



Child support

The *Mishnah* (4:6) begins by teaching that one is not obligated to support their children. The *Mishnah* continues that this was derived from the condition placed in the *ketubah* that if the father passes away, the daughters are supported by the estate until they marry, while the sons share the mother's *ketubah* (aside from the rest of the estate). Since the clause regarding the sons' inheritance is only applicable after the father's death, the same is true regarding the daughters' support – it only applies after the father's passing.

The *Bartenura* explains that the ruling in the *Mishnah* both depends on the age of the children and the financial situation of the father. If the children are younger than six, then *Beit Din* force the father to support his children and even forcibly extract the funds to do so. The *Mishnah* is referring to where the children are ages six and above. In that case, if the father is a financially capable of supporting his children with ease, then *Beit Din* would similarly force him; much like *Beit Din* have the capacity to force other members of the city in matters of *tzedakah*. If the father however is not wealthy, while the *Beit Din* would take care of the children's needs, they would also publicise the cruelty of the father in not supporting his children.

We find that the supporting one children who are six and above stems from the *mitzvah* of *tzedakah*. That being the case, the *Tosfot* ask how *Beit Din* can force the wealthy father? The *Gemara* (*Chulin* 110b) explains that *Beit Din* do not force one to perform a positive *mitzvah* whose reward is presented along with its command. The *Tosfot* provide several answers. First, they suggest that in this case the funds are not be forcibly extracted. Instead the "force" being used is verbal.

The *Ran* however finds this answer difficult, given that if the father is not wealthy, verbal pressure is also used. If the forcing in the case of the wealthy father is also verbal, then

there appears to be no real difference whether the father is wealthy.

The *Tosfot* also suggest that the forcing is after the citizens have determined the amount of money that should be collected to support the children. In that case they can force the father to contribute based on their evaluation.

Finally, the *Tosfot* suggest that in this case *Beit Din* can force the father to pay, given that there are negative prohibitions that are violated if they avoid giving *tzedakah*.

Returning to the *Tosfot's* question, the *Ketzot*, citing the *Kesef Mishnah*, argues that since the *mitzvah* of *tzedakah* is a *Torah* command, there exists a *shi'abud* – a financial lien on one's property. Consequently, when *Beit Din* forcibly extract the funds, it is equivalent to *Beit Din* collecting a debt he owes to the poor – we are simply collecting what is rightfully theirs. In short, this case is not to be confused with forcing one to perform a positive *mitzvah* as this *mitzvah* has an existing financial lien.

Why then do the *Tosfot* not present this answer? The *Kehilot Yaakov* suggests that the *mitzvah* of *tzedakah* is different. It is true that for a positive *mitzvah* there is exists a *shi'abud* such the monetary obligation can be forcibly recovered. The *Kehilot Yaakov* cites *Arachin* and *Pidyon Ha'Ben* as examples. In this case however, the *mitzvah* of *tzedakah* is different in that is it is defined as a case of *mamon she'ein alav tovin* – a monetary case that does not have a defined claimant. This is because one can choose to whom they wish to give *tzedakah*. He cites the case of one who damages one of the *matanot kehuna* (gifts to the *kohanim*) that have not yet been given to a *kohen*. The *Gemara* (*Bava Kamai* 39a) rules that the one is exempt since it a case of *mamon she'ein alav tovin*. The *mitzvah* of *tzedakah* would be similarly defined as a case of *mamon she'ein alav tovin*. This then explains why the *Tosfot* did not present the *Ketzot's*.¹

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¹ The *Kehilot Yaakov* notes that *pikyon ha'ben* would also appear to be a case of *mamon she'ein alav tovin* as one could perform the *mitzvah* with any *kohen*. He cites the *Ritva* who explains that that case here is referring to "makirei kahuna" – where the family has an existing arrangement to give their *matanot kahuna* to a specific *kohen*. Consequently, that case would no longer be defined as *mamon she'ein alav tovin*. The *Kehilot Yaakov* also

provides other explanations why the case of *pidyon ha'ben* is different. See inside.

Note that the *Kehilot Yaakov* continues explaining that with *tzedakah* a *shi'abud* does indeed exist. This is in the context of the *ani'im* in one's city where the *gabbai* acts as the *shaliach* – there is a claimant. It is regarding this obligation to give each *ani* a small amount that the *Kehillot Yaakov* suggest the *Kesef Mishnah* is referring (and not our case).

Revision Questions

יבמות ג' ט' – ה' א'

- What is a person obligated to pay if they confess that they stole an object? (ג' ט')
- Complete the following principle: (ג' ט')
זה הכלל: _____ אינו משלם על בי עצמו
- In a case of *pitui*, to whom are elements of compensation paid: (ד' א')
 - If the father is alive during the trial?
 - If the father died after the trial?
 - If the father died prior to the trial?
 - If she became a *bogeret* prior to the trial?
- On which of the cases in the previous question does *R' Shimon* argue? (ד' א')
- In what case is the *ketubah* payment paid to someone else other than the divorcee? (ד' ב')
- What is different from a regular case of *na'arah meorasah she'zinta* when: (ד' ג')
 - The *na'arah* converted?
 - The *na'arah* mother converted whilst pregnant with her?
- What are the five rights listed in the *Mishnah* that a father has whilst his daughter has not yet become a *bogeret*? (ד' ד')
- What is the difference between the rights of a father and husband? (ד' ד')
- What are the three obligations placed on a husband? (ד' ד')
- At what point is a girl transferred from the *reshut* of the father to the *reshut* of the husband? (ד' ה')
- Complete the following statement analysed by *R' Elazar ben Azaria*: (ד' ו')
" _____ והבנות _____ והבנים "
- What was the implication of the above statement? (ד' ו')
- Can a woman still claim the money of a *ketubah* if she never had one written for her? (ד' ז')
- What are the four conditions that even if they are not written into the *ketubah* are considered as if they have been written? (ד' ז'-י-י"א)
- Can a husband alleviate the responsibility of redeeming his captive wife by sending her a *get* and *ketubah*? (ד' ט')
- What is different about the *ketubot* of *Anshei Yerushalaim* and *Anshei Yehuda*? (ד' י"ב)
- Can one add to the base value of a *ketubah*? (ה' א')
- When is there a dispute as to whether the *tosefet ketubah* is paid? (ה' א')
- What is *R' Meir's* opinion regarding whether a woman can agree to her *ketubah* being a reduced value? (ה' א')

Melbourne, Australia

Sunday -Thursday

10 minutes before *Mincha*
Mizrachi Shul
Melbourne, Australia

Friday & Shabbat

10 minutes before *Mincha*
Mizrachi Shul
Melbourne, Australia

Efrat, Israel

Shiur in English

Sunday -Thursday

Rabbi Mordechai Scharf
9:00am
Kollel Magen Avraham
Reemon Neighbourhood

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mishnahyomit.com/shiurim

Rabbi Chaim Brown
www.shemayisrael.com/mishna/

Rabbi E. Kornfeld
Rabbi C. Brown
http://www.dafyomi.co.il/calend
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SHIUR ON KOL HALOSHON

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Next Week's Mishnayot...

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	שבת קודש
22 April ז' אייר	23 April ח' אייר	24 April ט' אייר	25 April י' אייר	26 April י"א אייר	27 April י"ב אייר	28 April י"ג אייר
Ketubot 5:2-3	Ketubot 5:4-5	Ketubot 5:6-7	Ketubot 5:8-9	Ketubot 6:1-2	Ketubot 6:3-4	Ketubot 6:5-6

