

Laws of Marriage Chapter 11 (Auto Translated)

English

Auto Translated

Shiur Overview

Summary of Lecture on Laws of Marriage Chapter 11

Introduction to the Chapter

This chapter comes after we've already learned about kiddushin (betrothal), nisuin (marriage), and ketuva (marriage contract). In Chapter 10, we learned the fundamental principle that **the Sages instituted a ketuva — so that it should not be easy in his eyes to divorce her** — so it shouldn't be easy for the husband to divorce his wife, because it will cost him money. One is not even permitted to be with a wife without a ketuva.

[Digression: Psychological reason for ketuva] — Rav Yoel Asher suggested that the reason for ketuva is not only about the husband's financial calculation, but that **the wife needs to feel security** — even if the husband is faithful, she needs to know that there is a financial penalty if he divorces her. Rav Yitzchak responded that he prefers the simple explanation — that it costs money, and that's what holds him back (as the Gemara says: **a bad wife with a large ketuva** — a difficult wife with an expensive ketuva).

The Sages established: betula (virgin) — two hundred, be'ula (non-virgin/widow) — one hundred. The chapter will teach two main topics: (1) **specific laws** — who is called a betula and who is called a be'ula regarding ketuva, with various scenarios; (2) **ta'anat betulim (claim of virginity)** — when the husband claims that she was not a virgin, questions of credibility, and whether we believe him.

[Digression: Is this a practical or theoretical topic?] — In Masechet Ketubot we

see that it was actually a practical matter (for example, **a betula gets married on Wednesday** — a virgin's wedding is on Wednesday, so he can go to beit din). But **many laws on a topic doesn't necessarily mean it happened often — it can be because it's a theoretical topic** with various issues of credibility. In ancient times there were **large age differences** between groom and bride (as we see in Yevamot), which made such questions more practical.

The Torah doesn't speak of ta'anat betulim as a ketuva question, but of motzi shem ra — which is a completely different topic (a fine of one hundred kesef). **The halacha doesn't accept claims of mekach ta'ut** (that he wants to divorce because she's not a virgin), **only claims for money** (whether she receives two hundred or one hundred).

Halacha 1 — One Who Marries a Betula: Betula from Erusin vs. from Nisuin

The Rambam's words: One who marries a betula — even if she became a widow or was divorced or underwent chalitza, if from erusin — her ketuva is two hundred. If from nisuin — her ketuva is one hundred, for once she was married she is like a be'ula.

Explanation

A betula is defined here as one who has not yet been intimate. If she is a widow, divorcee, or chalutza **from erusin** (kiddushin without nisuin), she receives a ketuva of **two hundred**. If she is a widow/divorcee/chalutza **from nisuin**, she receives only **one hundred**, because **once she was married she is like a be'ula** — once she has been married, she has the status of a be'ula.

Insights and Explanations

1. **Betula is a status, not just a physical reality:** The Rambam brings out that **even if we know for certain that she is physically a virgin** (there was no intercourse), but once there was **nisuin**, she receives only one hundred. This means that "betula" and "be'ula" regarding ketuva is **a status matter** (first marriage or second marriage), not just a physical fact. This is compared to modern times — no one talks about betula/be'ula, but everyone asks if it's a first marriage or second marriage.

2. **"Chezkat nesua shetiba'el" — or more than a chezka?** In certain places the language is **"chezkat nesua shetiba'el"**, which would mean it's a chezka/presumption that at nisuin there was intercourse. But **here it's more than a chezka — even if we know for certain there was no intercourse**, she receives only one hundred. This shows that it's **a takana based on status**, not on reality.

3. **Why is nisuin without intercourse enough?** This connects to what we learned earlier — that **nisuin is "ra'ui l'bia"** (the Rambam's approach), a state that is prepared for intercourse, even without actual intercourse. This is a **"state of intercourse"**, and therefore it's enough to give the status of be'ula. In such laws there will always be a **"lo plug"** — we don't check each case separately.

4. **[Small note: The language "nechlitz" — Chalitz is an act that the woman does** (vechalitz na'alo), but the language is "nechlitz" — a passive form, like "nitgaresha". In the language of the Sages **both forms apply to both** — the man is called "garush" (as if passive) and the woman is called "nechlitz" (as if passive), even though it's reversed.

Halacha 2 — Ketuva of a Freed Slave, Convert, and Captive

The Rambam's words: And so one who marries a virgin freed slave or convert or captive — if the slave was freed and the gentile converted and the captive was

redeemed and they are less than three years and one day old, their ketuva is two hundred. And if they were three years and one day old or more, their ketuva is one hundred. And why did the Sages institute a ketuva of one hundred for these even though they are virgins? Since the **chezka of a married woman is that she will be intimate**, and the **chezka of a slave and gentile and captive is that they will be intimate**. They instituted one hundred for them... whether they were intimate or not, and they are like be'ulot for all matters.

Explanation

A slave who was freed, a convert, or a captive who was redeemed — if this happened before she turned three years old, her ketuva is two hundred (like a regular betula). If after three years, her ketuva is only one hundred, because the **chezka** is that she was already intimate (a captive through assault, a slave/gentile in other ways).

Insights

1. **Chezka as law/status, not determination:** The concept "chezka" here doesn't mean a determination of reality (that we figure out what actually happened), but rather it means a **law** or a **status** — this is how the Sages instituted it. The proof is that the Rambam says explicitly **"even though they are virgins"** — even if we know she is a virgin, her ketuva is still one hundred. This proves that the **chezka** doesn't determine what actually happened, but rather determines the law.

2. **Two interpretations of "chezka" as status:** Rav Yoel Asher suggests that the status means a kind of **honor issue** — even if she and everyone who knows her knows she is a virgin, but in "the street" it means he married a be'ula, and that's not "a good match" — therefore the ketuva is only one hundred. Rav Yitzchak holds that the Rambam doesn't say this meaning explicitly, but simply that **the Sages instituted the system this way**.

3. **Practical reason for a general takana:** An "unusual" explanation: The Sages have limited time in beit din. When one can make a rule that

always applies, one does so, instead of going into each individual case. 99% of married women, captives, slaves are be'ulot — for that one percent should we write a tractate?

4. **"Tiknu chachamim" — emphasis on takana:** The Rambam says **"tiknu chachamim"** — this is a takana, not a determination of reality. This supports the interpretation that chezka here means a law/takana.

Halacha 3 — Mukat Etz

The Rambam's words: Mukat etz her ketuva is one hundred. Even if he married her on condition that she is a complete virgin and she turned out to be mukat etz, her ketuva is one hundred.

Explanation

A woman who lost her virginity not through intercourse but through a stick or something similar — her ketuva is one hundred. Even when the husband took her "on condition that she is a complete virgin" and it turns out she is mukat etz, the ketuva remains one hundred.

Insights

1. **"Al menat" doesn't mean a formal condition:** Rav Yoel Asher means that the Rambam doesn't mean by "al menat" a formal condition (like the condition of Bnei Gad and Bnei Reuven), but only that he **intended/assumed** that she is a complete virgin. Rav Yitzchak is uncertain whether with an actual condition it would be different.

2. **No mekach ta'ut:** The halacha teaches us **two directions** — (a) on one hand, you shouldn't say that because he intended a complete virgin, he should receive two hundred — no, her ketuva is one hundred. (b) On the other hand, **conversely** — he also can't say it's a mekach ta'ut and he wants to withdraw from the marriage entirely. **Tosafot** says that even when a person thinks it's a virgin, mekach ta'ut doesn't apply — he only loses in ketuva (two hundred becomes one hundred), but he can't leave entirely.

3. **Distinction between shidduch-value and ketuva-law:** There are two separate matters — (a) how important she is as a match (regarding this she's still a girl, no mekach ta'ut), (b) regarding ketuva there is a specific distinction between virginity and non-virginity. Therefore: "al menat shehi betula" means **"al menat shelo nivela"** — that she has a **status of betula regarding ketuva**, not that she must have physical virginity.

Halacha 4 — Minor Under Three Years, and Minor Under Nine Years

The Rambam's words: A minor girl from three years and under who was intimate, even if intimate with an adult man, her ketuva is two hundred, for her virginity will return like other virgins. And so an adult woman who was intimate with a minor under nine years and one day, her ketuva is two hundred as if she was not intimate at all, for intercourse of a nine-year-old and one day is intercourse, less than this his intercourse is not intercourse.

Explanation

A girl under three years old who was intimate — even with an adult — her ketuva is two hundred, because her virginity grows back. An adult woman who was intimate with a minor under nine — her ketuva is also two hundred, because intercourse of a minor is not considered intercourse.

Insights

1. **"Betuleha chozrin" — more than a physical thing:** With a minor under three, that "betuleha chozrin" doesn't just mean that physically the virginity grows back, but it means that **it's not intercourse at all** — it has no halachic significance. Even if the virginity wouldn't have been removed, it would still be intercourse (as we see with a betula who is intimate and the virginity remains). But here, because she is under three years old, it's **not**

intercourse at all, and that betuleha chozrin is a sign/proof of this.

2. Intercourse of a minor — whether it physically removes virginity: Rav Yoel Asher asks: With a minor under nine, where the Rambam says **"his intercourse is not intercourse"** but doesn't speak of "betuleha chozrin" — it must be that practically a minor doesn't remove virginity. Rav Yitzchak disagrees and says: **it doesn't say that** — it could be that intercourse of a minor actually doesn't remove virginity, but it could also be that it's not even on the level of mukat etz.

3. The distinction between minor and stick: A **stick** that enters **is indeed a kind of intercourse** (mukat etz her ketuva is one hundred) — that is, a stick removes virginity. But a **minor under nine** — his intercourse is **nothing at all**, he's not better than a stick. Therefore, if the minor physically removed virginity, she would at least be like mukat etz. Rav Yoel Asher concludes that presumably a minor under nine doesn't physically remove virginity, and therefore her ketuva is two hundred (not just one hundred like mukat etz).

4. Dispute of Rav and Shmuel — Yerushalmi vs. Bavli:

Rav Yoel Asher's approach (according to the Yerushalmi): The Yerushalmi says "a minor who is intimate with an adult, under nine years old, ein la chazara — he doesn't have the power to go with signs." This means a minor simply doesn't have the physical ability to tear virginity. This is a practical, reality-based thing. Therefore, when the Rambam says "as if she was not intimate," he means that practically the virginity remains intact. Proof: With a minor girl the Rambam says "her virginity will return" — a practical thing. If with a minor the reason were a purely halachic reasoning, the Rambam would have said the same language in both cases. But the Rambam gives in each case a separate practical reason.

Rav Yitzchak's approach (according to Shmuel in the Bavli): Shmuel says "there is no mukat etz in flesh" — this means that

halachically it's not called mukat etz. Rav holds that intercourse of a minor is "like mukat etz" — it's classified as mukat etz. Shmuel disagrees: it's not intercourse (because under nine is "his intercourse is not intercourse"), and it's also not mukat etz — it's nothing. It's a **third category**: not intercourse, not mukat etz, but "nothing."

Proofs for the third category: A woman who was born without virginity, or an adult woman whose "virginity fell away" — these are cases where there is no virginity but it's also not mukat etz. Mukat etz means something happened — an act, an injury. But when nothing happened (like with intercourse of a minor according to Shmuel), it's a separate category without any "defect" — not moral and not physical.

5. Innovation regarding mukat etz: Mukat etz is a "physical defect" — something bad happened (an injury, an accident), but it's not a "moral defect." But with intercourse of a minor under nine, there isn't even the physical defect — because halachically nothing happened. It's compared to a woman who was born without virginity — no deficiency of importance at all.

6. Another innovation: Even intercourse that doesn't remove virginity (the virginity remains intact) — nevertheless makes "betula" regarding law, because "the law of intercourse" is an important thing in itself. The virginity is in a certain sense only a sign of the intercourse, not vice versa.

Halacha 5 — Ketuva of Betula: Bogeret, Blind Woman, Aylonit

The Rambam's words: A betula — even if she is a bogeret, or blind, or aylonit — her ketuva is two hundred.

Explanation

All types of virgins receive ketuva of betula of two hundred, without any distinction.

Insights

With a bogeret it's technically possible that she's not a virgin in the physical sense (because with age virginity can disappear), and with an aylonit too — because her whole system is different,

perhaps there is no virginity. Nevertheless her ketuva is two hundred. The main importance of betula is "a fresh new girl" — but the Rambam rules that even when that aspect is missing (like with a 25-year-old bogeret, or a blind woman), the law of ketuva of betula remains.

Halacha 6 — Deaf-Mute and Shoteh: No Ketuva Instituted

The Rambam's words: Deaf-mute and shoteh — the Sages did not institute a ketuva for them. Shoteh — they did not institute marriage for her at all. Deaf-mute — they instituted marriage for her but did not institute a ketuva, so that they will not refrain and not marry her. Just as she has no ketuva — [also all laws of ketuva].

Explanation

From the Torah, a deaf-mute and shoteh cannot be betrothed. For a shoteh the Sages did not institute marriage at all. For a deaf-mute the Sages did institute marriage (rabbinic kiddushin), but did not institute a ketuva — so that people won't be deterred from marrying her.

Insights

1. The reason why the Sages instituted marriage for a deaf-mute: The Sages were concerned that a deaf-mute shouldn't remain alone forever, because that would lead to hefkerut — people would come to her without any protection. Therefore they created rabbinic kiddushin.

2. Why not institute a ketuva — a "genius thought": Because it's hard to find a match for a deaf-mute, the Sages consciously left out the ketuva, to give motivation for people to marry her — one saves the ketuva. With a ketuva no one would want to. This is "hem amru vehem amru" — the same Sages who instituted ketuva for all women, here consciously didn't add ketuva to their takana of marriage of a deaf-mute.

3. "Just as she has no ketuva" — broader meaning: The Rambam means not only the basic ketuva (one hundred/two hundred), but all

laws of ketuva — also conditions of ketuva, support, etc. This is also part of the "incentive" — it's "cheap" to marry a deaf-mute, because one has no financial obligations.

4. Who feeds her? There is a "charity fund" that is always available, and her parents or others will need to figure it out. The husband is exempt from support.

5. Why for a shoteh did the Sages not institute marriage at all: The Sages held that it's not a mitzva to have mercy on a shoteh and give her a husband — "it won't work." The parable of "**a person cannot dwell with a snake in a basket**" doesn't mean a shoteh is literally a snake, but just as one cannot speak logically with a snake — one cannot make a "deal" with a snake that wants to bite — so one cannot speak with a shoteh.

6. The principle that the Sages don't make takanot that don't help: The Sages don't make takanot that don't help even after the takana. With a deaf person — one can make kiddushin and it will function. With a shoteh — even if one makes a marriage, she/he won't be married, because it won't help. This is contrasted with "today's Sages" who make a "protest" — but protest is not relevant. The Torah can do things even if it doesn't help (that's the law), but the Sages need to know that if something can't help, they shouldn't institute it.

Halacha — Married a Deaf-Mute and She Became Hearing: Her Ketuva is One Hundred

The Rambam's words: If a competent man married a deaf-mute and she became hearing, she receives ketuva and conditions of ketuva, and her ketuva is one hundred (like a be'ula).

Explanation

When her status is elevated to a competent woman, the husband automatically becomes obligated in ketuva and conditions of ketuva.

Insights

1. **The ketuva is not only obligated at the marriage moment, but renewed each day.**

If one forgot the ketuva for one day, one must make a new one. Therefore, even if yesterday he was exempt, today — if he wants to continue living with her — he needs a ketuva. This is the foundation for why he becomes obligated now.

2. **Why is her ketuva one hundred (like a be'ula) and not two hundred?** Because she is a be'ula, from the same husband who took her when she was a deaf-mute. Even though it's "like a new person" — the virginity is already gone.

3. **"It's not fair"** — the husband can say he married under different conditions. Answer: He is now exempt from then, but if he wants to continue living with her, the normal obligation arises that one who lives with a wife needs a ketuva.

Halacha — Shoteh: Beit Din Does Not Marry Him / No Takana of Marriage

The Rambam's words: But a shoteh — beit din does not marry him, for the Sages did not institute marriage for him at all.

Explanation

Beit din does not make a marriage for a shoteh, because the Sages did not institute marriage for a shoteh at all.

Insights

The Rambam speaks not only generally (no general takana) but also specifically — beit din should never go and make a marriage for a shoteh.

Halacha — Law of a Minor

The Rambam's words: And so a minor — the Sages did not institute marriage for a minor, even though they instituted for a deaf-mute. Why? Because a minor will become an adult, but a deaf-mute will not be healed. For an orphaned minor girl the Sages did institute marriage "so they won't treat her in a hefker manner."

Explanation

The Sages did not institute kiddushin for a minor (unlike a deaf-mute), because a minor will soon become an adult and be able to make proper kiddushin from the Torah. A deaf-mute has an illness that won't be healed, but a minor has an "illness" that will be healed with time.

Insights

1. **The distinction between minor and deaf-mute:** The Sages don't make takanot that aren't necessary. A deaf-mute without a takana will remain alone forever, but a minor will wait a bit and become an adult.

2. **Why did the Sages institute for an orphaned minor girl:** An orphaned minor girl is the most vulnerable — she has no father, no family to protect her, and "grabbers" can grab her. The Sages instituted that one can take a "protector" — a husband who will watch over her. A normal minor girl has a father, a family — she doesn't have this problem. Therefore we learned that a father should not betroth his minor daughter (because she has a father who protects her). Only an orphan who will be without kiddushin will be "the hefker girl."

3. **With a minor boy there is no concern of hefker behavior** — therefore the Sages did not institute kiddushin for a minor boy.

Halacha — "And We Don't Marry a Youth Until We Check Him"

The Rambam's words: "And we don't marry a youth until we check him and know that he has brought signs."

Explanation

One should not marry a young man until one checks that he already has signs of adulthood.

Insights

1. **Why must one check:** Since with a minor there is no takana of kiddushin at all (not from the Torah and not rabbinic), when someone makes a marriage with someone who still looks young, one must make sure he already has signs, because if not it won't be kiddushin at all. With a

minor girl it's not as severe, because at most there will only be rabbinic kiddushin.

2. "We don't marry" — a recommendation or a law: Rav Yoel Asher suggests that "we don't marry" sounds like a recommendation — that a rabbi/mesader kiddushin shouldn't marry without checking.

3. Source in the Gemara: In the Gemara it says "we check for kiddushin and for divorce and for chalitza and for refusal" — there are things one must check.

4. "One who marries a wife for his minor son" — in the Gemara it speaks of "one who marries a wife for his minor son," and there's a question whether "minor" there means actually a minor or just too young. There's a matter of "close to his time," and if an actual minor — there's something of an issue of promiscuity.

Halacha 7 — Minor of Nine Years and One Day Who Married a Woman

The Rambam's words: A minor, even nine years and one day old, who married a woman — he has no ketuva. When he grew up and maintained her — he has basic ketuva.

Explanation

A minor who married — even if he's already nine years old (whose intercourse is intercourse) — she has no ketuva. When he became an adult and he maintains the marriage, she has basic ketuva.

Insights

1. No validity with a minor: With a minor there is no obligation of ketuva because there are no halachic Torah kiddushin — it has no "validity" (force).

2. Two versions in the Rambam: In other printings it says "he has basic ketuva of one hundred" — which means that after adulthood she receives only one hundred (not two hundred), because he already removed virginity as a minor (nine years and one day old can remove virginity). But in other versions it just says "basic ketuva" — which can mean two

hundred if she is a virgin, one hundred if not. In both versions — only basic ketuva, not additional ketuva.

Halacha 7 (continued) — Convert Who Converted He and His Wife

The Rambam's words: And so a convert who converted he and his wife — her ketuva is one hundred, for on this condition he maintained her.

Explanation

A gentile couple who both converted — her ketuva is one hundred, because she is no longer a virgin.

Insights

1. "For on this condition he maintained her" — what does "maintained" mean? The Rambam means: although when they married as gentiles they didn't undertake a ketuva, but from when he maintains the marriage as a Jew, it's like a new obligation — and the obligation of ketuva begins.

2. Does one need new kiddushin? No Rishon states explicitly whether a convert and female convert need to make new chupa and kiddushin. The Acharonim say yes. One can say it's obvious that one must, or obvious that one doesn't need to — because "maintained" can mean he continues living with her, which is like kiddushin through intercourse, according to the principle "a person doesn't make his intercourse promiscuous intercourse." In the Rambam it doesn't state explicitly that he made new kiddushin.

3. The Gemara's custom — to distinguish between seed: In the Gemara it says one must make separation (interruption) between conversion and intercourse, to distinguish between seed sown in holiness and seed not in holiness.

4. General point of Halacha 7: Normally one would say ketuva goes on the first marriage. But the Rambam teaches us that with a minor who grew up and a convert who converted — from when they become a "real halachic couple"

(adults or Jews), the obligation of ketuva begins with the maintenance.

Overview of Halacha 7 — Who Has One Hundred

Until now the Rambam has given a list of who receives one hundred: deaf-mute and shoteh, minor girl, minor who grew up, convert who converted — all have one hundred. This is all takanot of the Sages.

Halacha 8 — Ta'anat Betulim: Foundation

The Rambam's words: Every betula whose ketuva is two hundred — there is [=against her] ta'anat betulim. And everyone whose ketuva is one hundred, or for whom the Sages did not institute a ketuva — there is no ta'anat betulim.

Explanation

Only with a betula whose ketuva is two hundred can the husband claim ta'anat betulim (that he didn't find virginity). With one whose ketuva is one hundred or for whom the Sages didn't institute a ketuva — ta'anat betulim doesn't apply.

Insights

"There is for her" means "there is against her/regarding her": The language "there is for her ta'anat betulim" doesn't mean she has a claim, but that the husband has a claim against her — he can say: I'm only obligated two hundred because you're a virgin, but I didn't find virginity, so I don't want to pay two hundred.

Halacha 8 (continued) — One Who Secludes Himself with His Betrothed

The Rambam's words: And one who secludes himself with his betrothed before nisuin [has no ta'anat betulim].

Explanation

One who secluded himself with his betrothed before nisuin — cannot claim ta'anat betulim.

Insights

1. What does "secluded" mean? Rav Yoel Asher suggested that "secluded" means he already lived with her (more than just seclusion). Rav Yitzchak strongly disagreed: "secluded means secluded" — yichud suitable for intercourse, as the Gemara says "one who eats at his father-in-law's in Judea" — in Judea there was a custom that the groom secluded himself with his betrothed (not lived, but was alone in a way that intercourse is possible). From this he can no longer claim ta'anat betulim, because perhaps he himself was intimate with her.

2. Innovation — ta'anat betulim looks at reality, not at the time of nisuin: We see that ta'anat betulim is not tied to the moment of nisuin, but to reality — if you yourself are the one who removed virginity, you can't claim.

3. Question from shoteh who became competent: With a shoteh who became competent he also himself was intimate as a shoteh, and yet she receives only one hundred (because from when it's a "legitimate" marriage she's called a be'ula). Why should it be different here with secluded? Answer: With shoteh — he married as a shoteh, it's a formal marriage situation; with secluded — he did it himself before nisuin, he can't come with claims.

Halacha — And What is Ta'anat Betulim: Two Signs

The Rambam's words: And what is ta'anat betulim? This is one who married a betula whose chezka is that she is a virgin, and he claims and says I did not find her a virgin. There are two signs of virginity: the first — blood that flows from her at the end of the first intercourse, and the second — the tightness that will be found in her at the first intercourse at the time of his relations.

Explanation

The Rambam defines what ta'anat betulim is: when someone married a betula who has a chezka as a virgin, and he claims that he didn't find her as a virgin. Two signs of virginity: (1)

blood at the first intercourse, (2) tightness/narrowness at the first intercourse.

Insights

The Rambam will now lay out his approach to ta'anat betulim, and on this there are entire disputes — what is the meaning of ta'anat betulim, and what happens generally.

Halacha — If She Said Because I Fell (Claim of Mukat Etz)

The Rambam's words: One who marries a betula whose ketuva is two hundred, and he claimed and said I did not find her a virgin, we ask her. If she said it is true what he says, he did not find me a virgin because I fell and a stick or ground struck me and my virginity went — she is believed. He can only make a general cherem — for the matter is not certain to him.

Explanation

When she says she lost her virginity through a fall on a stick or ground (mukat etz), we believe her. Her ketuva is reduced to one hundred (not two hundred), because physically she's not a virgin. But he can't claim mekach ta'ut, because she's not a be'ula — she didn't commit promiscuity.

Insights

1. Mekach ta'ut only on status, not on physical virginity: Mekach ta'ut is not said on physical virginity, but on status. If she were

Summary of Lecture on Laws of Marriage Chapter 11 (Continued)

1. Mekach ta'ut only on status, not on physical virginity: Mekach ta'ut is not said on physical virginity, but on status. If she were a widow (a be'ula), he could claim mekach ta'ut. But when she is only mukat etz, her status hasn't changed — she's not a be'ula, just physically the virginity is missing.

2. Bari and shema — bari is preferable: The foundation for why we believe her is because she

says "bari" (certain — I know what happened) and he says "shema" (perhaps). Bari and shema — bari is preferable, as the Gemara says.

3. Cherem setam — takana of the Geonim: The Rambam says he can only make a **cherem setam** — a curse on whoever speaks falsehood. This is not from the Gemara, but a **takana of the Geonim**: even when someone loses according to the law, he can't make the other swear, he can't obligate — the Geonim instituted that he can make a cherem setam. This is not an oath, not a cherem with a name (as in Laws of Torah Study), but a general curse: "Whoever claims falsehood in order to steal money that I owe — may he be in cherem." The purpose is only to frighten — perhaps she will withdraw if she's lying. It costs nothing, because it doesn't actually do anything.

4. "For the matter is not certain to him" — since he doesn't know for certain what happened (he wasn't there), he can't do more than a cherem setam.

Halacha — If She Said a Man Came Upon Me by Force After I Was Betrothed to Him

The Rambam's words: If she said yes it is true that he did not find me a virgin, a man came upon me by force after I was betrothed to him — she is believed, and her ketuva is two hundred as it was.

Explanation

When she says she was assaulted after she was already betrothed to him, we believe her, and her ketuva remains two hundred.

Insights

1. Nistachfa sadehu — "your field became yours": When he betrothed her, he betrothed a virgin. What happened afterwards (assault) is not her fault, and it's "on him" — as the Gemara says "nistachfa sadehu" (your field was flooded). He already "bought" a virgin, and what happened later is his loss. Like someone who buys a car in a store, takes it home, and it breaks — he can't go back to the store.

2. Betula-status vs. physical virginity: That a betula is worth two hundred is not (only) because the first intercourse is a "better intercourse" — it's about status. But in practice, once he has betrothed her, it's already "his."

3. Ketuva begins from nisuin, but eshet ish from kiddushin: It's interesting, because ketuva takes effect from nisuin, not from erusin. But eshet ish is one hundred percent from kiddushin — the distinction between ketuva (which begins from nisuin) and marriage (which begins from kiddushin) is only a time distinction. Commentators ask about this, but the Rambam says clearly that this is the halacha.

Halacha — When He Claims Shema Against Her Bari (Assault After Erusin)

The Rambam's words: He can claim shema — perhaps before you were betrothed to me you were assaulted (before erusin), or my purchase is a mistaken purchase, or perhaps she is actually a promiscuous woman. But we don't pay attention to his claim — we don't listen, because she says bari and he says shema.

Explanation

He can try to claim three things: (1) perhaps the assault was before erusin — then only one hundred; (2) mekach ta'ut — he wants to send her away; (3) perhaps she is a promiscuous woman — he's not allowed to live with her. But none of this helps, because he doesn't know for certain.

Insights

1. No forbidden matter: No prohibition question (forbidden matter) comes from his shema-claim, because he doesn't have certain knowledge.

2. Cherem setam here too: He can only make a cherem setam — **"Whoever claims falsehood in order to steal money that I owe"** — the same as in the previous halacha.

Halacha — When Both Argue Whether He Was Intimate at All

The Rambam's words: He claimed and said I did not find her a virgin, and she said he did not come upon me and I am a virgin — we check her, or he returns and is intimate before witnesses.

Explanation

When he says "she's not a virgin" and she says "he wasn't intimate with me at all, I'm still a virgin" — it can be resolved: either we send an expert to check, or he is intimate again before witnesses.

Insights

"Before witnesses" — not literally before witnesses during the act: "Returns and is intimate before witnesses" doesn't mean the witnesses see the act of intercourse itself, but that one sees before witnesses (the evidence/signs) — the Rambam will explain this later.

Halacha — When She Says "He Came Upon Me and Found Me a Virgin"

The Rambam's words: She said he came upon me and found me a virgin like all virgins — we ask him what was the matter that you said she is not a virgin. If he said because I did not find blood...

Explanation

When she claims that he was indeed intimate but she was a normal virgin, we ask him what is his proof that she's not a virgin. This brings two types of claims: ta'anat damim (no blood) and ta'anat petach patuach (no tightness).

Insights

1. The beit din asks him directly — it's interesting that the beit din asks him directly what his claim is, we don't wait for her to say it. Perhaps she also doesn't know about the reality-based answers (like families without blood).

2. Why do we believe him — from the very fact that we make all these checks we already see that we believe him. The beit din seeks answers

— perhaps both are right and it's a mistake. Only when all answers fall away, is he believed with his claim.

Halacha — Ta'anat Damim: Checking the Family

The Rambam's words: We check in her family whether perhaps they have no blood at all... if all of them were found so...

Explanation

If he claims he didn't find blood, we check in her family whether there is such a reality that they don't have menstrual blood and don't have virginity blood.

Insights

What does "all of them" mean — seemingly it would be enough if there is such a thing in the family, why do we need "all of them"? Answer: it depends on the reality — if this is a genetic thing that only exists when "all of them" have it, then "all of them" specifically.

Halacha — When the Family Doesn't Have This Condition: Illness/Hunger

The Rambam's words: Perhaps there is a great illness in her that damaged the moisture of the organs, or perhaps she was fasting in hunger — we moisten her and feed her and give her to drink until she recovers and is intimate a second time, and we see if she produces blood or not. And if there is no illness and no hunger — this is ta'anat betulim.

Explanation

If the family doesn't have this condition, we look for other reasons — illness or hunger. We heal her and are intimate again. If there's no answer — he is believed with ta'anat betulim.

Insights

"This is ta'anat betulim" even with ta'anat damim alone — the Rambam rules that even when only blood is missing (but tightness was present), it's a valid ta'anat betulim. The

foundation: every virgin has blood, whether minor or na'ara or bogeret, except from illness — every virgin must have blood, whether minor or na'ara or bogeret, except from illness.

Halacha — Ta'anat Petach Patuach: Bogeret vs. Na'ara

The Rambam's words: Perhaps she matured... for most bogerot don't have tightness for they have grown much, for she has grown and her organs have healed and her virginity has ended... if she has not matured... perhaps she tilted, perhaps he was intimate very gently... if he said no, but certainly I found an open opening — this is ta'anat betulim, for every virgin who has not matured, whether minor or na'ara.

Explanation

With ta'anat petach patuach: if she is a bogeret, an open opening is no proof because bogerot naturally have less tightness. If she is a na'ara, we look for other answers (tilting, gentle intercourse). Only when all answers fall away, is it a valid ta'anat betulim — but only with na'ara/minor.

Insights

1. **"Her virginity has ended" with bogeret** — "ended" doesn't mean literally, because blood is still there, but the tightness becomes less.

2. **The Rambam's approach:** Ta'anat petach patuach is valid only with na'ara/minor, not with bogeret. But ta'anat damim is valid with all — even with bogeret.

Halacha — Dispute with the Geonim

The Rambam's words: There are Geonim who ruled that a bogeret has no ta'anat damim [but yes ta'anat petach patuach]... and the way of the Talmud does not show this... and it is an error in their texts... I have already checked many and ancient books... that a bogeret has only ta'anat damim alone.

Explanation

The Geonim hold exactly the opposite of the Rambam: a bogeret has no ta'anat damim but yes ta'anat petach patuach. The Rambam disagrees and says this comes from an error in their versions of the Gemara.

Insights

1. The Rambam's methodology of texts:

The Rambam says "I have already checked many and ancient books" — he personally researched many old manuscripts of the Gemara. The Rambam was a "strong researcher" who checked manuscripts.

2. [Digression: The Chazon Ish's approach regarding manuscripts] —

The Chazon Ish holds that a manuscript is not better than a printed text, which is called "an unusual approach." In the times of the Rishonim one only learned from manuscripts, and one had to clarify which version is correct — this is a "post-print" approach that is only possible after there is printing.

3. **"The way of the Talmud"** — the language "the way of the Talmud" the Rambam uses also in other places (as in the introduction to Perush HaMishnayot — "the way of the Talmud is a very deep way"). The Rambam doesn't mean it states explicitly differently from the Geonim, but that from the way one learns the sugya one doesn't see like them.

Halacha 11 — Why Do We Believe the Husband in Ta'anat Betulim

The Rambam's words: The Sages are the ones who instituted basic ketuva for a woman, and they instituted and said that everyone who claims ta'anat betulim and the woman contradicts him, it is upon her to bring proof and not upon him. For there is a chezka that a person does not toil over a feast and lose it and turn his joy to mourning.

Explanation

The foundation of believing the husband is a chezka — a person doesn't make a joyful wedding

and turn it into mourning for nothing. Because the Sages instituted the ketuva, they also instituted that the husband is believed, and the wife must bring proof.

Insights

1. **"Contradicts" — only when both say bari:** "Contradicts" means when both say with certainty — he says "I did not find virginity" and she says "yes I was a virgin." But when her version calms his problem (e.g., she gives an answer why there's no virginity), he is believed and she must bring proof. This is more than a simple bari and shema, because even when both can technically remain right, we believe the husband.

2. **"A person does not toil over a feast and lose it" — not a physical/financial chezka, but an emotional one:** What if someone else paid for the wedding? The Rambam doesn't mean the physical expenses, but the state of mind — he made a celebration, he wants to be a normal groom, and now he turns it into a great embarrassment. A person doesn't do this for nothing.

3. **[Digression: Proof from Berachot — worry of virginity]:** In Berachot it says that a groom is exempt from Kriat Shema "if he did not do the deed" because he is "worried with the worry of virginity." Rashi explained: "concerned lest he not find her a virgin." This shows that virginity was once a great concern. The Rambam in Perush HaMishnayot also says "lest he not find her a virgin." This is a balance: to calm the bride they instituted ketuva; to calm the groom they gave him credibility if he claims ta'anat betulim.

4. **A counter-question:** One can imagine a case where a groom specifically wants out of this match (e.g., his father made the match and he's not satisfied), and he's looking for a way out — then "turning his joy to mourning" is not proof that he's honest.

Halacha 12 — Until When Can He Claim Ta'anat Betulim

The Rambam's words: Until when can he claim ta'anat betulim? If he secluded himself — immediately. And if they did not seclude themselves — even after thirty days.

Explanation

If he secluded himself with her after the first intercourse (nistaru), he must go immediately to beit din. If he didn't seclude himself, he can claim even after thirty days.

Insights

1. **"Immediately" means "only immediately" — only right away:** If he continues living with her (nistaru), this shows he accepts her and has no claims. Therefore he must go immediately to beit din — this is the reason why a virgin's wedding is on Wednesday, so he can immediately go to beit din on Thursday.

2. **"And if they did not seclude themselves even after thirty days":** The Rambam doesn't set a limit — as long as he hasn't returned to her, he can claim. "Thirty days" is not a maximum, but an example that even after so long he can still.

Halacha 13 — Ruling of the Geonim: Additional Ketuva

The Rambam's words: All the Geonim ruled that what the Sages said that he is believed if she contradicted him — to lose her basic ketuva. But the addition she has, unless it became known with clear proof that she was a be'ula, or she admitted to him that she is a be'ula before she was betrothed and she deceived him.

Explanation

All Geonim rule that the husband's credibility through "a person does not toil over a feast" applies only to basic ketuva (two hundred). But additional ketuva (which he voluntarily added) he must indeed pay, unless he has clear proof that she was a be'ula, or she admitted that she deceived him.

Insights

1. **Why do we need "the Sages are the ones who instituted" — not enough with chezka alone?** Everywhere a chezka is enough alone, why does the Rambam need to add that "the Sages are the ones who instituted and they agreed"? The answer: the chezka of "a person does not toil over a feast" is a **weak chezka** — it's "questionable" (debatable), because on the other hand every woman also has a chezkat betula until we know otherwise. Because it's a weak chezka, the Sages only applied it to their own takana (basic ketuva), but not to additional ketuva which he voluntarily took upon himself.

2. **Dispute of Rashba vs. Geonim/Ramban:** The Rashba learns that "a person does not toil over a feast" is a "proper chezka" — a full chezka that also works on additional ketuva. But the Geonim and Ramban view the chezka as a weaker thing — not a true chezka, but because ketuva is a rabbinic law, the Sages in such a case didn't obligate him to pay. The Rambam rules like the Geonim.

3. **"Hem amru vehem amru" — nature of the chezka:** According to the Geonim the chezka is "hem amru vehem amru" — the Sages said ketuva, and the Sages also said that in such a situation we exempt him. It's not a natural chezka that stands on its own. All chezkot are actually takanot of the Sages — "nothing is real" — but the distinction is between a chezka that the Sages formulated as a general law, versus a chezka that is only a reasoning why the Sages made a specific takana.

4. **The Rosh's dissenting approach:** The Rosh rules that "toil over a feast" can indeed go on additional ketuva too, because additional ketuva he also gives because he's satisfied with his bride. But the Rambam rules like the Geonim.

5. **Mekach ta'ut — what does it apply to?** "Mekach ta'ut" doesn't mean the kiddushin are nullified (he still needs a get), but that he's exempt from the ketuva amount of a virgin (two hundred) and pays only like a widow (one hundred). This is "mekach ta'ut on the ketuva."

Halacha — Oath on Additional Ketuva

The Rambam's words: Therefore he can make her swear with holding an object according to the law of all who swear and take, and afterwards she collects the addition. And she cannot make him swear that he did not find her a virgin, and afterwards lose basic ketuva, for there is a chezka that a person does not toil over a feast and lose it. And she can make a general cherem.

Explanation

For additional ketuva we return to normal laws — she must swear (nishba venotel) in order to receive the addition. But for basic ketuva the chezka remains in force, and she cannot make him swear — only a cherem setam.

Insights

1. Why can't she make him swear on additional ketuva? If the chezka is weak enough that it doesn't work on the addition, why can't she make him swear (instead of her swearing)? The answer: the chezka is weak — it can't protect additional ketuva — but it's still strong enough that she can't force him to swear. So only the option of cherem setam remains.

2. Why does the Rambam need to say again "and she cannot make him swear"? The Rambam already said earlier that she cannot make him swear. The answer: once the Rambam brought in the topic of oaths (that she must swear for the addition), one might think that she can also make him swear. Therefore the Rambam says again that the chezka still works to exempt him from an oath, although it doesn't work to exempt him from the addition.

3. "Nishba venotel" — the mechanism for addition: The Rambam sets it up like a normal "nishba venotel" — like in every case where someone wants to extract money from one who possesses it. Although there is a document (ketuva), it's treated like a regular monetary claim.

Halacha — "He Returns and Writes Her One Hundred": When He Wants to Stay

with Her

The Rambam's words: If he wanted to maintain her he returns and writes her one hundred, for it is forbidden for a person to remain with his wife even one hour without a ketuva as we explained.

Explanation

If the husband is believed with his ta'anat betulim (and she loses basic ketuva), but he still wants to stay with her — he must write her a new ketuva of one hundred (like a be'ula), because one is not allowed to live with a wife without a ketuva.

Insights

1. Mekach ta'ut — what does it mean with kiddushin? The Rambam doesn't say clearly what happens when ta'anat betulim works and the husband wants a get — whether he must pay something, whether it's entirely mekach ta'ut. The Rambam only speaks of the case where he wants to stay with her.

2. Mekach ta'ut nullifies the entire ketuva, not just a part: When one sells a car for a thousand dollars and it's only worth five, "batel mekach" means the entire transaction goes back, not that one returns the difference. So too here — mekach ta'ut nullifies the entire ketuva (not just reduces from 200 to 100). The Rambam's language "he returns and writes her one hundred" — he writes a **new** ketuva, which means the old one is entirely nullified.

3. Three possibilities of mekach ta'ut: (a) mekach ta'ut nullifies the kiddushin entirely; (b) mekach ta'ut means only that he must pay like a be'ula (one hundred instead of two hundred); (c) mekach ta'ut nullifies the ketuva entirely. The Rambam's language "he returns and writes her one hundred" indicates like option (c) — the old ketuva is entirely nullified, and he must write a new one.

4. Batel mekach vs. ona'ah: A clear distinction — ona'ah is when the purchase remains valid and one returns the difference, but batel mekach is a complete nullification of the transaction.

5. **[Digression: Laws of conditions vs. laws of mekach ta'ut]** The Rambam treats the matter like laws of conditions (conditions in kiddushin), not like laws of mekach ta'ut. This means the focus is not on "the purchase is nullified" as a monetary transaction, but on special rules that apply with kiddushin. With kiddushin there are special laws of mekach ta'ut,

which are based on a **chezka** — that no husband wants to live with a wife who has certain defects, and if he had known he wouldn't have betrothed. This is a unique reasoning with kiddushin. But in our case, where the buyer already had benefit from the merchandise (intercourse), the mechanism is different.

| Full Transcript

Laws of Marriage Chapter 11 — Virgin and Non-Virgin Regarding the Ketubah

Introduction to the Chapter

R' Yitzchak: Good,

R' Yoel Asher: We're learning the Rambam, Sefer Nashim, Hilchos Ishus, Chapter 11. We've already done kiddushin, a bit of nisuin, and ketubah, and now we're continuing with ketubah. We learned in the previous chapter, in the tenth chapter, the matter that it's a takanas chachamim,

R' Yitzchak: Yes,

R' Yoel Asher: that at nisuin one becomes obligated in a ketubah, or one writes a ketubah.

R' Yitzchak: It's an obligation, right? The chachamim enacted it.

R' Yoel Asher: To such an extent, one may not even be with one's wife without a ketubah. Right?

R' Yitzchak: That was relevant to yesterday, but now we're holding back at the main point, like the noseih, that they enacted that what? That so that she should not be light in his eyes to divorce her, yes?

R' Yoel Asher: Not kalah with a kuf.

R' Yitzchak: She should be a kallah and not a kalah. That he shouldn't be able to easily drive her away, it should cost him money. The chachamim understood men. The only thing that makes him not divorce his wife is if she's expensive. The Gemara says that the worst thing is ishah ra'ah uchesuvsa merubah. Someone has a difficult wife and an expensive ketubah.

Digression: Psychological Reason for the Ketubah

R' Yoel Asher: I don't know if you're saying they understood the man. I think they understood the wife, that the wife wants to feel secure. Even if the man is faithful enough and everything, but the wife wants to feel that he'll also have a monetary penalty if not. She needs that extra feeling of security.

R' Yitzchak: You really like the psychological, warm things. I like that it costs money. Anyway, in short, they said what? That if one marries a besulah, everyone knows that a besulah is worth more than an almanah. There are those who argue the opposite, she already has experience. But in any case, regarding nisuin the rule is, that's how it was in olden times. I mean today too, but not in the sense that one pays money, I don't know exactly.

R' Yoel Asher: No, once upon a time she was probably worth more. There's the thing of "mi she'asao kli," there's something of a...

R' Yitzchak: Today people think less about this, because you see it was a whole thing, the chasan goes to beis din. The takanah is very important. A besulah is worth two hundred. Not worth, it's worth double.

R' Yoel Asher: For a besulah the chachamim established two hundred, and for a be'ulah one hundred.

Content of the Chapter: Specific Laws and Claims of Besulim

R' Yitzchak: That's what we're going to learn. Now we need to learn the details. Basically two

things. First of all, many details of who is called a besulah and almanah regarding this. There are various cases. A clear case is clear, but there are various heicha timtza's where for example even if she is technically a besulah, nevertheless she only receives an almanah because she already technically had a wedding, and the like. Or other cases where one needs to know what the halachah is.

And secondly, we're going to learn it, since there is this great difference between a besulah and a non-besulah, often there's a din Torah about this.

R' Yoel Asher: He had an expectation of a besulah, and he made a ketubah for a besulah, and he finds that she's not a besulah.

R' Yitzchak: Or he claims, one needs to know if we believe him, and what does he want to do with this? He wants to gain one hundred maneh, one hundred zuz.

R' Yoel Asher: So there are times when he wants to claim mekach ta'us, and one relates to this also as what's called mekach ta'us.

R' Yitzchak: But here mainly we don't speak, if I remember.

R' Yoel Asher: And afterwards there are various issues of ne'emanus regarding this, and she claims that he did have a besulah, and he claims that he didn't, and the like,

R' Yitzchak: How does one believe? Regarding the mekach ta'us, we speak more about the...

R' Yoel Asher: No, we put the mekach ta'us only to the side, we dismiss it. The halachah doesn't accept any claims of mekach ta'us, we do accept claims for money.

Digression: Is This a Practical or Theoretical Topic?

R' Yitzchak: It's interesting, the claim is, be a bit in my head. Okay, I'm the one who doesn't like these kinds of things. Say that our head is a bit funny that a person just had a wedding, and he's worried that if he gets divorced, he'll have to pay twice as much. It's a bit funny the claims that are the subject of what we're talking about. It would make more sense if the main thing is may I do it. But the problem is may I do it, he can give

a get. The question is only to give a get with less money. So, somehow the money is indeed very important here.

R' Yoel Asher: When we see that there are many halachos about this, it means it's important to many people. Often a halachah... when there are many examples, it's clear that it happened often. But often it can be that it's a very theoretical topic. There are in it several types of ne'emanus and several theoretical topics. Therefore about this we made all kinds of cases and disputes. Not necessarily because it's something that happened very much, as you ask. Why should people worry so much about the two hundred a day after the wedding for many years later?

R' Yitzchak: Yes, and what does it mean, I mean that specifically this topic is indeed something that once was, but today this is mainly for study.

R' Yoel Asher: No, that's what I'm saying, but that because there are many Gemaras or many halachos about this, is not necessarily that it was more frequent, but because there's more to study, the chachamim thought of more heicha timtza's.

R' Yitzchak: That could be.

R' Yoel Asher: The other thing could be that once upon a time in those times people, there were large age gaps between people. So we see clearly in Maseches Yevamos, which is in other halachos, we also had in Hilchos Arayos. Why should today be the havah aminah that a person should marry his grandmother and the like? Okay, no, but I'm saying, once you think that

R' Yitzchak: It could be a

R' Yoel Asher: thing that a sixty-year-old man should take a sixteen-year-old girl, something we don't think about today, but it is indeed normal, he's still going to die soon. She's a besulah or not a besulah. We know that the whole marriage isn't going to last too long, it's an older marriage.

R' Yitzchak: I think that if you look in Maseches Kesubos, you see that it indeed was, once it indeed was a practical thing. You see

such, every wedding is made on Wednesday in honor of this. It can't be that this is in honor because the rabbis have many theoretical studies, right? It will be because it happened, every third wedding there was a discussion about this. Okay, every tenth, I don't know, some such number.

R' Yoel Asher: It's very interesting. Even after what you say that it happened, and in honor of this one always runs to the judge, I mean, how often? If we get divorced, we'll see what... why do I need to worry about this?

R' Yitzchak: That's a question. Therefore I say that it must be that it is indeed a nafka minah now, it's not a question if we're going to get divorced, perhaps he's planning to get divorced. It must be, it must be.

R' Yoel Asher: But there's a matter of that you deceived me. I thought you were worth more than you are. And the ketubah is only the heicha timtza, where the price tag lies.

R' Yitzchak: Right, I think it must be, and if you look at history, I can, how much Torah was just about this, I don't know. But you see it was such a discussion. And the Torah itself, I mean, one needs to know, about the chachamim one can say that they love theoretical study, and they learn yagdil Torah ve'yadir. About the Chumash itself, the Gemara also says about the Torah yagdil Torah ve'yadir, we don't say. It could be that there are in the Chumash also things that are just such tasty theoretical studies, like hasanpakos vekashkashes. What else did they see yagdil Torah ve'yadir? I want to remember about this. And we said an explanation that "vayeda" means that one learns a bit of science. Do you remember the explanation of... In any case, there are in the Chumash such things, but generally speaking, in parshiyos where a whole story is written, it's clear that it's something one needs to talk about. So the whole... In the Torah it doesn't say ta'anas besulim.

R' Yoel Asher: The Torah begins it with motzi shem ra. Right.

R' Yitzchak: In the Torah it doesn't say ta'anas besulim.

R' Yoel Asher: It could be that all motzi shem ra was very... that if someone wanted to slander a woman, like today, today one says what has to do with the nerves. Back then it was the thing, she's a zonah, I found "lo matzasi besulim."

R' Yitzchak: Today there's also a zonah woman. Yes, there's a thing here. In any case, it was a thing, probably the motzi shem ra also, the motzi shem ra pays one hundred maneh, why?

R' Yoel Asher: Because that's what he wanted to cause her to lose. And with this one begins the topic, and one goes, and if not, then...

R' Yitzchak: In short, you see perhaps in every generation, as you say, each time the halachah works out differently exactly, according to how the chachmei hador understand what the halachah is, but that it's an actual topic, okay, anyway, what we're learning now is indeed a halachos of specific laws, what is who is maneh and who is masayim, and when does one receive belief.

Halachah 1 — One Who Marries a Besulah: Besulah from Erusin versus Besulah from Nisuin

R' Yitzchak: The Rambam says thus:

R' Yoel Asher: Hanoseih besulah. The Rambam says, a besulah is such a physical thing, someone who has not yet been violated. **Even if she became widowed or divorced or received chalitzah**, even if she received, she already had a husband, she's a widow. It means obviously that she was never with the husband. **Or divorced, or received chalitzah**, or she received chalitzah. It also means that she was already married to someone, and she received chalitzah from one of the brothers.

Note: The Language of "Nechletzah"

R' Yitzchak: By the way,

R' Yoel Asher: She was still a besulah.

R' Yitzchak: Because everyone knows that divorce is something that happens, she is negrushah. Chalitzah is something she does, yes? Nechletzah. It should be called ishah chaltzah. The same thing people ask that a garush, he's not a garush, he's a megaresh. But we see in the

language of the chachamim that it goes both ways on both. She is a nechletzah, and he is a garush. It's not a... We don't care about this.

R' Yoel Asher: Hacholetz levam tehei, and she is the nechaletz. Yes, okay.

R' Yitzchak: It's weird. He's not the choletz, she is choletz to him.

R' Yoel Asher: Vechaltzah na'alo, right.

R' Yitzchak: So the whole idea is that she is choletz to him.

Continuation of Halachah 1: If from Erusin — Her Ketubah is Two Hundred

R' Yoel Asher: Right. Okay. So, when can one actually call a besulah? So, **"If from erusin she became widowed"**, if the reason why she's a widow or divorcee or chalutzah is because there was already kiddushin,

R' Yitzchak: But there wasn't yet nisuin,

R' Yoel Asher: then **"her ketubah is two hundred"**. Because if she says she's a besulah, and she presents herself as a besulah, and after all she was only mekudeshes, she's indeed a besulah. That she was mekudeshes is not a proof, it doesn't make her not a besulah. But **"if from nisuin"**,

R' Yitzchak: If she already had a wedding,

R' Yoel Asher: Nisuin,

R' Yitzchak: In the sense of yesterday. What does nisuin mean? There was a chuppah.

R' Yoel Asher: There was chuppah, and afterwards "kenisah leveisah", and "ba alehah" and the like.

R' Yitzchak: No, not "ba alehah". That's the chiddush.

R' Yoel Asher: We know that not,

R' Yitzchak: We know there was nisuin,

R' Yoel Asher: But she's called a besulah. She says to everyone that she's a besulah, that she was never, but we know there was a wedding.

R' Yitzchak: No, we know, we know, he died. But still,

R' Yoel Asher: Then **"her ketubah is one hundred"**. Then we don't look at the fact that

physically she's a besulah, rather **"once she was married she is like a be'ulah"**. Once she had nisuin, she already receives the status of a be'ulah. It's very interesting that besulah and be'ulah is not just a physical thing, it's also a status thing. But in other places we'll see differently. Okay.

Discussion: Besulah/Be'ulah — Physical Reality or Status?

R' Yitzchak: How did we see differently? We'll see, he saw, also "her ketubah is two hundred." No, but the opposite. But no, they learned. It could be that there's like a chazakah, but here it's even...

R' Yoel Asher: Even we know for certain.

R' Yitzchak: Yes, even we know for certain. Because travel... Yes,

R' Yoel Asher: I think it's a status thing. It's a first marriage or second marriage. Even today. Today no one is concerned with besulah and be'ilah, but everyone will ask. I mean it's very relevant, it's not at all the same question.

R' Yitzchak: It does say in certain places that it's a chazakah. It's the language "chezkas nesu'ah shetiba'el". But I think the point is, even if we know clearly that

R' Yoel Asher: It's not just a chazakah. Like once one had a wedding, one already presented it that way, or it's a matter of status. Okay, let's see, it will probably become clearer with time.

R' Yitzchak: It could be that because usually, as we learned, that nisuin is even when there's no bi'ah. The Rambam says it's "ra'ui lebi'ah", but it's not even any bi'ah. Why? Because it's a "matzav shel bi'ah". Yes, I can imagine. That, again, there will always be a certain lo plug in these kinds of halachos, because we won't check extra every case. In short,

R' Yoel Asher: Anyway,

R' Yitzchak: That's the chiddush in this halachah, right?

Rambam Hilchos Ishus Chapter 11 — Chazakah, Mukas Eitz, and Bi'as Ketanim

Halachah 2 — Ketubah of a Freed Slave, Convert and Captive

R' Yitzchak: Now comes another halachah, it's also a chazakah apparently. So according to the proximity of the next halachah it appears that this is indeed a matter of chazakah. But I think that always, chazakah is not just like a clarification. Chazakah can mean that this is called... Do you understand what I'm saying?

R' Yoel Asher: It's her status, that's her situation.

R' Yitzchak: Yes, or that's called the law.

Reading in the Halachah

R' Yitzchak: "And so," look at the next halachah. **"And so one who marries a besulah"** — someone takes a besulah.

R' Yoel Asher: We know she's a besulah, but she has other defects: **"a freed slave"** — she was a maidservant, **"or a convert"** — she was a non-Jew and she converted, **"or a captive"** — she was captured.

So, **"if the maidservant was freed and the non-Jew converted and the captive was redeemed and they are less than three years and a day old"** — if from three years old they are already freed or already a Jew or already released — **"their ketubah is two hundred"**, because under three years we'll already see.

"And if they were three years and a day old and above" — if she was a maidservant when she was already above three years, or she was a non-Jew or captive — **"their ketubah is one hundred"**, it's only one hundred.

The Rambam's Reason

And the Rambam immediately explains the reason, and let's return to this. The Rambam says, **"And why did the chachamim enact for these a ketubah of one hundred even though they are besulos?"** — Why indeed did the chachamim establish that the freed slave, convert, these three, even if we know she's a besulah, even if she says she's a besulah, she only receives... There they didn't make this distinction. Why then does one say that one

receives only... always one hundred if she was above three.

The Rambam says, **"Since the chazakah of a married woman is that she will be violated"**. Ah, he also goes up to the first one. There's a chazakah. Ah, above he goes up to all of them, both halachos. Okay, very good, also to the married woman. From the copyist Nachum: Above it's written one hundred, **and even though they are besulos, since the chazakah of a married woman is that she will be violated**, the chazakah of a married woman is that she becomes violated, that her husband will be bo'el her, **and the chazakah of the maidservant and the foreigner and the captive is that she will be violated** in other ways, it means that a captive is raped.

R' Yitzchak: And so on.

R' Yoel Asher: So **they enacted for them one hundred**, the chachamim established one hundred, and they didn't go into each individual case if it's actually so. They made it generally, **whether they were violated or not. And they are like be'ulos for everything**, they're called like be'ulos, because there's this chazakah.

Discussion: Chazakah as Status, Not Clarification

But it's very good as you say, that we don't say that the chazakah decides about her, because then he wouldn't want for a besulah.

R' Yitzchak: It clearly says even a besulah, it means that one needs to have clear proofs.

R' Yoel Asher: So perhaps the word isn't status, but... yes, status, whatever, that it's a matter of honor such that it's fitting for each person to marry a virgin. And even if she and all her friends, everyone who knows her knows that she's a virgin, but if on the street it's said that he married a non-virgin, he doesn't have the honor or the thing, uh, it's a good match. Okay.

R' Yitzchak: Again, the Rambam doesn't say that, that's what we said. What the Rambam says is more that the Sages established the order this way, that's how it's usually done.

I would say something else, the Sages have limited time to sit in beis din and judge every case. So when the Sages can make a rule that will always be the same, they do it, it saves them a lot of time. Imagine he has to check if she's really a virgin, it starts getting into all the details. You know what? A married woman, 99% of married women, and 99% of captive women, again, in their time, you have to know what a captive woman means, but a maidservant, all these things, 99% are non-virgins. For the one percent should they write a tractate of Gemara? Let it be, for, virgin, non-virgin.

R' Yoel Asher: Good day. Well, well, it could be that it's a change in reality, that it's not the same good match.

R' Yitzchak: But he doesn't say that meaning.

R' Yoel Asher: No, since there's a presumption that a woman has been with a man, therefore it means it's established among people as if. No.

R' Yitzchak: But he says "the Sages enacted" for this. No, I say "since there's a presumption," he says "they enacted for them" for this.

R' Yoel Asher: No, "the Sages enacted."

R' Yitzchak: Because the whole thing.

R' Yoel Asher: Is an enactment of the Sages of one hundred and two hundred. Here too they established the enactment according to this.

R' Yitzchak: In short, one can learn however one wants, everyone should go home.

R' Yoel Asher: And think what they want.

Halacha 3 – Mukas Eitz

R' Yoel Asher: "**Mukas eitz her kesuba is one hundred.**" What does "mukas eitz" mean? The Rambam will explain later. Someone whose reason for not having virginity is not because she was already intimate with a man, but it happened that, the case they give is "eitz," she fell on a tree or the like, and that removed the virginity.

So what? So "**her kesuba is one hundred,**" also the kesuba is one hundred, because even though status-wise she's viewed as a maiden.

R' Yitzchak: She did nothing wrong, as you say, but physically she's not a virgin.

R' Yoel Asher: So therefore her kesuba is one hundred. The Rambam says, "**even if she married on condition that she's a complete virgin and she's found to be mukas eitz, her kesuba is one hundred.**"

R' Yitzchak: That means, when he knows she's a mukas eitz, even if he thought that.

R' Yoel Asher: She's a complete virgin and he counted on a kesuba of two hundred, and "**she's found to be mukas eitz.**"

R' Yitzchak: What is now the kesuba?

R' Yoel Asher: We don't say that since he already married with this understanding, he must now give two hundred, rather the kesuba is one hundred.

Discussion: Mekach Ta'us and "Al Menas"

R' Yitzchak: I think it also means the opposite.

R' Yoel Asher: He also can't say that he.

R' Yitzchak: Wants to withdraw from the mistaken transaction.

R' Yoel Asher: Because the Rambam certainly doesn't mean here "al menas," that it was said "al menas." If it was said "al menas," if he says "al menas she's a virgin" and she's a mukas eitz.

R' Yitzchak: If one makes an actual condition I don't know.

R' Yoel Asher: The Rambam started here with the words "al menas." I don't believe he means to say here, to speak about mekach ta'us.

R' Yitzchak: Because... yes yes, he's speaking about mekach ta'us, certainly. That's mainly what the halacha means.

R' Yoel Asher: No, it doesn't look that way, let's see. Later he'll finish.

R' Yitzchak: That's the novelty. That usually, even mekach ta'us means he has nothing, he comes out without a kesuba, or even without a get perhaps, you know, according to the laws of mekach ta'us. He says no, her kesuba is one hundred.

The answer is, as he brings from Tosafos, that in practice, even when a person thinks it's a virgin, mekach ta'us doesn't bother him. That is, something loses the kesuba, he loses. He says

this, on one hand you shouldn't say what does a virgin mean. A virgin she's not. On the other hand, that's not what he means when he says al menas she's a virgin. Al menas she's a virgin means al menas she wasn't intimate. Al menas she has the law of a virgin regarding kesuba. This standing is opposite, Abraham came to confuse.

R' Yoel Asher: There are two things: there's how important she is, or what kind of match was made, and regarding that there would be relevance to mekach ta'us. And that indeed didn't change at all. She's still called a maiden.

But we have here an extra thing, that regarding kesuba there's a distinction between virginity and non-virginity. So here it's divided. A mekach ta'us because she's no longer a maiden, she is a maiden, but she doesn't have the disqualifications of a maiden, it's just what a maiden.

R' Yitzchak: In short, she did nothing wrong, but something is weaker about her, something a weaker thing. It's not worth more than a hundred.

R' Yoel Asher: Regarding kesuba, yes. The Rambam says so.

Halacha 4 – A Minor Girl from Three Years and a Minor Boy from Nine Years

R' Yitzchak: Now, one more halacha of what does intimacy mean? This is also a principle, like a rule of the Sages. Yes.

R' Yoel Asher: Right. The Rambam says, **a minor girl from three years...** he doesn't need to say it, because he just said about the converts. Someone who is younger than three years old, who was intimate, someone was intimate with her, even if the one intimate was an adult, someone who is already an adult not a minor.

Her kesuba is two hundred, we don't say that the intimacy made her a non-virgin, because under that age one cannot become a non-virgin. Why? Because **her virginity will return like other virgins**. If there's already there the hymen, whatever blocks what is called virginity.

R' Yitzchak: It grows back. Right, so therefore, it's not called intimacy as if. That's actually the case.

R' Yoel Asher: If it were intimacy.

R' Yitzchak: Even if the virginity didn't fall away, yes? Someone had intimacy and the virginity fell away, it's still intimacy, that doesn't help. It's only because she's less than three years old, so therefore that the virginity returns means that it's truly more than that, that it's not intimacy at all.

R' Yoel Asher: A halachic intimacy. No, but it seems there are two things, also that practically she'll become a virgin again.

R' Yitzchak: The virginity returns, that doesn't even make a question. Certainly, it must be both. Because he learns her kesuba is two hundred.

Intimacy of a Minor Boy from Nine Years

R' Yoel Asher: **"And similarly an adult woman who was intimate with a minor boy from nine years and below,"** that's not called intimacy, even if the girl is already an adult, but the one intimate, the man, was a minor from nine years and below, so also **her kesuba is two hundred as if she wasn't intimate at all, because intimacy of a nine-year-old and one day is intimacy, less than that his intimacy is not intimacy**. It's not called intimacy.

No, but here he doesn't speak of virginity returning. No, certainly, it must be at least like mukas eitz. No, here it must also be a practical thing that someone from a minor from nine years doesn't tear out virginity.

Discussion: Does a Minor from Nine Years Tear Out Virginity?

R' Yitzchak: No, no, no, it doesn't say that, don't put, you love to put in things.

R' Yoel Asher: Understand? Because it doesn't make sense.

R' Yitzchak: I told you for the first halacha, I can't be worse than mukas eitz. Truly, for the first halacha it's also because it's not called virginity. And I told you, if she still has virginity,

that depends on the practical matter. If she has virginity, she's not certain.

R' Yoel Asher: Certain means the intimacy hasn't yet removed the kesuba. If she doesn't have virginity, yes. Standing practically he can yes.

R' Yitzchak: It doesn't say here. It could be that it's not even called mukas eitz. Perhaps there's something a smaller level than mukas eitz.

R' Yoel Asher: No, it can't be.

R' Yitzchak: Why can't it be?

R' Yoel Asher: It can't be. The child is not worse than a tree. He's not better than a tree. He is yes. Why is he better than a tree? A tree means yes intimacy or not intimacy?

R' Yitzchak: Yes. Ah, okay. Nothing happened, there was no intimacy. Nothing happened.

R' Yoel Asher: Unlike when a tree goes in there was yes an intimacy. A tree was intimate with her. So we're also talking about a tree that's older than nine years.

Discussion in the Dispute of Rav and Shmuel Regarding a Minor Being Intimate with an Adult, and Laws of Virgin's Kesuba

Continuation of Discussion: A Minor Being Intimate with an Adult — Dispute of Rav and Shmuel

The Position of the Yerushalmi

R' Yoel Asher: If she doesn't have virginity, yes. Standing practically he can yes.

R' Yitzchak: It doesn't say here. It could be that it's not even called mukas eitz. Perhaps there's something a smaller level than mukas eitz.

R' Yoel Asher: No, it can't be.

R' Yitzchak: Why can't it be?

R' Yoel Asher: It can't be. The child is not worse than a tree, and not better than a tree.

R' Yitzchak: He is yes.

R' Yoel Asher: Why is he better than a tree? A tree means yes intimacy? Ah,

R' Yitzchak: Okay. Nothing was, there was no intimacy. Nothing happened.

R' Yoel Asher: And unlike when a tree goes in there was yes an action. A tree was intimate with her. So we're also talking about a tree that's older than nine years and one day.

R' Yitzchak: Is something a real thing? What? Is something a real thing? Yes.

R' Yoel Asher: No, it can't be.

R' Yitzchak: Why can't it be? The holy Yerushalmi says, "**A minor being intimate with an adult, less than nine years old, she has no return, he doesn't have the power to go with signs.**" A minor can't tear out virginity, there's such a rule.

R' Yitzchak: But Shmuel in the Gemara says explicitly not so. Shmuel in the Gemara says, "**There is no mukas eitz in flesh.**" It's not called mukas eitz.

R' Yoel Asher: No, he says the same thing. "There is no mukas eitz in flesh," but the power of a minor doesn't make him.

The Position of Shmuel in the Bavli

R' Yitzchak: Yes, yes, that's an interpretation of the person, but the simple meaning of the Gemara, which most all normal people understood, there's a dispute, a minor being intimate with an adult, Rav said it's like mukas eitz, as you say. Shmuel said there is no mukas eitz in flesh, it's not called mukas eitz.

And what the Rambam says, as if she wasn't intimate, the Rambam doesn't say that virginity remains. Excuse me, it doesn't say that, it says that it's not intimacy, and you understand that without intimacy, nothing happened. There's no virginity? No problem. There's such a thing, perhaps one will see details of mukas eitz, one will see that there's something a level that's even less than mukas eitz. I don't know.

R' Yoel Asher: Apparently the simple meaning of the Yerushalmi makes, it's smoother, it's more simple, because it's very hard to say that intimacy that removed hair, that removed virginity, should be weaker than a tree that removed virginity.

R' Yitzchak: There was no intimacy, Master of the Universe, there wasn't. You say there was intimacy, you keep saying not like Abraham?

R' Yoel Asher: No. And he even tore out virginity.

R' Yitzchak: Rabbeinu, "because intimacy of a nine-year-old and one day is intimacy, less than that his intimacy is not intimacy." If he claims that he had intimacy with her,

R' Yitzchak: It's a different topic. There are two things: there's a thing "mukas eitz," and there's a thing "intimacy." Intimacy this is not. Mukas eitz this is also not. So this is nothing. Moshe,

R' Yoel Asher: Shmuel said it's a "not intimacy."

R' Yitzchak: No,

R' Yoel Asher: Mukas eitz means a practical way of opening the virginity without intimacy.

The Third Category — Not Intimacy and Not Mukas Eitz

R' Yitzchak: Not true. That's a dispute. Rav holds like you. That's a great person. Rav was the Rosh Yeshiva of a whole yeshiva, he held like you that it's a mukas eitz. But Shmuel argues with him, he says "there is no mukas eitz to disqualify her." He doesn't say in reality, it's not a dispute in reality, it doesn't make sense. It's a dispute in halacha. That's not called mukas eitz. Good day.

So what does it mean? Nothing. Because there was no intimacy. So what happened? Nothing. She was born. When she was born without virginity, she doesn't have the law of mukas eitz. There's such a thing as without virginity that's not mukas eitz. It's not true that mukas eitz means anything that's without virginity. Soon we'll see it. Nothing happened. There was no intimacy. What happened? I don't know. Magic. Nothing happened, you can't have complaints. Okay. Let's learn further.

Proof from the Rambam's Language by a Minor Girl

R' Yoel Asher: Why then by a minor girl does the Rambam say "her virginity will return"? It wouldn't have fallen out at all. He can say that it

doesn't have the law of intimacy. So rather what, clearly from this Rambam one would learn that no, this is a way of saying that it is intimacy. No, no, because if you say so,

R' Yitzchak: The Rambam would have said on both things,

R' Yoel Asher: Because that's not called a halachic intimacy. When he says "her virginity will return," it seems that by both we're speaking of a practical thing. By a minor girl the reason is "it will return," and by an adult with a minor, because a minor can't shed hair.

R' Yitzchak: No, it's not true. Also the halacha is also the laws of forbidden relations. It's not called intimacy.

R' Yoel Asher: It's not an extra thing. It's not an extra thing, it's the same thing. Both halachos in the thing. It could be that the reason why "his intimacy is not intimacy" is also the same reason,

R' Yitzchak: Because he still can't make a proper intimacy. We have such a presumption that under nine

R' Yoel Asher: He doesn't yet have the powers to make a full intimacy. Therefore "his intimacy is not intimacy" regarding forbidden relations, and also because of this he doesn't shed hair. The holy Rambam doesn't say anything you want to say, but he says that "his intimacy is not intimacy" makes the distinction between the minor girl and the adult that a minor came.

R' Yitzchak: The same thing,

R' Yoel Asher: Why it's not intimacy. Or here he says a practical thing, "her virginity will return," or here he says a practical thing, because a minor can't make intimacy. That's how it seems to me simply,

R' Yitzchak: It's a better simple meaning it seems to me. Okay.

R' Yoel Asher: He also understood it that way.

R' Yitzchak: I would... yes, because he and you are both people who are anti-lomdus.

R' Yoel Asher: Nothing does no... anti-lomdus? R' Moshe tears himself that he has

R' Yitzchak: Fear to make lomdus.

R' Yoel Asher: One must be a real scholar to understand. Okay, tell you further.

R' Yitzchak: Okay, eat, you know what? Say your interpretation.

Summary of the Dispute

R' Yoel Asher: It's very difficult, I don't know. Let's once... no, one must here create a new category of something that on the surface to a normal person looks more than mukas eitz, because a limb of a... yes, I mean there was intimacy, there was Master of the Universe, there was what we can... there's a halachic called not intimacy. There's such a... there's such even less than mukas eitz.

R' Yitzchak: One thing, there's no novelty. There's explicitly such a halacha. There's such a halacha for example defect. Mukas eitz is a certain defect, a certain thing.

R' Yoel Asher: Defect is a different thing, because it's not...

R' Yitzchak: There's such a thing, if someone is born without virginity for example, okay, or it's an adult and her virginity fell, there are several ways that don't have virginity and no defect. And what you say that a third category was a novelty, let alone, it's a clear thing that there's a third category defect. It's a certain blemish such that, even though it's not intimacy, it's not a moral defect, it's nothing to do with bad, but it is something a physical defect, you'll call it.

R' Yoel Asher: Let's see later, when the Rambam lists mukas eitz, he lists other ways that aren't exactly mukas eitz. But it seems that under the category of mukas eitz, goes in everything that came out from mukas eitz.

The Meaning of Intimacy and Virginity

R' Yitzchak: So there is such a thing of not having makat etz, what is not makat etz. Makat etz, something happened. It doesn't have to be with wood, it can be with something else. But this was exactly the dispute between Rav and Shmuel. In makat etz u'basar means, it's not makat etz. If it's

a be'ilah, it's a be'ilah. And by the way, a be'ilah, even... which doesn't remove the besulim, he also makes her a be'ulah, yes? Regarding this. Right? She had a be'ilah without the besulim going away. It went away anyway, very good. The din of be'ilah is a very important thing. The whole besulim is in a certain sense only a sign of the be'ilah.

On the contrary, this is that there is such a thing, one can call it etz, a bit of a chiddush, the answer is that one can call etz a certain mum like... Why did you get a chavalah? It's called, what for, no one called you in your shul, it was an accident. What should I do? I'm still somewhat less important, as it were.

But something where there is no lack of importance at all, because it was a boy of three years old, or she was less than three, doesn't matter. Or a boy less than nine, she was less than three,

R' Yoel Asher: Yes. Okay, says the Rambam further. Let's go in, we're now putting this matter aside, we're now going to also categories of women.

Laws of Kesuvah of a Besulah — Categories of Women

Besulah — Even Bogeres, Sumah, Ailonis

R' Yitzchak: That means, who has a...

R' Yoel Asher: What is the kesuvah? Says the Rambam, a besulah, there's no difference if she is a... even if she is already a bogeres, or sumah, a blind woman, or ailonis, a woman who doesn't have signs of womanhood, who cannot have children, and the like, which we already learned in the second chapter, her kesuvah is two hundred. Because she is a besulah,

R' Yitzchak: There's no difference. It could be that technically she's not a besulah, because often when she is already older doesn't mean a besulah, and part of importance...

R' Yoel Asher: And perhaps by ailonis it's also the same thing, that because her whole system is different, perhaps there are no besulim.

R' Yitzchak: Yes. And also in general, the whole importance of a besulah is that it's a fresh new girl from the package. She's already twenty-five, never mind, the whole topic is different. And consequently,

R' Yoel Asher: Her kesuvah is two hundred. Ah, one might say sumah, she doesn't have eyes unfortunately, she was still the same. But with this... I think,

R' Yitzchak: It's not at all one of the besulos, something fresh... already.

Chereshes and Shotah — The Chachamim Did Not Establish a Kesuvah for Them

R' Yoel Asher: But the chereshes and the shotah...

R' Yitzchak: Ah, the Rambam goes as if on his list, he says in chapter 2 ailonis is a nice thing, he goes into chereshes and shotah.

R' Yoel Asher: Chereshes and shotah, we already learned, they don't have marriage. In the Torah they don't have kiddushin and marriage. But the Chachamim established marriage for a chereshes.

R' Yitzchak: First of all,

R' Yoel Asher: Both don't have... by both... now we're holding in the middle of learning kesuvah, but I want to give the background.

R' Yitzchak: Ah, the Rambam goes in to give the background.

The Background of Chereshes and Shotah

R' Yoel Asher: Chereshes, the Chachamim established kiddushin. And shotah we'll already see. Says the Rambam, **but for these two, the Chachamim did not establish a kesuvah**, the Chachamim didn't establish the kesuvah at all. Why? **The shotah, they didn't establish marriage for her at all.** The Chachamim didn't establish any marriage for a shotah. Chereshes yes, but shotah, the Chachamim say, it's not a mitzvah to have mercy on a shotah and give her a husband, it won't work.

By a chereshes, but a woman who is deaf, is not not not... There is a halachah that the Chachamim established marriage, but although they established marriage, but **"they did not establish a kesuvah for her"**, they didn't establish a kesuvah.

The Reason Why the Chachamim Did Not Establish a Kesuvah for a Chereshes

Why? Look at a very beautiful thing. From the Torah she also cannot become mekudeshes. The Chachamim came and said that we don't want a chereshes to now remain forever alone, and afterwards it will become hefker, people will come, she will be hefker for people, and the like. So they established that a man can indeed take her, and they made rabbinic kiddushin.

But since they created the entire kiddushin, they didn't add to it the regular mitzvah of all kesubos. Right, all kesubos they added, it's "hem amru v'hem amru". When they made kiddushin, they didn't add what kesuvah always comes with. Why? With a genius thought. **"So that they won't refrain and not marry her"**. It's already hard to find a match for a chereshes, and this is actually why the Chachamim established it, so they shouldn't remain alone.

So a kesuvah is a difficult thing, they made it so there's another motivation for people to marry her, because one saves the kesuvah. So they created for her... As if, with a kesuvah, one barely looks anyway, with a kesuvah he certainly won't find. And it seems that people thought about this. That is, without a kesuvah? Okay,

R' Yitzchak: It doesn't cost me, at most a get. A non-get costs, can't. I hear.

The Broader Meaning of "She Has No Kesuvah"

And not only does she not have a kesuvah, **"just as she has no kesuvah"**,

R' Yoel Asher: Says the Rambam,

R' Yitzchak: That the Chachamim didn't establish a kesuvah, I don't mean to say only the hundred and two hundred that one must give when one dies, but I mean all the laws of

kesuvah. We will learn later that kesuvah also includes

R' Yoel Asher: How a person

R' Yitzchak: Must behave with his wife when he

R' Yoel Asher: Got married.

Kiddushin MiDeRabbanan: Chereshes, Shotah, and Cheresh – Obligations of Kesuvah and Conditions of Kesuvah

Halachah: Chereshes – She Has No Kesuvah and Conditions of Kesuvah

R' Yoel Asher: He does enough of a good thing that he frees her from being alone, but the money, the food, her parents or whoever it is will have to figure it out themselves. She doesn't have mezonos. **"And not the conditions from the conditions of kesuvah"**, all the things that we will later learn, that when a person gets married he becomes obligated with various things called obligations of kesuvah, he doesn't have. He has no obligation to support her, and not the other things called conditions of kesuvah.

R' Yitzchak: It's interesting, because this is apparently also part of the like incentive that it's so cheap to marry her.

R' Yoel Asher: **"They did not establish a kesuvah for her"** means to say the entire mitzvah.

R' Yitzchak: I understand what you mean to say, earlier you said that one can do it differently. He married her,

R' Yoel Asher: Doesn't he have to give her food?

R' Yitzchak: You added a story that the father will give.

R' Yoel Asher: No, there is a kupah shel tzedakah. That a person must give for his wife is in a regular case.

R' Yitzchak: I understand, kupah shel tzedakah is always.

R' Yoel Asher: Who will marry her? The pauper of the town, yes?

Halachah: If He Married a Chereshes and She Became Hearing – Her Kesuvah

is One Hundred

R' Yoel Asher: Already, says the Rambam, **"and just as she has no kesuvah"**. Ah, says the Rambam, what happens in such a case? **"If he married a chereshes"**, a person went and he grabbed a mitzvah and he

R' Yitzchak: Married a chereshes,

R' Yoel Asher: **"And she became hearing"**, to his fortune she became,

R' Yitzchak: She was able to begin hearing.

R' Yoel Asher: Nu, now what is? Can he say, "I married you when you were a chereshes, it was only a kesuvah mideRabbanan, a marriage mideRabbanan"? But now, once her value has gone up, she does get a kesuvah and conditions of kesuvah. He becomes obligated automatically, because now it becomes like kiddushin d'Oraisa. I mean later we'll learn more.

R' Yitzchak: This is still a topic whether it's d'Oraisa.

R' Yoel Asher: The main thing is, it now becomes proper kiddushin. No, I'm saying, here it's not that the Chachamim put back, but... Once the Chachamim said that by every d'Oraisa kiddushin there is kesuvah,

Discussion: Why Does She Get a Kesuvah If It Was Rabbinic Kiddushin?

R' Yitzchak: It's rabbinic kiddushin, I mean that rabbinic kiddushin should also have a kesuvah if there is such a thing, like a ketanah and the like. The words are not that,

R' Yoel Asher: The difference is...

R' Yitzchak: I mean that the words would be... I'll tell you a simple thing: the kesuvah one becomes obligated not only when one marries. Kesuvah is obligated every single day extra. If one forgot the kesuvah one day, one must make a new one. So let's say, yesterday he was exempt, today, if he wants to continue living with her, he must now make a kesuvah. Okay, good explanation. And therefore the kesuvah is one hundred.

R' Yoel Asher: How much is the kesuvah? The kesuvah is however one hundred, because she is

a be'ulah. From whom is she a be'ulah? From the man who took her. But only now is like a new person.

R' Yitzchak: He would have been a chereshes, but the pikacha doesn't have her own besulah. In short, her kesuvah is one hundred, because it's a be'ulah, so says the simple meaning of this, but I think it's a good explanation. Built on this that the kesuvah he becomes obligated, because although, you can ask that it's not fair, I married you with this, on condition that you complete the kesuvah for her, yes, but no problem, you can give now, you are exempt, but you want to continue living, the normal obligation comes upon you, that one who lives with a woman must have a kesuvah.

Halachah: Shotah – No Establishment of Marriage at All

The Law of a Pikei'ach Who Married a Shotah and She Became Sane

R' Yoel Asher: What happens if someone didn't follow the Chachamim and did take a shotah? On this it doesn't say, because it could be that it never meant real kiddushin.

R' Yitzchak: What?

R' Yoel Asher: A shotah? Yes, he didn't follow the Chachamim and he

R' Yitzchak: Married her.

R' Yoel Asher: Yes, and...

R' Yitzchak: It must be the same halachah.

R' Yoel Asher: Apparently one will say, no, that you now need to give fresh kiddushin, because there were no kiddushin until now. The Chachamim didn't establish themselves. Consequently, it's a fresh marriage. A fresh marriage is kesuvah. Simple. Further, the Rambam says very

R' Yitzchak: Clearly that a shotah... The Rabbeinu didn't mention the law of a pikei'ach who married a shotah, because shotah has no marriage.

R' Yoel Asher: Consequently if he will make a marriage,

R' Yitzchak: It will now first give a marriage.

R' Yoel Asher: Right, there's no question at all, it's like always when a person now marries a be'ulah.

Halachah: If He Married a Chereshes or Shotah and Wrote Her One Hundred Maneh – He Wanted to Damage His Property

R' Yoel Asher: Says the Rambam further. What happens in such a case, he married a chereshes or shotah?

R' Yitzchak: That means, now one can say that he doesn't have to give a kesuvah at all. But what did he indeed give?

R' Yoel Asher: Yes, **he married a chereshes or shotah and wrote her one hundred maneh**. He wrote a kesuvah, one hundred maneh. One hundred maneh I mean? Of the hundreds, one hundred maneh. He wrote on his own turns. He wrote one hundred maneh, not land moth same, much more, yes. And then, don't tell me that because the Chachamim didn't establish he becomes exempt. If he obligated himself, he is obligated. Like every time when a person obligates himself something with a kinyan. Why? **"He wanted to damage his property"**. You specifically want... It's an interesting expression. You're not obligated, why did you do it? Because you're very generous, you want to give away your money for the woman.

Discussion: Why the Expression "He Wanted to Damage His Property"?

R' Yitzchak: "He wanted to damage" doesn't mean your intention is to damage,

R' Yoel Asher: But it's interesting that I gave him such a negative... I would have said, okay, because he's a great merciful one, he's a very sweet Jew,

R' Yitzchak: He wants to support and make a woman. No, but what it means,

R' Yoel Asher: Your own property you can pay yourself. Even if you don't have any good intention, just a crazy person who gives away money, but if you undertook, you undertook.

R' Yitzchak: He means that it's your money, you can do with it what you want.

R' Yoel Asher: "Knock yourself out", you didn't have to give away.

R' Yitzchak: Perhaps indeed your "reason" is because you love her very much, that's not the word. Or "whatever", he has another calculation why. I don't know why. The main thing is that a person, it's like "making a condition on what is written in the Torah", no law on things. You want to give away your own money, we won't stop you. "No problem". Ah, should I give the hundred maneh for R' Itzik? But I don't hold of this. He should give the hundred maneh for our yeshivah. Okay,

R' Yoel Asher: Don't be afraid, every shotah already has some rebbe who has sat down to make all the money from him.

R' Yoel Asher: Yes, no, it's not given. Apparently there will even be a law that the beis din will claim from her,

R' Yitzchak: Like always. Yes, he'll already have a document.

R' Yoel Asher: What's the question? So this is her a chereshes, but someone will already do, like every chereshes, "open your mouth for the mute". On this is said "open your mouth for the mute".

Discussion: What is the Chiddush of This Law?

R' Yoel Asher: Already, says the Rambam further. What is the chiddush of this? Why must this stand? Apparently this is a law always. Someone makes a kinyan,

R' Yitzchak: He gives indeed for a shotah. I already said that the cases are against it. And afterwards, it's simple, I agree that it's simple, and that's the law.

R' Yoel Asher: I already simple things, yes.

Halachah: A Cheresh or Shotah Who Married a Pikacha and Became Sane – They Wanted to Maintain Them After They Recovered

R' Yoel Asher: Says the Rambam further, what happens in such a case? We see that we lived about a healthy person who takes a woman who

is a chereshes or shotah. What happens when a cheresh or shotah, the man is a cheresh or shotah, **who married a pikacha woman,**

R' Yitzchak: She took a healthy woman.

R' Yoel Asher: And now, he became smart, he became healthy, or he became no longer shotah, or he became no longer cheresh. And now, he didn't write any kesuvah, yes? One can't obligate a cheresh anything. And now, says the woman, hey, you became no longer shotah? You became healthy? Now give here the money. It's the halachah, **their wives have no claims at all,**

R' Yitzchak: The wives have no claims of kesuvah. But,

R' Yoel Asher: So what then? More than this, more than this, says he, the Rambam actually, that he "married women" means that he said to each one that he... Actually it wasn't a marriage, because a cheresh shotah there is no marriage. But what then? He became healthy. What happens now? So, **"they wanted to maintain them after they recovered"**, if he will indeed keep them further, he needs apparently new kiddushin, no? Certainly. Because "they wanted to maintain them after they recovered" means he

R' Yitzchak: Wants to now make a marriage.

R' Yoel Asher: Now regardless of what was until now, a new halachah begins now. What is it now? It's now a healthy person who marries a healthy be'ulah. So **"she has a kesuvah of one hundred"**, like every be'ulah, in the world.

Halachah: A Beis Din That Married Off the Cheresh – She Takes All That They Wrote for Her

R' Yoel Asher: "And if it is a beis din that married off the cheresh", but if there is a case that the beis din... Like the beis din takes on for the chereshes, we see that the beis din takes

R' Yitzchak: On also for the cheresh.

R' Yoel Asher: Not a shotah, but a cheresh yes. If the beis din said that we make that this should be called a... It's interesting, it's not an automatic kiddushin, unlike chereshes. What always when a person marries a chereshes, the Chachamim

established a takanah. Here it looks like only if the beis din becomes involved?

Discussion: Why Must Beis Din Intervene by a Cheresh?

R' Yitzchak: No, no, because look further, because they wrote a kesuvah. What is the kesuvah? The kesuvah, how can you make alone perhaps?

R' Yoel Asher: Because there is a takanah.

R' Yitzchak: But a kesuvah, how can you? The simple meaning is, the beis din, usually said that a cheresh for example doesn't need to give a kesuvah, perhaps? He doesn't have a kesuvah at all, I don't know what he needs. But the beis din dealt with the welfare of the deaf, and they made this person a marriage. No woman wanted to marry without a kesuvah. So they said, you know what, he will give you a kesuvah on his property, and they will be like guardians,

Laws of Marriage – The Law of the Shoteh and the Minor

R' Yoel Asher: Something like that sort of thing. Ah, very good. Beit din...

R' Yitzchak: Beit din will take it away from him. He doesn't know. How does he have her money? He inherited it from his grandfather. What's the difference? Something like that.

R' Yoel Asher: So **she takes everything that beit din wrote for her**. But the presumption here, the novelty is, that even if he later becomes mentally competent, he cannot say I never wanted this, because the beit din did it for your benefit when you were still a shoteh. Now you are indeed the state's wise man, calm down, and they meant your benefit, and he must respect it. Here lies a great novelty, yes, because he now receives ownership automatically over his assets, seemingly.

R' Yitzchak: Okay, but they didn't promise. But they didn't promise,

R' Yoel Asher: He was already obligated.

R' Yitzchak: I don't know if he can say I didn't want to.

R' Yoel Asher: No, she takes, it appears as if she is already established in this, or she already has a right to this, he cannot do it. Yes, it could be.

Law: Shoteh – Beit Din Does Not Marry Him Off, The Sages Did Not Institute Marriage For Him At All

R' Yoel Asher: The Rambam says, now you've seen that beit din gets involved to make a marriage for a cheresh, but for a shoteh they never do it.

R' Yitzchak: A shoteh, we see that the beit din can even personally intervene like this, give ketubot even.

R' Yoel Asher: The Rambam says, "**But the shoteh, beit din does not marry him off**". Why? "**Because the Sages did not institute marriage for him at all**". In a place where the enactment of the Sages does not stand, they did not institute marriage for him. That means, the Sages took care of the cheresh and the chereshet, because it's not nice, they can have a marriage, it's not as bad as a shoteh. So the Sages said that if the beit din estimates

R' Yitzchak: that it's appropriate, they should make a marriage for them.

R' Yoel Asher: Does there always need to be beit din or not? Not so clear. It appears that for a chereshet there is automatically always kiddushin miderabbanan if one is mekadesh a chereshet,

R' Yitzchak: And the beit din of the city can sit down and make a marriage.

R' Yoel Asher: But a shoteh is, first of all, the beit din did not generally make such an enactment, but now he's speaking even in a specific case, you should never go and make a marriage for a shoteh and also give a ketubah. Why? Because it won't help, that's the point. The Sages fix problems that after they've been fixed, they're fixed. Okay, there's no kiddushin, we want there to be kiddushin, we'll give chalitzah. But if we make a marriage for a shoteh,

R' Yoel Asher: She won't become married. They explain that chereshim want us, the reason

why the Sages instituted kiddushin for chereshim is so they can have children. I remember that they should protect her, perhaps only for a ketanah who is an orphan. But a shoteh, the Rambam says, that the Gemara says...

Laws of Marriage – The Law of Shoteh and Minor

Continuation of the Law of Shoteh – The Parable of "A Person Cannot Dwell With a Snake in a Basket"

R' Yoel Asher: It doesn't mean to say that a shoteh is necessarily a snake, but it means to say just as you cannot stand in logic with a snake. When a snake comes to bite you, you cannot answer, look, let me explain to you, let me make a deal. That's the thing with a shoteh. With a shoteh you cannot have someone to talk to. When he's hungry he'll bite.

The Principle: The Sages Don't Make Enactments That Don't Help

R' Yitzchak: In any case, the point here is a very important principle: the Sages don't make any enactments that don't help even after the enactment. Today's sages have a custom that they make a protest or something. A protest is not a matter. The Torah can do things even if it doesn't help. That's the law, what can I do?

The whole point of the Sages, regarding what they spoke about before the shiur that perhaps cheresh is different today, you see that the Sages themselves had it differently, because the Torah according to the law, a cheresh is nothing. Yes, there's advice to give somehow that there should be kiddushin derabbanan, but if it's something that the Sages cannot help, the Sages need to know this, they shouldn't do it. Don't institute such a thing that after the enactment also doesn't help.

Has the Condition of Shotim Changed Over Time

R' Yoel Asher: One needs to know, it cannot be enough. It could be that things have simply become better, that in the times of the Sages there were already chereshim, and chereshim were a bit more... Today we know that one can

teach chereshim. It could be that from Scripture until the Gemara there was also progress. So accordingly it could be that a shoteh that has been helped a lot, doesn't mean any principle of a person cannot dwell with a snake in a basket.

R' Yitzchak: One needs to know the reality.

R' Yoel Asher: But it's very interesting.

R' Yitzchak: There are many shotim who are also a snake in a basket.

Discussion: Is There a Prohibition to Marry a Shoteh

R' Yoel Asher: If someone, for example, a person who lives with a woman who is a shoteh, there will be no prohibition seemingly, because it didn't say it's forbidden. It only said, beit din doesn't do it. It didn't say it's forbidden. So, it's not like... It doesn't say like...

R' Yitzchak: Since there's no kiddushin relevant there, it will mean like the Rambam says, lo tekadesh it won't be, because...

R' Yoel Asher: What are you talking about now? I'm saying that we haven't seen here that a normal person who marries for example a woman who is a shoteh, that there should be any prohibition. It appears that the Sages are not instituting, but we're talking about that a person, it doesn't say lo ya'aseh ken.

I ask that he cannot give her kiddushin, because kiddushin doesn't take effect on her. It doesn't say that one may not. We reckon yes, it could be that the Sages like one brings up from below, and I'm not telling you anything. Because lo tihyeh kedi she'iz is seemingly not. It could be that it's a kind of silencing. Yes.

R' Yitzchak: I say that one shouldn't. Oh, am I a sage? I say that one shouldn't.

R' Yoel Asher: No one should marry a shoteh. It should have said such a thing.

R' Yitzchak: It doesn't need to say, it needs to be a shoteh.

R' Yoel Asher: It needs to say. Sometimes, the one who marries her is also that there's a reason, it can only be no law.

R' Yitzchak: Shoteh doesn't have the other one.

R' Yoel Asher: It could be that the Sages didn't institute any kiddushin, any legitimate kiddushin, but it's such, if he wants to live with a shoteh...

R' Yitzchak: No, no, I don't agree.

R' Yoel Asher: Here's the evidence, the Rav.

R' Yitzchak: The Rav... I don't agree.

R' Yoel Asher: I don't agree. Yes.

R' Yitzchak: I don't agree. I don't agree. I don't agree. I'm not kiddushin. Perhaps... is one transgressing? So it says it very well. One is transgressing, one may not marry a shoteh, because it's not standing kiddushin. There's no kiddushin, one may not marry a shoteh.

R' Yoel Asher: No one should do it.

R' Yitzchak: It's also a great foolishness. No, like the community, he doesn't do it, one doesn't need to write any beam. It's also a great foolishness.

R' Yoel Asher: A shoteh is a shoteh.

R' Yitzchak: I'm also becoming... Stop being so compassionate. From compassionate people come out shotim. Eventually shotim also. How are there shotim? There are enough shotim.

R' Yoel Asher: We need more. One sees from the fact that the world is full of shotim, because people did marry shotim. Not those shotim. Those shotim are shoshvu.

R' Yitzchak: No, one doesn't see. It wasn't written anywhere a language of lo Yisrael.

R' Yoel Asher: Because kiddushin. But the Sages, but you see, one is secluded. Listen, listen.

R' Yitzchak: Ein beit din masi'in otam, one doesn't do it, one may not do it.

R' Yoel Asher: One may not do it.

R' Yitzchak: One may not. There's no writing there.

R' Yoel Asher: If you do it yourself, he didn't violate a mitzvah, there's no prohibition. I'm talking about a pikei'ach or a pikei'ach.

R' Yitzchak: Or a pikei'ach cheresh. One may not, one may not, one may not, one shouldn't do it. It's a great prohibition. One may not. Hello,

are you with foolishness? I'm silencing the two. Whoever has a practical question, R' Yitzchak tells him to be stringent, but one can call in. No, not any leniency.

The Definition of Shoteh – What Does "Shoteh" Mean

R' Yoel Asher: I'm not talking about a shoteh.

R' Yitzchak: A shoteh means someone who is truly a shoteh. I haven't seen now laws that make someone a shoteh. How does the Rambam speak? How does the Rambam elaborate on shoteh? One can see for oneself who is a shoteh. In the Gemara there is length, you're not a shoteh. Length? I want in the Gemara. I gave there. A shoteh is someone who doesn't have any intellect.

R' Yoel Asher: How much intellect? Someone who hasn't had the light of intellect shine on him.

R' Yitzchak: I think that if God wills, when Mashiach comes and those people will have intellect, most people today will receive a law of shoteh. It's all relative. Shoteh means he doesn't have as much intellect as normal people have. Today when the whole world is crazy, you say that today there are fewer shotim? Perhaps the opposite.

Today everyone is so stupid, that you know what the difference of a shoteh is from him? He needs to be a very very great shoteh to have a law of shoteh. But when the whole world will be smart, one will even call a person like us shotim.

R' Yoel Asher: It's not so simple.

R' Yitzchak: This is what Rabbi Shimon bar Yochai said that he will exempt the whole world, because he'll say that they're drunk. Because relative to him they're all drunk, shotim.

R' Yoel Asher: You understand? Okay, one needs to see, one needs to learn laws of shoteh.

R' Yitzchak: I'm telling you the law, what bothers you about my law?

R' Yoel Asher: One needs to look into shoteh. No, because it seems to me that shoteh doesn't mean he doesn't have any intellect. Shoteh means he does strange things, he's a crazy person, a wild one, a crazy person, such a thing.

R' Yitzchak: No, no, no, I'm not looking after. Rabbi Yitzchak, a shoteh means someone who doesn't have da'at? Yes, a meturaf can be a great ba'al da'at. He just sees that one does, because the other people are so stupid. Yes, no difference. No, I don't mean that.

R' Yoel Asher: Every shoteh thinks that he's the only wise person in the whole world is a shoteh.

R' Yitzchak: But the problem, for that I say it's truly relative. No, but shoteh means he doesn't understand. Okay, let's not go into this. Okay, wait already.

Law 4 – The Law of a Minor

R' Yoel Asher: Let's already give drama. Ah, would it already be a minor? Minor.

R' Yitzchak: Ah. That means, now comes drama on the maps. Chereshe, we've already talked about. What happens with a minor?

The Rambam's Words

R' Yoel Asher: Yes, I learned that kiddushin doesn't apply to a minor. A minor cannot be mekadesh, unlike a ketanah where the father can receive. A minor has no way with the father, and also miderabbanan one can make a thing called ma'amar, which we've already learned about. If there's no father, one can with derabbanan kiddushin.

So the Rambam tries to explain, what's the difference between a minor and a minor? A minor cannot be mekadesh, essentially a ketanah also cannot receive kiddushin, she only has the father as owner. So it is.

Why Didn't the Sages Institute Marriage for a Minor

R' Yitzchak: And so the minor, the Sages did not institute marriage. But the body of the Sages, if the Sages can indeed make it, why didn't they make it for a minor?

R' Yoel Asher: The Rambam says thus: For a minor, the Sages will not institute marriage, unlike a chereshe. Why? After all, let's say, wait a bit, it will soon be proper marriage from the Torah.

R' Yitzchak: The Sages didn't want to go with things where there's no need. That means, a chereshe, if the Sages hadn't instituted his marriage.

R' Yoel Asher: He'll remain forever alone, and it will be absurd. A minor will wait a bit, and he'll become an adult.

R' Yitzchak: So, a chereshe has an illness that doesn't get cured, a minor then has an illness that gets cured with time. If so.

Why a Ketanah Orphan Yes

R' Yoel Asher: Why a ketanah yes? "Instituted" means to say when there's no father. Then, when a ketanah who is alone, let's say a ketanah orphan, the Sages also instituted then a marriage. It's not marriage from the Torah, because she cannot receive kiddushin.

R' Yitzchak: But marriage miderabbanan.

R' Yoel Asher: And afterwards she can do mi'un, she can leave with a mi'un, as the Rambam explained it in chapter 2. The Rambam says, seemingly, a ketanah has the same argument, **"Even though she will come to complete marriage"**, soon she will be able to make proper marriage.

The Rambam says, the Sages instituted this **"so that they should not treat her in a manner of hefker"**. So that they shouldn't treat her in a manner of hefker. That means, because she's an orphan and she's a ketanah, she's the most vulnerable, and grabbers can grab her. So the Sages said that one can take a protector, a husband who should her.

R' Yitzchak: Take and watch over her.

R' Yoel Asher: They didn't do it for a chereshe.

R' Yitzchak: Because a chereshe is an adult.

R' Yoel Asher: She has a different problem.

R' Yitzchak: She has a mother, a father, that's not the problem. I mean it appears that the ketanah is specifically because she's an orphan she has a problem. That means, a normal ketanah doesn't have a marriage. Yes, we learned, a father shouldn't be mekadesh his ketanah. Why? She has a father, she has a family.

The ketanah unfortunately, when she'll be without kiddushin, she'll be the hefker girl, and no one will take care of her. So, it's specifically a deficiency that an orphan has that.

R' Yoel Asher: Causes the enactment.

R' Yitzchak: Which is not so for a minor.

R' Yoel Asher: There's no concern of minhag hefker. The Rambam says, "**And they don't marry off the youth until they check him and know that he brought signs**". Therefore, by a ketanah, for this reason perhaps one doesn't need to check so strongly. There's no prohibition on being mekadesh, because at most there will only be kiddushin derabbanan.

But since by a minor there's generally no enactment of kiddushin, so when someone makes a marriage with someone who still looks young, and you don't know for sure if he already has signs or not.

R' Yitzchak: "And they checked him and know that he brought signs".

R' Yoel Asher: Because if not there won't be any kiddushin, not from the Torah and not from the Rabbis. Someone who is a doubtful minor...

R' Yitzchak: There's a presumption, as we learned in the laws of bar mitzvah.

R' Yoel Asher: As the Rambam says.

R' Yitzchak: For everything there's checking him, if it's still not there.

R' Yoel Asher: He can, because he's going to make with this an eishet ish.

Discussion: What Does "Ein Masi'in Et Hana'ar" Mean

R' Yitzchak: Interesting that he made some law that one needs to check. I don't know why. Not relevant to today's times, because usually people don't marry at twelve.

R' Yoel Asher: Thirteen. It could be that ein masi'in is a language like such lechatchilah. It means that a youth... The marriage will be called a marriage, perhaps you're right like some presumption. Ein masi'in is a youth sounds like such a recommendation, that a rabbi... a law to

be mesader kiddushin. The mesader kiddushin shouldn't be masi.

R' Yitzchak: Masi'in means the father perhaps. I don't know masi.

R' Yoel Asher: What is indeed the simple meaning? Why shouldn't one say that one should rely on the... So it says.

R' Yitzchak: In the Gemara it says that bodkim lekiddushin ulegirushin ulechalitzin leme'unim. There are things that one needs to check. So is it implied in a Gemara?

R' Yoel Asher: Can one transgress in practice it turns out an atzma'in, a serious thing.

R' Yitzchak: What does it mean? A Gemara. Ah, so what? Who is masi ish livno katan. But there katan means katan actually, or katan is a bit too small?

R' Yoel Asher: He asks.

R' Yitzchak: It says a deed close to her time.

R' Yoel Asher: He says that book tanna, if he's young it's not a wrong, therefore one doesn't need to check it. But a katan it appears that it's some matter of promiscuity, something letting a boy play with a minor.

Laws of Marriage — A Minor Who Grew Up, A Convert Who Converted, and the Claim of Virginity

Law 7 (Continuation) — A Minor of Nine Years and One Day Who Married a Woman

R' Yoel Asher: Therefore one should make sure that it's truly redemption.

R' Yitzchak: But there's a reliance on presumptions and such things.

R' Yoel Asher: No, why should we rely on chazakah (presumption)?

R' Yitzchak: It seems that it's important. Kiddushin is a davar chamur (serious matter). That's how it is.

R' Yoel Asher: Are you sure it's a davar chamur? After all, it could result in eishet ish (a married woman) and the like.

R' Yitzchak: No. Now like this, a minor... yes.

R' Yoel Asher: Further. It could be that the word "mesayen" means when he is already sufficiently independent, and he goes on his own and he gives kiddushin, you're right.

R' Yitzchak: But when there is no longer a mesader kiddushin (one who arranges the marriage) here, yes.

R' Yoel Asher: Mesayen means the parents.

R' Yitzchak: We take whoever, whatever.

R' Yoel Asher: The doers, the doers do. Yes. It says further, **a minor, even a nine-year-old and one day**, even if he is already nine years old and one day, meaning, we learned earlier that bi'ah (intercourse), he can already perform bi'ah. **If he married a woman, she has no kesubah.** You don't have a kesubah, even though you don't have kiddushin d'oraisa (biblical marriage).

R' Yitzchak: It has no validity. The essential kesubah has no validity yet.

R' Yoel Asher: It has no validity. It has no kiddushin, yes, she doesn't become his wife.

R' Yitzchak: True, but **when he matures.**

R' Yoel Asher: Once he has matured. He became an adult and he was mekadesh (betrothed) her again. He considers her a wife. **Then she has the essential kesubah,** she has the essential kesubah. Meaning yes, the kesubah. But not the tosefes kesubah (additional kesubah). Here there are two versions in the Rambam.

R' Yitzchak: Why not tosefes kesubah?

R' Yoel Asher: In the other printed Rambam it says here "she has the essential kesubah of a maneh (one hundred zuz)."

R' Yitzchak: He's going to say that it's a maneh.

R' Yoel Asher: No, no, no. He doesn't say, no.

R' Yitzchak: But he says "likewise."

R' Yoel Asher: One minute. So there are those who say that "she has the essential kesubah" means that the Rambam says, no, she has the essential kesubah, if she is a besulah (virgin). If she is a besulah then it's two hundred, if she is not a besulah then it's one hundred. But kesubah means not the tosefes kesubah.

Discussion: Is she a besulah or be'ulah?

R' Yitzchak: But he was already bo'el (had intercourse) as a minor presumably, or perhaps not? Maybe not.

R' Yoel Asher: He was already nine years old, so that means he can already... he can already remove besulim (virginity).

R' Yitzchak: Further, because of this she is a be'ulah (non-virgin), she receives a kesubah of a maneh, no? That's what I thought. But it doesn't say so in the Rambam. Let's say it doesn't say. I say myself that it's a maneh, no? Just like all the times we learned. Look, look that the Rambam says "likewise," carry out the law by the previous one.

Law 7 (continued) — A convert who converted, he and his wife

R' Yoel Asher: "Likewise a convert who converted, he and his wife, her kesubah is a maneh, for on this condition he maintained her." What does this mean? A convert who converted, he and his wife, they both converted, a couple of non-Jews both converted, yes? And she is already not a besulah because she was a non-Jewess until now, and also because she has a husband. So her kesubah is a maneh. Why does it say "for on this condition he maintained her"?

R' Yitzchak: That means, he cannot maintain himself without a kesubah, very simple.

R' Yoel Asher: No, I mean he means to say that although when they had their wedding they were still non-Jews, they didn't undertake any kesubah. But now when he maintains her, it's like new kiddushin.

R' Yitzchak: Like we learned, that how does it mean, that a kesubah is all the time...

R' Yoel Asher: Like you say, a kesubah is always obligated, the obligation always comes up fresh. Well, here one can say differently. Here one can say that the maintaining, that is the new kiddushin.

Discussion: Does one need to make new kiddushin?

R' Yoel Asher: The question is, when it says "and he maintained her," and we haven't yet had clarity, does that mean that one must make kiddushin, one must give fresh kiddushin, or not? Apparently yes, kiddushin with blessings... with all the blessings, with everything. The custom here it seems the word is...

R' Yitzchak: That when a ger v'giyores (male and female converts) had a wedding at the wedding, one makes it completely new, one even makes separation, as it says in the Gemara that one must make, in order to distinguish between seed in holiness and not in holiness. The later poskim say that one must make new chupah v'kiddushin (wedding canopy and betrothal). In no Rishon does this law appear that I've checked. You can say that it's obvious that one must, you can also say that it's obvious that one doesn't need to, because kiddushin has a meaning. Kiddushin means that one designates. Certainly, it's a kinyan (acquisition) with everything, but he maintains. We see that it doesn't say in the Rambam that he made new kiddushin, then the question doesn't begin. He says "on this condition he maintained her," simply, perhaps it means bi'ah... how does it mean, kiddushei bi'ah (betrothal through intercourse), whatever, I don't know. He says from some commentator that... if he lives with her, simply he is, he mixes it. It comes out that it's kiddushei bi'ah. I don't know.

R' Yoel Asher: I can't say that it's living in sin.

R' Yitzchak: Like the chazakah that a person makes his intercourse an act of intercourse for marriage.

R' Yoel Asher: And in general, what it seems here, the point of law 7 is apparently, that kesubah, normally a person would say that kesubah goes on the first marriage, when the first time he was nosen (married). Therefore, he began as a minor he is exempt, he began as a non-Jew he is exempt. We say that no, from when you begin to be a real couple, let's not throw in the word yes fresh kiddushin not, from when you are a real halachic couple, because you are now already Jews or adults, there is an

obligation of kesubah with the maintenance that is.

R' Yitzchak: That's the point. Very good.

Overview — Who has a maneh

R' Yitzchak: Until here we've been taught who has a maneh. Let's go back. This is all laws about who has a kesubah. It went a bit into the details, certain people for whom the Sages enacted a maneh. In essence also comes in the context of the chapter, who has a maneh and who has two hundred? All those with enactments have a maneh. This is something like another list, that we learned a list of who has a maneh, and now there's more. A deaf-mute and a shoteh (mentally incompetent person) has a maneh, a minor girl has a maneh, a minor boy who matured has a maneh, a convert who converted has a maneh, etc.

Law 8 — The claim of virginity

R' Yitzchak: Now we can learn about what happens when he claims that she is the maneh one. Although he said that she is a besulah.

R' Yoel Asher: But she isn't. Yes, already. Now we're going to learn when there is a dispute about the ta'anas besulim (claim of virginity). Until now we learned when we learned simply the essential laws. Here we go like this: **"Every besulah whose kesubah is two hundred"**, every besulah and we already know the law that her kesubah is two hundred, **"she has a ta'anas besulim"**. I mean, when the Rambam says here "she has," does he mean all the time "there is upon her" or "against her"? The husband has upon her... "there is upon her a ta'anas besulim." It's temporary, "she has" means like she goes...

R' Yitzchak: Halachic language already has an old rule that it doesn't go with, there is something stated briefly.

R' Yoel Asher: The language is the husband has a ta'anas besulim.

R' Yitzchak: That he can say.

R' Yoel Asher: That the reason why I am obligated for her kesubah of two hundred is only because you are a besulah. But I didn't find besulim, therefore I don't want to give you two

hundred. **"And anyone whose kesubah is a maneh or for whom the Sages did not enact a kesubah"**, and anyone whose kesubah is a maneh, because we have a sign that she is already not a besulah, or one of the defects that we enumerated, a deaf-mute and the like, for whom the Sages did not enact a kesubah.

R' Yitzchak: **"She has no ta'anas besulim"**.

R' Yoel Asher: Because it's not relevant.

R' Yitzchak: It's not relevant.

Law 8 (continued) — One who secluded himself with his betrothed

R' Yitzchak: And another one who has no ta'anas besulim.

R' Yoel Asher: The Rambam brings another law, **"And one who secluded himself with his betrothed before marriage"**. I mean that "secluded" here means he lived with her, not that he was in seclusion.

R' Yitzchak: Certainly it means yichud (seclusion).

R' Yoel Asher: Not that he goes out with her.

R' Yitzchak: Yes, yes, certainly, yichud suitable for bi'ah.

R' Yoel Asher: Ah no, no, not that he lived. You have yichud. Why something?

R' Yitzchak: Any yichud? Any yichud between the erusin (betrothal) and the nisuin (marriage) takes away ta'anas besulim? No.

R' Yoel Asher: No, I mean that "secluded" means that he already lived with her, and not just was in yichud.

R' Yitzchak: No, no, God forbid.

R' Yoel Asher: That he was with her.

R' Yitzchak: But she doesn't say so either.

R' Yoel Asher: She says yes. That she says you were bo'el with me, and we know that there was yichud, he can't claim, yes, certainly.

Discussion: What does "secluded" mean?

R' Yoel Asher: This is a bit premature, because the law should have been placed after we already began to speak in general about when she says no, you were bo'el with me.

R' Yitzchak: No, no, the reality is that this is the meaning, that "secluded" means one who secluded himself before the marriage, perhaps he was bo'el with her then, therefore he was hers, he already has no claims.

R' Yoel Asher: If she says so.

R' Yitzchak: No, she doesn't need to say.

R' Yoel Asher: We say ourselves.

R' Yitzchak: No, that's the law. I can explain to you.

R' Yoel Asher: Even if you don't want to mean that "secluded" means living.

R' Yitzchak: It can't mean. "Secluded" means secluded. "Secluded" never means that, not true, it can't mean. "Secluded" means that he secluded himself. The Gemara says, "one who eats at his father-in-law's in Judea," in Judea there was a custom that he secluded himself with his betrothed. Not that he lived with her, he went, there was some party, they sat alone somewhere, in a manner that was relevant for bi'ah, therefore he can no longer have ta'anas besulim, because perhaps he was.

R' Yoel Asher: "Secluded" means something more than just yichud, just being alone in a car.

R' Yitzchak: No, it doesn't mean anything, it means yichud, certainly yes.

R' Yoel Asher: It means the situation that was called in Judea.

R' Yitzchak: That he secluded himself with his betrothed.

R' Yoel Asher: Which then bi'ah comes in.

R' Yitzchak: No, because "secluded" means yichud, not true. Yichud means yichud. You don't know what you're saying. Yichud means yichud, that the measure of yichud, whatever the yichud is, that means, then he perhaps acted. I don't understand what you want, why can't it be that? He made yichud, and in Judea it was a custom specifically to do that. Okay, go understand, the custom of Judea. But that's what he does. From this we see that perhaps.

R' Yoel Asher: It's not a big deal. But here also lies a chiddush (novel point), that the besulim we

don't look from marriage and onward, rather we look at the thing. If you are the one who... you were bo'el with her the first time...

R' Yitzchak: Certainly, what is a contradictory claim?

R' Yoel Asher: The kesubah happens here at marriage. The kesubah wasn't yet.

R' Yitzchak: What is relevant about living claims? He himself was bo'el. I don't understand what you're saying.

Question from shoteh she'nispakei'ach

R' Yoel Asher: True, but... what's true? Earlier, by the previous defects when a shoteh she'nispakei'ach (incompetent person who became competent), yes? He was the one who took away her besulim. But still, from when it's called a proper marriage, she is a be'ulah. Remember the law? That what? A shoteh she'nispakei'ach, that he himself was bo'el with her the first time. But he only has a maneh, because from when it's a legitimate marriage she's called a be'ulah. I could also say the same thing here.

R' Yitzchak: I don't understand what you're saying, exactly that is a be'ilah. No, he had a wedding, he did something himself. Hello?

R' Yoel Asher: Also by a shoteh she'nispakei'ach.

R' Yitzchak: He himself made it that he was a shoteh.

R' Yoel Asher: He didn't play. Okay, let's go further, let's see. We'll become a bit clearer later, we'll see more about ta'anas besulim.

R' Yitzchak: In any case, it could be that the whole thing that there is such a thing as ta'anas besulim is only about a special chazakah in the nature, we believe him very strongly. But the person...

Rambam Laws of Marriage — The Claim of Virginity: Signs of Virginity, Permitted Claims, and Bari and Shema

Law 1 (continued) — And what is the claim of virginity? There are two signs of virginity

R' Yitzchak: No, he had a wedding, he did it himself. Hello? Do you understand what I'm saying?

R' Yoel Asher: Also by a shoteh she'nispakei'ach,

R' Yitzchak: He himself made it that he was a shoteh.

R' Yoel Asher: He didn't have a wedding with a deaf-mute,

R' Yitzchak: A distinction.

R' Yoel Asher: Okay, let's go further, let's see. We'll become a bit clearer later, we'll see more about ta'anas besulim.

R' Yitzchak: In any case, it could be that the whole thing that there is such a thing as ta'anas besulim is only because there is a special chazakah, in adam torei'ach (a person takes trouble), we believe him very strongly. But this person there's nothing to believe, he already did the whole thing.

R' Yoel Asher: Okay, says the Rambam, **and what is the claim of virginity?**

R' Yitzchak: Already, now, what is the meaning? Now the Rambam is going to say his approach, about this there are whole disputes, what is the meaning of ta'anas besulim, and what happens in general?

R' Yoel Asher: Already, the Rambam says like this. **What is the claim of virginity? Says the Rambam, this is one who married a besulah, whose presumption is that she is a besulah.** She has a chazakah as a besulah. But perhaps every girl, before something changed, she has a chazakah as a besulah. **And he claims and says I did not find her a besulah.** I didn't find her as a besulah. When the first time I was bo'el, I saw that she is not a besulah.

Says the Rambam, what are the signs of a besulah? Says the Rambam, **there are two signs of virginity.** Virginity has two signs, **the first, blood that flows from her at the end of the first intercourse,** at the end of the first bi'ah blood flows. **And the second, the tightness that is found in her at the first**

intercourse during his relations, that during relations there is tightness,

R' Yitzchak: It's tight. Now we're going to see what are all the sorts of claims, what is the law of each one of the claims, etc.

Law 2 — If she said because I fell: The claim of mukas eitz

R' Yoel Asher: Says the Rambam like this: **One who marries a besulah, whose kesubah is normally two hundred, and he claims and says I did not find her a besulah. We ask her.** We ask her, what's going on? **If she says, if she says it's true he says, it's true that I wasn't a besulah. He didn't find me a besulah, why? Because I fell, I once fell, and a tree or ground struck me, I fell on a tree or on the ground, and my virginity went,** that tore my besulim.

So **she is believed**, that he can't say that she committed adultery under him, or that she is already a be'ulah, therefore he was only mekadash on condition that she is a besulah. But what then? Physically she is no longer a besulah, therefore the kesubah should be a maneh. It now turns out that what was written in the kesubah of two hundred was on condition that she is a girl and she is not a girl, I mean she is not a besulah, but she is also not called a be'ulah or something that one could

R' Yitzchak: Nullify the marriage as a mistaken transaction.

Discussion: Why not a mistaken transaction? The distinction between status and physical virginity

R' Yoel Asher: If he had been told that she is a besulah, and he had a wedding, and it turns out that she is a widow, then he could have said mistaken transaction. He can't say that here. Mistaken transaction is not said about physical besulim, but about status.

R' Yitzchak: Even though...

R' Yoel Asher: **Even though he claims and says perhaps a man came to you.** Therefore **and you have nothing**, you have no reason,

because I can claim claims of mistaken transaction.

R' Yitzchak: **We don't pay attention to his claim,**

R' Yoel Asher: And he is further obligated to give a maneh. And he can't divorce her or say that the betrothal is void.

Discussion: Bari and shema — Why do we believe her?

R' Yitzchak: He claims shema (perhaps). Yes, he doesn't know. He wasn't there. Why? Why does he say perhaps?

R' Yoel Asher: Why does the Gemara say about this? Because she says bari (certainly). She says, I know what happened. I am certain, and he says shema. And bari and shema, as the Gemara says, because she says certainly and he says perhaps. The one who knows certainly is more truthful.

R' Yitzchak: But the Rambam says a chiddush,

Cherem setam — The enactment of the Geonim

R' Yoel Asher: But he can indeed make something like a stringent measure called a cherem. He can make a cherem, different from the cherem that we learned in the laws of Talmud Torah, where one can make a niddui or a cherem for the honor of a Torah scholar, which is a cherem, not just any cherem, but a cherem with the person's name. But here he can make a general cherem, a type of cherem, which is called a general cherem, a curse, upon which no man has come. This is usually something that people are frightened of, so if indeed she is correct, if she claims what she claims exactly as it happened, he can frighten her so that if she is lying she should quickly retract.

R' Yitzchak: He says something like this language: "Whoever is drunk and frightened and does not speak the truth about what she drank, let it be under cherem."

R' Yoel Asher: Something like that. Why does he have this right? **Because the matter is not certain to him.**

R' Yitzchak: That's the word? Because it's not certain? Because... that's apparently the reason

why he can only make a cherem.

R' Yoel Asher: He can't do more, he can't make a cherem on her with her name,

R' Yitzchak: Or he can't impose an oath.

R' Yoel Asher: In other cases one could say, you are extracting from me, right? But here there's something else. She wants to extract money from him, so he should say you must swear. But one doesn't say that, because since she says certainly and he says perhaps, he must believe her. But nevertheless they gave him the

R' Yitzchak: right that she can make the cherem. The cherem is not something that appears in the Gemara, the Geonim innovated a novelty that even one who according to the law loses in the Torah court, he cannot impose an oath on the other, he cannot obligate, he cannot do anything, the Geonim made an enactment, the Rambam calls it in the laws of partners, it's a rule that he should be obligated. That is, the Geonim tried everything, perhaps through this one can discover the truth? And the cherem costs nothing, because it doesn't do anything. The cherem, first of all a cherem is not an oath, it's not something real. And second, she only says that the other, it's a way to frighten, to make sure that if there's a lie here they should say it. Okay. So this is if she says, "mistaken transaction," right?

Law 3 — If She Said "A Man Came Upon Me By Force After I Was Betrothed to Him"

R' Yoel Asher: But what if she doesn't say that? Rather she says something else.

But if she says, **"Yes, it is true that he did not find me a virgin,"** it's true that I wasn't a virgin, but the reason why I'm not a virgin is because **"a man came upon me by force after I was betrothed to him,"** after I was already betrothed to him, someone raped me.

R' Yitzchak: Also,

R' Yoel Asher: **"She is believed,"** we believe her. And what happens because we believe her? Here she will earn even more, **"her ketubah is two hundred as it was,"** her ketubah remains

two hundred. Why? Because here she can claim differently. Here she can claim that after you already betrothed me, my status changed, so you are still obligated, because when you betrothed me you betrothed a virgin.

Discussion: Nishtachfah Sadehu — "Your Field Has Been Swept Away"

R' Yoel Asher: Why do we believe her? Why don't we check the virginity in English?

R' Yitzchak: "Nishtachfah sadehu," right? That the virginity is at the time of betrothal, as we already saw earlier, right? We see that if he himself did it, that it's nothing. Even if a second person did it,

R' Yoel Asher: If it was by force, because he had, after all he had the benefit of making a virgin a non-virgin, or the non-virgin.

R' Yitzchak: She's already his wife, he betrothed a virgin, and what should be done if a rape happened later? It's not her fault, and it's on him. It's his, as if his, as the Gemara says, your field has been swept away, it was yours.

Discussion: Virgin Status vs. Physical Virginity — The Ketubah is About Status

R' Yoel Asher: So you don't want any mistaken transaction. You're saying here with this also, that the fact that a virgin is worth two hundred is not about the first intercourse being a better intercourse or something.

R' Yitzchak: It's certainly about that technically, but in practice, it was already his. I buy something, and I go to the store. Yes,

R' Yoel Asher: Forget from... take away from the ketubah begins from kiddushin, the ketubah begins from nisuin.

R' Yitzchak: Yes, but the wedding begins from yours. And I go to the shop, and I buy a car, and I come home, the car is broken. If when it was still in the store it got broken, he must give me a new one. If I took it home afterwards and it's a car, what comes now, you're already mine, it's a good day, I can't have any complaints.

R' Yoel Asher: It's interesting, because the ketubah takes effect from the essence of nisuin.

R' Yitzchak: That's true, but a married woman is completely one hundred percent betrothed.

R' Yoel Asher: Certainly she's a married woman. So it's just something like... The fact that ketubah begins from nisuin is just a time, a short time from when it begins. He can go up on the...

R' Yitzchak: If he wants he can make a ketubah at the time.

R' Yoel Asher: If he wrote, as they learned, if he wrote it doesn't take effect at the time of betrothal.

R' Yitzchak: But why does he do that? One can do that if he wants. Yes.

Law 4 — When He Claims "Perhaps" Against Her "Certainly" (Rape After Betrothal)

R' Yoel Asher: Says the Rambam, what happens in this case, when the woman says

R' Yitzchak: that she was raped after

R' Yoel Asher: that I was already your wife?

R' Yitzchak: The commentators ask as if the question, it seems that the obligation of ketubah is at the time of betrothal, but it won't work. The Rambam says clearly that no, it seems as we say. Other commentators want to say reasoning about why it should begin. So that's the law according to the Rambam. Yes.

R' Yoel Asher: And if he says, no, perhaps, he also shows a claim of perhaps. Why should I believe you? Perhaps before I betrothed you you were raped. And it's a mistaken transaction. Perhaps I took a non-virgin altogether, not a virgin,

R' Yitzchak: because it happened before.

R' Yoel Asher: Or... basically, there can be three claims here: before I betrothed you you were raped, therefore I should only pay one hundred if I want to keep her. Or mistaken transaction if I want to divorce her. Or even worse, perhaps she's willing and a prostitute, I'm not allowed to live with her at all. In short,

R' Yitzchak: He doesn't know anything about these things. He says, who says? You say? I don't say.

R' Yoel Asher: Perhaps not. No forbidden intercourse happened,

R' Yitzchak: because he didn't want to. He just says, I don't know. Why should I believe you? He doesn't believe her as if.

R' Yoel Asher: So what he can do is only **he can impose a general cherem upon whoever speaks falsely in order to extract money that I am obligated.** He can make the curse, he can frighten with the curse. And if she admits, then indeed the law would be different, the admission.

R' Yitzchak: You also see that

R' Yoel Asher: You have some way out.

R' Yitzchak: Yes, general cherem, yes, it was stated earlier. Whoever speaks falsely,

R' Yoel Asher: Here... yes, I mean to say... this is the same language as before.

R' Yitzchak: Yes, but... this means general cherem. Anyone who speaks falsely so that I should have to pay money, let him be under cherem. He's just explaining here the language. I think earlier also means the same language.

R' Yoel Asher: Right. And that's the only thing he has. But besides that he will still have to pay the ketubah. Again, because she says certainly, therefore his claim of perhaps otherwise has no validity against her certainty.

Law 5 — He Claimed "I Did Not Find Her a Virgin," and She Said "No Man Came Upon Me and I Am a Virgin"

R' Yitzchak: Okay, now there can be another sort of claim that she can have.

R' Yoel Asher: What happens when their claim is even more different, and it's like this, **he claimed "I did not find her a virgin,"** I had intercourse and she's not a virgin, **"and she said 'no man came upon me,'"** he couldn't have had intercourse, **"and I am still a virgin,"** I'm still a virgin. This has a solution. It can be resolved, **"they examine her, or he returns and has intercourse before witnesses,"** one of the two. Either they examine her, we send an expert to examine, or he returns

and has intercourse before witnesses means perhaps in a case when... okay, let's not go into it.

R' Yitzchak: Before witnesses means before witnesses. It doesn't mean that he has intercourse before witnesses, as the Rambam will learn later. It means that they examine before witnesses, and he says "okay, in the rest," right? If he says that it could be that he can check the witnesses later. But I meant just like that, this proves that... that... that he says that he indeed had intercourse. So now he certainly had intercourse, and we'll see now what the matter is. Right?

If she said, if she says like this,

R' Yoel Asher: She said, what does she say in such a case? **"He came upon me,"** he indeed had intercourse with me, **"and he found me a virgin like all virgins,"** and I was a proper virgin.

R' Yitzchak: Until now we've been talking about her saying that I'm indeed not a virgin and that she has an excuse,

R' Yoel Asher: Yes? Or "no man came upon me." Now she says, yes, he had intercourse, and I am indeed a virgin, and he's just a liar. **"We ask him,"** we ask him, we go in, **"what was the matter that you said she is not a virgin?"** What does "I did not find her a virgin" mean? **"If he said 'because I did not find blood,'"** before deciding that he's a liar, we want to figure out perhaps there's

R' Yitzchak: a simple mistake here. There are situations where she still tells him to claim this, or something like that.

Discussion: Why Does the Court Ask Him Directly?

R' Yoel Asher: So like this, **"if he said 'because I did not find blood,'"** you should know like this, there are women who are still called virgins.

R' Yitzchak: But it's interesting actually, this we ask directly, we don't wait for her to say this, perhaps she also doesn't know about it.

R' Yoel Asher: Perhaps she doesn't know from... okay, yes.

R' Yitzchak: I don't know. In short,

R' Yoel Asher: He says that...

R' Yitzchak: Claim of blood, yes? What did I learn earlier that there are two types of claims. If it's a claim of blood,

Law 3 – Claim of Blood: Examination in the Family

R' Yoel Asher: If the one who says she's not a virgin because she didn't see any blood, the law says like this: there are families where there is no blood, **"we examine in her family perhaps they have no blood at all,"** perhaps she's from the families that don't have blood. There are such types of families, he says, that don't have blood, neither menstrual blood nor virginal blood,

R' Yitzchak: They have little blood. The two things go together.

R' Yoel Asher: Okay, it's actually interesting. Two types of things are needed. Okay, but there are women who run on such a low blood count, that they should eat a little more what's it called, iron or what. **"If they were all found to be so."**

Discussion: What Does "All of Them" Mean?

R' Yitzchak: If we see indeed that the...

R' Yoel Asher: "All of them" is interesting. If we see... apparently it should be enough if there is such a thing in the family. What does he mean by "all of them"? What is "all of them so"?

R' Yitzchak: I don't know if "all of them" means the family.

R' Yoel Asher: In general, one must ask the whole family. One makes a phone call, one hears, ah, that family has this.

R' Yitzchak: Yes, yes. Okay, I don't know. You're asking laws of genetics, how it works?

R' Yoel Asher: I'm asking about the word "all of them." What does the word "all of them" mean?

R' Yitzchak: I don't know what "all of them" is. I wouldn't be precise. One must know the reality. If the reality is that if it's "all of them," if the problem is with "all of them," then "all of them"

specifically. If the reality is, I don't know, it depends on the reality,

R' Yoel Asher: I don't know what the reality is. Okay.

Law 4 – When the Family Doesn't Have This Condition: Examination for Illness or Hunger

R' Yoel Asher: But what happens

R' Yitzchak: if "the members of her family were not found to be so"?

R' Yoel Asher: What would it be? **"Perhaps there is a great illness in her that dried up the moisture of the organs,"** perhaps she's sick, and therefore she lacks moisture, she doesn't have enough, she's dehydrated. **"Or perhaps she was fasting in hunger,"** perhaps she fasted a lot. **"We moisten her,"** we make her moist.

R' Yitzchak: Meaning to say we don't give her more injections of water,

R' Yoel Asher: Right? We anoint her with oil, I don't know what. **"And we feed her and give her drink until she recovers and has intercourse,"** until she becomes healthy, **"and has intercourse a second time,"** and then she has intercourse when she's already healthier. **"And we see if she produces blood or not. And if there is no illness there and no hunger,"** then **"this is a claim of virginity,"** he has a legitimate claim of virginity.

Innovation: Claim of Blood Itself is a Valid Claim of Virginity

R' Yitzchak: Very good. "And even though," this is a claim of virginity. If he says only that I didn't find blood, even though there is indeed a tightness, there is no open opening. What does it mean finished? Why?

R' Yoel Asher: Why does he say "since no blood came out"? She claims blood did come out. Yes, we're talking here a whole

R' Yitzchak: time when he says and she says. He stands firmer. Yes,

R' Yoel Asher: Yes.

R' Yitzchak: We're talking now about the claim of virginity that he says. Yes. In the end,

R' Yoel Asher: In the end, when he stands firmer he is believed. Okay. Why? Because... no, because he is extracting money from her, right? Soon we'll see why.

Discussion: Why Do We Believe Him?

R' Yitzchak: But first now, what does claims mean? Ah, there's such a presumption. Okay. If...

R' Yoel Asher: No, I'm saying because until now we've also understood that we believe him, because if not we wouldn't have made all these examinations. Okay. We believe him. Therefore we're now looking for what is the explanation. There's a claim and advice. If we say not yet, she's a liar. First of all we try perhaps he's right and she's also right, it's just a mistake, some illness.

R' Yitzchak: What do you mean that there are indeed answers to the question?

R' Yoel Asher: There are indeed true answers to the question.

R' Yitzchak: Then he has a

R' Yoel Asher: strong claim against her, and he only gave him there belief and so forth. We'll soon see what the law of claims is and the Rambam, even if the second sign, the Rambam said that there are two signs of belief. The other sign of virginity, the tightness, was indeed there. But since no blood came out, since there was no blood, there are no virgins. Why? Because every virgin must have blood, whether minors, whether young women, whether adults. Except for illness, only illness. So therefore, if... if we say I didn't find blood,

R' Yitzchak: We have no answer,

R' Yoel Asher: We believe him.

R' Yitzchak: Soon we'll see whether we believe if it's not yet standing, right?

R' Yoel Asher: But he already said, this is a claim of virginity. Yes.

R' Yitzchak: We believe that there is a claim of virginity. We'll find out.

Claim of Open Opening – By Adult vs. Young Woman

R' Yoel Asher: Okay, fine. Says the Rambam further.

R' Yitzchak: This is when he says I didn't find blood, but if he has another claim.

R' Yoel Asher: When he says I didn't find tightness, when he says I didn't find tightness he means to say I didn't find tightness but rather I found an open opening. So in other words blood was indeed there. So it's always her age. We ask about her age, perhaps she's an adult? Perhaps she's already an adult? Meaning simply fourteen and older? Older, yes. Most adults don't have tightness because they've grown a lot. Adults already don't have the tightness. Why? Because she has grown and her organs have healed, they've stretched already, the organs become looser, and her virginity is gone. Therefore, the sign...

R' Yitzchak: Gone doesn't mean literally, because blood is still there, but it becomes less.

R' Yoel Asher: The tightness goes away. But if she has not yet become an adult, but if she's still a young woman...

R' Yitzchak: That's the first step. So further we're looking for advice as if. There is, if she's older, one good answer.

Rambam Hilchos Ishus Perek Yud Alef — Ta'anas Besulim (Continuation)

Halacha Daled (Continuation) — The Claim of Pesach Pasuach

R' Yoel Asher: If not, perhaps the reason why he didn't encounter the pressure was? Perhaps it was wrapped, the way he was intimate was sideways, if he was very gentle, he did it very slowly, you didn't feel the pressure. If he says, further, no, rather this was an open opening, it wasn't one of those errors, he has a ta'anas besulim. And for whom does he have the ta'anas besulim? He explains, for every virgin who hasn't matured, whether a minor or a na'arah, whether healthy or sick, that every virgin na'arah has an opening. And even though blood came out, if he

found an open opening, there are no besulim here.

R' Yitzchak: Specifically a na'arah. If it's a na'arah, and the excuses of a bogeres aren't present - she's not a na'arah, or other excuses of... Basically, we believe him if the excuses are true, whether wrapped or gentle, whatever, it's called a good claim. This is the opinion of the Rambam. There are others who say differently,

R' Yoel Asher: That one cannot say this.

R' Yitzchak: There are Geonim. Ah, a bit differently. Because they say generally that there's no such thing as an open opening without blood. But the Rambam says that there is such a claim, but only by a na'arah.

Halacha Hei — Dispute with the Geonim Regarding a Bogeres

R' Yoel Asher: And the Rambam, "**there are Geonim who ruled,**" there are some of the Geonim who taught, the opposite, "**that the bogeres has no claim of blood.**" Not as I said that the bogeres has no claim of an open opening, but yes a claim of blood. Exactly the opposite, a bogeres doesn't have a claim of blood, a bogeres must always have blood, but an open opening she has...

R' Yitzchak: She has yes.

R' Yoel Asher: She has yes means that one has against her.

R' Yitzchak: Right, always. "Yesh lahem" means it's relevant there to the law. Says the holy Rambam about the Geonim, have you figured out who they were?

R' Yoel Asher: So, again, the Geonim said what? If he says...

R' Yitzchak: It's plainly the opposite question. The Rambam says that one of... When he makes a claim about a bogeres, the Rambam says that if he claims blood he's believed, but if he claims an open opening not, they say exactly the opposite. Because if he claims blood he's not believed, if he claims an open opening he is yes. That means, believed means it's relevant, because it's as if the dispute is in the reality as if.

R' Yoel Asher: They say that the reality is opposite. They say that a bogeres doesn't have blood,

R' Yitzchak: But he does have a... what the Rambam calls pressure, which is the opposite of an open opening.

The Rambam's Response: Error in the Geonim's Texts

R' Yoel Asher: But says the Rambam, "**and the way of the Talmud doesn't show this thing.**" The way of the Talmud doesn't show, when one learns the Gemara one doesn't see like the Geonim.

R' Yitzchak: Interesting.

R' Yoel Asher: The way of the Talmud he means to say that it doesn't explicitly state not like them, but from learning the sugya it doesn't seem to him like them.

R' Yitzchak: I mean it does state yes. The Rambam says yes. Who?

R' Yoel Asher: Afterwards he brings out... "**And there's an error in their texts.**" They must have had an error in the texts of

R' Yitzchak: The Gemara that they had.

R' Yoel Asher: "**I have already checked many ancient books.**" The Rambam was a strong researcher who checked manuscripts, and he didn't learn the Lithuanian way of learning that one is allowed

R' Yitzchak: Not to check manuscripts. Do you know that in ancient times one only learned from many ancient books?

R' Yoel Asher: But "many" means to say that he checked multiple versions.

Digression: The Chazon Ish's Approach Regarding Manuscripts

R' Yitzchak: Yes, yes. But you must remember today, the entire approach of the Chazon Ish, that one doesn't rely on manuscripts, is only possible after there's printing. Once one only learned from manuscripts. So imagine the Gemara, there are two Gemaras, certainly you check. There were only manuscripts.

R' Yoel Asher: I mean to say by way... Okay, let's not...

R' Yitzchak: No, no, I mean seriously.

R' Yoel Asher: The many ancient books means I have carefully examined the texts.

R' Yitzchak: Yes. Yes, but that's... The Chazon Ish also looked at more than one printing. That means, perhaps there's only one printing. But what the Chazon Ish said that a manuscript isn't better than a printing, it's a very novel approach. Because imagine there's no printing, one would initially learn from a manuscript, and one would need to clarify which is a good approach.

R' Yoel Asher: I didn't mean something completely different. I didn't want us to take away from Tosafos' question, because I wanted us to continue from all... But the reality,

R' Yitzchak: We love reality.

The Rambam's Conclusion: A Bogeres Only Has a Claim of Blood

R' Yoel Asher: Okay, but one must say Rabbeinu, the Chazon Ish is a post-printing approach. I found that what the Geonim could have learned differently in the sugyos was because they had different versions. But the correct versions are as I said, "**that a bogeres only has a claim of blood alone.**"

R' Yitzchak: He brings that it's literally a Gemara passage that one must be girsa differently. That means, derech ha'Talmud I mean is the language that the Rambam also uses, I remember in the introduction to... Do you remember such language that derech ha'Talmud is a very deep way, and isn't it a deep way to Perush HaMishnayos I mean?

Rambam Hilchos Ishus Perek Yud Alef — Ta'anas Besulim (Continuation)

Halacha Yud Alef (Continuation) — Foundation of Believability: The Presumption "A Person Doesn't Toil Over a Feast and Ruin It"

R' Yitzchak: He brings that it's literally a passage in Gemara that one must be girsa differently. That means, derech ha'Talmud I

mean is the language that the Rambam also uses, I remember in the introduction to... Do you remember such language that derech ha'Talmud is a very deep way? To Perush HaMishnayos I mean. Derech ha'Talmud is as if learning Gemara, I don't know exactly what the translation is, one must think.

R' Yoel Asher: Why did the Rambam for example insert this thing? Because people knew about the Geonim?

R' Yitzchak: He says that Rabbeinu Chananel was girsa this way. No, it's interesting. I roughly made a list of all the places where the Rambam brings yes,

R' Yoel Asher: He argues with the Geonim.

R' Yitzchak: Presumably the reason is practical. It's a question, because the Rambam should only write one halacha. I imagine it's practical, because this was,

R' Yoel Asher: Everyone knew that he

R' Yitzchak: Said that he must be responsible for it. Apparently.

The Rambam's Explanation: The Sages Established the Kesuba and the Believability

R' Yoel Asher: So, says the Rambam further.

R' Yitzchak: Until here, we've learned the rules of ta'anas besulim. Now the Rambam comes to explain why. Why does the claim work?

R' Yoel Asher: He says that we believe the man. Why? Only if the woman is certain and the man is uncertain, then we believe the man. But when both are certain, both say with certainty, we believe the man. Why exactly?

R' Yitzchak: And also, the man certain and uncertain, it's a bit more than that, both certain and uncertain. She claims, also responds to what he saw, right? She says "I'm not a virgin, but I have a good answer." So as if both can remain correct. He only says "perhaps you're violated." Okay, perhaps not.

R' Yoel Asher: Says the Rambam, the reason why we believe him is because **"it is the Sages who established the basic kesuba for a**

woman." The Sages established the basic kesuba for a woman, the maneh of two hundred. **"And they established and said that anyone who makes a ta'anas besulim and the woman contradicts him,"** that every man who claims ta'anas besulim and claims that she wasn't a virgin, and the woman denies him.

That doesn't mean denies him in a way that... When he claims ta'anas besulim certainly, and the woman denies him, and now it's the question whom do we believe, her or him? And this is the word here "contradicts," that it's either her or him. It's not when... When her version calms his problem, then he's believed, and she must bring proof, not he, and not him.

Why? **Because there's a presumption that a person doesn't toil over a feast and ruin it and turn his joy to mourning.** A person makes a wedding on the understanding that he's taking a virgin, he makes this kind of wedding, yes? A virgin is with seven

R' Yitzchak: Blessings and a full thing.

R' Yoel Asher: And he's happy, he makes a celebration, as we learned that one must have several days to prepare a wedding, it's a great celebration. And now it's a great shame, everyone was there last night and danced, and now his father, everyone starts crying, oy, he unfortunately fell in. A person doesn't do this, a person wouldn't have done this if it weren't true. He's in joy, he wants to be in joy.

Discussion: Is "A Person Doesn't Toil Over a Feast" a Physical or Emotional Presumption?

R' Yitzchak: A person doesn't toil over a feast and ruin it and turn his joy to mourning. I would have thought,

R' Yoel Asher: But the Rambam means to say that "a person doesn't toil over a feast and ruin it" isn't a practical thing because he spent money, because then someone will come in and say, what happens if someone completely paid for his wedding? Says the Rambam, but the point isn't the physical feast, it's the emotional state, it's that he made a celebration.

R' Yitzchak: But in practice, we've seen that there are such laws that one must toil for three days.

R' Yoel Asher: Good, good, good. But what happens, you know, it's a rich child whose father sent him down with an airplane, and he sent him down a whole feast. But the point is, the "a person doesn't toil over a feast" isn't something physical, because he exerted himself, but because it's a celebration, he wants to be a normal groom.

R' Yitzchak: It's not clear, but there is such a question. I see that someone has already said the answer, that the Rambam implies that it's not necessarily the feast and the payment. Ah, the Meiri. The Meiri? No, Choshen Mishpat alef Even HaEzer. Yes.

By the way, I can, let's say his father made him the match, he's not actually happy, he's looking for his way out. I can imagine a case where there's specifically a good reason why he would turn his joy to mourning.

Proof from Brachos — Tirda of Besulim

R' Yitzchak: Again,

R' Yoel Asher: She's the one claiming that she wants the money. First of all, let's think, without the "a person doesn't toil over a feast and ruin it," one could have said that she wants to get more money, yes? Just like that that she would have been some kind of taking from another.

R' Yitzchak: I'm not exactly, because it's a presumption. He already promised. He promised doesn't just stand like that,

R' Yoel Asher: Either a maneh. On that part he would have said that it means like... A kesuba already means like given. Well, the others learned that it's a document,

R' Yitzchak: It's an obligation. I don't know if it helps.

R' Yoel Asher: I'm saying that a man doesn't seek shame, a man doesn't want to do it.

R' Yitzchak: I think that this is a certain checks and balances. The entire kesuba is as if for the benefit of the woman, so she won't be light in his eyes. On the other hand, men still have the

concerns of besulim. Perhaps that's the point. Once this was a great concern.

The Gemara says that... Ah, there's the proof. They spoke at the beginning of the shiur, but now they remembered. There's an explicit Gemara in Brachos that a groom is exempt from Krias Shema if he didn't do the deed. Why? Because he's preoccupied with tirda of besulim. So it states, tirda of the mitzva of intimacy, lest he not find her a virgin. So it states in Rashi. Yes, yes.

R' Yoel Asher: It's the very preoccupation of the first intimacy.

R' Yitzchak: One of the things, certainly. So says Rashi, if I remember, that it's a preoccupation of the... tirda of the mitzva of intimacy,

R' Yoel Asher: The first intimacy. Yes,

R' Yitzchak: If I remember, it states in Rashi this way. So says Rashi, he's concerned lest he not find her a virgin. So, in order to calm the bride, they'll give a kesuba. And in order to calm the groom, they tell him, "no problem, if he says she's not a virgin, we believe you, you can be exempt."

So says the Rambam, "lest he not find her a virgin" there in Perush HaMishnayos. I remember Rashi also says this there. There are other explanations. It's actually a bit... For us we don't understand it, but it seems that it was once the case, it was a big thing. So...

Clarification: Mekach Ta'us on the Kesuba

R' Yoel Asher: So. Okay. But wait, let's try to remember. The entire point here is that he should pay a maneh, or he wants to be able to say mekach ta'us?

R' Yitzchak: Mekach ta'us means, and consequently he only needs to pay a maneh.

R' Yoel Asher: No, not mekach ta'us. Consequently the kiddushin isn't kiddushin? No. That's what the word mekach ta'us means, no?

R' Yitzchak: Mekach ta'us on the kesuba.

R' Yoel Asher: Kesuba. Ah, I don't know. He wrote the kesuba,

R' Yitzchak: You gave a get now. Perhaps, if it's... I mean, he can't say that he must give a get, because he has no proof that she's violated.

R' Yoel Asher: He also has no proof that she's violated. But he was intimate on the understanding that she's a widow, or... I don't know what a kiddushin is,

R' Yitzchak: A kiddushin, a kiddushin. It's as if a kesuba. He's exempt from his obligation, he only gets a widow. That's the whole discussion, I mean. One must really understand, one must learn better. But the Rambam wasn't standing, it only stood regarding losing the kesuba. Look further, he'll see, but at the end of the chapter one will see. The main discussion is this. Says the Rambam still

Halacha Yud Beis — Until When Can He Claim Ta'anas Besulim

R' Yoel Asher: A few details about this. "**And until when does he have to claim ta'anas besulim?**" How long can a man remember and come to beis din and say that I want that when I divorce her she should only receive a maneh,

R' Yitzchak: Yes? "**If she was secluded immediately.**" What does secluded mean? That later he was secluded with her, right?

R' Yoel Asher: If he lived with her afterwards,

R' Yitzchak: After the first intimacy she became secluded, so I mean,

R' Yoel Asher: Is the translation correct? Because if he continues living with her,

R' Yitzchak: It's immediately, we only believe him immediately. On the contrary, only immediately may he. "Immediately" means "until immediately." That means, the moment, in other words, if later he was secluded with her, it's obvious that he still accepts her. He must go immediately to beis din, as the beis din sits on Thursday in order to solve the problem. That means, the wedding is Wednesday in order to solve the problem.

Imagine, when is the wedding? Wednesday. Why Wednesday? Yes, we thought, why should one have a problem, one should be able to go immediately to beis din.

R' Yoel Asher: A moment, for the inheritance, for when it will be one hundred and forty.

R' Yitzchak: Okay. "**And if they weren't secluded even after thirty days.**"

R' Yoel Asher: That means, they didn't live together, even after thirty days.

R' Yitzchak: That means, he can basically say this forever. As long as he's not yet back with her, he can say the claims.

R' Yoel Asher: Even after thirty days doesn't yet mean forever. One must know,

R' Yitzchak: There's no limit stated, it doesn't state "until thirty days."

R' Yoel Asher: That means, because if he's secluded with her, he can no longer say forever, because I see that he lives with her very nicely,

R' Yitzchak: And you have no claims. Yes, something like that.

Halacha Yud Gimmel — Ruling of the Geonim: Additional Kesuba

R' Yitzchak: Very interesting. Now one can learn a ruling from the Geonim. "**All the Geonim ruled,**" yes, all of them.

R' Yoel Asher: Says the Rambam, "**All the Geonim ruled that this that the Sages said that he's believed if she contradicts him,**" that when both say, he says "I didn't find virginity," she says "yes there was virginity," and then we say that we believe him because of "he doesn't toil over a feast," all this is "**to lose the basic kesuba,**" it's losing the basic kesuba, the essential mitzva of kesuba, the two hundred. "**But the addition she has.**" But if they wrote in the kesuba, they wrote other amounts that the man takes upon himself, the man added tosefes kesuba, yes? This is "she has," this he must yes give.

R' Yitzchak: Why? "Unless," as if because the believability is only for the enactment of the Sages. The tosefes kesuba he himself promised.

Discussion: Why Is the Presumption Only on the Basic Kesuba?

R' Yoel Asher: It's very interesting. When they learned "it is the Sages who established and they

agreed," it itself is a novel thing, because why isn't a plain presumption enough? Why do the Sages say? Because the Sages say that there's a presumption. Everywhere a presumption is enough. Here it seems that there's something more.

That is, the chazakah is such a questionable chazakah, it's not such a good chazakah. I know, you can find giants. Perhaps one could say that every woman also has a chazakah that she is a betulah until we know otherwise, yes, for example. But it's something of a "they said and they said," that in such a case, because there is this chazakah, they didn't institute a ketubbah.

So consequently, this is only on the ketubbah that the Chachamim added, the Chachamim also made the weaker chazakah. But tosefet (additional amount) that he took upon himself money, he definitively took upon himself money. And on this we don't say that one who is toreiaich b'seudah (troubled himself with a feast) that the feast should take it away, **unless it became known with clear proof that she was a be'ulah, or that she admitted to him that she was a be'ulah before she was betrothed and deceived him.** She admitted, or he has clear proof.

R' Yitzchak: But simply not having betulim is not yet—

R' Yoel Asher: No reason that a person who was excited yesterday and wrote a large ketubbah should now get out of it.

R' Yitzchak: This is the opinion of the Geonim, and the Rambam rules this way, he doesn't argue with this. The Rosh rules this way. But the Rosh says that toreiaich b'seudah can apply to the tosefet ketubbah, because tosefet he also gives because he is so happy with his kallah and so forth. But the Rambam appears to rule like the Geonim, and consequently the Rambam says, if so, what happens? If there is no ne'emanut (credibility).

R' Yoel Asher: Again, but this is a lomdishe (analytical) topic, whether the "they said and they said," consequently it is a weak chazakah.

Ta'anat Betulim: Laws of Tosefet Ketubbah, Oaths, and Mekach Ta'ut

Halachah: The Law of Tosefet Ketubbah in Ta'anat Betulim

R' Yitzchak: The Rambam rules it, he doesn't argue with this. The Rambam says that "toreiaich b'seudah" can apply to tosefet ketubbah also, because tosefet he also gives because he is so happy with his kallah and so forth. But the Rambam appears to rule it according to the Geonim. Consequently the Rambam says, if so what happens? If there is no ne'emanut...

R' Yoel Asher: Once, again, this is a lomdishe topic. Whether the "hen hen edei" (they are the witnesses) and "hen hen edei," meaning it is a weak chazakah.

R' Yitzchak: Not a weak chazakah, it's a chazakah, it's a balance. They give him the ne'emanut. By the way, every single thing that the Rabbis say, they say. Nothing is absolute. There is no such thing as a chazakah that is absolute.

R' Yoel Asher: Chazakah is that the Chachamim see it this way. Everywhere when we say chazakah, we don't say "hen hen edei" and "hen hen edei."

R' Yitzchak: There is also chazakah, there are also proofs. But certainly, this the Chachamim said, the Chachamim said that it's a law. This he did himself, there is no chazakah. So the Rishon Gaon argued. One can argue on that Gaon if one wants, but the Rambam didn't hold by that.

So now, we need to know if so what happens l'halachah? What is the halachah? Just like everyone who is a kofer hakol (denies everything), yes? Every time someone comes and he says "you owe me money," and the other says "it doesn't begin."

R' Yoel Asher: And what happens? He is exempt.

R' Yitzchak: But if he is modeh b'miktzat (admits partially), a part he admits, he is obligated in an oath.

The Rambam's Ruling: Oath on Tosefet, Cherem on Principal

R' Yoel Asher: So such a man who made a tosefet ketubbah, and afterwards he claims betulim, and she claims back, what will be the halachah? According to the ruling of the Geonim it will be like this, that the claim, he won't automatically be right because of the chazakah. But what then? How then can he get out of giving the tosefet?

"Therefore he may make her swear with holding an object." Here the man can make her swear. He can say, "You want to take the tosefet ketubbah? Swear with a nekitat chefetz (holding an object), make a proper oath, and only then will you be able to take." **"Like the law of all who swear and take,"** just as the law is always that the one who takes... Here we see ourselves differently, that what stands in the ketubbah doesn't yet mean that it's already collected or what. **"Like the law of all who swear,"** just as the law of people who are "nishba v'notel" (swears and takes), that often the muchzak (one in possession) of the money can obligate the other with an oath, "if you want to take, you must give an oath." **And afterwards she collects the tosefet,** only after she can bring proof on the tosefet.

R' Yitzchak: That is, we go back to the normal regular halachot.

R' Yoel Asher: The chazakah of ein adam toreiach b'seudah falls away. So if he...

R' Yitzchak: What does it mean, where am I here? So basically...

Discussion: Why Can't She Make Him Swear on Tosefet?

R' Yoel Asher: I would say it like this: According to how the Rashba learns, the chazakah of ein adam toreiach b'seudah is a proper chazakah. It's not something of a "they said and they said," but it's a proper chazakah. Consequently he has the chazakah also in such a case, also on the tosefet ketubbah. Which Rashba? The Rashba I mean.

But the Ramban with all these Geonim looked at it that the chazakah of ein adam toreiach b'seudah is not a true chazakah, but it's something of a matter of because it's only a din d'rabbanan (rabbinic law), because ketubbah is only a din d'rabbanan, they didn't obligate him in such a case to give a ketubbah when there is such a bit of chazakah of ein adam toreiach b'seudah.

Consequently, what becomes the law? It becomes the law like other muchzak who claims against those who want to be motzi (extract), that kol hanishba'im (all who swear), if she makes an oath she can extract from him. But according to this calculation a person could have said the opposite, that if he doesn't want to give the tosefet ketubbah, he should swear.

But she does not have the right to make him swear, that she was not found a betulah, and afterwards she loses the principal ketubbah, because the chazakah is that ein adam toreiach b'seudah and loses it.

R' Yitzchak: On the chazakah she doesn't have...

R' Yoel Asher: Received the right to make him swear, because there is still the chazakah of ein adam toreiach b'seudah.

R' Yitzchak: But further, the cherem (ban) that we learned earlier, one can do. **And she has the right to make a general cherem,** because one doesn't mix in lying. But again, they simply said told. On the principal ketubbah he is believed. One cannot say, swear to me, shevuat hesset (oath of inducement)...

R' Yoel Asher: Because I said one is toreiach at the time. It's enough to be obligated to pay the Chachamim.

R' Yitzchak: It's enough to give to exempt...

R' Yoel Asher: Yes, from the assistance.

R' Yitzchak: It's enough to give to exempt from paying. One cannot make an oath against this. One can make a cherem. Cherem one can always make.

R' Yoel Asher: I still don't understand why she can't say on the tosefet ketubbah that not I

should swear, but you should swear to exempt yourself from paying tosefet ketubbah.

R' Yitzchak: Again.

R' Yoel Asher: Why does he say "she does not have the right to make him swear" on the principal ketubbah? Why don't we say that in a case she doesn't want to swear? Can she say, if you don't want to pay me tosefet ketubbah, you should swear.

R' Yitzchak: What is the question? When?

R' Yoel Asher: What happens if she says, if you don't want to pay tosefet ketubbah, yes? We learned that tosefet ketubbah she can receive with an oath. Only with an oath.

Discussion: The Mechanism of Nishba V'Notel

R' Yitzchak: There is a document, yes? What is the case? What is the case? There is a document that says, I owe you such and such amount of money, yes? He claims that he has a great reason why he doesn't owe, yes? What is the halachah? There are halachot of to'en v'nit'an (claimant and defendant) about this. What is the halachah?

R' Yoel Asher: Always there can be a case of yishava v'yitol (let him swear and take).

R' Yitzchak: So hold the Geonim. You can argue on these halachot, there are people who argue on the basic halachah, on the nishba v'notel. But the Geonim hold that the normal case, without any special halachot of chazakah, would have been like this, consequently she is nishba v'notel.

R' Yoel Asher: According to this, why does he bring in the "she does not have the right to make him swear"? Because once he brought in the topic of making swear...

R' Yitzchak: He already repeated again what he said earlier. He says again what he said earlier. "She does not have the right to make him swear" is only to repeat that the... yes, here the chazakah. This is the whole thing that the Geonim said.

R' Yoel Asher: Why does it need to stand here? He says like this, once the Geonim said that the chazakah is a weak chazakah and it doesn't work

on tosefet, only something is a "they said and they said," you might have thought that she can make him swear also? He says, no, the chazakah works also on him not being able to make him swear, only to make a cherem.

R' Yitzchak: This he already said earlier, but cherem she can make him.

R' Yoel Asher: Just as they learned on that case, they didn't yet learn, they learned what he can make him.

R' Yitzchak: The Rambam says, that according to the same approach of the Geonim, that one can make general cheremot on anyone that I have a claim on someone, and the other is right in beit din, I can add a cherem, because the Geonim thought perhaps this will help, she can also make the general cherem that whoever claims falsely, that is, he claims that she is not a betulah, and she holds that it's false, there should be a cherem, perhaps it will help, he will admit.

R' Yoel Asher: I know. So, yes, you hold the weekday after the wedding, they already made cheremot with oaths. Yes. Now...

Halachah: "Chozer V'Kotev Lah Me'ah" — When He Wants to Stay With Her

R' Yitzchak: Now it's like this. So, I think the word is like this: Normally when someone says that she is not a betulah, perhaps normally he will divorce her now, but he will divorce her for free, for cheaper. For free or for cheaper depends, yes? If it's a mekach ta'ut (mistaken transaction), it's completely for free. If it's cheaper, it needs to be cheaper.

R' Yoel Asher: She has the right to make the cherem.

R' Yitzchak: So, all ta'anat betulim is what? How much does he need to pay her if he is right and he gives her a get?

R' Yoel Asher: If he is believed, only believed, yes? Nothing. If he is believed only believed. Or if he says mekach ta'ut, consequently I was never obligated at all in a ketubbah.

R' Yitzchak: The Rambam didn't say, true? The Rambam says, what is if he wants to stay with

her after they believed him with his ta'anat betulim and she lost the principal ketubbah?

R' Yoel Asher: The Rambam says the halachah is that he must make a new ketubbah, **"he returns and writes her one hundred."** He must make her a ketubbah of one hundred. Why? Because the principal ketubbah she already lost with his ne'emanut, and now that he wants to live with her, he must give her a ketubbah, just as we learned, **"for it is forbidden for a man to remain with his wife even one hour without a ketubbah as we explained."** Since he may not live with her without a ketubbah, if he wants to continue living with her, he must give her a new ketubbah of a be'ulah.

Discussion: What Does Mekach Ta'ut Mean by Kiddushin?

R' Yitzchak: Now, it's very funny, because the basic question that we ask, I always feel that this is the basic answer, that the Rambam didn't say what happens when there's a ta'anat betulim that works, and he didn't say what he wants to do, the person, what is the normal case. And consequently, usually when we say the language of mekach ta'ut, mekach ta'ut doesn't mean that I need to give belief, mekach ta'ut means the whole thing that... And apparently it should mean that he doesn't need to give a get either.

But here you see in the halachah that it's not true, because you see that they can be mekayem (maintain). What does mekayem mean? Give her? We already learned earlier, does mekayem mean to give new kiddushin? It's not implied so. Very funny.

So, it's very unclear. There are Acharonim, various Acharonim who speak about this, what is the halachah, what he means. There are those who argue that one who claims ta'anat betulim actually doesn't even need a get. But it could be that the topic is not so strong the get, because this is already technical, the beit din will take care of that. The main dispute is about the hundred dollars, that's important. He wants... two hundred, actually. He wants to give a get for free.

R' Yoel Asher: But doesn't mekach ta'ut mean that if I had known I would never have wanted to be mekadesh? Who says that people only want to be mekadesh? I don't want to pay five hundred for someone who is not a...

R' Yitzchak: One minute, this is certain that mekach ta'ut means that he is completely exempt. The Rambam only adds here a basic thing. He is right, that if he wants to continue living with her he must continue to pay her one hundred, because he may not live with a woman without a ketubbah.

R' Yoel Asher: But if we say that mekach ta'ut doesn't nullify the kiddushin, why shouldn't we say that it only nullifies the one hundred?

R' Yitzchak: No, there's no such thing. A mekach ta'ut goes like this.

R' Yoel Asher: But if mekach ta'ut doesn't nullify the kiddushin, if you say that it's still kiddushin, because the thing that people don't want to be mekadesh...

R' Yitzchak: Kiddushin was two years ago. Nu. You see that the Rambam says clearly that "he returns and writes her one hundred." He doesn't say like you.

R' Yoel Asher: He doesn't say that the ketubbah remains with the previous one.

R' Yitzchak: I'm saying, mekach ta'ut can mean three things: mekach ta'ut can mean that it nullifies the kiddushin, it can mean that it's a mekach ta'ut that I thought she was a betulah, consequently I only need to give one hundred. Here it appears that mekach ta'ut completely nullifies the ketubbah.

R' Yitzchak: I think that what happens by every mekach ta'ut? If you sell me a car for a thousand dollars, and I know from you that it's only worth five dollars, the whole transaction goes back. I don't say you should give me back the last five dollars. This is the benefit, yes? Batel mekach (nullified transaction) always means the whole thing is nullified, not that he gives back the difference of money.

R' Yoel Asher: I think by kiddushin there were unique halachot, on this were all these halachot,

that no man wants to live with a woman... There's a chazakah that when a man is mekadesh someone, what is the such and such defect he won't mean.

R' Yitzchak: Yes, good, then. But here, no, now he ate like halachot of tenai (conditions), not halachot of mekach ta'ut.

Batel Mekach, Mekach Ta'ut, and the Difference Between Kiddushin and Mekach U'Memkar

Batel Mekach Means a Complete Nullification of the Transaction

R' Yitzchak: The whole transaction goes back. I don't say that you remain in the five dollars. This is ona'ah (overcharge), yes? Batel mekach always

means the whole thing is nullified, not that he gives back the difference of money.

The Difference Between Kiddushin and Mekach U'Memkar

R' Yoel Asher: I think by kiddushin there were unique halachot, on this were all these halachot, that one can say that no man wants to live with a woman. There's a chazakah that when a man is mekadesh someone, if he had known that she has such and such a defect, he wouldn't have meant. I mean—

R' Yitzchak: But you see clearly, go well then. But here, no, now he ate so much help. Tenai, not halachot of mekach ta'ut. You can call it mekach ta'ut also.