



# THE SHABBAT MATTERS

שבועות תשפ"ב | מסכת יבמות דף ק"ז

לע"נ ברוך בענדיט וברכה גרוס ע"ה  
by Mr. & Mrs. Duvy Gross

## INSIGHTS FROM OUR CHABUROS

When מי און Does or Does Not Apply

רבי חנינא בן אנטיגנוס אומר כל תינוקות שאינה יכולה לשמור קידושה אינה צריכה למאן

**T**he Mishnah states that a young girl who is married off by her mother or brother may walk away from the marriage even without **מאן** if she was so young that she was not capable of guarding or honoring her kiddushin when it was given. What is the definition of a girl who cannot guard her kiddushin? Rambam (Hilchos Gerushin 11:7) writes: "Which minor girl is in need of doing **מאן**? If a girl received her kiddushin when she was between the ages of six and ten years old, if she was aware that the money or object she received was for kiddushin, and not just as any other object such as a nut or date, then she would need **מאן**. If she does not realize that the kiddushin money is distinct from other objects she owns than she does not need **מאן**, and she can just walk away from the 'marriage' and go back to her mother's house. If she was younger than six years old when **מאן** the original kiddushin took place, she does not need even if she is aware of the significance of the kiddushin money. If she was older than ten years old, she would need even if she has no concept of the fiscal value and **מאן** significance of the kiddushin money."

Raavad disputes the three levels of age groups which Rambam presents. He insists that a girl who has no concept of kiddushin (סכלה) cannot become מקודשת, even if she is ten or eleven years old. Whether the girl understands the value and significance of the money or object given to her for kiddushin is only a factor when the girl is accepting kiddushin for herself and she is older than ten years old. When she is younger than ten years old, in the absence of the father, she can only become מקודשת if her mother or brother make the arrangements.

## STORIES OFF THE DAF The Sinning Kohen

"פישון הגמון במדה כפושא מדד לפיכך מדדו לו במדה כפושא..."

**A** certain kohen once married a divorcee and lived with her for many years in violation of halacha. Although it is possible that he was unaware of the law at first, overwhelming evidence indicates that he chose to live with her in spite of this. Years later, he wanted a divorce but his wife refused. Eventually, she ran away to America. For three years, the husband wrote to her begging her to accept a divorce, but she refused.

At that point, the kohen approached the Rav of his city and asked for help. The Rav wrote to a colleague in America but didn't hear back from him. The Rav was unsure if the kohen should be mezakeh a divorce to his wife, or if he should be required to gather the one hundred signatures of qualified Rabbanim that would enable him to circumvent the cherem of Rabbeinu Gershom and marry another woman.

The local Rav took the question to the Imrei Dovid, zt"l. The Imrei Dovid answered, "We see in Sota 8b that the way a person is treated is in accordance with the way he originally acted. It is clear from Yevamos 107b, that Beis Din is likewise strict with a person who acted improperly purposefully. In the Gemara there, we find that despite the fact that Beis Shammai require miyun in the presence of the husband and hold that only an arusah can do miyun, they waived both of these objections in the case of the miyun of the wife of Pishon the camel driver. He was using up her property, so they allowed a miyun which ordinarily they would have prohibited. Her husband was away when she did it, yet the sages ruled that her marriage was absolved despite this fact and the fact that she was a nesuah.

The Imrei Dovid continued, "Similarly, this kohen lived in sin in a calculated and cavalier manner for very many years. Let him toil to procure the hundred signatures! If you have good reason to be lenient, for example if there are young children who need someone to care for them, you may allow him to remarry by being mezakeh a divorce. If there is no compelling reason, don't give this wanton sinner who shows no sign of remorse an easy way out!"

## YOM TOV CONNECTION

**In this week's daf** the Gemara discusses the concept of a conditional marriage (יש תנאי בנישואין) which means that if a condition is not satisfied the marriage would dissolve. We learn the חופה וקידושין הלכות of חופה and קידושין from מתן תורה, for example the candles which are used when walking a couple down the aisle symbolizes the אש of סיני הר סיני. It is interesting to note that according to the המקנה על קידושין (in his הקדמה) the המקנה על קידושין was הר סיני at כלל ישראל of נישואין the המקנה על קידושין and that is why תורה רבינו broke the first לחות which retroactively gave ישראל the status of פנויות (see חכמה פרשת משך). (כי תשא). The Rabbis teach us that מתן תורה is a wedding which happens every year between ישראל and הקב"ה and we are זוכה to the gift of Torah for the coming year on every שבועות. This is why we prepare for 49 days, so that we will be on the highest possible level of רוחניות, and maximize our potential. (חתם סופר). Wishing everyone much success in receiving their individual חלק in Torah on שבועות.

# HALACHA HIGHLIGHT

Unintended

שאינן אדם עושה בעילתו בעילת זנות

*Because a person does not intend for his cohabitation to be deemed promiscuous*

**R**ambam<sup>1</sup> rules that if a man gives less than a perutah to a woman for kiddushin and then cohabits with her in the presence of witnesses without articulating his intent he must deliver her a get if she decides to marry someone else. The rationale is that a person does not intend for his cohabitation to be deemed promiscuous and therefore intended to effect kiddushin with this cohabitation and did not rely on the insufficient money that he gave her for kiddushin. Another application of this principle<sup>2</sup> is when a man divorces his wife, whether from eirusin or from nisu'in and they have relations in the presence of witnesses before she married another man. This principle indicates that rather than have this cohabitation deemed promiscuous he intends to effect kiddushin, therefore, she would require another get before marrying another man.

Rambam<sup>3</sup> cites some Gaonim who maintained that based on this principle anytime a couple had relations in the presence of witnesses a וטג is required. Rambam disagreed with this extension of this principle. He wrote that the principle is in force only for one's wife. Concerning one's wife it could be asserted that rather than be deemed promiscuous he intended that the cohabitation should be for the sake of kiddushin. Regarding other women, there is no reason to assume that the couple had relations for kiddushin and the more logical approach is to assume that it was merely a promiscuous act.

Shulchan Aruch<sup>4</sup> follows the ruling of Rambam and limits the application of this principle to cases involving one's wife. Rema<sup>5</sup>, however, cites the opinion of Gaonim and writes, "Some authorities say that if a single man and woman have relations in the presence of witnesses there is reason to suspect that they had relations to effect kiddushin since they would not want their relations to be deemed promiscuous but if there is a chazakah of promiscuity or if the man is married there is no concern that they intended to effect kiddushin and some authorities maintain that even in these cases there is reason for concern."

1. רמב"ם פ"ז מהל' איזות הכ"ג

2. רמב"ם פ"י מהל' גירושין הי"ז

3. רמב"ם שם הי"ט

4. שו"ע אה"ע סי' קמ"ט סעי' ה'

5. רמ"א אה"ע סי' ל"ג סעי' א'

## POINT TO PONDER

**The Mishna starts** by saying אין מומאנין "אלא ארוסות" since the wife is the one who uses the word מומאנין which is לשון זכר rather than מומאנות which is לשון נקבה?

### Response to last week's Point to Ponder:

The Gemara says that רבי חייא בר אבא tricked a יבם into doing a חליצה and then asked him to do a proper חליצה so that she can remarry. Would we be able to force a יבם to do a חליצה in such a case or can he refuse?

The רשב"א writes that in case of a חליצה פסולה, which means that יבום is no longer possible, we would force the יבם to do a proper חליצה so that she can remarry.

## REVIEW AND REMEMBER

1. According to Beis Shammai, how many times does a girl do נתיאון?
2. What is the halachic importance that the man would pay for the wedding meal?
3. According to Ulla, how does נתיאון work?
4. When is a girl too young even for נתיאון?

ר' יוסף שמואל שמעלקא ב"ר יצחק מערמעלשטיין ז"ל, Shelly Mermelstien, לע"נ

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