



Kidushin with a Shtar

This week we made the transition from *masechet Gittin* (divorce), to *masechet Kiddushin* (first stage of marriage). The new *masechet* opens by discussing the ways of performing *kiddushin*. See Volume 3, Issue 38 for an introduction to *kiddushin* and these forms of “acquisition”. One of the methods, a *shtar* (contract), connects us to the *masechet* we just completed. The *Gemara* (5a) questions the source of *shtar* being a valid means. The *Gemara* answers that when the *Torah* teaches regarding divorce “...and she leaves his house (by way of divorce) and goes [and marries] another man” (*Devarim* 24b) it connects marriage and divorce. Consequently since divorce can be effected by way of a document, so can *kiddushin*.¹ We shall explore some of the implications of this *hekesh* (textual connection).

The *Ketot HaChoshen* (200:5) notes that there is a difference between contracts used in financial transactions and a *get*. The *Gemara* (*Gittin* 20a) explains that a *get* can be written on an *issur hana'ah* – an object from which one is forbidden to gain any benefit. This is not the case with financial documents.

The *Ketot* explains that with respect to financial contracts the receiver must acquire the document (*zechiya*). The

transfer of ownership occurs once the document is handed over to the receiver. *Zechiya* does not apply to an *issur hana'ah*. *Gittin* however is fundamentally different. Since a *get* can be handed over *ba'al korchah* (forcibly) the concept of *zechiya* does not apply. With respect to a *get* it need only be placed in her hand (“*ve'natan be'yada*”). Consequently a *get* can be written on an *issur hana'ah*.²

Returning to *kiddushin*, the *Ketot* cites the *Chelkat Mechokek* who explains due to the *hekesh* cited above, a *shtar* used for *kiddushin* could also be written on an *issur hana'ah*. We find therefore that the *hekesh* not only teaches that a contract can be used but also how that contract takes effect.

There is however a dissenting opinion. The *Gra* (*Even HaEzer* 32:1) explains that the *Rashba* rules that if the object were an *issur hana'ah* on a biblical level, then its use would be forbidden for a *shtar kiddushin*.

The *Avnei Miluim* explains that despite the *hekesh*, only a *get* can be written on an *issur hana'ah* since, as we have explained, a *get* can be given *ba'al korchah*. *Kiddushin* however requires her consent and therefore she must acquire the *shtar* and an *issur hana'ah* cannot be used.³

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¹ See the *Gemara* inside for source of the other forms of *kiddushin* and the limits of this *hekesh*.

² The *Ketot* uses this distinction to answer another question. He asks, can someone place a contract gifting a house to his friend and declare that he is giving his friend the house along with the document inside. Is it a valid transaction? With respect to *Gittin* we find that the even though a husband owns his wife's possessions, when a *get* is handed over we say “her hand and *get* are transferred simultaneously”. Can we say in this case that the land and document are transferred simultaneously? The *Ketot* says that it cannot since the receiver must first acquire the contract before the land can be transferred. (The suggestion relies on the land belonging to the receiver for the contract to be transferred – it is circular.) With *Gittin* however, the *get* need not be acquired first, just placed in her hand, therefore we can say *gita ve'yada ba'in ke'echad*.

³ One possible way of explaining this debate might be to ask whether the fact that a *get* can be given *ba'al korchah* is symptom or cause of whether an *issur hana'ah* can be used. According to the first understanding presented, it appears that the fact that a *get* can be given *ba'al korchah* is a symptom of the fact that this type of status change does not require that the contract be acquired by the receiver to take effect; it need only be placed in her hand. This document is in a different class. The *hekesh* therefore teaches that role of the contract in *kiddushin* is the same – simply handing of the document can affect that change.

According to the second understanding, once we say that a *get* can be handed over *ba'al korchah* the requirement that the receiver acquire the contract falls away. It is the same class of document, yet with different technical requirements. The *hekesh* therefore only teaches that a contract applies to the world of *kiddushin* and since it cannot be given *ba'al korchah* an *issur hana'ah* cannot be used.

Revision Questions

גיטין ט' ג' י'

- In what case can having Greek signatures on a *get* be problematic and why? (ט': ט')
- Can a *get* be written on two sides of a page? (ט': ט')
- Where are the valid locations on a *get* for the signatures of the witnesses? (ט': ט')
- Can a *get* be written in Hebrew and the signatures be in Greek? (ח': ט')
- Is a signature valid if it is just the person's name without the father's name (i.e. missing "*ben Ploni*")? (ח': ט')
- What is a *get me'useh* and is it valid? (ח': ט')
- What is an *amatlah* and how is important in the law of *gittin*? (ט': ט')
- List the three opinions regarding what is considered adequate grounds for divorce. (י': ט')

קידושין א' א' ט'

- What are the three means of *kidushin*? (א': א')
- What are the two ways a woman leaves a marriage? (א': א')
- How is a Hebrew male slave acquired? How does he "acquire himself" (i.e. set himself free)? (ב': א')
- Is this the same for a female slave? What is extra? (ב': א')
- According to *Rabbi Meir* how is a Canaanite slave acquired? How does he acquire himself? (ג': א')
- According to the *Chachamim*, how is a Canaanite slave acquired? How does he acquire himself? (ג': א')
- How is a *behema gasa* and a *behema daka* acquired according to: (ד': א')
 - *Rabbi Meir* and *Rabbi Elazar*?
 - *Chachamim*?
- How is property that has *achrayut* acquired? How is property that does not have *achrayut* acquired? (ה': א')
- Is it ever possible to acquire property that has no *achrayut* with property that has *achrayut*? (ה': א')
- At what stage in the purchasing process does one have to go through with the deal? (ו': א')
- What types of *mitzvot* are noted in the *Mishnah* that men are *chayav*, but women are *patur* (two types)? What types of *mitzvot* do they both have a *chiyuv* (three types)? (ו': א')
- What eight things are customary for a man to do with *kodshim* that women are not? (ז': א')
- For which two *korbanot* do women perform the waving service? (ח': א')
- What types of *mitzvot* are customary to fulfill in *Eretz Yisrael*? (ט': א')

Local Shiurim

Melbourne, Australia

Sunday -Thursday
10 minutes before *Mincha*
Mizrachi Shul
Melbourne, Australia

Friday & Shabbat
10 minutes before *Mincha*
Beit Ha'Roeh
Melbourne, Australia

Efrat, Israel
Shiur in English

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

ONLINE SHIURIM

Rabbi Chaim Brown
www.shemayisrael.com/mishna/

Rav Meir Pogrow
613.org/mishnah.html

Rabbi E. Kornfeld
Rabbi C. Brown
<http://www.dafyomi.co.il/calendar/myomi/myomi-thisweek.htm>

SHIUR
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Rabbi Moshe Meir Weiss
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Next Week's Mishnayot...

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	שבת קודש
27 th January ט"ז שבט	28 th January י"ז שבט	29 th January י"ח שבט	30 th January י"ט שבט	31 st January כ' שבט	1 st February כ"א שבט	2 nd February כ"ב שבט
Kiddushin 1:10-2:1	Kiddushin 2:2-3	Kiddushin 2:4-5	Kiddushin 2:6-7	Kiddushin 2:8-9	Kiddushin 2:10-3:1	Kiddushin 3:2-3

