

DERECH B'YAM HATALMUD ON THE DAF

IYUN INSIGHTS ON KESSUBOS 3A-3B

(A selection of issues discussed by the מפרשים on the דף.)

How can the Rabbis uproot a מעשה קידושין?

The גמרא towards the top of דף ג. says that in certain cases, the חכמים can take an invalid גט and cause it to become valid. It says that they can do so because כל דמקדש אדעתא דרבנן מקדש – all acts of קידושין are done with the approval of the Rabbis.

What is the meaning of this, and how do the Rabbis have the right to uproot a מעשה קידושין?

The ריטב"א in (ד"ה כל המקדש) explains that the קידושין is viewed as if it was made on תנאי, contingent on the approval of the חכמים. Even if a חתן does not explicitly state that his קידושין is dependent on the permission of the Rabbis, we assume this to be his intent. If the חכמים disapprove of a מעשה קידושין, such as in the גמרא here, it is as if it never took effect.

תוס' in (בבא בתרא מה: ד"ה תינה דקדיש בכספא) holds differently. He says that the חכמים have the right to עוקר דבר מן התורה – to *uproot an item in the Torah*. They use this ability to uproot the מעשה קידושין. He says that this applies even if the man did not perform the קידושין thinking that it is based on the Rabbis' approval.

The majority of ראשונים, including גיטין לג. ד"ה ואפקינהו רבנן) in תוס', hold that when the חכמים uproot a קידושין, they do so retroactively from the time that it occurred. (One difference whether the קידושין is uprooted retroactively or not would be whether the woman must be killed if she was unfaithful to her husband during their marriage.)

When was it established that the בית דין meets only twice a week?

The גמרא towards the bottom of דף ג. discusses the statement in the משנה that בית דין meets twice a week. The גמרא says that this was a תקנה established by Ezra. How often did בתי דינים meet before Ezra established his תקנה? Did he limit or expand the times that בתי דינים meet?

תוס' in (ד"ה שבתי דינים) gives two answers. First, he says that prior to Ezra, בתי דינים were available to meet every day, but he established that they should meet in a set fashion on Mondays and Thursdays. רש"י in (ד"ה שבתי) appears to hold similarly.

Second, he brings the ר"י who says that prior to Ezra, the בית דין met every day in a *single city*, and Ezra established that they should meet *everywhere* on Mondays and Thursdays. The ריטב"א in (ד"ה לא) says similarly to the ר"י.

Alternatively, the ריטב"א suggests that בתי דינים originally met daily, but not throughout the entire

day. Ezra established that they should meet twice a week for the entire day.

Esther HaMalkah and the קרקע עולם היתר of acting as

The opening משנה teaches that בתולות normally marry on יום הרביעי. The גמרא on the top of דף ג: brings a ברייתא which teaches that due to danger, it is permitted to move up the day of the wedding. רבה says that this refers to a period in which בתולות who married on יום הרביעי were forced to have relations with the non-Jewish governor prior to their חתונה. The גמרא says that the women should be told דאונס שרי – that they are permitted to have relations with the הגמון because they are being forced.

רש"י in (ד"ה ולדרוש) says that this means that we tell the women that relations with the הגמון *will not prohibit them* to their husbands, since it occurs באונס.

תוס' in (ד"ה ולדרוש) quotes רבינו תם who says that we tell the בתולות that *it is מותר* for them to have relations with the הגמון since it is a situation of אונס.

תוס' brings explanations of two of the בעלי התוספות. He quotes the ריב"ם who says that since the women would be acting as קרקע עולם – passively – they did not have to give up their lives to avoid having relations with the הגמון.

This is based on the גמרא in עד: which questions how Esther HaMalkah could have had relations with Achashveirosh. Doing so should have been a חילול ה', because other Jews were aware of it, and a Jew is required to give up his life in such a situation. אב"י explains there that she acted as קרקע עולם when they had relations.

Why could the women be with the הגמון? Was this not a time of שמד in which a person must give up his life and not transgress an איסור?

The הרמב"ן in (ד"ה ולדרוש) asks why it was מותר for the בתולות to be with the הגמון. The non-Jews were coming to uproot the תקנת חכמים of having weddings on יום הרביעי, and so the women should have been required to give up their lives rather than obey.

He answers that the הגמון came for הנאת עצמו – his own physical pleasure – and not specifically to uproot the תקנת חכמים. Therefore, the women were not required to give up their lives to resist.

He cites the ראב"ד who argues and says that for *all decrees* during a time of שמד, even if it is clear that a גוי is acting for הנאת עצמו, it is still necessary for Jews to forfeit their lives.

Excerpted from the forthcoming sefer
Derech B'Yam HaTalmud on the First Perek of Kessubos (Sections 2-3)

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