

INSIGHTS FROM OUR CHABUROS

Rescinding the condition of the woman not having oath

לא תימא טעמיה דרב כיון שכנסה סתם אחולי אחליה לתנאיה

The Mishnah presented a case where a man betrothed a woman on the condition that she not be bound to any oaths. If the man discovers that she, in fact, had declared oaths upon herself at that time, the kiddushin is null. If, when the man married the woman he did so without repeating his stipulation and he made no mention of his prior condition, the marriage is nevertheless ended, and the woman receives no kesubah.

In the Gemara, Rav explains that the man must issue a גט in order to dismiss this woman. This is surprising, for, after all, he had stipulated that the kiddushin was contingent upon her not having any oaths, and this condition was not fulfilled. According to most Rishonim, Rav is explaining that it is not that we say that the man forgoes his stipulation by being silent at the time of the marriage. Rather, the husband knows that the original offer of kiddushin is null. It was conditional, and the condition was not met. When the man nevertheless marries the woman, he intends for his relations with her to be an act of kiddushin. ר"ן explains that the man does not want his act of having relations to be meaningless (בעילת זנות). Therefore, the husband understands that by marrying this woman, he is revoking his original stipulation and he intends for the original kiddushin to be valid unconditionally.

Tosafos notes that it is difficult to understand how Rav could have even suggested that the husband is able to rescind his having placed a condition on the kiddushin. The truth is that he only gave her kiddushin if she had no oaths in effect, and she actually did have oaths. How can the husband now recreate the kiddushin if it was clearly nonbinding? Tosafos explains that Rav means that although the original kiddushin is invalid, perhaps the husband still intends for kiddushin to be valid by means of the חופה which he is presenting now. Ran explains that the husband could have ostensibly salvaged the original kiddushin. We could say that the reason he placed a condition upon the kiddushin is that he felt that it would be more convenient for him to have a wife who was unencumbered by oaths, as this was perceived as an inconvenience to him. Later, when the husband married her without restating the condition, we might have indeed said that the husband is maintaining his insistence that the marriage be smooth and convenient, but he now sees that his wife having oaths is not a legitimate concern, and he is now ambivalent to whether or not she has oaths. Nevertheless, Rav explains that the Mishnah is not a case where the husband is dismissing the condition.

PARSHA CONNECTION

In this week's daf the Gemara discusses על תנאי, a conditional marriage. The conditions in our Gemara are regarding נדרים or מומים. The concept and customs of marriage are actually learned from מתן תורה. פרשת יתרו quotes a תשב"ץ who writes "כל המנהגים של חתן כלה אנו למדים ממתן תורה". For example, the reason why we have lit candles at the חופה is because we had אש during מתן תורה. In a similar way to our Gemara, the marriage between כלל ישראל and הקב"ה was also a conditional one. It was על תנאי that we will keep מצות. The ספר המקנה explains that when בני ישראל were given the עשרת הדברות it was a תנאי and when משה רבינו broke the לווחות he undid the קידושין so that the מעשה עגל will not be considered as an unfaithful act by a married wife, because she is retroactively single. We say every morning the following: וארשתיך לי לעולם וארשתיך לי בצדק ובמשפט ובחסד וברחמים which refers to our everlasting "marriage" to הקב"ה. The פסוקים outlines the conditions for an everlasting relationship, namely being faithful, אמונה, חסד ורחמים, ומשפט ובחסד. These מצות are our assurance that our relationship will be לעולם!

STORIES OF THE DAF Civil Marriage?

"אין אדם עושה בעילתו בעילת זנות..."

Rav Yitzchak Zilberstein, shita, was once asked to clarify the halachic position about numerous civil marriages that took place in the Soviet Union during the periods of communist antireligious persecution.

"A man married a woman in Russia during the years when it was impossible to fulfill Torah and mitzvos openly, and many Jews tended to pretend to be non-Jews so that they wouldn't have to suffer oppression. For this reason, the couple decided to only marry civilly and did not arrange a chuppah and kiddushin. Do we say about such a couple what it says in Kesuvos 73a, that the assumption is that a Jewish man doesn't intend his relations to be wanton, but rather that he is assumed to have intended that they will constitute kiddushin? And in this case, there were other Jews who saw them living together as man and wife after their civil marriage—are they to be considered witnesses to the kiddushin? Or perhaps this situation is not one where we would make such assumptions?"

Rav Zilberstein answered, "The truth is that many great poskim have already addressed this question in a number of different forms, and their general approach is that since either the couple had the choice of marrying properly and chose not to, or since they never had any awareness of the need to marry properly at all, we do not assume that their household arrangement constitutes kiddushin. Even so, one would require a גט l'chumrah in the event of divorce. However, if the couple did indeed want to marry properly but were prevented by the prevailing persecution, one would assume that the husband had intended that living together as man and wife should constitute kiddushin, and their relationship would have to be treated accordingly."

HALACHA HIGHLIGHT

Nullifying Kiddushin

רבא אמר תנא ספוקי מספקא ליה ... גבי איסורא לחומרא

Rava says that the Tanna is uncertain [whether the husband can nullify the marriage without having made a stipulation] and concerning matters of prohibition he rules stringently

There was once a couple who had a civil marriage in Eretz Yisroel and had a religious wedding in Eretz Yisroel. A short time after the chasunah, the wife discovered that her husband had decided, even before the chasunah, to practice another religion. She immediately left her husband and the question was whether the kiddushin could be nullified given the fact that he never told about his new religion. In other words, is there circumstantial evidence (אומדנא) that allows us to assume that she would have never married him had she known that he had left Judaism, or not. What made the matter even more pressing was that subsequent to the wife leaving, the husband was incarcerated and thus unable to give a גט.

The Chelkas Yaakov¹ addressed a number of different points related to this difficult question. One interesting issue is whether practicing another religion puts one into a different halachic category than one who does not observe any of the mitzvos. Although it is certainly more abhorrent for a person to leave Judaism on an emotional level, but is there any halachic difference, since a person who does not observe the mitzvos is also considered a mumar².

Regarding the issue of circumstantial evidence, he cites a related teshuvah of Chasam Sofer³ where he gives credibility to matters of circumstantial evidence even in the context of nullifying a kiddushin. In practice, however, Chelkas Yaakov, rejects applying this reasoning. One reason is that Chasam Sofer himself only suggested the rationale in theory but refused to apply the principle in practice. Secondly, halacha⁴ follows the opinion of Rava who maintains that if a man does kiddushin without a stipulation and later discovers one of the blemishes that disqualify a woman, the kiddushin remains in force because of doubt. This ruling applies even when circumstantial evidence would clearly indicate that the husband would be concerned about this particular blemish. Therefore, it is clear that if a husband cannot nullify a kiddushin, despite circumstantial evidence in his favor, certainly a woman could not nullify a marriage with circumstantial evidence, since women have a greater interest in marriage than men.

1. שו"ת חלקת יעקב אה"ע סי' פ"ה.
2. שם אות ג'.
3. שו"ת חת"ס אה"ע ח"א סי' פ"ב.
4. שו"ע אה"ע סי' ל"ט סע"ה.

MUSSAR FROM THE DAF

Seeking the Good in People

מר רבה: מחלוקת בטעות שתי נשים. אבל בטעות אשה אחת — דבר הכל אין צריכה הימנו גט.

Rabba said: The Machlokes is an error concerning two women. But in an error with one woman, all agree, that she does not require a bill of divorce from him.

The Gemara explains that there is a machlokes between Rav and Shmuel in a case when a man married one woman on the condition that she had made no nedarim, and then married another woman without any specification. Rav holds that he was only makpid on the first one and not makpid on the second one. Why does Rav hold that a person can be makpid on the first woman and not the second woman? Rashi explains because דלמא לגבה דהך חביבה (perhaps she was very chaviv to him), therefore he wasn't makpid on her nedarim. Rashi is teaching us a very important lesson in life. When there is another person who does something that we find annoying, making it difficult for us to get along with them, to overcome it you have to try very hard to see something precious in that person. Because that חביבות will allow you to forgo your hakpados.

כי חפץ חסד הוא (Chapter 1) We see this idea in the Tomer Devorah when the midas hadin tries to prosecute a person, Hashem focuses on the chesed the person has done which allows Him to relate to that person with Rachamim. The Tomer Devorah explains that we can emulate Hashem in the same way. By focusing on redeeming qualities another has, can help us relate to others with rachamim, at a time when we may want to be angry. Rav is teaching us that it is possible to overcome one's hakpados. A person is a combination of many diverse parts. There is no person who doesn't have something unique and special about them. Through learning how to uncover that beautiful part of another can help one ignore areas that one generally would be makpid on.

POINT TO PONDER

רש"י ד"ה אלא טעמא דרב writes that we assume that he lived with her לשם קידושין but with regards to the כתובה he is maintaining the original תנאי. If רב is saying that the current ביאה is for קידושין that means that she is only ארוסה and ארוסה doesn't get a כתובה. So why does רש"י write that he is maintaining the original תנאי? It's not necessary.

Response to last week's Point to Ponder:

משנה "אלו יוצאות שלא בכתובה וכו'" The mishnah says does the חשנה mean even if she did one of these things only once? Does the husband have to give her a warning?

רש"י writes that עוברת על דת יהודית needs a warning and without a warning the husband cannot divorce her without paying her כתובה. The הגה"ה adds that a one time warning is sufficient.