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בס"ד Intro

Today we will בע"ט learn מסכת קדושין of נע"ט. Some of the topics we will learn about include.

The Machlokes regarding

קידשה אביה בדרך

וקידשה עצמה בעיר

והרי היא בוגרת

In the case of a נערה whose father accepted her Kiddushin in the morning, and later on the same day she accepted her own Kiddushin; and afterward on that very same day she was examined and discovered to be a בוגרת.

בן says

הרי היא בוגרת לפנינו

מדהשתא בוגרת

בצפרא נמי בוגרת

The חזקה החזקה, her current status of בוגרת assumes that she was already a בוגרת in the morning during her father's Kiddushin:

Therefore, her father's קידושין was not effective because she was no longer under his jurisdiction, and her קידושין did take effect.

В

שמואל disagrees and says

חיישינן לקידושי שניהם

We do not consider the חזקה בהשתא as an assumption, and therefore לחומרא her father's Kiddushin was also effective, because

השתא הוא דאייתי סימנים

Perhaps she only became a בוגרת now, but in the morning she was still a פערה, and her father's קידושין WAS effective because she WAS ברשותו.

מקוה שנמדד ונמצא חסר

A מקוה that initially contained the required forty הסאה, but afterward it was discovered to be lacking from the forty

כל טהרות שנעשו על גביו למפרע

טמאות

All אהוו items that were previously immersed in this מקוה are considered איט, even if the מקוה was situated in a public area where generally ספק טומאה סהור, a questionable שומאה שוני is considered טומאה.

הכותב נכסיו לאחרים

ולא שייר כלום

A person who signed away ALL his assets to others without leaving anything for himself;

בשכיב מרע

אם עמד אין מתנתו מתנה

If he was a dying person, who then recovered, the מתנה is cancelled, because

דגלי דעתיה דמצוה מחמת מיתה היה

It is obvious that his intention of the מתנה was only if he was to die, but not if he recovers, because would otherwise not do that. However,

בבריא

מתנתו מתנה

If he was a healthy person, the מתנה is valid.

קידשה אביה בדרך קידשה עצמה בעיר וקידשה עצמה בעיר והרי היא בוגרתחזקה דהשתא









So let's review ...

Zugt Di Mishnah;

מי שנתן רשות לשלוחו לקדש את בתו והלך הוא וקדשה

A father first instructed his agent to accept a Kiddushin for his daughter, but the father himself then went ahead and accepted a Kiddushin for her.

אם שלו קדמו קידושיו קידושין

If the father's Kiddushin was first, then only his Kiddushin is effective, because, as Rashi explains

דבטליה לשליחותיה דשליח

The father's קידושין indicates that he cancelled the שליחות. ואם של שלוחו קדמו

קידושיו קידושין

If the שלים's Kiddushin was first, then only the שלים's Kiddushin is effective, because the father did not yet cancel the שליחות. And obviously, a second Kiddushin cannot take effect once she's מקודשת.

ואם אינו ידוע

שניהם נותנים גט

And if it was not known which Kiddushin was first, both are effective לחומרא; and therefore, if she chooses to marry someone else, she first requires a **G**ett from both men. ואם רצו

אחד נותן גט ואחד כונס

And if she chooses to marry one of them, she first requires a **G**ett from the other.

Similarly,

וכן האשה שנתנה רשות לשלוחה לקדשה והלכה וקדשה את עצמה

If a woman first instructed her agent to accept her Kiddushin, but she then went ahead and accepted her own Kiddushin; the above likewise applies.

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3 The Gemara proceeds with a Machlokes

איתמר קידשה אביה בדרך וקידשה עצמה בעיר

והרי היא בוגרת

In the case of a נערה whose father accepted her Kiddushin in the morning and she then accepted her own Kiddushin later on the same day; and even later on that very same day she was examined and discovered to be a בוגרת;

And as the Gemara explains; דקדיש בההוא יומא דמשלים ששה

This all occurred on the day that the six months of נערות concluded:

and as Rashi explains; שהיום היא עשויה להשתנות

Her status of נערה was destined to change on this day and she was going to become a בוגרת at the end of the day. Therefore,

רב says הרי היא בוגרת לפנינו מדהשתא בוגרת בצפרא נמי בוגרת

The חזקה החקה, her current status of בוגרת assumes that she was already a בוגרת in the morning during her father's Kiddushin;

And as Rashi adds; there is no אזקה דמעיקרא חזקה of נערה; we do not say that since she was initially a נערה, she continues to be considered a נערה until a known change;

שכל היום היא בחזקת שתבא

For the entire day there was a supposition that she would become a בוגרת.

Therefore, her father's קידושין was not effective because she was no longer under his jurisdiction, and her קידושין did take effect.





Dedicated By: _





שמואל disagrees and says חיישינן לקידושי שניהם

We do not consider the חזקה דהשתא as an assumption, and therefore לחומרא her father's Kiddushin was also effective, because

השתא הוא דאייתי סימנים

Perhaps she only became a בוגרת now, but in the morning she was still a נערה during her father's Kiddushin.

Therefore, perhaps her father's קידושין WAS effective because she WAS ברשותו.



The Gemara questions שמואל from a Mishnah in מסכת

מקוה שנמדד ונמצא חסר

A מקוה which was initially known to have contained the required forty סאה, but afterward was discovered to be less than forty;

כל טהרות שנעשו על גביו למפרע

טמאות

All items that were previously immersed in this מקוה, between now and back to when it was definitely full, are considered טמא.

Apparently, because we do consider the חזקה דהשתא, that the מקוה's current status of חסר was always its status, and the מקום is considered ודאי חסר?





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The Gemara explains

התם תרתי לריעותא הכא חדא לריעותא

Regarding מקוה, we do consider the חסר of חסר of חסר, because, there are two factors which contradict the טהרה of the item.

דאיכא למימר העמד טמא על חזקתו
 ואימר לא טבל

There is a טמא חזקה חזקה of the item that was initially אטמ, that it continues to be אטט until a definite טבילה, and this questionable טבילה cannot remove the חזקת טומאה. And

הרי חסר לפניך

There is a חזקה דהשתא מקוה was always חסר.

Regarding בוגרת however, we do not consider the חזקה because this is only one factor that contradicts her father's קידושין.

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The Gemara suggests that this מחלוקת רב ושמואל is possibly based on the same reasoning as the מחלוקת תנאים in the following Braisa regarding הכותב נכסיו לאחרים ולא שייר כלום

A person who signed away ALL his assets to others without leaving anything for himself;

and as Rashi writes, בשכיב מרע בשכיב מרע אם עמד אין מתנתו מתנה If he was a dying person, who then recovered, the מתנה is cancelled, because דגלי דעתיה דמצוה מחמת מיתה היה It is obvious that his intention of the מתנה was only if he was to die, but not if he recovers, because he would otherwise not do that. However, בבריא מתנתו מתנה If he was a healthy person, the מתנה solution.





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9 The Braisa begins

מי מוציא מיד מי

If the owner is now a שכיב and claims to have been a שכיב at the time of the מתנה, while the recipients claim that he was a מתנה all along even at the time of the מתנה, who extracts the מתנה from whom?

הוא מוציא מידם בלא ראיה והן אין מוציאים מידו בלא ראיה דברי רבי יעקב

תבי יעקב says we consider the שכיב מרע. בעלים, and therefore he can extract the מתנה from them without a proof; while they cannot extract the מתנה from him without proof.

רבי נתן disagrees and holds אם בריא הוא

עליו להביא ראיה שהיה שכיב מרע

We consider the ב'ב'ב's current status of בריא as an assumption that he was always a בריא; and therefore, he cannot extract the מתנה without proof that he was previously a שכיב מרע.

The Gemara at this point believed that the reasoning's behind both מחלוקת are the same:

רבי נתן

And רב who says הרי בוגרת לפנינו

Both hold that we do consider the א חזקה חזקה מחל and בריא as an assumption that this was the previous status as well.

While רבי יעקב And שמואל who says חיישינן לקידושי שניהם

Both hold that we do not consider the בריא of בריא as the previous status.

The Gemara answers that this is not necessarily so רבי יעקב concurs even with רבי יעקב, because התם דאיכא למימר העמד ממון על חזקתו

חזקה דהשתא חבי יעקב only regarding monetary issues in which the בעלים has a חזקת ממון, he initially possessed the money; and the חזקה במחוז cannot override the חזקת ממון.

אבל הכא מי נימא העמד גוף על חזקתו

רבי יעקב does consider the חזקה דהשתא וזקה regarding בוגרת בוגרת where she does not have a נערה of חזקה דמעיקרא, because it was עשויה להשתנות, destined to change.











While שמואל concurs even with רבי נתן because התם דכולי עלמא בחזקת בריאים קיימי התם דכולי עלמא בחזקת בריאים קיימי because there is a supporting הזקה that all people are healthy. Therefore, מאן דקא מפיק נפשיה מחזקה הוי עליה לאיתויי ראיה

Whoever claims otherwise must bring proof.

Many girls remain נערות even on the final day.

אבל הכא מי קא מפקא נפשה מחזקה דקמיה מחזקה דקמיה למחזקה במוגרת בוגרת, because there is no supporting חזקה that she was not a נערה, because, as Rashi explains הרבה נערות ביום דמשלם שית

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The Gemara cites two Breisos regarding קידשה אביה בדרך קידשה עצמה בעיר וקידשה עצמה בעיר והרי היא בוגרת

One Braisa rules as רב הרי היא בוגרת לפנינו Only HER Kiddushin is effective

While the other Braisa rules as שמואל חיישינן לקידושי שניהם we also consider her father's Kiddushin

The Gemara concludes, that both Breisos may concur with שמואל, but

כאן במכחשתו

כאן בשאין מכחשתו

If she contradicts her father and claims to have become a קידושין even before his קידושין, she is believed, and his קידושין is not effective.

However, if she does not contradict him, then לחומרא his קידושין is effective.

The **G**emara concludes והילכתא כוותיה דרב





