



Kinui by Beit Din

The *Mishnah* (4:5) teaches that in certain situations the *Beit Din* can perform *kinui* (formal warning against seclusion with another man) on behalf of the husband. The cases include whether the husband becomes a *cheresh* (deaf-mute) a *shoteh* (insane) or if he was imprisoned.

A debate ensues regarding the effect of *kinui* performed by *Beit Din*. The *Tana Kama* maintains that even if *stira* (seclusion) is subsequently witnessed, she would not be a *sotah* and not be required to go through the process we are learning about. Rather it would result in the wife losing her *ketubah* if she violated the *kinui*. *R' Yosi* on the other hand maintains that once the husband is released from jail, his wife would be a *Sotah* and he would be required to bring her to the *Beit HaMikdash*.

The *Gemara* (*Sotah* 27a) explains that the debate in the *Mishnah* is based on the understanding of the two *pesukim* referring to the husband warning his wife (5:14) and then bringing his wife to the *Beit HaMikdash* (5:15). They argue whether the same person must perform *kinui* and the bringing.

A few points are worth addressing. The *Gemara* earlier (3a) records a debate amongst the *Tanaim* whether a husband must perform *kinui*. *R' Yishmael* is of the opinion that the husband is allowed to perform *kinui* but not obligated while *R' Akiva* maintains that should the situation arise, the husband must. The *Gemara* explains that according to *R' Yishael* there is a prohibition of "You shall not hate your brother in your heart." When the *Torah* writes "and he warns his wife" it is only to permit *kinui* in the face of this prohibition. How then should we understand the role of *Beit Din* in the absence of the husband in light of this debate?

The *Gemara* learns the authority of *Beit Din* to perform *kinui* from the superfluous repetition of the words "*ish ish*" in the *pasuk* opening the section that deals with *Sotah*. The

Davar Shaul (*Sotah* 27:1) explains that the concern of *R' Yishmael*, that *kinui* might arise out unrest between husband and wife and violate "You shall not hate..." is not present when the *kinui* is performed by *Beit Din*. Consequently everyone would agree that there is a positive *mitzvah* on *Beit Din* to perform *kinui* for the husband should the situation demand it.

Returning to the derivation from the *pasuk* of the authority of *Beit Din* to perform *kinui*, the *Gemara* understands that we learn that *Beit Din* are able to perform *kinui* "in order to remove her rights to her *ketubah*". The *Tosfot* (27a) however explain that the *Gemara* is not to be taken literally. The *pasuk* really only teaches that the *kinui* of *Beit Din* is significant to make her prohibited to her husband. The reason being that *ketubah* is rabbinic. The *Tosfot* continues that even according to *R' Shimon ben Gamliel* who states that it is *de'oraita* (biblical) his position is not that it is really *de'oraita* but rather there is on what to really in the *Torah* for its institution. The *Tana* cited in a *Gemara* is therefore to be understood as teaching an additional *halacha* that for the wife to lose her *ketubah* when violating *dat*, she must be forewarned.

The *Netziv* (*Meromei Sade* III, *Sotah* 27b) explains that the *Tosfot's* understanding is based on their position that a husband who obligates himself via a *ketubah* is bound rabinically. The *Netziv* however proves that according to *Rashi* even though the obligation to give a *ketubah* is rabbinic, once a husband writes a *ketubah* the *shibud* (financial lien) is biblical. (The reference to "*mohar betulot*" in the *Torah* is to the custom that men did choose to provide *ketubot*.) Consequently the *Gemara* can be taken literally that the *Torah* teaches that the *kinui* performed by *Beit Din* has the power to dissolve the lien created by a *ketubah*.

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Revision Questions

סוטה ד' ג' ז' ב'

- What is a *meuberet chaveiro* and explain the debate regarding this case? (ד':ג')
- Explain the debate regarding whether a *zkeina* can become a *sotah*. (ד':ג')
- If a *sotah* who is the wife of a *kohen* is found to be innocent, can she return to her husband? (ד':ד')
- Does the *kina* apply to *issurei arayot*? (ד':ד')
- In what three cases can the *beit din* provide the *kinui* instead of the husband? Would this *kina* make her a *sotah*? (ד':ה')
- Who else would the *mei sotah* affect? (ה':א')
- If the *sotah* refused to drink, aside from her husband, who else would she be forbidden from marrying? (ה':א')
- On the day that *R' Elazar ben Azarya* was elected as *nasi* what did *R' Akiva* expound regarding:
 - *Tum'ah ve'tahara*? (ה':ב')
 - *Tchum Shabbat*? (ה':ג')
- How was the *shirat ha'yam* sung according to *R' Akiva* and how was it sung according to *R' Nechemya*? (ד':ה')
- Who learnt that *Iyov* worshipped *Hashem* through *yir'ah* and who learnt that he worshipped *Hashem* through *ahavah*? (ה':ה')
- Explain the debate regarding the level of *edut* required for *stirah*. (א':ו')
- What level of *edut* is required to prevent a *sotah* from drinking *mei sotah*? (ב':ו')
- Which witnesses would prevent a *sotah* for drinking *mei sotah* yet not prevent her for receiving her *ketubah*? (ב':ו')
- Which event requires a more formal level of *edut* – *kinui* or *stirah*? (ג':ו')
- From which *p'sukim* is the law described in the previous question derived? (ג':ו')
- If there are two conflicting testimonies regarding whether she was *nitmeit* when does she nonetheless drink *mei sotah*? (ד':ו')
- Which seven things may be recited in any language? (ז':א')
- Which eight things must be recited in *lashon ha'kodesh*? (ז':ב')

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Sotah 7:3-4	Sotah 7:5-6	Sotah 7:7-8	Sotah 8:1-2	Sotah 8:3-4	Sotah 8:5-6	Sotah 8:7-9:2

