

מנה אין כאן משכון אין כאן

I. מקדש בשעבוד - ממונא אגיד גביה:

A. גמ' קידושין ח-ה: someone says "התקדשי לי במנה" and he doesn't give her the 100, but gives her a משכון. In such a case, רבא says that the woman is not מקודשת, b/c מנה אין כאן משכון, b/c אין כאן משכון.

1. Q: What does it mean that the משכון is not there, it is there!?!?

2. A: The רמב"ן ח: ד"ה מנה אין כאן says that since the man isn't being מקדש the woman with the משכון itself, she is not מקודשת, b/c מקודשת אינה במלוה. There is no משכון, which means that she's not קונה the item, b/c it's like a הלואה - there's nothing בעין and so, the קידושין won't be חל.

a) The רמב"ן says that מקדש במשכון doesn't work, b/c מקדש במלוה doesn't work. The connection between the 2 cases is שעבוד - a שעבוד isn't acceptable for a קנין, b/c it's not בעין. The שעבוד is in the רשות הלוה, it doesn't really belong to the מלוה. Since the שעבוד doesn't really belong to the מלוה, you can't be מקדש an אשה with a משכון. When you are מקדש with a משכון, you are giving over a שעבוד, but if you give her that שעבוד, then you didn't give her anything, b/c it's still in his רשות, the רשות הלוה.

b) The רמב"ן says that this is why you can't be מקדש with מלוה either. A שעבוד is always ברשות הלוה, so when he's מוחל on it, he didn't give her anything and so, the קידושין does not take effect.

B. גמ' קידושין מה: if you have a שטר חוב that says that someone owes you money, you can be מקדש an אשה with it התורה, מן התורה, however, there are issues of דעת סמיכות involved. Since the man can be מוחל the חוב if he wants and the woman will end up getting nothing, there is an issue of דעת סמיכות in such a case.

1. Q: The רמב"ן קידושין ח: ד"ה ובמשכון says that we see from here that the fact that there's a שעבוד is what allows for this קידושין to take place. Had it not been for the issue of דעת סמיכות, there would be no problem with such a קידושין. Why does being מקדש with a שעבוד work, it's also a case of being מקדש with a שעבוד?

2. A: The רמב"ן says that you can be מקדש an אשה with a שעבוד. A person can't be מקדש an אשה with his own שעבוד, but he can be מקדש an אשה with a שעבוד that he has against someone else. Since the הלכה says that a שעבוד is in the רשות of the לווה, if a person gives a משכון to a woman, he creates a שעבוד, but that won't work for קידושין, b/c he still retains ownership over it - ממונא אגיד גביה. Since the משכון remains in the רשות הלוה and the man is still holding onto the קידושין, כסף קידושין won't be חל. However, when שמעון owes ראובן money and ראובן gives the שטר to a woman, he gave her something that he loses ownership over and therefore, the קידושין is חל.

a) According to the רמב"ן, since the man retains ownership over the שעבוד, the קידושין won't work in a case where a man is מקדש with his own שעבוד.

b) We can understand this in 2 ways:

(1) Just as when it comes to גיטין, there can be no strings attached, there can't be strings attached by קידושין either. We have a היקש between גירושין and קידושין

from "ויצאה והיתה" and so, there can't be strings attached in either case. But it would be startling if this would be the case, b/c we would be learning from רשב"א קידושין ב. through "ויצאה והיתה" and according to the ד"ה והאי שטר, we only compare קידושין and גירושין when it comes to שטר.¹

- (2) It must be that one of the דינים of כסף קנין is that there can't be strings attached. We see this from the גמ' קידושין ח., which says that people wanted to buy a שפחה, but they didn't have money, so they gave a silver bar instead. The שפחה went up in price and רבי אמי said, "פריטי אין כאן נסכא אין כאן". We see that the man needing to lose ownership of the money is a דין כללי in חו"מ and not a דין פרטי by גיטין and קידושין.

II. מוכר שטר חוב להבירו:

- A. גמ' קידושין מה. if you have a שטר חוב that says that someone owes you money, you can be מקדש an אשה with it מן התורה, however, there are issues of סמיכות דעת involved. Since the man can be מוחל the חוב if he wants and the woman will end up getting nothing, there is an issue of סמיכות דעת in such a case.
1. Q: How does this דין work to begin with?
 2. A: The רא"ש כתובות ט"ז quotes ר"ת who says that there are 2 types of שעבודים. When a person borrows money, there are 2 שעבודים created, there's a שעבוד הגוף, which means that you can come after me and a שעבוד נכסים, which means that you can come collect from my property. When it comes to the שטר חוב להבירו of פרשה, the חידוש is that you can sell property that you don't own entirely, but have the rights to. A שעבוד הגוף cannot be sold, only a שעבוד נכסים could be sold. When a person sells a שטר, he sold the שעבוד נכסים, but he retains the שעבוד הגוף. However, since the שעבוד נכסים emanates from the שעבוד הגוף, if the שעבוד הגוף disappears, then the שעבוד נכסים disappears as well. Once the מלוה is מוחל the שעבוד הגוף, the שעבוד נכסים no longer exists, which could make it that the person who bought the שטר, ends up with nothing.
- a) Q: The מוכר שטר חוב של asks, doesn't that fact that the שטר חוב של אחרים can be מוחל the שעבוד even after he sells it show that he still has some sort of connection to it. According to the רמב"ן קידושין ח: ד"ה ובמשכון, a person can be מקדש an אשה with a שעבוד של אחרים, b/c he will lose ownership over it once it leaves his possession, but according to (רא"ש כתובות ט"ז) ר"ת's understanding of the גמ' קידושין מה., that is not true?
- b) A: The רמב"ם הל' מכירה ו"ב says that the reason the person could be מוחל, is b/c the whole institution of selling a חוב is only מדרבנן. Therefore, since this does not work מן התורה, we will allow you to be מוחל. מדרבנן both the שעבוד נכסים and the שעבוד הגוף were sold, therefore, the מקנה says that since the מוכר doesn't retain ownership over everything, it will work for קידושין.²

III. משכון אין כאן - מח' הרמב"ן והרא"ש

¹ However, the רשב"א quotes the בעל העיטור who says that we compare the methods of all of קידושין to all of גירושין.

² ר"ת didn't say this, b/c he holds that you can hold a מדאורייתא שטר.

- A. גמ' קידושין ח.ח.: someone says "התקדשי לי במנה" and he doesn't give her the 100, but gives her a משכון. In such a case, רבא says that the woman is not מקודשת, b/c אין משכון אין, b/c אין כאן משכון אין כאן.
1. According to the רמב"ן ח. ד"ה מנה אין כאן, even though the 'גמ' says "משכון אין כאן", there really is a משכון here, it just means that the woman is not קונה the item, it only creates a שעבוד. The giving over of the משכון does create a שעבוד, it's just that it's not enough for קידושין.
 2. However, the רא"ש קידושין א.: says that those who think along the lines of the רמב"ן are incorrect. You can't be מקדש an אשה with a משכון, b/c giving over a משכון is a meaningless act in הלכה. If a person is already חייב in something, then he can create a משכון, however, if the שעבוד did not exist already, then you cannot create a משכון. The man gave a משכון in this case, but that's meaningless when it comes to קידושין.
 - a) Q: Who's right?
- B. גמ' ב"מ עה. you hire people to work in your field and they come and start the job and then leave. Now, you have to hire higher workers, but you have to pay much more for them. You are allowed to hire the new workers and make the old workers pay. When the first workers came, they left their tools in your field and so, you are allowed to charge the first workers up to the value of their tools that they left in your field.
1. Q: Why is this true?
 2. A: 2 Answers:
 - a) The רא"ש קידושין א.: says that יש מפרשים that it's based on the פרשה of משכון. Once the workers agreed to do the job, they have to do the job and if they don't, they have to pay for it to get done. When the workers come to work, they were משעבד themselves. They didn't make a formal קנין, but they brought their tools and by leaving their tools there, they are giving them over as a משכון - a משכון creates a חוב. This is how the רמב"ן קידושין ח. ד"ה מנה אין כאן would read this גמ'.
 - b) But the רא"ש says that in that case, the משכון didn't create a חוב, b/c the פועלים were already חייב since they were מפסיד the guy. The משכון didn't create the חיוב, but it addresses the חיוב that the פועלים already had towards the guy. The פועלים were מפסיד the guy, so they had a חיוב towards him and therefore, משכון works.
 - (1) Q: Isn't the רא"ש saying that the פועלים are מזיקין and so, the guy can collect based on the משכון? How is this a case of היזק and even if it is a case of היזק, then why does there have to be a משכון there for the guy to collect?!?
- C. גמ' בכורות מח. there were 2 שמעון בן יוסף's in the same city and someone has a שטר that says that שמעון בן יוסף owes him money. He goes to each of them and they each say that the other one owes him the money. Since ב"ד doesn't know who is the one who owes the money, neither of them have to pay. The 2 שמעון בן יוסף's purchased a field together, so the guy who says that one of them owes him money goes to them and says that either way he should be paid back from that field, b/c one of them definitely owes him. According to ר' ירמיה, this is a good claim, however, רבא says that this is not a good claim - שעבוד נכסים is the same as ערב, b/c in both cases, a person can collect from an entity that didn't borrow the money. These 2 דינים follow the same principles and when it comes to

ערב, you can't go to collect from the ערב first, you have to go to the לווה first. The reason you go to the לווה first, is b/c the ערב's חיוב comes from the לווה, he doesn't have an independent חיוב. This is how שעבוד נכסים works as well - it emanates from the לווה and so, if there's no חיוב on the לווה, then there will be no חיוב on the נכסים either. Therefore, if ב"ד can't be מחייב either שמעון בן יוסף to pay, then it can't take from the נכסים, b/c that would be like collecting from a נכסים שעבוד in the absence of a הגוף שעבוד.

1. According to the רא"ש קידושין א:י, a משכון is like a שעבוד נכסים. A שעבוד נכסים can't be created unless there was a הגוף שעבוד, just as a משכון cannot be created unless there was a הגוף שעבוד. This is why a person can't go after שמעון בן יוסף's נכסים, if he can't collect from שמעון בן יוסף himself.³
2. According to the רמב"ן קידושין ה: ד"ה מנה אין כאן, you can have a שעבוד of משכון without a הגוף שעבוד - you can have a משכון without a preexisting הגוף שעבוד.

a) Q: So how does the רמב"ן read this גמ'?

b) A: It seems as though the מה' between the רא"ש and the רמב"ן is whether you can create a שעבוד נכסים in the absence of a הגוף שעבוד. According to ר"ת (רא"ש כתובות) (ר"ת: ט:), since the שעבוד נכסים emanates from the הגוף שעבוד, once the הגוף שעבוד goes away, the שעבוד נכסים does also. The אבנ"מ כ"ט:י says that the רא"ש קידושין א:י is not exactly saying that you can't create a שעבוד נכסים without making a הגוף שעבוד. It's possible to say that a שעבוד נכסים could be created in the absence of a הגוף שעבוד. However, it's clear that if a הגוף שעבוד and שעבוד נכסים were made and the הגוף שעבוד disappears, then the שעבוד נכסים disappears as well. You could get rid of a הגוף שעבוד by paying back the money or by being מוזהל. In both cases, when the הגוף שעבוד disappears, so does the שעבוד נכסים. The אבנ"מ says that another way to be מפקיע the הגוף שעבוד is if a person has the same name as someone else, if there are 2 שמעון בן יוסף's in the same city. In this case, since ב"ד can't do anything, the הגוף שעבוד is פקע and so, the שעבוד נכסים disappears as well. Even the רמב"ן קידושין גמ' ב: ד"ה מנה אין כאן would agree to this, which is why he will agree to what the גמ' בכורות מה. says - he believes that you can make a שעבוד נכסים without a הגוף שעבוד, but he agrees that if the 2 שעבודים are created together and the הגוף שעבוד is פקע, then the שעבוד נכסים is פקע as well.

(1) Q: 3 Questions:

(a) Why does the fact that ב"ד can't figure out who owe's the money now mean that the חוב is פקע?

(b) If the person lent the money in such a case where it will never be able to be collected, b/c 2 people have the same name, then it's not a הגוף שעבוד that was פקע, but it was never a הגוף שעבוד to begin with!?

(c) This pushes the רמב"ן into the camp of ר"ת, however, the מקנה קידושין ה:י גמ' בתוד"ה מנה says that this is not true!?

IV. הילך:

- A. גמ' ב"מ ד. a person needs to take a שבועה דאורייתא in a case of במקצת. But what if it's a case of הילך - what if someone says that he owes someone part of what he claimed and

³ It happens to be that רבא is the one speaking in both the גמ' בכורות מה. and the גמ' קידושין ה:י.

gives it to him right away, is that מודה במקצת or not? Some say that it's the same thing, but others say that it's different, b/c once you give the money, that part is over and the case becomes like כופר בכל, which does not require a שבועה.

a) Q: הילך is a case where a person says that he owes some of the money and gives it over right then. What if the person says that he owes part of the money, but doesn't have it on him right now, so he's going to give a משכון instead? Is this a case of הילך or not?

b) A: The ר"ן שבועות יז:יח. (בדפי הרי"ף) quotes 2 answers:

(1) The בעל העיטור says that it is considered to be הילך. Even though the guy isn't paying back the money itself right now, the משכון is good enough for it considered to be הילך.

(2) However, the ר"י מיגש says that it isn't הילך. The proof is from the גמ' קידושין "מנה אין כאן משכון אין כאן" גמ', the case of מקדש במשכון ת.ח.:

(a) The ראייה is that since you can't be מקדש an אשה with a משכון, this is not a case of הילך.

i) This ראייה seems to not make sense according to our understandings of the גמ' קידושין ת.ח.:

(1) According to the רמב"ן ח: ד"ה מנה אין כאן, this is not a good ראייה, b/c the חסרון of משכון is that it's not a כסף and that's not what's going on in the case of הילך.

(2) But according to the רא"ש קידושין א:י, the חסרון of משכון is that it can't create a שעבוד and in the case of הילך, there was already a שעבוד. Therefore, the רא"ש would never say what the ר"י מיגש said.

ii) ... This is why the ר"ן says that others (like the רא"ש קידושין א:י) are ראייה דוחה.

(b) There must be another way to understand the גמ' קידושין ת.ח. Therefore, the ר"ן says that those who reject the ר"י מיגש's ראייה do so, b/c they didn't understand the ראייה. How are we supposed to view this ראייה? The ר"ן says that the only way to transfer ownership on something is through a משעה קנין. There is no way to transfer ownership on the משכון, b/c you need a מעשה קנין and there isn't one that will work. Since the משכון could not be transferred from the man to the woman, the קידושין was not הל... .

i) The ר"ן says that there are 2 different types of משכון, there's בשעת הלואתו and הלואתו שלא בשעת הלואתו. Every הלואתו has a built in קנין כסף, b/c the מסירת המעות is the קנין כסף. When it comes to הלואתו שלא בשעת הלואתו, there is no money being given, but there still could be a קנין כסף. When a person takes a הלואתו שלא בשעת הלואתו, he is מוחל the חוב that the person owes to him. One could have seen this as being a קנין כסף, if you hold that a מחילת החוב is a קנין כסף. However, the גמ'

תלמוד tells us that a מחילת החוב is not a קנין כסף. Therefore, there is no way to create a קנין כסף in a case of הלואה.⁴

- ii) There is no קנין כסף going on here, but maybe there's a משיכה going on here. The ר"ן says that there is no משיכה here either, b/c משיכה can only be used to be קונה the דבר, גוף הדבר, it can't work just to acquire the משכון/שעבוד. Every case of הלואה שלא בשעת הלואה that works is working through גביאה in ב"ד.

(1) Q: Is this true?

V. מקדש במשכון של אחרים:

A. גמ' קידושין ח: - if someone is מקדש with משכון of someone else, the woman is מקודשת, b/c בעל חוב קונה משכון.

1. Q: How does this work?

2. A: 2 Answers:

- a) According to the רמב"ן, that the problem with משכון is that there is a lack of a קנין כסף, there is no problem here, b/c the man is not connected to this משכון, he would only be connected to his own משכון.
- b) According to the רא"ש, a משכון must be preceded by a חוב and here, that's what happened.

(1) Q: According to the ר"י מיגש, the problem with משכון, is that the משכון can't be transferred from the man to the woman. Therefore, the קצות ע"ב asks, that being the case, how could someone be מקדש a woman with a משכון של אחרים?

(2) A: 2 Answers:

(a) The קה"י קידושין יח:ג says that a משיכה only works to transfer a שעבוד, but not to create a שעבוד. When a לווה gives an item as a משכון, he is creating a שעבוד to the לווה and therefore, משיכה does not work. However, when it comes to משכון של אחרים, the לווה was already זוכה the משכון, he is not trying to create a שעבוד, he is just trying to transfer the שעבוד and therefore, משיכה works.

(b) If a person owns the דבר and tries to pass off the שעבודים, then it's not going to work. However, if all a person owns is the שעבודים, then he can pass off the שעבודים. When it comes to משכון של אחרים, the person only owns the שעבודים and so, he can pass it off to someone else.

i) Q: What does this mean?

ii) A: The reason משיכה can't be קונה a משכון, is b/c the essence of a משיכה is a כניסה לרשות הלוקח. So if a person isn't given the item, but is only given rights over it, then it's not as if he was מכניס it to his רשות.

However, when all a person has is rights and gives those rights over to

⁴ Not everyone agrees that מחילת המלוה can't be used for קנינים, the רמב"ם הל' מכירה ז:ד holds that it can be. Therefore, the רמב"ם would not reject this so quickly. The ר"ן is trying to explain the ר"י מיגש and the רמב"ם considers himself to be a תלמיד of ר"י מיגש, b/c his father was a תלמיד of the ר"י מיגש. That being the case, it's unlikely that the רמב"ם would say something that goes against the ר"י מיגש. Therefore, perhaps we could say that the reason הלואה שלא בשעת הלואה isn't a קנין, is not b/c the guy is being מוחל the חוב when he accepts the משכון.

someone else, it's as if the other guy was מכניס the item into his רשות,
b/c that's all there is, the ליה is no longer tied to the item.

- (1) The ר"ן שבועות יז:יח. (בדפי הרי"ף) ר"י says that it could be that the ר"י really agrees to the רמב"ן, that something that can't be called a קנין כסף, can't be called הילך.
- (2) The reason משכון is not a קנין כסף according to the רמב"ן, is b/c the מקנה is still holding onto the item. הילך means that the person is no longer holding onto the item. So, if something can't make a קנין כסף, b/c it's אגיד גביה, then it can't work for הילך either.