YESHIVAT HAR ETZION

ISRAEL KOSCHITZKY VIRTUAL BEIT MIDRASH (VBM)

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**GEMARA GITTIN 5779**

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Dedicated in memory of Rabbi Jack Sable *z”l* and

Ambassador Yehuda Avner *z”l*

By Debbie and David Sable

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**Shiur #2**

**Gittin Chapter 9**

**Exclusion in Kiddushin (82b)**

**by Rav Ezra Bick**

**Sources:**

1. Gemara 82b "Ba'ee Rabi Abba... " until 83a "teiku"

2. Rashba 82b s.v. "*ha d'amrinan kideish*"

3. Ritva 82b s.v. "*Batar*"

1. The dispute between the Rashba and the Ritva

In [last week’s](https://etzion.org.il/en/daf-82a-except-ploni) *shiur*, we saw the position of the Rashba *daf* 82b regarding the statement of the gemara regarding a certain case: “Shimon’s *kiddushin* did not take effect (*lo ahanu*).” The Ritva claimed that *kiddushin* which do not prohibit have no validity at all. From this we deduced that that, according to the Ritva, the act of *kiddushin* is an act of *issur v’heter*, and therefore, if there is no new consequence at all in the realm of *issur*, the intended *kiddushin* are completely meaningless.

The case under discussion was where Reuven performed *kiddushin* with the exception of Shimon, and Shimon performed *kiddushin* (with the same woman) with the exception of Reuven. Reuven’s *kiddushin* made the woman prohibited to the whole world except for Shimon. Shimon’s *kiddushin*, on the other hand, prohibited no one, since most people were already were prohibited to the woman, and Reuven was excluded from Shimon’s *kiddushin*. Thus, **in actuality**, the status of the woman vis-à-vis issur did not change at all.

We must emphasize the term “in actuality.” Even if the definition we deduced from the Ritva’s statements is correct ‒ that *kiddushin* which do not prohibit are not *kiddushin* – the conclusion of the Ritva is nonetheless debatable. For Shimon gave *kiddushin* to the woman and prohibited her to the whole world except for Reuven. I could say that Shimon’s actions **do** make the woman prohibited to the whole world, except for the fact that the whole world was **already** prohibited to the woman because of Reuven’s *kiddushin*. According to the Ritva, the gemara is saying that there must be a **new change in the practical *issur* status** as a result of the *kiddushin*; otherwise, I say that the *kiddushin* are meaningless, and therefore null and void.

Take note: there is in fact a consequence between a woman becoming prohibited because of Reuven’s *kiddushin*, and a woman becoming prohibited **also** because of Shimon’s *kiddushin*. Shimon’s additional *kiddushin* becomes practically relevant in the case that Reuven dies. If Shimon’s *kiddushin* are valid, the woman is still prohibited to the world, and in order to release her we would need a get from Shimon. According to the Ritva, since at their inception Shimon’s kiddushin had no effect (“*lo ahanu*”) and did not in actuality prohibit a woman who was previously permitted, they were not valid at all; the woman is permitted to the whole world, even without a get from Shimon.

The Ritva also holds that the woman in this case is permitted to the one who was excluded from the *kiddushin*. If Reuven gave a woman *kiddushin* to the exclusion of Shimon, Shimon can be *mekadesh* her, and also may have relations with her. This conclusion follows from the assumption that *kiddushin* have effect in the realm of *issur v’heter*. Therefore, *kiddushin* which exclude someone (according to R. Eliezer) create an exclusion also is in the realm of *issur*; that is to say, if Reuven was *mekadesh* a woman to the exclusion of Shimon, the woman is prohibited to the whole world except for Shimon. Therefore, she is permitted to Shimon.

The Rashba disagrees with both these points. First of all, the woman who is *mekudeshet* to Reuven to the exclusion of Shimon is prohibited to Shimon (regarding relations), since if he has relations with her he is “using the part of the woman which is *mekudash* to Reuven.” Secondly, Shimon’s *kiddushin* are valid even though he did not make the woman prohibited to any new person. If Reuven dies, the woman is still prohibited to the whole world because of Shimon’s *kiddushin*. The Rashba holds that *kiddushin* have effect in the realm of *kinyan*, in creating a connection between the man who gives *kiddushin* and the woman who accepts them. Therefore, in *kiddushin* which excludes someone, the exclusion is also in the realm of *kinyan*. The *kinyan* which is created is non-existent in regard to Shimon; that is to say, as far as Shimon is concerned, the woman is not to the wife of Reuven. Therefore, Shimon can be *mekadesh* her, that means to say, make a *kinyan* on her. However, the Rashba claims, he cannot have relations with her, for, in contrast to his *kinyan*, which can relate only to the part not belonging to Shimon, relations perforce refer to the entire woman, and thus it turns out that Shimon “uses the part of the woman which is *mekudash* to Reuven.” On the other hand, the Ritva’s principle that *kiddushin* that do not prohibit are not *kiddushin* is baseless, because *kiddushin* in principle is not an act of *issur*, but rather an act of *kinyan*.

Thus it turns out that according to the Rashba’s position, a woman who is partially *mekudeshet* is entirely prohibited. This conclusion is problematic, since– regarding *gerushin*, this is not the case. A woman who is partially *megureshet* – that is to say, whose husband gave her a get to the exclusion of Ploni, which is valid according to R. Eliezer – is permitted to the whole world. It is not possible to claim that according to R. Eliezer, she is fit for *kiddushin* but not for relations, because the explicit language of the mishna is “R. Eliezer **permits**” .The question thus arises, what is the difference between partial *kiddushin*, in which the part of the woman which is *mekudash* to the man makes her prohibited to the whole world, and partial *gerushin*, in which the part of the woman not included in the *gerushin* , which part is still, by its exclusion, *mekudash* to the husband, does not make her prohibited to the whole world?

We are forced to conclude that there is a difference between *gerushin* and *kiddushin*. This difference will be made clear if we examine *kiddushin* with an exclusion and *gerushin* with an exclusion in regards to the realm of *issur* and the realm of *kinyan*. According to the Rashba, when someone is *mekadesh* a woman except for Ploni, he creates a *kinyan* with something left out. A *kinyan* with something left out in and of itself creates a prohibition to the whole world. But when someone is *megaresh* except for Ploni, we say the first of all he nullifies his *kinyan* (completely), and leaves something out only in the realm of *issur*. The reason for this is that *kiddushin* is a positive process, and *gerushin* is a negative process. When someone performs *kiddushin*, he makes a *kinyan* (on the basis of our assumption above that *kiddushin* are in the realm of *kinyan*, according to the Rashba) and therefore the exclusion is an exclusion in the realm of *kinyan*. When he is *megaresh*, he dismantles the *kiddushin*, and therefore we say that he is *megaresh* completely – except for what he excludes. Therefore, here too he first of all he is *makneh*, that is to say nullifies his *kinyan*, but he leaves out what he desires to leave out. In this case, he blocks the *heter* in regards to Shimon, but the *kinyan* nevertheless is completely nullified, and there is no *mekudash* part which makes the woman prohibited to everyone else.

1. The wife of two deceased men

It is understandable why, according to the Ritva, the case in which Reuven was *mekadesh* to the exclusion of Shimon and Shimon was *mekadesh* to the exclusion of Reuven (and they both subsequently die), is not designated “the wife of two deceased men.” The woman is *mekudeshet* to Reuven and isn’t *mekudeshet* to Shimon at all, and in and of itself she is the wife of only one deceased man. But this case is difficult according to the Rashba, for the woman is *mekudeshet* to both of the men (and therefore if one dies she is still prohibited because of the second.) Shimon’s *kiddushin* also created an actual prohibition, since because of his *kiddushin* the woman becomes prohibited to Reuven. The Rashba answers that Shimon’s *kiddushin* did not **directly** make the woman prohibited to Reuven (for he was *mekadesh* her except in regards to Reuven), but only **indirectly** (since Reuven would be using the part of the woman *mekudeshet* to Shimon). The gemara calls this “*lo ahanu*” (are not effective) – that is to say, Shimon’s *kiddushin* do not create a *shem eshet ish* in relation to Reuven – and therefore this woman is not called the wife of two deceased men. The question is why the exception from *yibum* in the case of the wife of two deceased men is dependent on whether each *kiddushin* creates a **direct** *issur* on someone.

. It seems that the institution of *yibum* is based on the following theory: when someone dies (childless, with a brother) it is obvious that his ***kinyan*** in regards to his wife is nullified, for a dead person cannot be the owner of anything. The fact that the woman is still prohibited (“the wife of the deceased shall not be married to someone else”) is not a new prohibition caused by the relationship with the brother (the yavam), but a continuation of the prohibition of *eshet ish* of the deceased husband. Although the *kinyan* *ishut* is nullified by the husband’s death, nevertheless the *shem eshet ish* is not. The *issur* of *ishut* was not nullified by the by the husband’s death, if they were childless (in contrast to the case in which they have children, in which death is not only the absence of a husband, which nullifies the kinyan, but death is a ***matir***, which nullifies the *shem eshet ish*). The question arises: what makes the issur eshet ish continue after the husband’s death? The answer is – the *yavam*. The living brother “inherits,” as it were, the *kinyan issur* of the deceased brother. It is not the case that there is a new *kinyan*, but the *yavam* comes in place of his deceased brother and holds – frozen, as it were – the old *kinyan* *issur*.

According to this, the law of “the wife of two deceased men” is a rule that the surviving brother does not “inherit” two *kinyanei issur*. In our case, the Rashba explains, there are not two *kinyanei issur*, because Shimon’s *kiddushin* did not create a new *kinyan issur* in regards to Reuven. It is true that Reuven is prohibited to the woman, but that is only because of the part of her which is *mekudeshet* to Shimon. In the part of the woman *mekudeshet* to Reuven, she is permitted to him as before Shimon’s *kiddushin*. It is only because of the fact that it is impossible to have relations with half a woman that in actuality he is prohibited to have relations with the woman, but on the level of the *kinyan issur*, she is permitted to him. Therefore, there is no problem of the wife of two deceased men.

1. The relationship between *kiddushin* and *gerushin*

Our gemara is constructed as follows: In regards to *gerushin*, R. Eliezer has a verse (or two) that make *gerushin* with an exclusion possible. According to the Rabbanan, although the gemara does not ask what the Rabbanan’s reasoning is, nevertheless it turns out that there is a requirement of “*kritut*,” that is to say, a total detachment, because of which the Rabbanan deem partial *gerushin* impossible.

R. Abba asked: What in regard to *kiddushin*? The gemara explains that the question, both according to R. Eliezer and the Rabbanan, is, do we link *kiddushin* to *gerushin*, that is to say, do we say that the din of *kiddushin* is the same as the *din* of *gerushin*? Logically, without a formal textual link, the gemara is willing to accept the possibility that while there is no partial *gerushin*, since we require an absolute level of “*kritut*,” but in regards to *kiddushin* there is nothing that prevents a man from being *mekadesh* partially, “except for Ploni.” In the gemara’s words, it is sufficient that there be a *kinyan kol d’hu*, any level of *kinyan*. On the other hand, the opposite is possible. It could be that regarding gerushin, R. Eliezer regards *gerushin* with something left out as possible, in accordance with the *drashot* cited above by the gemara, but in regards to *kiddushin*, in the absence of a biblical source, we require a “*kinyan me-alya*,” a complete, full-fledged *kinyan*.

At least in regard to the Rabbanan, the situation in the Yerushalmi is precisely the opposite. The Yerushalmi asks (in contrast to the absence of this question in the *Bavli*): what is the Rabbanan’s reasoning? The Yerushalmi’s answer is:

“And she left (*yatza*) his house and went and became (*hayta*) someone else’s wife”

The *yetzia* (leaving) is linked to her *havaya (becoming).*

Just as her in regards to *havaya*, she has no *havaya* regarding anyone else

So too in regards to her *yetzia*, she has no *yetzia* regarding anyone else.

 From the Yerushalmi, it seems that it is obvious to the gemara, with no source whatsoever, that partial *kiddushin* are impossible. It’s impossible to even conceive that a woman can be *mekudeshet* and yet be permitted to someone else. From a simple reading of the gemara, the implication is that R. Eliezer agrees with this (in contrast with the conclusion of the *sugya* in the Bavli, that R. Eliezer disagrees with the Rabbanan regarding both *gerushin* and *kiddushin*). Rabbanan, in linking *yetzia* to *havaya* (and not *havaya* to *yetzia*, as the Bavli does) learn that in *gerushin* as well, even though logically leaving something out is more likely to be possible, nevertheless exclusion cannot be made possible, and there is no partial *gerushin*.

What lies behind the Yerushalimi’s evident reasoning that in regard to *kiddushin*, *havaya* to someone else is impossible? It seems that to the Yerushalmi, it’s obvious that *kiddushin* means ***yichud*** – the woman is designated **uniquely** to the man and is separated from the rest of the world. We see this concept in the Rambam (*Ishut* 10:1) regarding *nissuin*, which the Rambam describes as a process in which the man “brings her to his home and secludes himself (*mityached*) with her and separates her (from others) to himself.” Marriage is defined as the woman’s being uniquely designated to the man on one hand, and on the other hand separated from others to him, that is to say separated from the whole world. It seems that to this Yerushalmi, this is the fundamental idea, the very concept of *kiddushin*. Therefore, exclusion in *kiddushin* is not a halakhic defect, but a contradiction in terms to the very concept of *kiddushin*. In contrast, *gerushin* need not be total to the same degree. Logically (and also according to R. Eliezer), someone can take apart the *yichud* he created in stages. Except that, according to the Rabbanan, the Torah came and determined that *gerushin* is the converse parallel to *kiddushin*, and just as a woman cannot be *mekudeshet* partially, so too *gerushin* cannot be performed partially.

(I know of a case which happened 40 years ago. A non-observant married Jewish couple became observant and established a *bayit neeman b’Yisrael*. At some point, after they kept Jewish law scrupulously, they came to Rabbi Moshe Feinstein *z”l* with a question. It was clear that when they were non-observant, their mutual connection was based on the intention that they love one another and wish to spend their lives together, but it was agreed that if one of them wants a certain degree of freedom to connect to someone else, there is nothing to prevent this. In fact, the woman indeed made use of this escape clause. Now, after they became observant, they learned the law that a married woman who is promiscuous is prohibited to her husband, and they asked R. Moshe *z”l* if they are obligated to divorce. R. Moshe said that they were not, at the outset, married at all, because *nissuin* which are not exclusive are not *nissuin* at all, even if they were married with *chuppa* and *kiddushin*, a ring, and a *ketuba*. The escape clause they left themselves contradicts the very concept of marriage, which includes the idea that the woman is *meyuchedet* to the man, and separated from all other men.)

As stated, the position of the Yerushalmi is the opposite of that of our gemara. The Yerushalmi makes *gerushin* dependent on *kiddushin*, since *yetzia* is linked to *havaya*. The Bavli makes *kiddushin* dependent on *gerushin*, since *havaya* is linked to *yetzia*. In its conclusion, the Bavli holds that R. Eliezer makes leaving someone out possible in *kiddushin* as well. According to the Yerushalmi, there is no one who thinks this way. However, at least in regards to the Rabbanan’s position, the two Talmudim meet – what is obvious to the Yerushalmi that there is no *kiddushin* with an exception, is the Rabbanan’s position according to the Bavli, as a result of the linking of *kiddushin* to *gerushin*. When all has been derived, just as *gerushin* must be *kritut* – a total separation of the couple from each other, so too *kiddushin* must be a total connection, with no exceptions.

**Sources for next week's shiur:**

*Gittin* 03

1. Gemara 83a “*Tam Rabbanan* …” until 83b “…*zaken echad ka matni*,” Rashi.

2. Rashba 83a s.v. “*Nimtza*,” Rama s.v. “*tanu rabbanan*.” (Ofek ed: p. 309, Mossad HaRav Kook ed. of the Ritva, p..365).

3. Tosafot 82b s.v. “*kigon*”

4. Rashba s.v. “*ve-avra*.”