YESHIVAT HAR ETZION

ISRAEL KOSCHITZKY VIRTUAL BEIT MIDRASH PROJECT (VBM)

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**GEMARA KETUBOT**

**Shiur #02: Ketubot 2a**

**"Higi'a ha-Zeman ve-Lo Nis'u" - The Delayed Marriage**

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Sources:

1. 2a Betula niseit ... hacha lo," Mishna 57a gemara 57b higiya zman ... meyached lah."

2. Nedarim 73b "Bogeret ... nami lo achla."

3. Ritva 57b s.v. ochelet mishelo, 63a "moredet mimai ... mimlacha" Ritva s.v. maitivei.

4. Even Hezer 56:3, Beit Shmuel 4, Pitchi Teshuva 2.

Questions:

1. What obligations begin twelve months after the betrothal even though the marriage has yet to take place?

2. Are certain obligations imposed on the bride?

3. What is the relationship (suggested in Nedarim) between the permissibility of a Kohen's fiancée to eat teruma and the possibility of annulling her vows?

4. How can we explain the debate as to whether obligations are incurred if the marriage is postponed due to extenuating circumstances?

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 The mishna in the fifth chapter of Ketubot (57b) establishes that after a groom expresses his desire to marry, the first time bride is given twelve months to prepare for the wedding, and a widow is given a period of thirty days. If the given period passes and the wedding does not take place, the groom must nevertheless begin providing food for the bride; if he is a kohen, the bride may already partake of his teruma (as a kohen's wife does, despite the fact that, in this case, she has yet to marry the kohen). This mishna mentions the groom's obligation to support the bride in a situation when the time for the marriage had arrived, without giving any details as to the specific circumstances when this applies.

Our sugya, at the beginning of the masekhet, addresses the particulars of this halakha. The Gemara establishes that if the given preparation period culminates on a Sunday, then although the couple delays the wedding until Wednesday night (in accordance with the rabbinic ordinance), the groom nevertheless need not begin supporting the bride on Sunday. The Gemara then questions the halakha in other situations where extenuating circumstances, such as illness, force the delay of the marriage. According to the first version cited in the Gemara, the groom is exempt from supporting the bride before the wedding so long as the delay resulted from circumstances beyond his control. The second version, however, leaves this as an open question. How are we to understand the two sides of this question?

1. Viewing Financial Support as a Penalty

 Before explaining the Gemara's question, let us first examine the nature of this obligation, to feed one's bride even before the wedding once the designated time has arrived - a situation referred to as, "higi'a ha-zeman ve-lo nis'u" ("the time arrived and they did not marry"). Why must the groom support the bride in a situation of higi'a ha-zeman?

 The simplest explanation would be that Chazal issued a kenas (penalty) against the groom for not marrying the bride on time. Having failed to uphold the agreement with the bride by not marrying her, he must pay for her support until he does. The Gemara's first reading maintains that the groom must pay so long as he bears some guilt. "Therefore," the Gemara comments, "if he or she fell ill or if she became a nidda - he is exempt from providing her with food." According to this view, it stands to reason that a penalty was only issued on the groom who indeed bore the obligation to marry his bride. The Ra'a (in the Shita Mekubetzet, 107b) in fact writes that in a situation of higi'a ha-zeman, although the groom must support his wife, he does not earn rights to "ma'aseh yadeha" - her profits or income, as a husband normally does in exchange for supporting his wife. Other authorities, however (the "Tiv Kiddushin" cited by the Pitchei Teshuva, E.H. 56), determined that even in a case of higi'a ha-zeman, the bride must give the groom rights to ma'aseh yadeha. That the wife's obligation of ma'aseh yadeha is in exchange for the husband's support of his wife is clear and well established; but this view of the Tiv Kiddushin clearly negates the approach viewing the groom's obligation in a situation of higi'a ha-zeman as a penalty. This approach is also called into question by the second version cited by the Gemara, that the halakha in situations of "oness" (when the marriage was delayed due to circumstances beyond the groom's control) remains an open question. If we view the husband's obligation as a penalty, why would we consider the possibility of requiring him to pay when he is not to blame for the delayed marriage?

2. A Result of the Husband's Commitment

 Rashi (s.v. "okhelot mi-shelo") associates the groom's obligation in the case of higi'a ha-zeman with a husband's obligation to support his wife. We can perhaps infer from here that the nature of the obligation before marriage, after the designated time has arrived, corresponds to that of the standard obligation after marriage; it is not merely a penalty. We may explain that the payment results not from the groom's guilt in the delayed marriage, but rather from his commitments to the bride. One who betroths a woman commits himself to marry her by a certain date. As this commitment involves the obligation to support her, he must, by virtue of his commitment, begin supporting her upon the arrival of that date even if he did not marry her by then. Accordingly, he can be required to pay her expenses even if he bears no guilt for the delay. Moreover, one could then claim that the husband earns rights to ma'aseh yadeha. Just as a husband has rights to his wife's ma'aseh yadeha in exchange for the support he provides her, so does he enjoy these rights in a situation of higi'a ha-zeman; a bride in this case should be no better off than a married woman, whose ma'aseh yadeha go to the husband.

3. The Rights to the Fiance's "Metziot"

 The Tiv Gittin (in the aforementioned passage) questions whether or not the groom has rights as well to lost items found by his bride (as he does after marriage). This issue appears to hinge on the reason behind the general rule granting a husband these rights. That a husband receives his wife's "metzi'a" (a lost item that she found) is established in the mishna (65b). The Gemara in Masekhet Bava Metzi'a (12b) explains this provision as a means to avoid "eiva" (resentment, or ill will). Tosefot in Ketubot (66a, s.v. "metzi'ata") initially claim that a husband receives his wife's metzi'a to prevent his resentment over his obligation to support her, just as he receives ma'aseh yadeha in exchange for his support. This approach appears explicitly in the Shita le-ha'Ran: "So that he does not say, 'Since she does not give me ma'aseh yadeha or her metzi'a, I will not give her food'." In conclusion, however, Tosefot reject this approach. In the fourth chapter of Ketubot (48a), Tosefot (s.v. "mi-shum") establish that "even though a woman's metzi'a belongs to her husband only because of [the concern for] eiva… this eiva [of which we are concerned] is not [resentment] caused by the food [he must provide her], for this does not resemble ma'aseh yadeha; rather, [it refers to] eiva of quarreling." If we view a husband's rights to the wife's metzi'a as a separate provision, independent of the obligation to support her, then presumably the groom has no rights to a metzi'a before marriage. If, however, we understand the metzi'a provision as an outgrowth of the husband's rights to ma'aseh yadeha, then the groom in this case of higi'a ha-zeman should receive the bride's metzi'a, according to these opinions that maintain that he has rights to ma'aseh yadeha.

 So far we raised two possible approaches to the groom's requirement to support his wife in the case of higi'a ha-zeman: 1) as a penalty[[1]](#footnote-1); 2) as based on the groom's commitments to his bride which flow from the betrothal. According to both these approaches, the woman's status does not change at all when the designated date arrives; all that takes effect is an obligation on the groom's part to support the bride, and perhaps other halakhot that stem from this obligation.

4. Annulment of the Fiance's Vows

 A sugya in Nedarim (73b), however, implies otherwise. The Gemara there discusses the question of who has the power to annul a bride's vows in a situation of higi'a ha-zeman. (After marriage, only the husband can annul the wife's vows, whereas during the period of eirusin - both the father and the groom enjoy this power.) The Gemara explains that according to the position of the "mishna rishona," which allows a kohen's bride to partake of his teruma in a situation of higi'a ha-zeman, the husband has exclusive power to annul her vows. Wherein lies the connection between the rights to eat teruma and the power of hafarat nedarim (annulment of vows)? After all, the Gemara in Ketubot establishes that according to Torah law, a bride can partake of her husband's teruma immediately after kiddushin. The question of whether she can eat after higi'a ha-zeman - the debate between the "mishna rishona" and the "mishna acharona" - involves merely the concern that a kohen's bride partaking of teruma before marriage may share it with her siblings, who are forbidden from eating teruma. How does this concern regarding teruma relate at all to the laws of hafarat nedarim?

 It would seem that according to the Gemara in Nedarim, the permission granted by the "mishna rishona" to the kohen's bride to eat teruma in the case of higia ha-zeman has nothing to do with our confident belief that she will not share with her siblings. True, the Gemara in Ketubot, as mentioned, claimed that according to Torah law any bride may partake of her groom's teruma immediately following kiddushin, as she may be considered "kinyan kaspo" (an "acquisition" of the husband that may partake of his teruma - see Vayikra 22:11). The Netziv, however, in his work on the Sifrei (Eimek ha-Netziv, Parashat Korach), claims that the Sifrei argues on this position, and maintains "that certainly the 'acquisition' of a woman does not resemble the acquisition of a servant… and a wife's person is not owned by the husband… and she is not included in [the clause], 'Should he acquire a soul…'" According to the Sifrei, the rights of a kohen's wife to partake of his teruma stem from a different source, from a verse in Bemidbar 18:11: "Everyone pure in your household shall eat it." Although the Sifrei derives from another source that a bride can partake of her husband's teruma during eirusin, one could claim that, based on the Sifrei's derivation from this verse in Bemidbar, a kohen's wife may eat teruma only after marriage. Sure enough, according to the Yerushalmi in Ketubot (5:4), the position of the "mishna acharona," forbidding a bride to partake of her husband's teruma in a case of higi'a ha-zeman, is based on the aforementioned derivation of the Sifrei.

5. A Partial Marriage

 Accordingly, it is reasonable to suggest that the Gemara in Nedarim understood that only after marriage does a kohen's wife eat of his teruma, as only then can we consider her "in your household," as required according to the Sifrei. If so, the "mishna rishona" introduces a most novel idea when it allows a bride to eat her husband's teruma in a case of higi'a ha-zeman. Namely, that when the stipulated time arrives, the bride is now considered a married woman. Therefore, just as she may partake of teruma, her groom has exclusive annulment rights over her vows.[[2]](#footnote-2) Such a notion, however, would have seemed untenable if it had not been explicitly posited in the Gemara. How can a bride transform into a married woman once the designated date arrives, without ever stepping under a chupa?

 The Gemara mentions explicitly only the husband's obligation of mezonot - to support his wife - as taking effect in a case of higi'a ha-zeman. Surprisingly, however, the Ritva extends the husband's obligations in this situation beyond mezonot: "He is obligated to feed her, and the same applies to her clothing and sustenance, as if she had entered the chupa." The husband is responsible to supply clothing, as well, an obligation unrelated to the responsibility to provide food. The Ritva claims that the groom is also responsible "be-parnasata" - "with regard to her sustenance," but it is not clear to what this refers. Rav Lichtenstein suggested that this term includes other general responsibilities a husband takes upon himself at marriage, such as to provide a place of residence. If so, this clearly marks a most significant expansion of the groom's obligations to his bride in the case of higi'a ha-zeman. The sugya in Ketubot explains why a bride may eat teruma when the intended wedding date arrives even if she is not married. We need not be concerned, the Gemara claims, that she might share the teruma with her siblings, because "he designates a place for her." Rashi explains that a groom would designate a specific location where the bride would eat the food he gives her, so that she would not share it with her family, thus increasing his expenses. We may, however, explain differently: the groom must provide a place of residence for his bride due to his marital obligations towards her. According to this interpretation, we have found a source for the Ritva's position, whereby in a case of higi'a ha-zeman the groom must provide residence for his bride.

6. The Extent of the Husband's Obligations

 According to the Ritva's novel approach to the halakha of higi'a ha-zeman, we must examine whether in this case all of a husband's obligations to his wife take effect, or only some of them. If only certain obligations take effect, we must identify the criterion by which we determine if a given obligation applies. In his commentary to Ketubot 63, the Ritva questions whether the wife's obligation to bake and cook for her husband takes effect in a situation of higi'a ha-zeman. In order to understand the two sides of the issue, let us first examine the activities a wife is required to perform for her husband, as listed in Ketubot 59b. There we find three categories of work: activity a woman performs to earn money (skilled labor); domestic work (such as baking and cooking); and favors of an intimate nature (pouring drinks for her husband, bathing him; these do not apply when the wife is a nidda - see 61a). A question arises as to how to understand the second category - the wife's domestic responsibilities. Do they belong to the realm of the personal relationship between husband and wife, reflecting the couple's general lifestyle, or do they perhaps belong to the financial arrangement of the marriage? The Ritva, who entertains the possibility of applying these responsibilities in the situation of higi'a ha-zeman, walks on precisely this tightrope. Clearly, in a case of higi'a ha-zeman the bride is exempt from the obligations relating to the intimate relationship of the marriage; after all, the nisu'in (formal marriage) has yet to take place and marital relations are as yet forbidden. On the other hand, the Ritva, as we have seen, maintains that all financial responsibilities related to marriage apply once the stipulated date has arrived, even before the wedding.

7. The Concept of Nissuin

 In order to understand this distinction more clearly, let us digress into the concept of chupa (or nisu'in). The Rambam famously maintains that nisu'in is not valid unless it presently lends itself to marital relations, known as "chupa ha-re'uya le-bi'a" (to the exclusion of when the bride is a nidda, and hence relations are forbidden). The Bet Yaakov questions this ruling in light of the halakha requiring the designation of a woman before Yom Kippur to marry the kohen gadol on Yom Kippur if his wife dies. (The kohen gadol must be married to perform the Yom Kippur service in the Mikdash.) According to the Rambam, the Bet Yaakov asks, how can the kohen gadol marry the woman on Yom Kippur? Since marital relations are forbidden on Yom Kippur, the nisu'in would classify as a "chupa she-eina re'uya le-bi'a," and is hence invalid! One could respond that the chupa itself - the private encounter between the bride and groom - does lend itself to relations; only an external factor, the sanctity of Yom Kippur, prevents the consummation of the marriage. We may, however, explain the Rambam's view differently.

 The Torah distinguishes between a bride (arusa) and married woman (nesu'a) with regard to many halakhot, but the essential difference between the two remains unclear. From the Chumash it emerges that an arusa still belongs to her father's household ("beit aviha" - see Devarim 22:21); only after nisu'in does the bride become part of her husband's household. For example, the Torah describes a vow taken by a married woman as follows: "if she makes a vow while in her husband's household" (Bemidbar 30:11). On the other hand, the Torah also refers to a married woman as "she'eiro" (roughly translated, "his relative"). For example, in the context of the prohibition against a kohen's contact with a dead body, the Torah makes an exception for "she'eiro ha-karov eilav" - "his relative who is close to him" (Vayikra 21:1-2), which Chazal, in Torat Kohanim, explain as a reference to his wife. Similarly, in the laws of inheritance the Torah describes a situation where the estate is assigned "li-she'eiro ha-karov eilav" (Bemidbar 27:11), from where Chazal learn that a husband inherits his wife's estate (Bava Batra 109b).

 There appears to be a fundamental difference between these two concepts - "bayit" (household) and "she'eir" (family relationship). Although the Biblical term "beito" ("his household") often refers to one's wife, nevertheless the concept of a household is not reserved for the relationship of marriage; it includes all those belonging to the family framework, as in the expressions, "le-mishpechotam le-veit avotam" ("by their families, according to their ancestral house"), "Bet Yisrael" (the House of Israel), and "Bet Aharon" (the House of Aaron). As we have seen, a woman before marriage belongs to her father's household. "She'eiro," by contrast, is rooted in the singular, intimate bond between husband and wife, which has no equivalent within the broader framework of family relationships.

 We may suggest that the Rambam requires "chupa ha-re'uya le-bi'a" only to create the intimate closeness of "she'eiro." The status of "beito," however, which reflects membership in the same family unit, does not depend on this kind of "chupa." The requirement that a kohen be married while performing the Yom Kippur service evolves from the verse, "He shall atone for himself and his household ['beito']" - referring to his wife. Although the kohen gadol cannot marry the designated woman on Yom Kippur in a "chupa ha-re'uya le-bi'a," nevertheless, the non-intimate, family framework of marriage begins once she enters his home - even if marital relations are not viable. (See the "chiddushim" of Rav Naftali Trop.)

 In light of this, we may explain that according to the Ritva's view, in a situation of higi'a ha-zeman the husband becomes obligated only in those responsibilities involving "beito" - the family cell, not those related to "she'eiro" - the intimate relationship between husband and wife. To explain this, we may divide the halakhic effects of nisu'in into two groups: those that develop automatically, and those that require an action to trigger them. It is possible for a woman after the twelve-month period to transfer from her father's household to her husband's household even without the performance of any action. The intimate connection between husband and wife, however, cannot take effect without an action; it cannot come about automatically. Alternatively, one could argue that the singular status of "she'eiro" cannot be attained so long as the bride has not entered the chupa, since marital relations become permitted only through the chupa.

 Accordingly, when the time for the wedding has arrived and the couple is not married, the groom does not inherit the bride's estate and - if he is a kohen - he cannot come in contact with her remains. Yet, he can annul her vows. Moreover, she may partake of his teruma even if by Torah law a kohen's bride cannot eat his teruma until marriage. Since she is considered as having become part of his household, we can apply to her the verse, "everyone pure in your household." Thereby we resolve the sugya in Masekhet Nedarim, which connects the husband's ability to annul vows at the point of "higiya ha-zeman," with the opinion that she may eat teruma.

8. Right to Inheritance

 The Tosefot Rid (48b) establishes that according to the "mishna rishona," the groom earns rights to the bride's estate should she die after the intended date passes but before the wedding. He formulates this position in very extreme form, claiming that this view "considers her his wife in every regard." This approach appears to go to a further extreme than even the Ritva, for we derive the halakha rendering a husband his wife's inheritor from the word "she'eiro" (as mentioned above). We may, however, suggest otherwise, and claim that the husband's inheritance rights do not relate to the intimate relationship of husband and wife. Indeed, the tanna'im argue as to whether a husband inherits his wife's estate by force of Torah law, and the Rishonim debate the issue of which position we accept. The Rambam (Hilkhot Ishut 12:3) rules that the husband's inheritance rights originate from "divrei sofrim" (rabbinic enactment); the Ra'avad rejects this view and claims that this provision is Biblically mandated. If the husband's inheritance rights originate from Chazal, who granted the inheritance to the husband in exchange for his obligation to bury his wife, then this halakha may evolve from the wife's status as "beito" - as part of the husband's household. However, this issue requires further analysis.

9. The Dynamic State of Eirusin

 In conclusion, we should note that what underlies this sugya is the general perspective that views eirusin as a state of becoming, rather than a state of being. The status of eirusin is not static; it is rather an abnormal reality that is to change. Just as we would not view the status of a "zekuka le-yibum" (a childless widow waiting for her brother-in-law to marry her, as mandated by the mitzva of "yibum") as a permanent situation, so is the status of an "arusa" never intended to remain forever. While discussing the berakhot over the chupa and kiddushin, the Ramban (on daf 8) describes kiddushin as "the beginning of the mitzva" and chupa as "the conclusion of the mitzva." They form a succession, two stages within a single, overarching mitzva. When the situation of eirusin does not develop into nisu'in, we confront a tragic situation which we lament at the conclusion of the kinot on Tisha Be'av (see Eli Ziyon). In order to prevent this tragedy, soldiers who have betrothed but yet to marry a woman are released from military duty. According to all views, this sugya of "higi'a ha-zeman ve-lo nis'u" is based on this idea. But the Ritva's position emphasizes with particular force the inner dynamic of the eirusin status. Though clearly Chazal were the ones who determined the maximum duration of the eirusin period, nevertheless, the development of eirusin into nisu'in, if only partially, is very likely rooted in this principle.

Summary

 In summary, we suggested three possible understandings of the halakha of "higi'a ha-zeman": 1) as a penalty; 2) as part of the groom's commitment; 3) nisu'in partially takes effect when the intended wedding date arrives. We can now return to the Gemara's discussion of a case where circumstances beyond the groom's control caused the wedding's delay. As stated, if the groom's obligation to support his bride results from a penalty placed upon him, then presumably this obligation would not apply when the wedding was delayed due to circumstances beyond his control. We cannot apply a penalty without guilt. If, however, the obligation evolves from his commitments to his bride, then we cannot exempt him on the grounds of extenuating circumstances; any exemption would have to be predicated on a presumption of intent, that he never accepted this responsibility in a situation of higi'a ha-zeman. Also, if nesu'in takes partial effect once the intended wedding date arrives, then we should apply the groom's responsibilities towards his bride despite the extenuating circumstances. Consequently, the Gemara's entire discussion becomes difficult to understand. This problem intensifies if we view nisu'in as flowing almost naturally from the eirusin. Quite possibly, however, even according to this approach we may exempt the husband from this obligation when he delays the wedding in order to get married on Wednesday night. The Gemara itself distinguished this case from that of extenuating circumstances: "Or, perhaps, there he encountered extenuating circumstances only because of the provision the rabbis enacted for him… " We may explain that when the intended date falls on a different day, the husband's exemption does not result from the halakha of "oness" (circumstances beyond his control). Rather, once Chazal instituted that a betula (girl never previously wed) gets married on Wednesday night, the time for the wedding has yet to arrive. We may follow this line of reasoning throughout the continuation of the sugya, as well, meaning, that we deal here not with an exemption based on extenuating circumstances, but rather with an extension granted to the groom. If the Gemara spoke of the exemption of "oness," it could not have raised the distinction mentioned later between his illness and hers. In either instance, we cannot cast any blame on the groom for the wedding's delay. If, however, Chazal granted him an extension, then perhaps this could apply only when the bride took ill, in which case he declares, as the Gemara puts it, "Ana ha ka'amina" ("I am standing here," ready to conduct the wedding). When he is physically unable to marry, then although he is not to blame for this inability, he must nevertheless begin supporting his bride, since the intended wedding date has arrived, thus rendering her "beito" - married to him in the sense of becoming part of his household.

Sources for the next shiur:

Sources:

1. 2b - "Amar Rava… a-nafshei" (3a); Nedarim 27a - "Nidrei onsin… migli onsei."
2. Gittin 73a - "Tanu rabbanan zeh gitekh… " until the mishna; Tosefot in Ketubot s.v. "ika."
3. Chiddushei ha-Ra'a s.v. "ela"; Ritva s.v. "amar Rava."
4. Yerushalmi, Kiddushin 3:2 - "Rabbi Avahu be-shem Rabbi Yochanan… ke-man de-avad"; Ran, Kiddushin 25a in the Rif - "u'le-inyan mekadesh… lo chashash kelal."
5. Rambam, Hilkhot Geirushin 9:8, Hagahot Maimoniyot 1; Hilkhot Mekhira 19:5-6; Mishneh le-Melekh in Hilkhot Mekhira 11:1 s.v. "hinei."

Questions:

1. According to the Gemara, do we, strictly speaking, apply the halakha of oness in cases of gittin?
2. According to the view that we do not apply oness to situations of gittin, why, in Gittin 73, do we not consider one's tenai (stipulation) to have been fulfilled if it is fulfilled through an oness?
3. What reason does Rava, in the sugya in Nedarim, suggest to explain why a fulfillment of a tenai through an oness does not qualify as meeting the conditions of the tenai?
4. May we distinguish between fulfilling a tenai through an oness on the one hand, and failing to satisfy a tenai due to an oness, on the other?
1. This approach emerges clearly from the comment of the Beit Shemuel on the Shulchan Arukh (E.H. 56:4), that even nowadays, when the formal betrothal ("eirusin" or "kiddushin") occurs just prior to the marriage ("nisu'in"), if the stipulated date for kiddushin arrived and it was delayed, the groom must begin supporting the bride. Clearly, no marital obligations apply at all before kiddushin; therefore, the requirement to support the bride must be viewed as a penalty, and not as part of the commitments between bride and groom. [↑](#footnote-ref-1)
2. The Gemara later raises the possibility of distinguishing between the consumption of teruma and hafarat nedarim; our discussion relates to the first possibility, whereby we can link the two halakhot. [↑](#footnote-ref-2)