YESHIVAT HAR ETZION

ISRAEL KOSCHITZKY VIRTUAL BEIT MIDRASH PROJECT (VBM)

\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*

GEMARA KETUBOT

**Shiur #14: The Ketuba of One Hundred, and the Ketuba of Two Hundred**

**by Rav Yair Kahn**

Translated by David Silverberg

 The mishna in the fourth perek (51a) teaches that even if the husband never wrote a ketuba to his wife at the time of their marriage, the wife nevertheless collects the ketuba payment upon divorce or the husband's death. The mishna specifies that if she was a betula (virgin) at the time of marriage, she collects two hundred zuz, whereas a widow who remarried receives a ketuba payment of one hundred. From here we learn the basic law of ketuba: two hundred for a betula, one hundred for a widow, and that the obligation is not based upon the groom's commitment. Our sugya records a dispute among the tanna'im as to the precise definition of "betula" in this regard: "If an adult had relations with a minor [girl], or if a minor had relations with an adult [woman], and a mukat etz [woman whose 'betulim' broke as a result of an accident] - their ketuba is two hundred, according to Rabbi Meir. The Chakhamim say, the ketuba of a mukat etz is one hundred." At first glance, it appears that according to Rabbi Meir, even if the woman lacks the physical signs of a betula, halakha still considers her a betula so long as she has yet to engage in intimate relations. The Chakhamim, however, disagree, and demand the physiological qualities of a betula for a woman to be defined as such. Therefore, if she lacks the physical signs of virginity, her ketuba is only one hundred, even if she has never had relations.

 This dispute might reflect different definitions of "betula" throughout halakha. There are, after all, other areas in which halakha differentiates between a betula and a "be'ula" (a non-virgin). For example, there are special laws which apply only to a betula concerning oness and mefateh (rape and seduction). A na'ara me'orasa (betrothed girl) is punished with sekila (stoning) for betraying her fiancee only if she was a betula; a be'ula in such a situation is sentenced to chenek (strangulation). Furthermore, a kohen gadol is commanded to marry a betula. In each of these instances we could ask whether the definition of "betula" is physiological or experiential. One may distinguish between the different areas of halakha, and therefore our discussion will focus mainly on the issue of ketuba.

 According to our understanding of the dispute between Rabbi Meir and the Chakhamim, we could assume that each side would take the opposite stand in the case of a woman who had engaged in "bi'a she-lo ke-darka" (literally, "unusual relations," referring to a sexual act that does not affect the betulim). According to the Chakhamim, such a woman would have a ketuba of a betula, since, physiologically speaking, she retains the characteristics of a betula. Rabbi Meir, by contrast, would hold that she does not have the status of a betula. After all, throughout halakha relations she-lo ke-darka are considered a sexual act. Thus, despite the presence of physical betulim, this woman cannot be deemed a betula, given the occurrence of intimate relations. Tosefot (39b, s.v. ta'ama), however, assume as self-evident the betula status of a woman who had engaged in bi'a she-lo ke-darka, for purposes of ketuba payment. They draw evidence from a sugya in Masekhet Kiddushin (10a) which asserts that the laws of oness apply to a girl who had engaged in bi'a she-lo ke-darka and was raped sometime thereafter. (The sugya there cites a debate between Rebbi and the Chakhamim as to the status of bi'a she-lo ke-darka regarding the punishment of sekila; as to her status vis-à-vis marriage to a kohen gadol, see Yevamot 59a.) According to our approach, we must ascertain why Tosefot make no distinction between Rabbi Meir and the Chakhamim in this regard. Perhaps one could argue that according to Rabbi Meir, the status of be'ula can apply only to a woman who is a betula in neither sense of the term; a woman who is a betula either physiologically or in the sense of never having engaged in relations, has a ketuba of two hundred. However, such a theory is very difficult to accept. We will return to this problem later.

 The mishna proceeds to posit that a widow from marriage (as opposed to a woman whose fiancee died after betrothal, before the wedding) has a status of a be'ula and receives a ketuba of only one hundred, implying that this holds true according to both Rabbi Meir and the Chakhamim. Commenting on the mishna, Rashi writes, "She is presumed a be'ula from when she enters the chupa." In other words, Rashi assumes that bi'a actually took place. Rashi's commentary must be examined in light of the Gemara (11b) which cites the following the berayta: "If the first [husband] had brought her in for purposes of marriage, and she has witnesses that she was not secluded [with him], or if she was secluded but did not remain [there] long enough for relations to occur, the second [husband] cannot submit a complaint [of having not found] betulim, since the first married her." At face value, the berayta means to say the widow had in fact not engaged in relations with her first husband, just as the witnesses testify. But here, too, Rashi explains: "Since the first married her - and he should realize that she had relations." According to Rashi's view, that we assume that this widow had, in fact, engaged in relations with the first husband, she has a status of be'ula according to both Rabbi Meir and the Chakhamim. The Rambam, however, rules (Hilkhot Ishut 11:1): "One who marries a betula who had been widowed or divorced, or had undergone chalitza - if she was widowed or divorced or underwent chalitza from eirusin [before the wedding], her ketuba is two hundred; if [this occurred] from nisu'in [meaning, after the wedding], her ketuba is one hundred, for once she marries she is like a be'ula." The Rambam echoing the Talmud Yerushalmi (1:3) writes explicitly that we deal here with a betula, as we had inferred from the berayta, and nevertheless she has the status of a be'ula with respect to the ketuba. This ruling requires explanation, according to both Rabbi Meir and the Chakhamim.

 The Gemara (11b) records an argument between Rav and Shemuel concerning the status of an adult woman who had relations with a minor: "Rav Yehuda said in the name of Rav, a minor [meaning, a boy under the age of nine, whose sexual activity does not halakhically qualify as bi'a] who has relations with an adult woman renders her a mukat etz. When I said this before Shemuel, he said, 'A mukat etz cannot occur with flesh [but rather only when the betulim are broken through a non-sexual incident]'." Before proceeding, we must understand the case, which is the subject of this debate. If relations with a minor does, indeed, break the betulim, why, according to Shemuel, do we not consider the woman a mukat etz? Tosefot (s.v. u-Shemuel) explain, "We deal here [with a case where] the betulim are not lost, for otherwise, why should she be any less than a mukat etz?" The Yerushalmi (1:3) explicitly follows this approach: "When a minor has relations with an adult woman, her betulim do not return! Rabbi Avin said, interpret [the mishna as referring to a case where] he had relations with her she-lo ke-darka. Rabbi Yossi B'Rabbi Avin said, even if the relations were normal, a minor's sexual act is considered a sexual act, but he lacks the strength to affect the simanim [= betulim]." This explains Shemuel's view, but Rav's position becomes difficult to understand. Why should she have the status of a mukat etz and lose her two hundred-zuz ketuba according to the Chakhamim, if her betulim remain? (The Rid takes a completely different - but difficult - approach in explaining this sugya.)

 It thus emerges that according to the Chakhamim, a mukat etz does not lose her betula status with regard to the ketuba only because of the physical absence of betulim. After all, according to the Yerushalmi, a woman loses her two hundred-zuz ketuba by virtue of having engaged in relations with a minor - despite the fact that this act has no physical effect whatsoever. Conversely, the Yerushalmi says explicitly that a bogeret (fully matured woman) lacks certain physical characteristics of a betula, and yet she receives a full ketuba payment like all betulot. In other words, according to the Talmud Yerushalmi, the position of the Chakhamim is not based on the bride's physiological characteristics. This is a welcome position since it is unreasonable that a woman should lose rights to a full ketuba payment simply because of the absence of the physical properties of a betula, although she had never engaged in intimate relations. However, we have yet to explain the Chakhamim's position, that a mukat etz has the status of a be'ula with respect to the ketuba payment.

 In summary, we find instances of women who are not betulot - such as a case of she-lo ke-darka - yet receive a full ketuba of two hundred, and we have situations of women who lose rights to a full ketuba despite never having engaged in relations and having the physical signs of virginity - a widow from marriage according to the Rambam. Additionally, according to the Chakhamim's view, that the betula status depends on the physical presence of betulim, and we thus consider a mukat etz a be'ula with respect to ketuba payment, some women nevertheless have a status of a mukat etz despite the presence of betulim (i.e. a woman who had relations with a minor).

 In light of all of this, we must concede that the distinction between the ketuba of two hundred and the ketuba of one hundred does not depend solely on the woman's definition as a betula. It then behooves us to clarify wherein precisely this distinction lies. Furthermore, we should ask ourselves why did the Sages differentiate between the ketuba of a betula and that of a be'ula? Moreover, according to the view that the ketuba is required by Torah law, this applies only to the ketuba of a betula. All agree that the ketuba for a be'ula was introduced by Chazal; according to Torah law, a be'ula has no ketuba at all. This seems very difficult to understand. The ketuba requirement is intended to ensure that the husband will not consider divorce lightly. By taking upon himself the ketuba obligation, the groom commits himself to the marriage; if he revokes this pledge, he must pay the ketuba sum to his wife. If so, then why should any distinction exist between a betula and be'ula in this regard?

 In order to understand the meaning behind this sugya, let us look at the illuminating comments of the Yerushalmi (1:3):

"They [the Chakhamim] asked Rabbi Meir [who holds that a mukat etz receives a ketuba of two hundred], there are no betulim here - and you say that the ketuba is two hundred?! He answered them: Does this depend on betulim? Does not a bogeret, who does not have betulim, receive a ketuba of two hundred, and does not a betula from marriage have betulim, but yet receives a ketuba of one hundred! Why is this? A bogeret has not lost her 'chinna' [literally, charm, or appeal]; a betula from marriage has lost her 'chinna.' Wherein lies this dispute? With regard to a mukat etz: Rabbi Meir says she has not lost her chinna, whereas the Rabbanan say that she has lost her chinna."

It thus emerges from the Yerushalmi that Rabbi Meir and the Chakhamim agree that the distinction between the ketuba of one hundred and that of two hundred depend upon not the formal status of betula, but rather the concept of "chinna." This is a hard concept to define, and it is unclear wherein lies its importance. Therefore, at face value, the criterion of the Yerushalmi is ambiguous and enigmatic.

 We learn from the words of our Sages that a certain quality lies at the core of marriage with a betula that does not exist in a marriage with a widow, and Chazal refer to this quality as "chinna." It seems to me that this "chinna" stems from the exclusivity of the connection between bride and groom. A wedding is essentially the entrance into a covenant of marriage, and the basis of a covenant between two parties is the singularity and exclusivity of this relationship, insofar as only they take part in this covenant. Chazal refer to betrothal (eirusin) with the term, "kiddushin" because in betrothing a woman, a man renders her forbidden to all other men like hekdesh (sacred property; see Kiddushin 2b). Specifically through this process, of becoming forbidden to all other men, the woman becomes special and exclusively designated for her husband. Every wedding is built upon this singularity, which demands exclusive loyalty throughout the marriage. The essential quality of this covenant becomes particularly pronounced when dealing with a marriage to a betula, who never had any such bond with another man. In such a case, the covenant reflects a more profound commitment which finds expression in the ketuba, through which the husband proclaims, "I have betrothed you forever" and has no intention of ever breaking this bond with his wife, and that should he violate this commitment, he must pay her the ketuba money. Accordingly, we can understand why the Torah required the marriage of a kohen gadol specifically to a betula, since it reflects a relationship that is qualitatively different, and a commitment that is more profound.

 The masekhet that deals with the laws of divorce (Gittin) concludes as follows: "'Ki sanei shalach' (Malakhi 2:16) - Rabbi Yehuda says, if you despise her, send her away. Rabbi Yochanan says, the one who sends away is despised. They do not argue; one refers to one's initial spouse, the other refers to one's second spouse, as Rabbi Elazar said: Whoever divorces his first wife - even the altar sheds tears over him, as it says, 'And this you do as well: You cover the altar of the Lord with tears, weeping and moaning, so that He refuses to regard anymore the meal offering or accept favor from you. But you ask, 'Because of what?' Because the Lord is a witness between you and the wife of your youth whom you have betrayed, though she is your partner and covenanted spouse'" (Gittin 90b). We see that there exists a unique covenant with one's first spouse, referred to as his "covenanted spouse," and breaking this covenant through divorce constitutes a form of betrayal. In Masekhet Sanhedrin (22a), the Gemara describes further the uniqueness of one's initial marriage:

"Rabbi Yochanan said: Anyone whose first wife died - it is as if the Temple was destroyed in his lifetime, as it says, 'O mortal, I am about to take away the delight of your eyes from you through pestilence; … and it says, 'I spoke to the people in the morning, and my wife died that evening,' and it says, 'I am going to desecrate My Sanctuary, your pride and glory, the delight of your eyes' (Yechezkel 24:16-21)… Rabba Bar Bar Chana said in the name of Rabbi Yochanan, pairing off is as difficult as splitting the sea, as it says, 'God restores the lonely to their homes, sets free the imprisoned' (Tehillim 68:7). Is this so? Did not Rav Yehuda say in the name of Rav: Forty days before the formation of the newborn a Heavenly voice calls out and declares, 'The daughter of so-and-so for so-and-so'? This is no question: One refers to the initial match, the other to the second match. Rav Shemuel Bar Nachman said, everything can be exchanged except the wife of one's youth, as it says, 'Can one cast off the wife of his youth!' (Yeshayahu 54:6). Rav Yehuda taught his son, Rav Yitzchak: A person finds peace of mind only with his first wife, as it says, 'Let your fountain be blessed; find joy in the wife of your youth' (Mishlei 5:18)."

 Chazal expressed this unique bond with a single word: "chinna." I am convinced that our Sages drew this ambiguous term from Scripture. The verse in Parashat Ki-Tetze reads: "A man takes a wife and sleeps with her. She fails to please him ['lo timtza CHEN be-einav'] because he finds something wrong with her, he writes her a bill of divorce, hands it to her and sends her away from his house. She leaves his household and becomes the wife of another man; then this latter man despises her, so he writes her a bill of divorce, hands it to her and sends her away from his house" (Devarim 24:1-3). Only in describing the first marriage does the Torah find it necessary to attribute its failure to the woman's not having found "chen" (favor, the Hebrew equivalent of the Aramaic, "chinna") in the husband's eyes. The second marriage ends without this "excuse." We thus see that the concept of "chen" applies only to the original marriage, and only when this element is lacking may a husband divorce his first wife. However, if "chen" is extant, divorce of the first wife should not be entertained.

 If so, then the ketuba of a betula reflects the deep sense of commitment that exists between bride and groom specifically in their first marriage. Although Chazal prescribed a ketuba for a widow, as well, the lower amount indicates a lower level of commitment. We similarly find that the Bet Din for kohanim would collect for the daughter of a kohen who is a betula an amount of four hundred zuz (see 12a). According to our approach, we may explain that this signifies not only a larger financial responsibility, but also an attempt to further deepen the husband's sense of commitment (perhaps related to the prohibition against a kohen marrying a divorcee). Obviously, everything we say applies on the general, categorical level; on the personal level, we may certainly encounter the opposite situation, where a person marries a betula with a lesser sense of commitment than another has when marrying a be'ula.

 Let us now return to the Rambam's position, that a widow from marriage receives a ketuba of only one hundred despite her never having engaged in relations with the husband. We questioned this ruling in light of the simple fact that this woman is a betula in both senses of the term. Why, then, does she lose her betula status regarding her ketuba? According to what we have explained, the answer is simple. Clearly, a woman who marries another man loses her quality of "chen" that enables the exclusive covenant between her and her husband. This woman already entered into a marriage covenant with another man, thereby infringing upon the exclusivity of her second marriage.

 In a case, however, of bi'a she-lo ke-darka, the status of such an encounter as a sexual act applies only to the laws of arayot (forbidden sexual relationships). Meaning, with regard to the prohibitions against relations with certain people, this type of encounter qualifies as a sexual act with which one can violate the arayot strictures. However, it is not a marital act and does not constitute a previous relationship unless performed within the context of marriage: "A husband makes her a be'ula [through relations] she-lo ke-darka, but another [man] does not make her a be'ula [through relations] she-lo ke-darka" (Kiddushin 9b). Just as physical affection without the sexual act does not render a woman a be'ula with respect to the ketuba, the same is true of relations she-lo ke-darka, as only a previous relationship undermines the "covenant" quality of the current marriage.

 Rabbi Meir and the Chakhamim debate the status of a mukat etz. In light of what we have seen, the Chakhamim's position seems, at first glance, untenable. In what way has the covenant of marriage been compromised by an unfortunate accident which renders a woman a mukat etz? As we have seen, the Yerushalmi asserts that Rabbi Meir and the Chakhamim argue as to whether a mukat etz retains her "chinna." We may perhaps explain that this dispute relates to differing perspectives regarding "chen." According to Rabbi Meir, a mukat etz receives a full ketuba of two hundred because objectively speaking, nothing has occurred that could prevent the establishment of a complete marriage covenant. The Chakhamim, by contrast, look not at the objective reality, but rather from the frame of reference of the husband who marries a woman missing her betulim due to unnatural causes, and may become suspicious. If the husband is plagued by doubt subjectively, he cannot establish a marriage covenant in the fullest sense of the term. The Chakhamim take into consideration the subjective, psychological reality, whereas Rabbi Meir focuses on the objective conditions.

 The same applies to a case where the woman had engaged in relations with a minor, according to Rav's view. Although the encounter has no physical effect on the woman, according to Tosefot's reading, she has the status of a mukat etz, such that the value of her ketuba becomes subject to the debate between Rabbi Meir and the Chakhamim. Rabbi Meir holds that she has the status of a betula because objectively, such an encounter (with a child under the age of nine) does not halakhically qualify as a sexual act. On the subjective plane, however, relations with a minor may very well infringe upon the quality of "chen" as it lowers the chances for the establishment of a deep covenant of exclusive marriage. The obstacle results from the husband's knowledge of this past incident, even if objectively we do not award any significance to that act.

Summary:

 Based on the Talmud Yerushalmi, we shifted the question of ketuba from the definition of betula (physiological or experiential) to the parameters of "chen." In so doing, we showed how the ketuba is not merely a monetary obligation undertaken by the husband before the marriage, but is actually an expression of the level of commitment which is basic to the entire institution of marriage in Judaism.

Sources for next week's shiur:

1. 12b - Mishna; Gemara until "shema mina." 15b - Mishna; Gemara until "ki bari ve-shema dami," Rashi s.v. keivan.
2. Bava Kama 46a - Mishna; Gemara until "u-mazik omer shema," Tosefot s.v. de-afilu; Tosefot, Ketubot 12b s.v. Rav Huna.
3. Ra'avan, Sota - "Ve-od hiksha ha de-amrinan be-Bava Kama… "
4. Bava Kama 118a - Mishna: "Ha-omer la-chaveiro… Shamayim."
5. Shita Mekubetzet, Bava Metzia 100a s.v. ve-im yish'al shoel; Ramban, Bava Batra 34b - "U-vekhol hanakh dini… "

Questions:

1. According to Rav Yehuda, how can a "bari" (= person who lodges a confident claim) extract money from the presumed owner through his claim, without any evidence?
2. How can Rav Yehuda rule in Bava Kama that the burden of proof rests of the shoulders of the plaintiff even when the alleged nizak (victim of property damage) is a bari and the alleged mazik (person responsible for the damage) is a "shema" (= he advances a doubtful claim)?
3. According to Rav Nachman, what is the halakha in a case where the plaintiff advances a confident claim and the defendant claims, "eini yodei'a im peratikha" ("I don't know if I repaid you")?
4. In a case when there is no muchzak (meaning, no one currently has the disputed item in his possession), does a confident claim suffice for the property to be taken away from the mara kama (last person with proven ownership)?