



Disputing a Ketubah Payment

The *Mishnah* (9:9) discusses a case where a woman comes to *Beit Din* with her *ketubah* claiming that she was divorced. She however does not have a *get* (divorce document) and explains she lost it. The husband admits that they are divorced, but claims the *ketubah* was paid and he lost his *shovar* (receipt). The *Mishnah* rules that in this case the *ketubah* need not be paid; the husband is believed. We shall try to understand this ruling.

The *Gemara* (89a) explains that in this case there were no witnesses to the divorce. Since the husband could claim that he never divorced her thereby exempting himself from any payment, he is believed when he says that he divorced her and paid her *ketubah*. This reasoning constitutes a *migo* – since he could have made a stronger argument, his claim is believed.

The *Tosfot* (89b, s.v. *yachol*) however ask that this case does not appear to constitute a *migo*. Had the husband claimed that they were still married, he would have obligated himself to provide her with food and clothing (*mezonot*), an obligation that he exempts himself from by admitting to the divorce. Consequently, this other possible claim is not a better one and we no longer have a *migo*.

The *Tosfot* answers, that since the wife claimed she was divorced, had he claimed that they were married, he would still not have been obligated to provide food and clothing. The reason is that this case would parallel the case, where one person claimed that he was owed wheat while the defendant admitted to owing him barley. In that case since the admission is different to the claim, the defendant is exempt from paying anything. Consequently, in our case, had the husband claimed they were still married, since the woman is claiming her *ketubah*, and the husband would be admitting the obligation of supporting her, something else,

he would be exempt. That claim then would indeed be a better one, and the *migo* is preserved.

The *Chidushei Mahariach* however finds the *Tosfot* difficult. He notes that there are two ways of understanding why in the case where one claimed he was owed wheat and the other admitted to barley that he is exempt. Either it is because when the claiming wheat, the claimant is implicitly either admitting that he is not owed barley or that he is forgoing his claim to barley. Neither logic appears to apply in this case as the claims for the *ketubah* and *mezonot* are reciprocally dependant on one another. If we do not believe that she is divorced she is due *mezonot*. Both financial obligations are simply dependent on the *get*. Consequently, by claiming that she was divorced and her *ketubah* unpaid she cannot be considered actively admitting or forgoing the claim to *mezonot*. The *Tifferet Yisrael* similarly asks that if we understand, the claimant waived his claim to barley because he claimed only wheat, that logic does not hold true in this case. In this case she cannot claim both the *ketubah* and *mezonot* and therefore cannot be considered as forfeiting the *mezonot*.¹

The *Chidushei Mahariach* comments that were it not for the *Tosfot's* explanation, he would have thought that in this case, if the husband claimed they were still married, he would still be obligated to pay *mezonot*. What then of our *migo*? The *Tifferet Yisrael* answers that the *migo* is preserved since exempting himself from *mezonot* is almost insignificant, especially since part of that obligation has the benefit of him enjoying *maaseh yadeiha* (anything she produces). Furthermore, it is paid gradually. Exempting himself from the payment of the *ketubah*, a significant financial obligation, is a much better position. Consequently, by admitting to having divorced her, the *migo* stands as he could have claimed that they were still married which would have been a much better position.²

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¹ The *Tifferet Yisrael* continues at length arguing that this case should not be considered like one where the claim is for wheat and the admission for barley. The *Tifferet Yaakov*, commenting on the *Tifferet Yisrael*, argues that ordinarily the *Ramah* does not maintain that the claimant is forgoing his right since he should not be penalised for not claiming both debts at the same time. Instead the defendant is simply considered as if he is denying the entire claim. In our case however, by claiming she is divorced, there is more of

a reason to say she forgoes her claim on *mezonot* which is part and parcel of being divorced. See also the *Netivot*.

² The *Tifferet Yisrael* continues, considering the claim he could have made that they were still married, this would not have been considered a partial admission requiring a *shevuah*. The admission to *mezonot* if they continued to be married for a long time, may in fact exceed the value of the *ketubah*. More importantly since the admission is not a fixed amount, it does not constitute a partial admission.

Revision Questions

יבמות ח': ד' – ט': ט'

- Complete the following phrase and explain: (ח': ד')
 "רבי שמעון אומר: מקום שיפה כוחו בכניסתה _____, _____
 מקום שהורע כוחו בכניסתה _____"
- What is done with the following items that a wife inherits: (ח': ה')
 - Elderly servants?
 - Old vines?
- When can a husband claim the expenses paid on *nichsei melog*? (ח': ה')
- Are there any restrictions placed on a *shomeret yabam* on the sale of property she inherits? (ח': ו')
- Explain the opinions of *Beit Shammai* and *Beit Hillel* regarding what is done with the property of a *shomeret yabam* that dies? (ח': ו')
- What is done with the *shomeret yabam*'s original husband's: (ח': ז')
 - Money?
 - Picked/detached fruit?
 - Unpicked fruit? (Explain both opinions.)
- Can the *yabam* set aside money for the *yavamah*'s *ketubah* in order to seize possession of his late brother's property? (ח': ח')
- What is the impact of the following statements made by a husband prior to marriage: (ט': א')
 - "דין ודברים אין לי בנכסיד"?
 - "דין ודברים אין לי בנכסיד ובפירותיהן"?
 - "דין ודברים אין לי בנכסיד ובפירותיהן ובפרי ברותיהן, בחיין ובמותן"?
- Explain the debate regarding who inherits a collateral in the hands of a lender. (ט': ב')
- What other possessions are also debated in the same manner as the previous question? (ט': ג')
- If a wife is placed in charge of components of a business can the husband demand a *shvuah* from her (as in normal business partnerships)? (ט': ד')
- What is the impact of the following statements made by a husband prior to marriage: (ט': ה')
 - "נדר ושבועה אין לי עליך"?
 - "נדר ושבועה אין לי עליך ועל יורשיך הבאים ברשותיך"?
 - "נדר ושבועה אין לי ולא ירושי ולא לבאים ברשותי עליך ועל יורשיך הבאים ברשותיך"?
- If the widow is made custodian of her late husband's property, can the *yorshim* demand a *shvuah* from her? (ט': ו')
- In which five cases must a widow vow prior to collecting her *ketubah*? (ט': ז')
- Explain the following cases: (ח': ט')
 - *Pogemet ketubah*.
 - Claiming a *ketubah* from *nechasim meshubadim*.
 - Claiming a *ketubah shelo befanav*.
- Can a lender claim money from the borrower if his has the loan contract, but claims he lost the *pruzbul*? (ט': ט')
- What can a woman collect if she presents the following: (ט': ט')
 - Two *ketubot* and two *gittin*?
 - Two *ketubot* and one *get* – with the *ketubot* dated before the *get*?
 - One *ketubah* and two *gittin*?
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Ketubot 10:1-2	Ketubot 10:3-4	Ketubot 10:5-6	Ketubot 11:1-2	Ketubot 11:3-4	Ketubot 11:5-6	Ketubot 12:1-2

