**YESHIVAT HAR ETZION**

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

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**LIFECYCLES – HILKHOT ISHUT**

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**Shiur #12: Laws of the Wedding (3)**

**Customs and Laws of the Wedding**

**Introduction**

Last week, we discussed the laws and customs of the Shabbat and week before the wedding, as well as the customs of the wedding day itself. We notes that the Shabbat before the wedding is known as the Shabbat Chatan or Aufruf, which some trace to a passage in *Perkei* *De-Rebbe* *Eliezer* (17, cited by Tur, YD 393). The custom of dedicating the Shabbat before the wedding to wedding celebrations appears in the *Rishonim*, including the Rashba (*Mishmeret Ha-Bayit* 7:2) and Maharil (*Hilkhot Shiva Asar Be-Tamuz Ve-Tisha Be-Av*). Sephardic communities do not mark the Shabbat before the wedding, but rather after the wedding.

We also discussed the custom of fasting on the day of the wedding. This custom is cited by the Rema (EH 61:1 and OC 573:1). Some suggest that the bride and groom fast in order to ensure that they are not intoxicated during the wedding (Beit Shmuel 6). Others (Beit Shmuel, ibid.) explain that the wedding day is a day of atonement upon which the sins of the bride and groom are forgiven, similar to Yom Kippur. The Arukh Ha-Shulchan (EH 61:21) writes, “Since it is a day of forgiveness it is appropriate to fast and to ask for compassion, that he should live a peaceful life with his spouse, and that they should produce a generation of upstanding children in the eyes of man and God.” He adds that if it is difficult for the bride or groom to fast, they should not fast, but they should not eat too much and should not drink intoxicating beverages.

Finally, we discussed the special prayers that are said and those that are omitted on the day of the wedding. We noted that the bride and groom, as well as the entire congregation, do not say *Tachanun* on the day of the wedding (Shulchan Arukh, OC 131:4; Mishna Berura ibid.). Some record that it is customary to say *Viduy* on the day of one’s wedding (see Pitchei Teshuva, EH 61:9).

As the Kitzur Shulchan Arukh (146:4) writes, “Before the ceremony, the groom and the bride shall sanctify themselves by repenting their sins, by searching into all their deeds from the day of their birth until this very day, by making a confession of their sins, and by beseeching the Almighty, blessed be He, that He grant them pardon, forgiveness, and atonement… And when they are under the *chuppa*, they shall pray that the Holy One, blessed be He, may cause His Divine Presence to rest between them, as our Rabbis of blessed memory said (*Sota* 17a): ‘If deserving, the Divine Presence rests between husband and wife.’”

This week, we will begin discussing the halakhic components of the wedding ceremony.

**Replacing a *Ketuba***

 As we discussed in an earlier *shiur*, the *ketuba* is a central and even defining component of the wedding ceremony. A man is obligated to write a *ketuba* for his wife, and it is prohibited to engage in marital relations without a *ketuba* (Rambam, Introduction to *Hilkhot Ishut*).

Furthermore, the Talmud (*Ketubot* 56b) concludes that according to R. Meir – who rules that “anyone who reduces the amount of the marriage contract to less than two hundred dinars for a virgin or one hundred dinars for a widow, this marital relationship amounts to licentious sexual relations” – it is prohibited to live with one’s wife without a *ketuba*, even if it is lost. The Rambam (*Hilkhot Ishut* 10:9-10) and the Shulchan Arukh (EH 66:3) rule accordingly. The Shulchan Arukh cites a debate whether the couple must refrain from marital relations (Rema), or whether they are even prohibited to live together (Mechaber).

If a couple loses their *ketuba* or if it is destroyed, they should replace their *ketuba* with a special text, known as a “*ketuba de-irkasa*.” However, there is a debate regarding whether nowadays it is urgent and imperative for the wife to receive a new *ketuba*.

Some *Acharonim* are lenient, for a number of reasons. First, some suggest that since the Enactment of Rabbeinu Gershom, which prohibits divorcing a women against her will, there may be no need for a *ketuba* nowadays (see Rema, EH 66:3). Although the Rema clearly maintains that one should write a *ketuba*, one might rely upon this view in extenuating circumstances. Second, in Israel, it is customary to write a second copy of the *ketuba* (*ha’etek*), which is entrusted with the local Religious Council. This is similar to an earlier practice, instituted in Egypt in 1892 (see Nehar Mitzraym, *Hilkhot Ketuba* 2), of writing a second *ketuba* in case the first *ketuba* is lost. Others disagree with this leniency (see *Teshuvot Ve-Hanhagot* 1:760 and *Ketuba Ke-Hilkhata, Teshuvot* 7). Others rely upon the *kinyan*, the fact that witnesses viewed the groom accept upon himself the obligations of the *ketuba* (see also Tzitz Eliezer 11:67 and 19:39).

A simple, temporary solution might be to give the bride a valuable object, or even a check, which matches the value of the basic *ketuba* obligation. In any case, as mentioned, a replacement *ketuba*, known as a *ketuba de-irkasa*, should be written as soon as possible.

**Writing and Signing the *Ketuba***

In most communities, it is customary to write the *ketuba* before the wedding ceremony, and to perform the *kinyan* and have the witnesses sign on the day of the wedding. Some had the custom of leaving a word or two unfinished, such as “*ve*-*kanina*,” until after the *kinyan*, so that the witnesses can testify that they saw the writing and *kinyan* of the *ketuba*. Although some do finish writing the word “*kanina*” after the *kinyan*, it is customary to write the entire *ketuba*, including the names, dates, and place, before the wedding, and the witnesses’ names are signed immediately after the *kinyan*.

It is customary in most communities to write and sign the *ketuba* before even beginning the wedding ceremony. It is often signed at what is often called the “*chatan’s* *tisch.*” Some, especially in Jerusalem, sign the *ketuba* after the *eirusin* (the *birkat ha-eirusin* and the giving of the ring), but before the *sheva berakhot*.

In addition to the standard text of the *ketuba*, which we describe in a previous *shiur*, there are a number of insertions made for each wedding. The scribe or rabbi write the date and place of the wedding, as well as the names of the bride and groom and the amount of the *ketuba* and the *tosefet* (additional amount), the witnesses add their signatures.

One should write the actual date of the wedding on the *ketuba*. If the *ketuba* was written and dated before the day of the wedding ceremony, and the *kinyan* and signing of the *ketuba* happened at a later date, the *ketuba* is deemed a *shtar* *mukdam*, which is invalid (see *Gittin* 18a; Shulchan Arukh, CM 43:7). If the *ketuba* was written and the groom was engaged in wedding matters (*asukin be-oto ha-inyan*) and the *kinyan* and signing of the *ketuba* did not happen until evening, some *Acharonim* validate the *ketuba* *bedieved* (see Shulchan Arukh, CM 43:16, and *Ha-Nisu’in Ke-Hilkhata* 11:28).

What if the *kinyan* and signing was performed before dark and the wedding ceremony was held immediately after dark? This is a very common scenario, especially during the summer months, when the ceremony is often held during *bein ha-shemashot* or slightly after nightfall. Some suggest that that as long as the groom performed the *kinyan* before sunset, the *ketuba* is valid (see Shulchan Arukh, CM 43:16). This practice, however, raises a number of questions.

First, is it possible to for the groom to accept upon himself the obligations of the *ketuba* before the wedding? Seemingly, just as a borrower may write a *shtar* *halva’ah*, which includes a lien (*shi’abud*) on the borrower’s property, before actually borrowing the money (see Rif, *Bava Metzia* 6a), the groom may similarly accept upon himself the conditions and financial obligations of the *ketuba* with a *kinyan* before the actual wedding. However, R. Moshe Feinstein (Iggerot Moshe, EH 4:100) strongly objects to relying on this leniency, rejecting the comparison between the *ketuba* and a *shtar halva’ah*. Most authorities appear to reject R. Feinstein’s objection.

Second, some object to the witnesses signing the *ketuba*, which states that that “witnessed” the wedding ceremony, when in fact they didn’t. This question is discussed by the *Rishonim* (see Mordekhai, *Gittin* 342). The general practice is to sign the *ketuba* before the wedding ceremony in any case. Despite this practice, R. Shlomo Zalman Auerbach (Minchat Shlomo 2:128) objects based on the language of the ketuba, which implies that the witnesses viewed the wedding itself. If the date of the *ketuba* does not correspond to the date of the wedding, this would be considered false testimony. Therefore, he rules that it is preferable to perform the *kinyan* and the signing of the *ketuba* during the wedding ceremony itself. This is indeed the common custom of Jerusalem (*minhag* *Yerushalayim*). R. Asher Weiss (*Techumin* 36) disagrees with this assertion and upholds the common practice of performing the *kinyan* before nightfall and the ceremony afterwards.

Alternatively, some suggest writing the date of the ceremony on the *ketuba*, and performing the *kinyan* and signing the *ketuba* the day before. Although this is generally deemed a “*shtar me’uchar*,” this may be preferable, according to some, to other options.

**The *Kinyan* on the *Ketuba***

The groom performs a “*kinyan*” on the *ketuba*. Through this *kinyan*, he accepts upon himself the obligations of the *ketuba*. The *Rishonim* question why the groom performs a *kinyan* on the *ketuba* at all, as the *ketuba* contains all of the standard marital obligations that are enforced by a *beit din*.

Some authorities, in fact, did not require a *kinyan*. R. Hai Gaon (cited by the Tur, EH 66, and Shulchan Arukh, EH 66:8) and the Ritva (*Ketubot* 54b) maintain that there is no need to perform a formal *kinyan*. Other *Rishonim* suggest other reasons to perform the *kinyan*. Some explain that the *kinyan ketuba* obligates the *chatan* in the *tosefet ketuba* (Tosafot, *Gittin* 18b, *s.v.* *ketuba*), or it may possibly activate the lien on the grooms property, or relate to other marital obligations mentioned in the *ketuba* (see Rema, ibid.).

In theory, the groom performs the *kinyan* and commits directly to the bride. As the bride is not usually present at the *kinyan ketuba*, the rabbi serves as her agent and gives the groom a *sudar* (a handkerchief or pen), which the groom lifts, thereby accepting upon himself the content of the *ketuba*. The witness view this *kinyan*, and then sign the *ketuba*. The witnesses must be *eidim* *kesherim* – i.e. male, Torah observant Jews.

In some communities, the groom later hands the bride the *ketuba*, and even says “*harei zu ketubateikh*.” Some suggest that this may make the *ketuba* fully binding (Tashbetz 3:301), while others explain that this act is actually a form of *kiddushei shetar*; in case the *kiddushei kesef* was invalid for some reason, the couple is certainly married through giving the *ketuba* with the intent of marriage. In most communities, especially outside of Israel, the *ketuba* is simply entrusted with the bride’s family or the bride herself, without being formally given to the bride under the *chuppa*.

Next week we will continue our study of the marriage ceremony.