

**YESHIVAT HAR ETZION
VIRTUAL BEIT MIDRASH PROJECT (VBM)**

**TALMUDIC METHODOLOGY
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PREMARITAL PAYMENT OF "MEZONOT" SUPPORT

The mishna in Ketubot (57a) addresses the schedule for nissu'in. Generally, in the days of Chazal, kiddushin (the first stage of halakhic marriage) was performed a period of time before the marriage was consummated through nissu'in. The mishna informs us that after kiddushin has occurred, each party has the right to demand that nissu'in be performed. The other party has a year to make the necessary arrangements. If the husband delays unnecessarily, the mishna continues, he must begin to pay mezonot support to his wife. Although, generally, these payments do not begin until the couple is officially married; in this case he must begin payments immediately after twelve months have passed. This halakha is referred to as "higiyu zman ve-lo niss'u (if the scheduled date for nissu'in has arrived and they still have not wed) okhlot mi-shelo (she begins to 'eat' (receive support) from him. " This week's segment will consider this halakha.

Intuitively, (which many reader's recognize by now, is often the 'best' way to begin analysis) there seems to be no integral reason that an unmarried (in terms of nissu'in) man should support a woman who isn't fully considered his wife. Therefore, we have no choice but to view this as an external fine levied by Chazal to deter tardy husbands (see the formulation of the Rosh Yevamot 4:25 who expressly refers to this payment as a kenas). However, we notice an interesting machloket which accompanies this halakha. The aforementioned mishna (57a) quotes a dispute as to what type of 'food' she may eat from her husband. In general, a yisrael who marries a kohen (after nissu'in) can share her husband's teruma even though she herself isn't a kehuna. The first position cited in the mishna rishona (early version of the mishna) maintains that this 'would-be' wife of a kohen who has waited twelve months, may share her future husband's teruma even though she isn't officially married to him. This is a startling halakha since she isn't really considered his wife and merely receives money which her future husband pays as a fine!! Indeed, the mishna acharona (later version of the mishna) rejects this position. Yet, the position itself does exist!!!

Evidently, this post-twelve month payment isn't isolated from the overall marriage relationship. It cannot be viewed as a mere fine laid upon this delaying man. Apparently, once kiddushin has occurred, and the woman has demanded that nissu'in be implemented, and a twelve month period has expired, part of their ultimate marital relationship already gels - even prior to the actual nissu'in. The husband has to pay her mezonot, not just because of an external, unrelated fine but because, in terms of mezonot support, they are considered married even before nissu'in. Once eirussin has been performed and the date of nissu'in transpires she attains a partial status of nessesu'a even before the formal nissu'in occurs.

Indeed, a simple reading of the mishna seems to capture this issue with utmost clarity. The first position allows this woman to eat from teruma because in certain respects, after twelve months have elapsed she becomes the wife of a kohen. Interestingly enough, in terms of the explanation to this mishna there seems to be a division between the Yerushalmi and the Bavli. The Bavli interprets the position which allows her to partake of teruma in the following manner. Fundamentally, a woman can begin eating teruma even as an arussa (since she is already regarded as kinyan kaspas as the husband's monetary possession - see Vayikra 22:11). However, because of extraneous gezerot we are forced to prohibit the arussa from partaking of teruma. We are either concerned that she will share it with her father and brother since she is still residing in their house or we fear that her husband is unaware of a defect which will render the original kiddushin invalid retroactively. Once nissu'in is performed, or even if it hasn't occurred, as LONG AS THE TWELVE MONTHS HAVE ELAPSED, these concerns fade; as their scheduled date passes, she will establish an independent residence in which she will eat her teruma or her husband will take greater care to examine her for faults. From the account of the Bavli it appears that the transpiring of the twelve months allows her to eat teruma only because, theoretically, she was always permitted to eat but was precluded because of tangential concerns. Once these problems are alleviated she can begin to partake. We cannot infer from this position then that any qualitative change has occurred after twelve months.

The Yerushalmi, however, offers an alternative approach. An arussa is prohibited from teruma not merely for technical reasons. Though she is considered kinyan kaspas and fulfills the standards of Vayikra (22) she isn't yet part of the husband's beito and the pasuk in Bamidbar 18:11 "kol tahor be-beitkha yokhlenu" mandates that inclusion in the bayit is necessary for eating teruma. An arussa - the monetary possession - cannot eat, while "beitkha" - one who is considered part of the household may partake. According to the Yerushalmi's conception - that only a member of beitkha can share teruma, we are forced to admit that the first position in the mishna saw a woman who waited twelve months as part of beitkha - as a partial nessesu'a. Without this status she would not be allowed to eat. The simple reading of the mishna, our original interpretation was borne out by the Yerushalmi though it was rejected by the Bavli.

SUMMARY:

It has been suggested that this obligation, which sets in after the twelve required months have elapsed, can be perceived in two different manners. We can consider this an external fine levied upon the husband to encourage compliance with his promise. Alternatively, this obligation can signal that certain aspects of the marital relationship blossom even before the actual nissu'in occurs. We will now explore several nafka minot of this issue.

The simple way to locate nafka minot would be to search for instances in which one or the other of our explanations isn't applicable. In general, any time you want to decide whether a halakha is 'x' or 'y' you should search for cases where 'x' exists and not 'y' and vice versa where 'y' applies and not 'x'. This will help determine the basis for the halakha. In our case we would like to inspect cases where a fine isn't relevant though her partial transformation into a nessesu'a is. Alternatively, we attempt to discover cases where a fine is feasible but we cannot view her as a nessesu'a. We will begin with the former.

The gemara in Ketubot (2a) questions this halakha in a case where twelve months have elapsed but the wedding must be delayed due to purely accidental reasons - i.e. the husband or the wife suddenly take ill. In these cases would he still be required to begin payments. In this instance there is no cause to fine him since he isn't negligent - hence the suggestion that he should not pay. However, if after twelve months her marital status begins in part, we might require these payments even in the absence of negligence - hence the consideration that maybe he should pay. The gemara appears to be in doubt over our very issue!!!

A second variation of this theme involves posthumous payments. In general, a widow receives support from the estate of her deceased husband until she remarries or collects her ketuba. This constitutes a posthumous component of their marital relationship. What about a woman whose husband delayed twelve months, began paying her support, and then passed away. If his payments are merely penal there is no reason to expect them after his death when he can no longer marry her; there is no reason to penalize him, not because he is innocent, but because these fines won't accomplish anything. If, however, their marital relationship begins immediately after the twelve months elapse - whether or not they have actually performed nissu'in - it's quite reasonable to assume that this woman receives posthumous payments as any other nessesu'a receives after her husband's death. This issue is debated by the Rishonim and according to the Ra'avad (at the end of the fourth perek of Ketubot) is a question posed by the gemara itself.

We have witnessed two instances in which the cause for penalty did not exist though her partial status as nessesu'a might still evolve. Interestingly enough, each of these applications is debated in the gemara. As to the gemara's conclusions in each of these cases - I will not outline them in this article. Suffice it to say that even after the gemara states the definitive maskana each of these possibilities is still defensible.

The inverse nafka mina would occur if we could formulate a situation where the husband's guilt exists but the prospects for the start of a marital relationship seem questionable. What happens if kiddushin- the first stage - has not yet been performed?

The parties have merely agreed in principle to the marriage - what is known in halakha as 'shiddukhin' which in many eras was a binding contractual commitment to marry. It wasn't, however, kiddushin and the woman in no way became betrothed and was still permitted to marry others without a divorce from her 'intended'. If a husband has scheduled KIDDUSHIN AND NISSU'IN for twelve months after the shiddukhin and he negligently delays - would he be obligated to begin these payments. As he seems just as guilty, he might be responsible to pay a fine. However, if the payments represent the start of the financial marital relationship one could suggest that this partial transformation evolves only when kiddushin has already occurred and there already exists a basic halakhic relationship. In THIS instance, after the waiting period has elapsed, one can envision this marital relationship slowly evolving - on its own - into the start of nissu'in. However, where there is no halakhic foundation to their relationship it would seem strange for such a relationship to entail. The Beit Shmuel in Even Ha'ezer 55:4 insists that in this case payments should be offered although he notes that the custom was not so.

A third question to analyze is whether we can detect any other elements of their marital relationship evolving once these payments begin. If we can detect their presence, we can prove that the payments weren't merely an external fine but marked the beginning of the emergence of their marital financial relationship; the start of this relationship determines that other responsibilities rights also present themselves. We find two variations of this theme. Generally, in exchange for the support a husband pays, he receives reciprocal payments - such as his wife's income. What happens in this case where they aren't officially married but the husband has begun supporting her. The Ritva (57a) asserts that he actually begins receiving the income (as well as any lost item of value which she recovers), because "IT IS AS IF SHE HAS ALREADY ENTERED THE CHUPPA" (the Ritva's formulation). Evidently the Ritva believed that the payments signaled the incipience of part of their marital relationship and hence a husband should receive his due. Conversely, if this were an isolated fine upon the husband there is no reason to believe that he should receive any reciprocal payments. The Rosh in Yevamot 4:25 argues and claims that since the pre-marital mezonot payments are only a fine - not in any way a signal of the start of the marital relationship - he doesn't receive her income in return. In this case we are privileged to clear formulations by the Ritva and the Rosh as they argue about this pivotal issue.

The gemara in Nedarim (73b) raises a similar question which seems to capture our issue in a nutshell. Generally a husband can outright nullify an oath which his wife took. This halakha - known as hafarat nedarim - is described in the beginning of parashat Matot. What about a husband who has yet to consummate the marriage through nissu'in but has begun these payments after the twelve months have elapsed? Does he secure the right to rescind her oaths. This is a question posed by the gemara. Logically, the answer to the gemara's question lies in the understanding of our issue. If the payments are a mere fine but their relationship has yet to begin - there is no reason that he should secure this right. He has been fined but nothing else has changed. Alternatively, if the payments mark the beginning of some sort of marital relationship we would expect peripheral elements of this relationship to also begin. Hence he might be able to cancel her oaths. The gemara in this instance does associate the hafarat nedarim question with the issue as to whether she can eat teruma confirming our position.

Methodological Points:

I. Oftentimes we read a mishna and immediately, even before we study the gemara, we adopt an intuitive understanding. Very often, the gemara will provide an interpretation which differs with our initial one. This doesn't necessarily mean that our reading is incorrect. Sometimes a different gemara, or a Yerushalmi will interpret the mishna differently from the Bavli. Still other times Rishonim might reinterpret the Bavli in a manner which is more similar to our initial version. In short, it is always advisable to generate an initial impression of a mishna even before reading the gemara. At the very least we will reject it in light of the explanation offered by the gemara. We will better understand the gemara's version and know what it rejects about ours. Other times our initial interpretation will surface in some other fashion.

II. Look for associated halakhot. If we find parallel halakhot emerging along with the primary one we must reinterpret the primary one in a broader fashion to explain the associated halakhot. In this case if we notice that the husband receives her income and the right to annul her oaths evidently his payment of mezonot is to be understood in broad terms - i.e. the marital relationship has begun.

III. When searching for potential nafka minot follow the simple formula - locate cases where one factor exists and the other doesn't and use these to test which factor truly forms the foundation of our halakha.

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