



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

The Hakuk Edition **English Topics on the Daf**

Dedicated l'refuah sheleima for Yaakov ben Victoria

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Yevamos Daf 107

Kiddushei Ketana and Miyun

We now begin the new perek, dealing with miyun. The first of the five arguments between Beis Shammai and Beis Hillel is if a nesuah can still do miyun. And the Gemara lists four opinions of why Beis Shammai forbids it.

Rabba and Rav Yosef say it is because "a man does not cohabit in a fashion of znus," and if she can simply undo the marriage, nobody would want to marry her.

This idea opens up many other questions in this fascinating sugya. Why should there be an option of miyun, in which she retroactively makes their relationship not a marriage? There is a possuk in the Torah, "Do not be a kedaisha" (Devorim 23:18), which includes any relationship unsusceptible to kiddushin, even a shifcha marrying a Jew. The Torah equates this with cohabiting with a zonah. Doesn't miyun create the same thing?

Some Rishonim explain that although the marriage of a ketana is subject to miyun, it is in the meantime an acceptable

union. Similar to the concept of a pilegesh, a quasi-wife common in Biblical times, anyone specified to be one's mate is permitted midioraisa. Although the Rabbonon forbade other forms of this principle, they left it at the dioraisa level for orphan girls, for their own benefit (see daf 112b). On daf 59b we learned about the definitions of zonah, and only if the original intention was not for marriage does it fall into that category (Ritva, there).

The Rambam, however, does not seem to go along with this. He writes that a pilegesh is forbidden— min haTorah! (This is his implication, although some commentaries say he means only midirabonon.) Even though the woman is "reserved" for one man, this is still considered a kedaisha (except for a Jewish king – Ishus 1:4, Melochim 4:4). How, then, do we understand miyun?

The Avnei Nezer (E.H. 121:24) answers with a brilliant insight. Why, indeed, is a pilegesh permitted only to a king? Because the halacha is that once a king marries someone, she cannot marry anyone else afterwards! The Mishnah in Sanhedrin teaches that the widow of a

king is forbidden to remarry. Therefore, even if their union is not fully consummated with kiddushin and kesuba, she is sufficiently bound with her husband to fulfill the Torah's standard of marriage. Shaarei Teshuvah of Rabbeinu Yonah offers a parallel thought: since there is great awe and reverence towards the king, nobody would dare violate his wives, even his pilagshim (3:94).

What about miyun, then? It is a variation of the same theme: pilegash lacks the ingredients of a regular marriage process, and kiddushei yesoma lacks the authority midioraisa for her to get married. Once the Rabbonon enacted her kiddushin, she is designated to her husband, "forbidden to the rest of the world" as the word "kiddushin" indicates (Kiddushin 2b). That is enough for her to not be considered a kadaisha.

Another way to understand miyun is a concept developed extensively by Rav Chaim Brisker, popularly known as "מכאן מוכרח להבא למפרע." Most halachic effects take effect from the time of execution, for the future. Some, though, work retroactively, such as annulment of vows by a husband to his wife. Miyun is an example of a blend of both effects. It works retroactively, but only regarding future matters. Although miyun voids the marriage and it is as if they were never married, that is only concerning halachos afterwards in the future. She may marry a Kohen; she is not a gerusha. But until the moment of miyun, they are fully and completely married, and nothing will change that. The husband's rights, such as ownership of money she

earns and items she finds, remain his forever. After miyun, the picture changes, and henceforth they are unrelated. Therefore, their union is not one of znus – that is how the Rabbonon instituted kiddushei ketana.

Alternatively, Avi Ezri notes the way Rambam describes kedaisha in Hilchos Ishus 1:4. "Before the Torah was given, a man could meet a woman in the street and if he and she wanted," they could cohabit – "this is called kedaisha. Once the Torah was given, it was forbidden..." Thus said, kedaisha is defined only when both parties agree to the union; a more formal relationship. A minor does not have halachic daas, so her opinion is inconsequential. Therefore, kiddushei ketana does not fall within the parameters of kedaisha! The same applies to marriages of a cheresh, in the next perek.