to the Yehudah Ya'aleh, he immediately presented many reasons why this was not a good idea. "First of all, we find on Kiddushin 52 that usually a woman would not get married in the azarah of the Beis HaMikdash. Tosefos explains that although a woman may have been in the azarah, a man would not ordinarily propose to her there since it is inappropriate to marry in a place that is designated for the holiness of the avodah. Since our shuls are a miniature

Mikdash, set aside for our tefillos, it is really not appropriate to make a chuppah in shul..."¹

When someone asked the Chasam Sofer, zt"l, this question he did not prohibit the practice outright. But he did write that it emerges from the Rema, zt"l, that the custom is to make the chuppah under the sky for a siman brochah.

He concluded, "Whoever is not interested in the brochah can go ahead and imitate the goyim and get married in shul!"² ■

1. שו"ת יהודה יעלה, חלק א', אורח חיים, סימן ל"ח
2. שו"ת חתם סופר, אבן העזר, סימן צ"ח