



On Condition: No Nedarim

The *Mishnah* (7:7) teaches that if a man performs *kiddushin* on condition that the woman does not have any *nedarim* and it is discovered later that she had *nedarim*, then the *kiddushin* is null and void. The *Bartenura* explains that the *Mishnah* is referring to specific *nedarim* that cause her great discomfort. It is those *nedarim* that impact the way he would then relate to her, that are considered significant in this context.¹

The *Gemara* (74b) however teaches that if the woman went to a *Chacham* to *matir* (undo) the *neder* then the *kiddushin* would work.

The *Ritva* however cites the question raised by the *Yerushalmi*. According to our *Mishnah* she should be able to go and marry someone else without a *get*. If we consider our *Gemara* however, there is reason for concern. It is possible that she could later *matir* then *neder*, which would mean that she is retroactively had no *nedarim* at the time of the first *kiddushin*. This would mean she is married to the first man and her children from the second man would then be *mamzerim*. There are two answers brought in the *Yerushalmi*. The first is that even though according to the *Mishnah* she does not need a *get*, she would need a *get* from the first man if she wanted to marry someone else, thus preventing this problem. The second answer however is that she can marry without a *get*. We need not be concerned that she would *matir* the *neder* if we inform her of the consequences of doing so.

The *Ritva* comments that since the *Gemara* makes no mention of the concern in the *Yerushalmi*, it must mean that once she is allowed to marry someone else, it is considered like a *get* and the first “*kiddushin*” would never take hold even if she was *matir* the *neder*. Nevertheless, the *Ritva* rules that practically one should still be concerned from the position of the *Yerushalmi*.

The *Tosfot* (74b s.v. *Chacham*) however notes that this law is taught alongside another one. We learn that if the husband performed *kiddushin* on condition that he or she had no *mumim* (physical blemishes) and it is discovered that she had *mumim* then the *kiddushin* is similarly void. If he went to a doctor and was healed, then it would be valid. From the case of *mumim* we see that it is not important what the legal status of the *neder* was at the time of *kiddushin*. In other words, it is true when a *Chachamim* is *matir* a *neder* it makes it as if there was a never a *neder*. Nevertheless, when the doctor healed his *mumim*, it does not change the fact that the *mumim* were present at the time of *kiddushin* – yet the *kiddushin* is valid. Instead, the issue is *kepeid* – it is a matter that would bother him.

Based on this understanding, the *Tosfot* explains the ability to salvage the *kiddushin* by her being *matir* the *neder* would only work before he learnt about the *nedarim*. If however he already learnt about the *neder* then it is too late. The *Tosfot* explains that this is nature of the *tenai* (condition) when he perform the *kiddushin*. As explained it is not related to what the status was at the time of *kiddushin*. Instead, it related to his *kepeida*. In other words, the *kiddushin* hinged on his reaction to learning about the *nedarim*. If she annulled the *nedarim* prior to him learning about them, then there is no reaction, they do not exist. If however he first learns of the *nedarim*, the condition is immediately violated. There is a *kepeid* because perhaps the *nedarim* might not be able to be undone. Consequently, even if she was *matir* the *nedarim* later, it would be too late, given that the reaction when learning of the *nedarim* already annulled the *kiddushin*.

The *Ran* (35a, *Rif*) notes that the position of the *Tosfot* is not consistent with the *Yerushalmi*, since the *Yerushalmi* addresses the concern that she might undo the *neder* after she married someone else.²

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¹ The *Rambam* limits this to three specific *nedarim*: not eating meat, not drinking wine and not wear nice (colourful) clothing.

² Interestingly however the *Rosh* present the same position as the *Tosfot* yet also cites the *Yerushalmi*.

Revision Questions

כתובות ו' א' – ז' ז'

- Does a husband have any right to the property a wife inherits? (ו' א')
- How does *R' Yehuda ben Beteira* divide *boshet* and *pegam* between a husband and wife? (ו' א')
- Can a father prevent a dowry from passing on to the *yabam*? (ו' ב')
- Compared to the dowry, what value is written in to the *ketubah* and in what circumstance does this calculation differ? (ו' ג')
- What else does the husband add into the *ketubah* as a proportion of the dowry? (ו' ד')
- If the father did explicitly state the value of the dowry, what is the minimum value he must provide? (ו' ה')
- What are the two opinions regarding the following case: the first daughter got married and the father gave her a particular dowry, yet when it came time for the second daughter to marry, the father had already passed away - what is the value of her dowry that is taken from the *yerusha*? (ו' ו')
- Explain the debate regarding whether an orphaned woman can tell the executor of the *yerusha* responsible for her welfare, to hand over control to her *erus*? (ו' ז')
- Regarding the previous question, when is there no debate? (ו' ח')
- What are the two opinions regarding the time until a husband must divorce his wife if he made a vow preventing her from benefiting from his property? (ו' ט')
- What are the two opinions regarding the time until a husband must divorce his wife if he upheld her vow preventing her from benefiting from his property? (ו' י')
- What are the two opinions regarding the time until a husband must divorce his wife if he upheld her vow preventing her from adorning herself and why? (ו' יא')
- How much time is it until a husband must divorce his wife if he upheld her vow preventing her from visiting her father? (Include two cases.) (ו' יב')
- Why must a husband divorce his wife if he upheld her vow not to go to a *beit avel* or *beit mishteh*? What is the exception to this rule? (ו' יג')
- When does a women lose here *ketubah*? (ו' יד')
- What is *dat moshe*? (ו' טו')
- What is *dat yehudit*? (ו' טז')
- What is a *kolanit*? (ו' יז')
- Which *mumin* are problematic if they were concealed from the husband prior to marriage? (ו' יח')

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28 January י"ח שבט	29 January י"ט שבט	30 January כ' שבט	31 January כ"א שבט	1 February כ"ב שבט	2 February כ"ג שבט	3 February כ"ד שבט
Ketubot 7:8-9	Ketubot 7:10-8:1	Ketubot 8:2-3	Ketubot 8:4-5	Ketubot 8:6-7	Ketubot 8:8-9:1	Ketubot 9:2-3

