



THE HAKUK EDITION

ENGLISH TOPICS ON THE DAF

Dedicated L'Refuah Shlaima for Yaakov ben Victoria

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Daf Hashovua Yevamos Daf 19

Rebbi and the Chachomim argue if maamar is comparable to kiddushin or not; all agree that kiddushin can be performed only with the consent of the woman.

Why is that, asks the Gemara (Bava Basra 48b) – don't we find other acquisitions that are valid even against the will of the giver? If someone forces someone to sell him something, it is nonetheless a sale. The Gemara answers that indeed it should have been valid, except that the Rabbonim invalidated it. We have a rule that kiddushin is contingent on the guidelines of Chazal, as we say "k'daas Moshe v'Yisroel." Therefore, if he tries to force kiddushin upon the woman, Chazal revoke the power of such a kiddushin.

The Shulchan Aruch (E.H. 42) quotes this and addresses the opposite case: What if a man is forced to be mekadesh a woman against his will? He first says she is mikudeshes, then adds that some say she is not, and concludes that it is thus a safeik kiddushin.

The Beis Shmuel explains the reasoning of the two opinions. The Rambam and others say it works because anyway a man can divorce his wife against her will – so even if he doesn't want the marriage, he can end it whenever he wants. (And even today, as we abide by Rabbeinu Gershom that generally one cannot divorce his wife by force, this would be an exception [Taz].) On the other hand, the Rif and other Rishonim reject this on the grounds that you can never force someone to buy anything. Even the Gemara above, that a forced deal is valid, speaks only about a sale. You can't ever force someone

to buy something, and kiddushin is considered an acquisition, so it can never be valid without consent.

The Aruch Hashulchan adds some elucidation. How does the Gemara think to compare kiddushin to a sale, when the woman is not necessarily receiving much of anything? Kiddushin may be done with a shtar or biyah, or a gift of a peruta (several cents). A sale, on the other hand, is presumably for the full value? He explains that kiddushin results in the husband's marital obligations to her – she'er kesus v'onah – and that is valuable enough.

Interestingly, he notes a historical precedent of forced kiddushin. After the episode of Pilegsh B'Givah, most of Shevet Binyamin was killed out (Shoftim 20-21). Although the other shevatim swore not to give their daughters to them in marriage, the Sanhedrin advised the surviving men of Binyamin to snatch girls to be their wives. Thus the tribe managed to continue.

A sheilah came before Rav Tzvi Pesach Frank in which he ruled that it was a case of forced kiddushin and invalid (Har Tzvi E.H. 1:82). Two men decided to marry off their children to each other, but the girl refused. All her father's pressures, threats (and, apparently, blows) did not change her mind, and she even told her acquaintances about her plight. Even so, the father took her one night to the boy's house and arranged a kiddushin, using the boy's mother's ring which he borrowed for the occasion. Afterwards they went to fill out a marriage certificate, but she then ran away and eventually eloped with a different man.

Among the issues raised, she claimed that no kiddushin formulation was said that night. Rav Frank held that it was clearly a case of forced kiddushin and not valid. And even if someone would argue that she accepted the ring willingly, the Gr"m writes that post facto consent is still not good enough.

An extension of this halacha that the woman must agree to kiddushin relates to the minhag that the chosson and kalla fast on the day of the wedding. What is the reason for this minhag? The Beis Shmuel cites two: The wedding day is a time of kappara and mechilah for them, so they fast, similar to Yom Kippur. Additionally, we want to make sure that they are in lucid frames of mind; eating and drinking might lead to inebriation.

One difference between these two ideas is mentioned by the Chochmas Adam (Klal 129:2). What if the chuppa is delayed by several hours into the night; can the chosson and kalla eat something, or must they continue to fast? According to the second reason, they should still not eat, just like the entire day until now. The Chochmas Adam says we can rely on the first reason, and once the day is over, they can break their fast, like any other fast day. They should be careful, though, not to consume any alcoholic beverage prior to the chuppa.

Once, a kalla wanted to take anti-anxiety medication to calm her nerves on her wedding day. The problem is that it dulls her mind somewhat, so maybe is not considered a kiddushin with her consent. A second question was if a Rav could be mesader kiddushin for a secular woman who drank several bottles of beer, for the same reason. Are these considered a lack of her cognizant consent?

The Shu"t Birchas Reuven Shlomo (Vol. 11 Siman 87) offers some practical suggestions to allay the halachic problem. The doctor consulted said that 10 mg. of Valium impairs lucidity. So he says she should take a lower dosage, and try other forms of calming instead. For the lady who drank a lot of beer, he recommends asking her friends if she seems to be in a clear frame of mind, capable of responding lucidly to their questions. If she is not, they should wait with the chuppa until she sobers up.