**YESHIVAT HAR ETZION**

**ISRAEL KOSCHITZKY VIRTUAL BEIT MIDRASH (VBM)**

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**LIFECYCLES – HILKHOT ISHUT**

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**Shiur #08: *Ketuba***

**Introduction**

[Last week](http://etzion.org.il/en/nisu%E2%80%99), we noted that there are two parts, or two stages, to a halakhic marriage: *kiddushin* (*eirusin*) and *nisu’in*. *Kiddushin* is achieved in one of three ways: *kesef* (giving something worth at least a *peruta* to the woman), *shetar* (a marriage document), or *bi’ah* (sexual relations performed with the intention of marriage). We explained that the formal aspect of marriage begins with the *kiddushin*. *Nisu’in*, it seems, initiates the more intimate aspect of marriage, which is accomplished through an act of “*ishut*” (which, according to the Rambam, can be achieved either through marital relations or even after *yichud* (seclusion), known as the “*chuppa*”), or through a formal act of entering the husband’s domain.

This week, we will begin to discuss the *ketuba*. What is the role of the *ketuba* in a Jewish wedding? What is its content, and what are the obligations of the husband?

**Origin and Nature of the *Ketuba***

What is the source and nature of the obligation to write a *ketuba*? The Talmud (*Ketubot* 10a) cites a debate between Rabban Shimon ben Gamliel and R. Nachman regarding the origin of the obligation of *ketuba*:

It was stated: R. Nachman said that Shmuel said in the name of R. Shimon ben Elazar: The Sages instituted the marriage contract for Jewish women: For a virgin two hundred dinars and for a widow one hundred dinars… Since [it the obligation of *ketuba*] is a rabbinic ordinance, she may collect only from the husband’s land of the most inferior quality.

Rabban Shimon ben Gamliel says: The marriage contract of a woman is an obligation by Torah law. And did Rabban Shimon ben Gamliel say that? Is it not taught [in a *baraita*, citing the versewith regard to a seducer]: “He shall pay money according to the dowry of virgins” (Ex. 22:16) – The Torah establishes that this fine will be like “the dowry of a virgin,” and that “the dowry of a virgin” will be like this fine, i.e., fifty silver *sela*, or two hundred dinars. From here the Sages based their determination that a woman’s marriage contract is an obligation by Torah law. Rabban Shimon ben Gamliel says: The marriage contract of a woman is not an obligation by Torah law, but is by rabbinic law. [The *gemara* resolves the contradiction between the statements of Rabban Shimon ben Gamliel:] Reverse [the attribution of opinions in this *baraita*, such that it is actually Rabban Shimon ben Gamliel who maintains that the *ketuba* is a Torah obligation].

Rabban Shimon ben Gamliel apparently maintains that the basic obligation of the *ketuba*, at least regarding a *betula*, is *mi-deoraita*. Just as the man who seduces a young woman (*na’ara*) and marries her must per a certain dowry of 200 *zuzim*, so whenever marrying a *betula* one must commit to a dowry of 200 *zuzim*. R. Nachman maintains that the obligation of *ketuba* is rabbinic, as the *gemara* (*Yevamot* 89a) says, “What is the reason that the Sages instituted a marriage contract in general, for an ordinary woman? So that she will not be demeaned in his eyes such that he will easily divorce her.”

 Before Rabbeinu Gershom (11th century) prohibited polygamy and divorce without consent, the institution of *ketuba* indeed served to discourage men from hastily divorcing their wives, as they would have to pay the amount written in the *ketuba*. This led the Rema (EH 66:3) to suggest that “Nowadays, in our lands, in which men do not divorce their wives without consent due to the ruling of Rabbeinu Gershon ... one may be lenient regarding the writing of the *ketuba*, although the custom is not so, and one should not change [the custom].”

 The *gemara* and *Rishonim* note that this debate may have numerous practical ramifications. This debate may determine the credibility of the husband to determine whether his wife has violated the terms of the *ketuba* (*Ketubot* 9a), the quality of land from which the *ketuba* is collected (ibid.), as well as whether the sum is determined by the currency’s value at the time of the signing or at the collection of the *ketuba* (ibid.). In addition, the *Rishonim* note that the required language of the *ketuba*, as well as the ultimate value of the coins referred to in the *ketuba*, may also be a function of this question.

 Rabbeinu Tam (Tosafot, *Ketubot* 10a, *s.v. amar*) rules in accordance with Rabban Shimon ben Gamliel, noting that it is customary to write in the *ketuba* “which rightfully yours from the Torah” (*de-chazi likhi mi-deoraita*). Most *Rishonim* disagree with this view. The Rosh (*Ketubot* 1:19), for example, maintains that the obligation is only rabbinic. However, he maintains that the text of the *ketuba* should still refer to the money as being “*mi-deoraita*,” which may impact upon the manner in which the payment is performed (as if it is a Biblically created debt). Others argue that the entire obligation and its rules are *mi-derabbanan* (Rabbeinu Chananel, cited by the Rosh), and that the phrase “*mi-deoraita*” should not appear in the *ketuba* (Maharam, cited by Hagahot Maimoniot, *Hilkhot Ishut* 10:6).

 A number of *Rishonim* adopt a middle opinion, claiming that the general obligation to provide financial security in case of divorce or death of the wife is a Biblical obligation, but the details, including the amounts, are rabbinically prescribed.

**The Rambam’s Opinion**

 The Rambam appears to advance a very important position. On the one hand, in a number of places he rules in accordance with the opinion that maintains that the *ketuba* obligation is rabbinic. For example, he writes (*Hilkhot* *Ishut* 10:7):

[A man] must write a marriage contract (a *ketuba*) [for his wife] before their entry into the *chuppa*; only afterwards is he permitted to live with his wife… It was our Sages who ordained the requirement of [writing] a *ketuba* for a woman. [They instituted this obligation] so that it would not be a casual matter for [her husband] to divorce her

Similarly, he writes (*Hilkhot Ishut* 11:14):

Our Sages were those who instituted the fundamental requirement of a marriage contract for a woman, and they also instituted [the following consideration]: Whenever [a man] makes a claim that his wife was not a virgin, and the woman disputes his claim, [the husband's claim] is accepted. It is the woman's responsibility to bring support for her claim, not the man's.

This view is in accordance with R. Nachman, who rules that the *ketuba* obligation is *mi-derabbanan*.

 However, elsewhere he implies that the *ketuba* has a different, Biblical origin. For example, in his introduction to *Hilkhot Ishut*, he writes the there is a positive commandment to “marry a woman, granting her the rights of the formal marriage contract *(ketuba)* and sanctifying the relationship through the rites of *kiddushin,*” and there is a prohibition to “have relations with a woman unless she has been granted a *ketuba* and the relationship is sanctified through the rites of *kiddushin*” (see also *Sefer Ha-Mitzvot*, neg. commandment 355 with Ramban).

 The Rambam seems to maintain that while the formal obligation of *ketuba* is Biblical, its form and details are rabbinic. What is the nature and purpose of this idea? The Rambam appears to believe that the *ketuba* is not just a monetary obligation; it is a defining factor of the marriage.

 In previous *shiurim*, we discussed the difference between the mitzva of marriage and the prohibition of “*panuy haba al ha-penuya*” according to the Rambam. We suggested that it is not just a prostitution that the Rambam prohibits (*kedeisha*). All relationships that are not first formalized by *kiddushin* and *ketuba* are by definition inappropriate and therefore prohibited. In other words, *kiddushin*, and the *ketuba*, in its Biblical sense, are meant to transform a fleeting sexual relationship into a relationship that is based on obligation and responsibility. That is also why, according to the Rambam, *pilagshot* are prohibited.

 This insight contributes much to our understanding of marriage and its relationship to the *ketuba*.

 Next week we will continue our discussion, and focus on the content of the *ketuba*.