

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

TALMUDIC METHODOLOGY

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**KIDDUSHIN MI-DIN EVED KENA'ANI - INDIRECT GIVING IN
KIDDUSHIN**

DEDICATED IN MEMORY OF RACHEL BAT SHLOMO STRAUSS

DEDICATED IN HONOR OF ELAN ZIVOTOFKY ('93) AND
JENNY BRENNER, UPON THEIR MARRIAGE - MAZEL TOV!

The gemara in Kiddushin (7a) discusses the structure of the act required to effect kiddushei kesef (marriage through monetary payment). Though one might consider that the husband must give money DIRECTLY to the woman, the gemara softens this requirement, and offers several alternate forms of effecting kiddushei kesef. Possibly, one of the most intriguing alternatives emerges from the gemara's consideration of the husband's role in the process. The gemara suggests that if Reuven transfers money to a woman so that she marry Shimon, the process is valid. This ruling effectively displaces the husband as the necessary 'giver' or source of the money.

More intriguing than the case itself is the rationale suggested by the gemara. The gemara bases this allowance upon the law of 'eved kena'ani' (gentile slave). Such an eved is faced with the following dilemma: to liberate himself he must financially redeem himself by paying his master. He is not, however, halakhically capable of owning money. Anything that he does acquire, transfers automatically to the master. How then can he be freed? The gemara in Kiddushin (23a) establishes a gezeirat ha-katuv (scriptural decree) [see gemara Kiddushin 8a] which allows this redemption money to be supplied to the master by another, on his behalf. Even though he hasn't personally delivered money, the eved is liberated. The gemara employs this as a model for our form of kiddushin. In each case, money wasn't actually delivered by the party acquiring the item (the eved who acquires himself, or the husband who acquires the woman). Yet, in each case the indirect delivery of money is valid. This article will explore the notion of indirect delivery, termed by the gemara as 'din eved kena'ani,' and the scope of its application.

DIN EVED KENA'ANI

Any examination of this concept must begin at the source - the actual case of an eved who is emancipated by another paying the money. Though a gezeirat ha-katuv is supplied, we might still question the basis for this halakha. The gemara addresses this issue within the context of a controversy between R. Me'ir and the Chakhamim (in fact

the controversy has little to do with this form of redemption). According to R. Me'ir, it would appear that the halakha of indirect delivery might be explained in a very simple manner. The gemara explains that "kabbalat rabo ka garma lei," the receipt of the money by the master causes his freedom. As Rashi notes, according to this theory it makes little difference who actually supplies the money. Freeing an eved is an uni-directional action executed solely by the master. The role of the money is to generate the master's consent and inspire him to liberate his slave. As long as the master received some form of money, its source is irrelevant; he has received incentive and carries out the emancipation. It is clear, then, that R. Me'ir's view of this halakha was based upon his not requiring any direct delivery. Receipt alone, even when supplied by a foreign source, suffices.

What is less clear from the gemara is the rationale of the Chakhamim who argue with R. Me'ir, and according to whom we rule. Do they similarly believe that the secret of indirect delivery is based upon not requiring ANY delivery, but merely the master receiving money on the eved's behalf? This question is actually the subject of a controversy between Rashi and the Ramban. The latter equates R. Me'ir and the Chakhamim. Hence, we might infer that according to all positions, the principle of eved kena'ani represents the ability to effect a sale or kinyan without actually giving. As long as your counterpart RECEIVED, he may transfer to you. Rashi, however, differs and establishes a new justification for this halakha according to the Chakhamim. The volunteer who offers the master money for the eved's freedom is acting as the eved's unappointed shaliach (agent) through the law of 'zakhin.' This rule dictates that in matters which are absolutely beneficial to a person, one may act as his agent. Despite the lack of explicit authorization, implicit authorization can be assumed. Since the person paying the money is considered the shaliach of the eved, halakha considers it as if the eved himself had rendered payment. The paradigm of 'eved kena'ani,' then, does not announce a radically new theory, and does not diminish or remove the importance of an actual delivery. Instead it reminds us that the delivery might be performed by agents of a person, if he is unable or unavailable to give the money himself.

SUMMARY:

'Eved kena'ani,' which is established by the gemara as a paradigm for the efficacy of indirect delivery, can be explained in two distinctly different manners. It might reflect a conventional model of agency whereby another's actions are considered mine. Alternatively, it might be a novel and innovative principle, which informs us that in certain circumstances no actual "netina" (direct delivery of funds) must be performed. It is sufficient that money be received.

In fact, eved kena'ani does serve as a universal model for valid acquisitions, and is applied in broader contexts. Again, some apply it to remind us that actual giving is unnecessary, while others employ it as a model for associating another's actions as mine. An example of the former is the Machaneh Efrayim (Shluchin Ve-shutafin 15) who describes a case where a Gentile sends a Jew to rent a house for him, and the Jewish agent pays money to the landlord on behalf of the Gentile. Even though the classical patterns of shlichut would fail in this case (shlichut per se is inapplicable to Gentiles), we

would still validate this rental. The landlord received money and hence he transfers rental to the stated party. This succeeds even though the party did not render payment directly or indirectly through his shaliach since the Jew cannot be considered the formal shaliach of the Gentile. Eved kena'ani teaches us that with regard to kesef, we are unconcerned with the delivery; receipt alone is sufficient.

A similar strategy is adopted by the Ketzot Ha-choshen (195:9) who analyzes the custom that the witnesses supply the handkerchief used in kinyan chalipin (acquisition through exchange). In theory, the symbolic transfer of this handkerchief should occur between buyer and seller, yet the custom evolved that the witnesses pass the cloth to the seller. The Ketzot maintains that we cannot interpret this as shlichut, but instead must view it as 'eved kena'ani.' It makes little difference whether the purchaser actually gave the seller the handkerchief. As long as a handkerchief was received, the kinyan is effective.

Both the Ketzot and the Machaneh Efrayim listed broader applications of the eved kena'ani principle. In theory, however, one might have distinguished between them. Within the context of kesef it is reasonable to dismiss the role of delivery while highlighting the importance of receipt. Payment of money is meant to provide compensatory restitution that inspires the seller to effect the transaction, and therefore does not require delivery by the purchaser himself. The extension to chalipin, however, is somewhat questionable. As stated in previous shiurim, chalipin effects a meeting of the minds which is cemented by a symbolic act, one that is mutually accepted as an arbitrary symbol of consent. It has little objective meaning and merely establishes an agreement between parties. To effect this agreement we might demand a hand-off between the parties themselves, requiring the direct participation of both buyer and seller. In this case, it is more difficult to ignore the role of the purchaser. In fact, Rav Velvel (Chidushim on Shas Vol. V page 231) also considers this difference.

Rav Chayim (Hilkhos Malveh Ve-loveh) also applies eved kena'ani in a broader context. Based upon a gemara in Bava Metzia (71), he determines that if interest is paid on your behalf, it is considered as if you rendered the interest. The principle of eved kena'ani illustrates that another's delivery is considered as your own. Here, 'eved kena'ani' does not diminish the role of the actual delivery. It merely reminds us that the 'giving' can be executed by another, while you remain its author. What Rav Chayim does not clarify are the terms or the definition of this agency. To what extent does it resemble conventional models of agency - namely shlichut (or zakhin, which is assumed shlichut)? Are we witnessing a new model which is independent of shlichut, one that mandates that the act of delivery is ascribed to another, even without the formal category of shlichut? On the one hand, Rav Chayim admits to a special gezeirat ha-katuv for eved kena'ani which establishes this principle. This would lead us to believe that it is a new halakha. However, he also asserts that this form of agency is unavailable to a Gentile, in the same manner that formal shlichut doesn't apply. This leads us to believe that it is somewhat based upon shlichut. What is clear is that unlike the Machaneh Efrayim and the Ketzot, Rav Chayim does not diminish the importance of the delivery. Rather, he maintains that another's delivery is ascribed to me.

One might view these two versions of 'eved kena'ani' as the basis for an interesting controversy in the mishna in Temura (29). The law of etnan zona (payment for prostitution) mandates that an item supplied as payment for prostitution cannot be offered as a sacrifice. What would happen if another supplied payment to the 'zona'? Would it be considered as if the person engaging in prostitution actually paid this item on behalf of the services? The mishna in Temura cites the position of R. Me'ir, who does not consider this 'etnan,' and then that of the Chakhamim, who invalidate this animal as etnan. Might the Chakhamim have ruled like Rav Chayim that another's payment is considered as yours? In this case, then, it would be considered as if the person himself paid for the zona.

KIDDUSHIN MI-DIN EVED KENA'ANI

Before applying the din of eved kena'ani to kiddushin, let us briefly review the source of this halakha. According to the Chakhamim we noted two interpretations: 1. Zakhin - the ability for one to acquire for another in cases where the benefit is clear-cut - Rashi. 2. Kabbalat rabo garma lo - the formal act of giving on the part of the buyer is unnecessary - Ramban.

The application of zakhin within the context of kiddushin is problematic, since kiddushin, as opposed to freedom of a slave, cannot be assumed as beneficial. Perhaps this man is not interested in marrying this particular woman. Ostensibly, this is why Rashi was forced to interpret the case whereby the giver is an explicit shaliach of the groom. However, this approach forces a secondary question: Why is it necessary to derive this halakha from eved kena'ani? How is it different from a normal case of kiddushin through an agent? A careful reading of Rashi will show that eved kena'ani teaches us something about the kesef - the money being used, not about the ma'aseh kinyan - the act used to acquire ownership. The kesef needn't belong to the buyer - in our case the groom. If the shaliach would use his own funds it is sufficient.

Another possible approach is that zakhin is not assumed shlichut (which again cannot be assumed in the case of kiddushin). Rather, it is the ability for one Jew to acquire on behalf of another without using the specific mechanism of shlichut. Similarly, we derive from eved kena'ani that one Jew can give on behalf of another. This corresponds to the approach offered by Rav Chaim.

Both above approaches share a common understanding of the ma'aseh kiddushin - the act required to create kiddushin. Whether following the conventional pattern of shlichut, or, like Rav Chayim, alluding to a new form of agency independent of shlichut, they both share one common denominator: 'Eved kena'ani' allows Shimon's actions to be considered as Reuven's. This sugya does not overturn the foundation of masekhet Kiddushin - an act of netina from the husband is still necessary.

One might speculate whether the alternate position is even conceivable in the context of kiddushin. Can one really dismiss the need of the husband's actual delivery? Is it possible within the context of kiddushin to apply the idea of kabbalat rabo garma lo? The most explicit example of such an attitude is found in the Mishneh La-melekh (Ishut 5:1). He cites the Radvaz who raises two related questions. What if a husband gives a

woman something which is forbidden for him to eat but permissible to her (such as any issur which cannot be eaten but can be given to a deathly sick person)? The husband hasn't given anything of value (because to him the absolute lack of utility renders the item valueless), but she has received value. Similarly, what if the husband transferred funds which did not have a minimum worth of a peruta? By the time the funds were received, however, devaluations and market fluctuations determined that the funds now had at least the minimum value of a peruta. In this case as well, though she received funds, the husband did not deliver. If we would validate these cases, would we not conclude that kiddushin as well does not require an active delivery on the part of the husband, and receipt of funds by the woman is sufficient? Of course, one might accept these cases but still distinguish them from our suggested case where another gives on your behalf. In these cases, the husband executed a delivery. What he delivered, though, was halakhically valueless or financially meaningless until they were received. We might consider this more of a netina than a case where the husband participated in no actual transfer.

If we do accept this principle, however, we arrive at a somewhat innovative concept of kiddushin. The husband does not have to actually give money as long as the woman receives something on his behalf. This must cause us to reconsider the role of kesef itself. Instead of imputing to it an active role in creating the kinyan kiddushin, we might prefer to view it as that which inspires the woman to marry herself to the husband.

Summary:

We have seen that the rule derived from 'eved kena'ani' can be understood in two ways: 1. Another's actions may be attributed to me, or 2. No official act of giving is required. Most Rishonim explain that kiddushin may be effected by using this principle, based on the first understanding. The Radvaz quoted in the Mishneh La-melekh, however, could be raising the possibility that the rule of 'eved kena'ani' teaches us that no giving at all is necessary in kiddushin.

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