Laws of Marriage Chapter 16 (Auto Translated)

English

Auto Translated

Shiur Overview

Rambam Laws of Marriage – Chapter 16

Introduction to the Chapter

After having learned in the previous chapters about the husband's obligations to his wife, the principal ketubah (one hundred or two hundred), the additional ketubah, and the conditions of the ketubah – all of which constitute the obligation at the time of marriage – we proceed in Chapter 16 to learn how one actually collects the ketubah (when the husband dies or divorces her), from what sources one collects, and what is done when there are disputes about whether she has already received the ketubah or not (R' Yoel Asher).

Halakhot 1-2: Defining the Terms (Nedunyah, Tzon Barzel, Nichsei Melog, and Ketubah)

1. The Rambam's Words

The assets that a woman brings to her husband, whether land, slaves, or movable property, even though they are written in the ketubah document, are not called ketubah but rather their name is nedunyah. If the husband accepted responsibility for the nedunyah upon himself and it became in his domain – if it decreased, it decreased for him, and if it increased, it increased for him – this is called nichsei tzon barzel. If he did not accept responsibility for the nedunyah upon himself, but rather it remains in the wife's domain – if it decreased, it decreased for her, and if it increased, it increased for her – this is called nichsei melog. Similarly, all assets that the wife has that she did not bring to her husband and did not write in the ketubah, but rather remained hers, or that fell to her as inheritance after she was betrothed, or were given to her as a gift – all are called nichsei melog, for they all remain in her domain. Only the principal ketubah, which is one hundred or two hundred, together with the additional amount alone, is called ketubah.

2. The Plain Meaning of the Rambam

The Rambam makes an introduction to define the terms he will use in the coming halakhot:

* **Nedunyah:** The property (land, slaves, movable items) that the wife brings to the husband at the wedding. Even if it is written in the ketubah document, it is not called "ketubah" but rather "nedunyah."

* **Nichsei Tzon Barzel:** If the husband takes upon himself responsibility for the nedunyah so that it enters his domain – if the value falls, it is his loss (when he divorces her he must return the entire original value), and if the value rises, the profit is his.

* **Nichsei Melog:** If the husband does not take responsibility, but rather the principal remains in her domain – if the value falls or rises, it is her loss or her profit (and the husband only consumes the fruits while they are together). Also, all other assets that the wife did not bring to the husband and did not record in the ketubah, or that she inherited or received as a gift after the betrothal, are automatically called "nichsei melog" because they remain in her domain.

* **Ketubah:** The word "ketubah" in the coming halakhot (regarding the laws of collection) does not mean the nedunyah, but only the "principal ketubah" (one hundred or two hundred) together with the "additional ketubah" that the husband added from his own money.

3. Insights and Explanations

* **The reason for the introduction (defining the terms):** As in other places in the Laws of Marriage, the Rambam begins with an introduction to define the terms. Since in reality, when a couple separates (through divorce or death), the wife comes to take all her monies together (ketubah, nedunyah, etc.), and especially since they would write the nedunyah in the ketubah document itself ("and this nedunyah that she brought to him") in order to know how much she brought in, therefore the Rambam must preface that halakhically (regarding the laws of collection and the like), the law of "ketubah" is entirely different from the law of "nedunyah" (R' Yitzchak).

* **The language "that the woman brings to her husband":** The language "to her husband" – she brings it to the husband – means that it does not remain in her father's house, but rather she brings it into their new joint life and household. There is a nice precision here: although the Rambam begins by saying she "brings to her husband," he immediately says afterward regarding nichsei melog that "it is in the wife's domain." The explanation is that although she brought it into the house and the husband has a right to consume the fruits as long as they are together, nevertheless the principal itself remains entirely in her domain (R' Yoel Asher). With nichsei tzon barzel, on the other hand, it becomes like a loan to the husband and enters his domain (R' Yitzchak).

* **The meaning and source of "tzon barzel":** The word "barzel" (iron) indicates something strong; the wife is assured that her principal is strong as iron and cannot be lost. The source for this is a Tosefta (in the laws of a shepherd with a property owner): when a shepherd takes over sheep on condition that he takes the profits (wool and milk), but if a sheep dies it is on his full responsibility to pay the owner, that arrangement is called "tzon barzel." From there comes the expression for any property where the principal is guaranteed (R' Yoel Asher).

* **The meaning of "nichsei melog":** In the name of the Rishonim it is brought that "melog" is from the language of meliga – cutting or shearing hair. The metaphor is that the head (the principal) remains hers and whole, and the husband may only "shear the hair" – that is, enjoy the fruits that grow from it (R' Yitzchak).

* **[Digression: What is the enactment of the Sages corresponding to consuming fruits?]** We learned that the Sages made enactments "one corresponding to the other" – for example, her handiwork corresponds to her sustenance. What does the wife receive corresponding to the husband consuming the fruits of her nichsei melog? (R' Yoel Asher). When one looks later in Chapter 12, one sees that the Sages enacted consumption of fruits corresponding to "her ransom" (the husband's obligation to redeem her if she is captured). But here in Chapter 16 we are not discussing the husband's rights to the fruits, but rather the principal itself that remains hers (R' Yitzchak and R' Yoel Asher).

* **The "default" is nichsei melog – and the dispute among Rishonim:** From the Rambam's words ("and similarly all assets... all are called nichsei melog") emerges a fundamental point: according to the Rambam, the "default" is that all of a wife's assets are nichsei melog (her domain, and the husband consumes fruits). For them to become nichsei tzon barzel, the husband must make an explicit condition to accept responsibility. If someone gives her a gift, it depends on various details whether the giver intended it for the groom/husband or for her, but according to the Rambam the normal law is that it becomes nichsei melog. The **Maggid Mishneh** brings, however, that there are other Rishonim who argue with the Rambam on this. According to them, there are other ways that assets become nichsei tzon barzel automatically – for example, the very fact that one writes it in the ketubah usually makes it nichsei tzon barzel, or if one gives her a gift with the husband in mind (R' Yitzchak and R' Yoel Asher).

* **[Digression: Whatever a woman acquires, her husband acquires]:** Where does the principle of "whatever a woman acquires, her husband acquires" come in? (R' Yoel Asher). The distinction is that her findings indeed belong entirely to the husband, but regarding assets she receives (inheritance or gift), this means that the husband automatically acquires the consumption of fruits as the law of nichsei melog, but the body of the assets remains hers (R' Yitzchak).

Halakhah 3: The Time of Collecting the Ketubah, Inferior Property, the Widow's Oath, and Valuing the Garments

Part A: The Time of Collecting the Ketubah ("Like a Debt with a Set Time")

1. The Rambam's Words

We have already informed that the Sages enacted a ketubah for a woman, and the law of the additional amount is like the law of the principal. They did not enact it to be collected whenever she wishes, but rather it is like a debt that has a set time, and the ketubah is only collected after the husband's death or if he divorced her.

2. The Plain Meaning of the Rambam

The Sages enacted the ketubah (it is a rabbinic obligation, not an obligation that arises by itself through an action), and the additional amount has the same laws as the principal regarding collection. The Sages established it as a unique obligation: she cannot collect it whenever she wishes ("whenever she wishes"), but rather it is like a debt that has a set time ("a debt with a set time"). The time when she can collect it is only after one of two things: the husband's death or divorce.

3. Insights and Explanations

* **The question of why the Rambam needs to say this explicitly:** It is puzzling why the Rambam needs to say at all that she cannot collect it in the middle of life. Until now we understood that a ketubah is simply a promise that "if I die or divorce you, I will give you 200 zuz." From the fact that the Rambam needs to explain that it is a "debt with a set time" and that she cannot take it when she wants, a new understanding emerges: originally the ketubah is money that already belongs to her now (a debt that already exists now), but the time of receiving it is only after death or divorce (R' Yitzchak).

* **Historical root and reasoning:** This connects with what was discussed earlier: originally one would pay money to the father or buy items for her at the wedding. The Sages changed the order so that instead of paying now, one makes the obligation now, but pays it only later (R' Yitzchak). Why doesn't she receive it while they are living together? Because as long as she is with the husband, he provides her with "food, clothing, and conjugal rights," so she is taken care of and doesn't need the money. Only when the marriage ends does she need to have it (R' Yoel Asher).

* **The meaning of ketubah as a "total" (sum total obligation) of the husband:** In other halakhot (for example regarding "to heal her" – medical treatment that has no limit), one sees that a husband can sometimes calculate that the expenses are already approaching the sum of the ketubah, and he is better off divorcing her and paying the ketubah. One sees from there that the ketubah is viewed as a set sum that the husband owes the wife in total, aside from the ongoing food, clothing, and conjugal rights (R' Yoel Asher and R' Yitzchak).

* **The practical difference of "a debt with a set time" (lien on property):** What is the innovation of calling the ketubah a "debt with a set time" (instead of saying that the obligation only begins when he dies or divorces her)? The practical difference is that the debt exists from the wedding onward (after all, one writes her a document), and therefore she can later collect from "encumbered property" (fields that he sold in the interim), because the lien was already on those properties from the first day. But the Rambam comes to exclude the other side: although it is already a debt now, she cannot demand it until the time comes (R' Yoel Asher and R' Yitzchak).

Part B: Collection from Inferior Property

1. The Rambam's Words

They also enacted that if the husband had good, bad, and medium fields, and the wife comes to collect her ketubah from him, she only collects from the worst of his properties, which is called ziburit.

2. The Plain Meaning of the Rambam

The Sages also enacted that if the husband has three types of fields – good (iddit), medium (beinonit), and poor (ziburit) – the wife can only collect her ketubah from the weakest properties, which is called "ziburit."

3. Insights and Explanations

* **The distinction between a creditor and ketubah (because of locking the door):** Fundamentally (from Torah law), a creditor should also collect from ziburit. But for a regular loan, the Sages enacted that one takes from "beinonit," due to the reasoning of "so as not to lock the door before borrowers" (so that people should not be afraid to lend money to the poor) (R' Yoel Asher, correcting R' Yitzchak). But with ketubah, this is not a loan, and the reasoning of "locking the door" is not applicable, because a woman wants to marry in any case ("more than a man wants to marry, a woman wants to be married"), and one doesn't marry because of the ketubah. Therefore the Sages left it at the fundamental law of ziburit (R' Yitzchak, with a brief comment about the correct pronunciation of the word "ziburit").

* **The progression of leniencies in ketubah:** Since the entire ketubah is an enactment of the Sages (rabbinic), the Sages have the power to make various leniencies for the husband (or stringencies on her): first, she cannot take it when she wants; second, she only takes ziburit; and third, the oath and valuation for a widow (R' Yitzchak and R' Yoel Asher).

Part C: Oath and Valuation for a Widow versus Divorce by His Will

1. The Rambam's Words

They also enacted that when she comes to collect after his death, she does not collect until she swears while holding an object that he did not leave anything with her, and she did not sell him her ketubah, and she did not forgive it. And they value all that is upon her and deduct it from her ketubah. But if he divorced her by his will, she collects without an oath, and they do not value the clothing upon her, for he bought them for her and she acquired them, and he wants to send her away, not she.

2. The Plain Meaning of the Rambam

When a widow comes to collect her ketubah after the husband's death, they require from her a severe oath "while holding an object" (holding a Torah scroll) on three things: (1) that the husband did not leave her any money or movable property for the ketubah; (2) that she did not sell the ketubah to the husband during his lifetime; (3) that she did not forgive him the ketubah. Additionally, they value all the clothing she is wearing (that the husband bought for her as clothing), and if she wants to keep it, the heirs deduct its value from her ketubah.

But if the husband divorces her by his own will, she collects the ketubah without an oath (if he has no specific claims; because he is alive and can make claims himself if she forgave it). Also, they do not value the clothing she is wearing, because he bought it for her and she already acquired it, and he is the one who wants to send her away, not she.

3. Insights and Explanations

* **Doing "business" with the ketubah:** One sees from this halakhah an interesting reality: a wife can do "business" with her ketubah and sell it to her own husband while they are still living together, or forgive it to him entirely (R' Yoel Asher).

* **Precision in "divorced her by his will":** The word "by his will" plays a role that if he does not divorce her by his will, for example when the court compels him to give a divorce, or when she is rebellious and has done something to force the

divorce, the law will perhaps indeed be different – that they will indeed value her garments or require an oath (R' Yitzchak).

* **The Rambam's responsum (garments versus jewelry):** The commentators bring in the name of a responsum of the Rambam that "they do not value the clothing upon her" applies only to garments, but not to jewelry (ornaments). The commentators also bring other opinions that distinguish between weekday clothing and Sabbath clothing (R' Yoel Asher and R' Yitzchak).

* **Difficulty in the reasoning for the distinction between widow and divorcee regarding garments:** There is a strong question on the Rambam's two reasons ("for he bought them for her and she acquired them, and he wants to send her away, not she"):

1. If the plain meaning is "he bought them for her and she acquired them" (he bought it for her and things he buys for her belong to her), why do we say for a widow that she did not acquire them, but rather the heirs deduct it from the ketubah?

2. And if the main reason is "and he wants to send her away, not she" (as R' Yoel Asher explains: he decided to divorce her, who asked him? He cannot expect her to go out without her normal respectable garments, and one should not be stingy and petty to deduct from her the shirt on her back!), what does this have to do with monetary laws? If the garments truly belong to the husband (and therefore one deducts it from a widow), why does he lose his money when he divorces her? And conversely, with a widow it is also not her fault that he died (and also not his fault)! Is this some kind of "fine" on the husband for wanting to give a divorce?

One can perhaps say a reasoning that with the heirs, who inherited property and did not live with her or decide to divorce her, there is a different relationship to the lien. But in practice, one sees throughout the halakhot (also earlier regarding compelling to divorce) that taking or leaving her garments seems to depend on the "mood" of the court – that is, who is causing the separation and who is right in the dispute (if she is right she receives more, if he wants to divorce he pays more). The analysis of this remains "unclear" (R' Yitzchak and R' Yoel Asher).

Halakhah 4: Leniencies of Ketubah – Collection from Land and the Laws of Appreciation

1. The Rambam's Words

They also enacted that a widow only collects her ketubah from land. She does not collect from the appreciation that the properties appreciated after the husband's death. And the daughters are not sustained after their father's death [from the appreciation]... And she does not seize with her ketubah the appreciation that the purchaser appreciated, even though a creditor collects the appreciation. These matters are among the leniencies of ketubah.

2. The Plain Meaning of the Rambam

The Sages enacted that a widow can only collect her ketubah from land and not from movable property. Also, she cannot collect from the "appreciation" (what the properties became more valuable or grew in fruits) after the husband's death. The same applies to "daughters who are sustained" (the daughters who receive sustenance from the properties after the father's death), that they do not take from the appreciation that grew during the time of the heirs. Also, if the husband sold a field and she goes to "seize" it (take it from the purchaser), she only takes the principal (how much it was worth at the time of sale) and not the appreciation that the purchaser appreciated – although a regular creditor does collect the appreciation. All these things are among the "leniencies of ketubah."

3. Insights and Explanations

* **Lien on movable property:** That she does not collect from movable property means not only that she cannot seize sold movable property, but even if the movable property is lying here before us, it is not encumbered for her ketubah (R' Yoel Asher and R' Yitzchak).

* **The initial assumption regarding appreciation of orphans:** Why might one have thought that she should indeed receive the appreciation after the husband's death (in a case where the principal itself is not enough for the two hundred zuz, as R' Yitzchak makes clear)? The initial assumption would have been to say that at the moment the husband dies there is an automatic acquisition and the field immediately becomes hers (or it already stands in her lien), therefore what grows afterward grows in "her" field. The Rambam comes and says no, it passes to the heirs, and the appreciation belongs to them (R' Yoel Asher).

* **Appreciation by a purchaser (creditor versus ketubah):** With a field that a purchaser bought, the wife cannot say that the sale was not legitimate and the field is hers retroactively; rather, until she seizes it, it belongs to the purchaser, therefore the appreciation is his. (R' Yoel Asher wanted to say that with a creditor it becomes his from the "time of payment," but R' Yitzchak corrects him that the lien of a creditor begins from the "time of the debt" when one borrowed and from the time of sale, not from the time of payment).

* **Dispute in the definition of "leniencies of ketubah":**

* *R' Yoel Asher's approach (balance):* The Sages made here a "balance" according to the need of the hour. With a loan, the Sages strengthened the hand of the lender (that he should even be able to take appreciation) so that people should not be afraid to lend money ("so as not to lock the door before borrowers"). But with ketubah, where the entire enactment was for the benefit of the wife ("so that she should not be light in his eyes to send her away"), the Sages saw that one need not go so far for her benefit (because women want to marry in any case, "more than a man wants to marry"), so they balanced it for the benefit of the heirs and purchasers.

* *R' Yitzchak's approach (strength of the lien):* It is not about a "balance," but rather the word "leniency" simply means that the "strength of the debt" – the strength of the lien – is weaker. Since ketubah is initially only an enactment of the Sages and not as strong a debt as a loan, it has a weaker encumbrance that does not reach to collect from the appreciation.

Halakhah 5: Collection from the Least Valuable Currency

1. The Rambam's Words

They also enacted that the woman takes her ketubah from the least valuable currency. How so? If he married a woman in one place and divorced her in another place, if the currency of the place of marriage was better than the currency of the place of divorce, he gives her from the currency of the place of divorce. And if the currency of the place of divorce was better than the currency of the place of marriage, he gives her from the currency of the place of marriage. When does this apply? When her ketubah had unspecified currency, but if he specified a known currency in it, whether in the principal or in the additional amount, it is like the law of one who lends his fellow a known currency, that he gives him as much as he lent him, as will be explained in the Laws of Loans.

2. The Plain Meaning of the Rambam

Another leniency in ketubah is that she receives from the weakest currency. If he married in one place and divorced her in another place, and the value of the currency (the two hundred zuz) is different in the two places, he always pays her according to the place where the currency is worth less – whether that is the place of marriage or the place of divorce. This only applies when it states in the ketubah "unspecified currency" (an amount without a specific name of a particular currency). But if he specified a "known currency" (whether in the principal ketubah or in the additional amount), he must pay exactly the currency he promised, just as with a loan of a specific currency.

3. Insights and Explanations

* **What does paying with currency mean?** Initially one might have interpreted that just as with land one gives "ziburit," so too when paying with cash one gives the weaker currency (R' Yoel Asher). But in truth the Rambam does not mean specifically that he gives her actual coins – he can even give her land (after all, one gives land for ketubah!) – rather the question is how much is the *amount* and the *value* of the debt, which is assessed according to the smaller value (R' Yitzchak).

* **The difficulty and the objection of the Raavad:** The **Raavad** already questions this halakhah (and is not satisfied even with what the Rambam explains in "when does this apply"): the Rambam himself gave earlier a clear measure in weight of silver for the two hundred zuz (one-eighth in Tyrian silver, according to a calculation of barley grains)! If a "zuz" has a clear weight of silver, how can there be a difference between a zuz in one place (for example New York or America) and a zuz in another place (New Jersey or Mexico)?

* One can try to say that perhaps the weight is the same, but in one place it is harder to trade and do business with the currency (R' Yoel Asher).

* But from the Rambam it is clear that the leniency is that he pays literally *less value*. The explanation is that if he wrote an amount with a name (for example two hundred shekel or zuz) without specifying which currency ("unspecified currency"), and in another place the same name of currency is worth less, he is exempt with the smaller value – provided that even the smaller value is more than the minimum measure of two hundred zuz of the province (Tyrian silver), as stated in the commentators (R' Yitzchak and R' Yoel Asher).

* **Definition of the law (leniency in the essence of the lien):** That one follows the "least valuable currency" is not just a leniency in the manner of "collection" (like ziburit), but rather it is a leniency in the "essence of the lien." When the language in the ketubah is not clear (ambiguous), one interprets it in his favor that he only encumbered himself for the smaller value (R' Yitzchak).

Halakhot 6-7: The Enactment of the Geonim to Collect from Movable Property and the Custom of "Whether from Land or from Movables"

Part A: The Enactment of the Geonim and Ketubat Benin Dichrin

1. The Rambam's Words

The Geonim enacted in all the yeshivot that a woman should collect her ketubah after her husband's death even from movable property, just as they enacted for a creditor to collect from movable property, and this enactment spread among most of Israel (all of Israel). Similarly, all other conditions of the ketubah are all like the ketubah and exist in movable property like land, except for ketubat benin dichrin, for which we have not found the custom of its inheritance widespread in all the yeshivot. Therefore we maintain it according to the law of the Talmud, that they only inherit their mother's ketubah from land.

2. The Plain Meaning of the Rambam

The Geonim enacted in all the yeshivot that a wife should be able to collect her ketubah after the husband's death also from movable property (not only from land as in the law of the Talmud), just as they enacted for a creditor, and this enactment spread among most (or all) of the Jewish people. This also applies to all other conditions of the ketubah (like sustenance and the like). But regarding "ketubat benin dichrin" (the enactment that the sons inherit their mother's ketubah in addition to their portion of inheritance with the other brothers), since the custom to collect from movable property did not spread in all the yeshivot, we leave it according to the law of the Talmud that they only inherit it from land.

3. Insights and Explanations

* **The meaning of "in all the yeshivot":** This does not mean that the heads of yeshivot enacted it only for their yeshiva students (as R' Yoel Asher initially interpreted), but rather "yeshivot" here means the two great yeshivot of the Geonim in Babylonia (Sura and Pumbedita), whose function was like a great court or Sanhedrin to rule halakhot for all of Israel, and the enactment was made for all Jews (R' Yitzchak, and R' Yoel Asher agreed).

* **The source and reason for the enactment (in the name of the Meiri):** Also with a creditor himself, the fundamental law of the Gemara is that one only collects from land, and the Geonim made the enactment for both (R' Yitzchak). The **Meiri** writes that the reason for the enactment was because the reality changed – Jews became poorer or did not own land, and it became impossible to fulfill the law of collecting specifically from land (R' Yoel Asher).

* **The practical difference of "after her husband's death":** The practical difference of "collection from movable property" regarding other conditions of the ketubah is mainly after the husband's death, because while he is alive there is no concept of "collecting" – he simply pays it as an obligation (R' Yitzchak).

* **Ketubat benin dichrin and the Rambam's "formalism":** Seemingly, according to the Meiri's reasoning (that people don't have land), there is no difference between ketubat benin dichrin and other conditions of the ketubah! Therefore one sees here that the Rambam is a strong "formalist" in halakhah: one cannot take someone else's money based solely on reasoning (that the old law doesn't work in reality) without a formal source and authority. Only where all Jews have already agreed does the Rambam allow it; but with ketubat benin dichrin, where there was a dispute among the Geonim and it did not become fully accepted, one must return to the law of the Talmud. (Incidentally, if the Rambam had indeed ruled in his book that ketubat benin dichrin also applies to movable property, it would have automatically become accepted by all Jews, but he held that he had no right to do so) (R' Yitzchak).

Part B: The Custom to Write a Condition in the Ketubah and the Power of the Enactment of the Geonim

1. The Rambam's Words

It is already customary in all the places that we know and whose reputation we have heard that they write in the ketubah "whether from land or from movables," and this is a great improvement, and wise men instituted it, for this is a monetary condition and the widow is found to collect from movable property with this condition, not with the enactment of the later authorities. If he did not write thus in the ketubah document but married without specification, if he knew of this enactment of the Geonim, she collects. And if he did not know, or we are in doubt whether he knew or did not know, we deliberate much on this matter, for the enactment of the Geonim does not have the power to rule with it even though it was not specified, like the conditions of the ketubah which are an enactment of the Great Sanhedrin, to the point that we would take money from the heirs with it.

2. The Plain Meaning of the Rambam

It is already customary in all known places to write in the ketubah "whether from land or from movables." This is a great improvement that wise men ("wise men") instituted, because thereby it becomes a "monetary condition," and the widow collects from movable property by virtue of this condition and not by virtue of an enactment of the later authorities (the Geonim).

If someone did not write this language in the ketubah but married without specification: if he knew of the enactment of the Geonim, she collects. If he did not know, or we are in doubt whether he knew, one must deliberate much in such a case (perhaps make a compromise), because an enactment of the Geonim does not have the same power as the regular conditions of the ketubah (which are an enactment of the "Great Sanhedrin" and can take money even

when it is not written in the ketubah) to take money from the heirs with it.

3. Insights and Explanations

* **Precision in the Rambam's language ("that we know and whose reputation we have heard"):** One can see in this language that the Rambam personally inquired of Jews who came from other countries what the custom is with them (R' Yoel Asher), or more simply: "that we know" means the places where he lived, and "we have heard" means what he saw in halakhic books from other places (R' Yitzchak).

* **The power of "monetary condition":** Although on things like conjugal rights or inheritance one cannot make conditions against the Sages, the collection of the ketubah is a pure "monetary matter," and with money the principle is that "his condition stands" (R' Yoel Asher and R' Yitzchak).

* **The Rambam's position on "enact

ment of later authorities" and the title "Great Sanhedrin":** The Rambam uses a sharp language – "with this condition, not with the enactment of later authorities." He gives here a "jab" and shows that he really did not like the idea that "later authorities" (the Geonim, who are later relative to the Amoraim of the Gemara) should make an enactment against the law of the Gemara and thereby take money unjustly when there is only movable property. Although the Rambam does not protest in practice because the custom has spread, he is very pleased with the advice of the "wise men" to write a condition, because then one collects according to the law of the Talmud (R' Yoel Asher). Additionally, it is noteworthy that this is the only place in the entire Mishneh Torah (except in the introduction) where the Rambam calls the Sages of the Gemara by the title "Great Sanhedrin," which gives them the power of hefker beit din hefker to take money (R' Yoel Asher and R' Yitzchak).

* **The true foundation of the enactment of the Geonim according to the Rambam ("married without specification" and "we deliberate"):** From the fact that the Rambam rules regarding "married without specification" that she collects only "if he knew of this enactment of the Geonim," lies a tremendous innovation: in practical halakhah, the Rambam holds that the enactment of the Geonim itself has no essential power of a court to obligate a person against the Gemara; the only reason it works is because if the husband knows of the enactment, he takes upon himself this encumbrance "on this understanding" – it comes back to an agreement and implicit condition on the part of the husband! (R' Yitzchak and R' Yoel Asher).

On this one asks: if the Geonim have no power to take money without knowledge, what does it mean to say "we deliberate much on this matter"? One simply cannot take! The answer is that the Rambam is not opposed to the enactment itself, but rather it depends on whether the husband married on this understanding. "We deliberate" means that the court must investigate thoroughly and consider how much the person truly knew. But if it is clear that he did not know, one indeed cannot take (R' Yitzchak).

* **Indirect knowledge and "speaking innocently":** To know whether he married on this understanding, one cannot ask him directly, because if he sees a possibility to be exempt from paying, he will say he did not know. One must extract it through "speaking innocently." Also, even if the husband does not know the halakhic details (what is stated in the Gemara and what is an enactment of the Geonim), it may be that the very fact that all his friends conduct themselves this way is enough to say that he married on this understanding. **[Digression: Claims in modern times]:** Many of the laws of claims and counterclaims only work when people are natural; in modern times when everyone is "sophisticated" and knows all the laws of "migo," it is very difficult to arrive at the truth through speaking innocently (R' Yoel Asher).

Halakhah 8: Lien of All the Husband's Properties for the Ketubah

1. The Rambam's Words

Furthermore, the Sages enacted that all the husband's properties should be responsible and guarantors for her ketubah, even if her ketubah is one hundred and he has land worth thousands of gold coins, everything is under the lien of the ketubah. And all that he sells from his properties after the marriage, even though his sale is valid and he has the right to sell all his properties if he wishes, she may seize them with her ketubah when he divorces her or when he dies, if she does not find free properties. And when she seizes, she only seizes with an oath while holding an object, like the law of all creditors. And this enactment is so that her ketubah should not be light upon him.

2. The Plain Meaning of the Rambam

Another enactment (a stringency for the ketubah) the Sages made: all the husband's properties are encumbered for the ketubah. Even if the ketubah is only one hundred zuz (a maneh) and he has fields worth thousands of gold coins, the lien lies on everything. The husband may initially sell all his properties after the wedding and the sale is valid, but if he divorces her or dies and there are no free properties, she can seize (take away) the sold fields from the purchasers for her ketubah. When she seizes from purchasers, she must swear a severe oath while holding an object, like every creditor. The reason for this enactment is so that the ketubah should not be light in his eyes.

3. Insights and Explanations

* **What is the innovation of "even if he has land worth thousands of gold coins"?** The innovation is not that she takes an expensive field (she only takes a maneh's worth from it anyway). The innovation is that normally a creditor can designate one specific field for the debt and free his other properties from the lien (and if that field is destroyed, the lender loses). With ketubah, the Sages enacted that the husband cannot designate one field, but rather all his properties in the world remain encumbered – even the cloak on his shoulders (R' Yitzchak).

* **The distinction in the oath when seizing from purchasers:** Although ketubah does not always have the same laws as a regular loan, when she goes to seize from purchasers she receives the law of a regular creditor. Therefore, even a divorcee (who normally does not need to swear when taking the ketubah, unlike a widow who swears a widow's oath), if she is seizing from purchasers, must swear an oath while holding an object that she has not yet received the money (R' Yoel Asher and R' Yitzchak).

* **The historical development of the enactment (Baraita in Ketubot 82b):** The reason "so that it should not be light upon him" is based on the Baraita in the Gemara, where there were several stages:

1. When they enacted a ketubah of two hundred zuz, people did not want to marry because it was too expensive.

2. So they enacted that the husband should set aside the sum separately (or an object like a golden ring) in his father-in-law's house for the ketubah. But this brought a new problem: since the money was already lying ready on the shelf and the husband had already mentally relinquished it, it was very easy for him during a quarrel to say "here is your ketubah, go!"

3. Therefore Shimon ben Shetach enacted that one may not designate any money, but rather "all his properties are responsible for her ketubah." When the ketubah lies on all his fields and businesses, he will think twice before divorcing her, because he does not want to have to go break up and sell his properties. The plain meaning of "light upon him" is not about the amount of money, but about the accessibility of paying the debt (R' Yitzchak). One sees here a constant "balance" in the enactments of the Sages, where they kept adjusting the halakhah according to the situation of the people (R' Yoel Asher).

Halakhot 9-11: The Widow's Oath Outside the Court, a Vow, and When

One is Exempt from an Oath

Part A: The Widow's Oath Outside the Court and the Advice of a Vow (Halakhah 9)

1. The Rambam's Words

When the court or the heirs administer an oath to the widow when she comes to collect her ketubah, they only administer it to her outside the court. For the courts refrained from administering it to her, because they are concerned for her lest she not be precise about herself in the oath. If the orphans wish to impose a vow on her, she vows to them whatever they wish, and they impose the vow on her in court, and afterward she takes her ketubah.

2. The Plain Meaning of the Rambam

When a widow comes to collect her ketubah from the heirs and must swear (at the demand of the heirs, or through the court for the benefit of minor orphans), they administer the oath to her only outside the court ("outside the court"). The reason is that the courts held back from administering it to her in court, due to the concern that she will not be sufficiently precise in the oath. If the orphans wish, they can have her make a vow instead of an oath (that if she takes money unjustly, a certain thing like grapes or apples should be forbidden to her), and this vow is made in court, and afterward she takes her ketubah.

3. Insights and Explanations

* **The psychology of "she will not be precise about herself":** The Sages were not suspicious that all women are wicked who swear falsely intentionally. The concern is that she permits herself. Since she lived with her husband and toiled for him, or if he once gave her a bit of money on account of the ketubah, she convinces herself that the money is due to her for her daily toil and it does not count as paid for the ketubah. Therefore she is not precise and swears that she received nothing (R' Yoel Asher and R' Yitzchak).

* **The difficulty with "outside the court":** What does it help that they administer the oath to her outside the court? It seems like a "cheap solution"! If the court is afraid that she will make a false oath due to her self-permission and they do not want to cause her to stumble (or they do not trust the oath), what is the difference if one goes outside the court? A false oath outside is exactly the same sin as in court! Additionally, even outside, the court is the one administering the oath to her in order to protect the heirs (and heirs – whether minors or adults – never know and must always administer an oath) (R' Yitzchak).

* *A reasoning about holding an object:* One can suggest that perhaps "outside the court" means that one makes a weaker type of oath without "holding an object" so as not to cause her to stumble with such a great prohibition (R' Yoel Asher). But in the Rambam it only states the words "outside the court" and nothing more (R' Yitzchak).

* *The matter of disgrace to the court (Maaseh Rokeach):* In the commentary **Maaseh Rokeach** it states that the reason is "to prevent greater disgrace if she lies" (R' Yoel Asher). R' Yitzchak wonders what "disgrace" comes from when the problem is a false oath, and if the court refrains from administering it to her, she would have to remain "stuck" without a ketubah! R' Yoel Asher explains that one cannot take away her ketubah entirely as long as the heirs have no proof that she is lying (but if they later find proof they can make a new court case). The problem is that widows are not precise, therefore the court does not want to do it at their place, and the heirs force it outside.

* **The distinction between an oath and a vow in court:** Why can a vow indeed be made in court? With an oath, if she swears falsely, she commits the sin right now in front of the judges, which is a disgrace and shame to the honor of the court that women permit themselves to swear falsely before their eyes. But with a vow (for example that she will not eat grapes if she takes unjustly), at the moment she makes the vow in court the vow is a good vow and there is no sin

whatsoever in court. If she later eats grapes at home, she commits the sin at home and that is already her own problem, not a disgrace to the court (R' Yoel Asher).

* **Why is she more afraid of a vow than of an oath, and the precision in "if the orphans wish":** If she is suspected regarding an oath, why is she not equally suspected regarding a vow? (R' Yitzchak). The answer is that she is not suspected of an oath wickedly (that she does not take oaths seriously), but rather the concern is "lest she not be precise" in the calculation of the ketubah (R' Yoel Asher). A **responsum of the Rambam** is also brought to explain the halakhah. Additionally, the fact that the Rambam writes "if the orphans wish" shows that since the enactment of the Sages was an oath, one can only change it to a vow if the orphans agree to it (R' Yitzchak).

Part B: A Widow Who Died or Married Before Swearing (Halakhah 10)

1. The Rambam's Words

If the widow died before she swore, her heirs do not inherit anything from her ketubah, for she has no ketubah until she swears. And if she married before she swore, she swears after the marriage and takes whenever she wishes, but she does not vow and take lest the husband nullify it.

2. The Plain Meaning of the Rambam

If the widow died before she managed to swear, her heirs inherit nothing from the ketubah, because she has no ketubah until she swears (and her heirs cannot swear about something they do not know whether the husband paid her). If she married a second husband before she swore, she can swear after the marriage and take her ketubah whenever she wishes. But she cannot then make a vow to take the ketubah, because we are concerned that her new husband will nullify the vow.

3. Insights and Explanations

* **The taking effect of the oath on the ketubah:** From the language "for she has no ketubah until she swears" emerges a foundation: the oath is not merely a side law of "clarification" to give more credibility to money she has already acquired. Rather, the oath itself creates the "taking effect" that the ketubah should become hers (or as R' Yitzchak formulates it: the enactment of the Sages was that the oath is a "condition" in receiving the ketubah). As long as she has not sworn, the ketubah is not hers at all, and therefore her heirs inherited nothing (R' Yoel Asher and R' Yitzchak).

* **Not being able to make a vow after marriage:** Even if she is ready to make a vow, she cannot use it as credibility after she has married, because the new husband has the power of nullification of vows ("lest the husband nullify"), therefore she has a way out of the vow and it ceases to be credibility (R' Yoel Asher).

Part C: If He Designated Land or Movables for Her Ketubah (Halakhah 11)

1. The Rambam's Words

If he designated land for her ketubah, whether he designated it with four boundaries or with one boundary, she collects her ketubah from it without an oath. Similarly, if he wrote movables for her in her ketubah and they themselves still exist, she takes them without an oath, and similarly if they were sold and other movables were purchased with them and it is known that these second ones are from the money of the first movables, she takes without an oath.

2. The Plain Meaning of the Rambam

If the husband designated a specific piece of land for her ketubah – whether he marked all four boundaries (four borders) or only one side (one border) – she collects the ketubah from it without an oath. Similarly, if he recorded for her specific movables (for example a flask of wine) and the movables still exist as they are, or even if the husband sold them and bought with them other movables (for example a menorah) and one

knows clearly the history that the second ones were purchased with the money from the first ones, she takes them for her ketubah without an oath.

3. Insights and Explanations

* **Why is no oath required when he designated land/movables?** Initially one might have wanted to say that the reason is because the husband made her lien stronger by making a specific security (R' Yoel Asher). But this does not help to answer the oath, because in any case there is a law of "all his properties are guarantors for her ketubah" (R' Yitzchak, who adds a reasoning that perhaps it means the husband relies more on her).

But the clear reasoning is thus: the entire concern with a widow is that perhaps the husband once gave her in the middle of life a sum of money ("bundles") and said that this should be for her ketubah. But when he specifically designated a certain piece of land or a certain object for the ketubah, we know for certain that he would never have given her something else for the ketubah. And since the land or the movables (or their exchange) still lie here before our eyes in the inheritance and are not with her, it is clear proof that he has not yet paid her the ketubah, and therefore no oath is required (R' Yoel Asher, and R' Yitzchak accepts it; R' Yitzchak also corrects a language in the middle, that she does not "inherit" the wine flask, but rather she takes it for her ketubah).

Halakhot 12-14: Cases Where a Wife Must Swear (Impairs, One Witness, Collected Not in His Presence) versus Reduces

Part A: One Who Impairs Her Ketubah and One Witness Testifies She Was Paid (Halakhah 12)

1. The Rambam's Words

One who impairs her ketubah does not collect except with an oath. How so? She produced a ketubah document with one thousand zuz in it, the husband says she received everything and she says I received only such and such, even if there are witnesses upon her regarding part that she took, even if she was precise in the calculation of what she took to half a half-perutah... The husband said she received everything and she says I received nothing, and one witness testifies upon her that she received everything... she does not collect all her ketubah except with an oath.

2. The Plain Meaning of the Rambam

A wife who "impairs" (makes a defect in) her ketubah – even a divorcee who collects from the husband himself – cannot collect except with an oath. How so? She brings out a ketubah of one thousand zuz, the husband claims she already received everything, and she says she only received a portion (for example five hundred). Even if there are witnesses about the portion she took, and even if she has a precise accounting down to half a perutah, she must swear.

Similarly, if the husband claims he already paid everything, and the wife denies everything and says she received nothing, but the husband brings one witness who testifies that she received everything (or a part), she cannot receive her entire ketubah unless she makes an oath.

3. Insights and Explanations

* **The definition of impairing her ketubah:** The plain meaning of "impairing her ketubah" is that through the fact that she is "admitting partially" (she admits that she already received part of the document), she herself weakened the strength and credibility of her ketubah document. Therefore, even if she can show that every time they settled accounts it was with witnesses, and she has a note that is precise down to the last penny ("to half a half-perutah") which seemingly shows she is telling the truth, nevertheless, since she is admitting partially on the document, her credibility is lacking and she must swear (R' Yoel Asher).

* **The power of one witness against an oath:** One witness does not have full credibility in monetary laws to take or withhold money

entirely, but he does have enough credibility to obligate an oath. Therefore, even if she denies everything, she must swear that she received nothing ("I received nothing"). After she swears, her oath is stronger than the one witness, and the husband must pay her the entire ketubah (R' Yoel Asher).

Part B: One Who Collects Not in His Presence (Halakhah 13)

1. The Rambam's Words

One who collects not in his presence does not collect except with an oath. How so? If he divorced his wife and went away, the court goes down to his properties after she swears and collects her ketubah. And this is when he is in a distant place where they have trouble informing him, but if the matter is close to inform him, they send to him and inform him, and if he does not come she swears and takes.

2. The Plain Meaning of the Rambam

A divorcee normally does not need to swear to receive her ketubah (if she is not impairing, etc.). But if the husband divorced her and went away, and she comes to collect the ketubah not in his presence ("not in his presence"), the court goes down to his properties to pay her, but only after she swears. This is only when the husband is in a distant place where it is a burden to inform him. If he is nearby, they send to tell him that if he does not come, she will swear and take.

3. Insights and Explanations

* **[Digression: The language "go down to his properties"]:** Why do Chazal use the language "go down" (descend) to the properties? Because a good settlement (like Tzfat) and the city gate where the court sat were up on the mountaintop, and the fields used to be down in the valley where much rainwater comes. Therefore the court literally "went down" from the mountain to the fields to take fruits for the ketubah (R' Yoel Asher).

* **The reason why she must swear not in his presence:** The distinction between in his presence and not in his presence is not due to brazenness (as R' Yoel Asher initially wanted to say), but rather because when the husband is not there, we are concerned that perhaps he would have claimed that he already paid her, and therefore the court makes the claim for him and obligates her to an oath. When the husband is there in his presence, she does not need to swear just like that, because if he paid he will himself bring a clear claim (R' Yoel Asher and R' Yitzchak).

* **Discussion of why one must inform the husband when he is nearby:**

* *The question:* What does it help that one informs him and he comes? The maximum that the husband can accomplish with his claim that he paid is only to obligate her to an oath, and the court makes the oath anyway even when he is not there! (Perhaps one thinks that in front of him she will be ashamed and admit?) (R' Yoel Asher).

* *Answer 1 – Concern for evidence:* We are concerned that the husband has proof or witnesses (for example his son-in-law or other people) who can testify that he already paid, and then she will not be able to take anything even with an oath (R' Yitzchak).

* *Answer 2 – Order of a court case and common sense:* It simply does not fit in a court case that one should take a person's money without giving him an opportunity to come, when he is located in the nearby city. Further, one sees from all these halakhot that it was a very normal thing that a wife already received part of her ketubah for various reasons; therefore the court must use common sense: if one can call him, one calls him to hear if there is some matter between them, and if he does not come, she takes with an oath (R' Yitzchak).

Part C: One Who Reduces Her Ketubah (Halakhah 14)

1. The Rambam's Words

One who reduces her ketubah collects without an oath. How so? She produced a ketubah document with one thousand zuz,

and he says she received everything, and she says I received nothing and I have only five hundred, and what he wrote to me as one thousand was a trust between me and him, she collects without an oath. But if she said there is in my ketubah document only five hundred, she does not collect anything with this document that has one thousand in it, for she has nullified it and it is as if she admitted it is false...

2. The Plain Meaning of the Rambam

A wife who makes smaller the amount of her ketubah ("reduces") receives payment without an oath. How so? She brings a ketubah of one thousand zuz, the husband says "I paid everything," and she says "I received nothing, but only 500 zuz is due to me, and what is written as one thousand was a 'trust' (trusted agreement) between us." In this case she receives the 500 without an oath. But if she says "in my ketubah document there is only 500 zuz," she cannot collect anything with the document of one thousand, because she herself nullified the document and it is as if she admitted the document is false.

3. Insights and Explanations

* **Meaning of "trust":** The husband wanted to sound like a big wealthy man to people so he wrote one thousand zuz, but between themselves they had an understanding and he trusted her ("trust") that she would be honest and only collect 500 (R' Yoel Asher).

* **Dispute in the reasoning why "reduces" does not need to swear:**

* *R' Yoel Asher's approach (migo / credibility):* Why does she not need to swear? Because she shows great honesty. She has the power of a "migo": if she wants to swindle, she could have said that she is owed the entire one thousand zuz (and the husband could only have demanded an oath). The fact that she herself goes down to 500 proves she is telling the truth.

* *R' Yitzchak's approach (valid document and denies everything):* One need not arrive at any "migo" at all! She has a valid ketubah document, and she is collecting in his presence. The husband's claim of "she received everything" can only obligate an oath if the wife is "admitting partially" (impairing) – that is, she admits that part of the obligation has already been paid. But here she is "denying everything" regarding his claim of payment; she says she received nothing, but rather she is fulfilling their agreement (the trust) to collect only 500. Since there is no admission whatsoever regarding payment, there is no reason to obligate her to an oath.

* **Discussion in the second case – "there is in my ketubah document only five hundred":**

* *The puzzlement:* Why does the Rambam say the document becomes nullified like a false document? The husband is not denying the document! The husband says "she received everything" – he admits that the document was written under the chuppah, he only claims he already paid! (R' Yoel Asher).

* *The explanation and precision in the Rambam:* When she says (without the explanation of trust) that in the document there is only 500, while it states there one thousand, she is essentially saying the document is false (R' Yitzchak). This lies precisely in the Rambam's language "**and it is as if** she admitted it is false": no one is truly saying the document is a lie (the husband admits it was signed), but halakhically, with the fact that she speaks directly against the document and says the document is only for 500, she herself nullified the power of the document (R' Yoel Asher).

* *What remains after the document is nullified?
* Since she threw away the document, she remains with a simple oral claim without a document. With a claim without a document, when the defendant (the husband) denies and says he owes nothing, she can only demand from him a **shevuat heset** that he owes her nothing, and he is exempt – just like with every regular oral loan (R' Yitzchak). Later the Rambam will qualify that in a place where one does not write a ketubah (but rather relies on the condition of the court), the law will indeed be different (R' Yoel Asher).

Halakhot 15-16 (18-19): The Meaning of "Does Not Collect Except with an Oath" and a Condition from the Husband on Credibility

Part A: The Principle of "Does Not Collect Except with an Oath" versus "Collects Without an Oath"

1. The Rambam's Words

Every place where we said she does not collect except with an oath, we say to her... And where it is said she collects without an oath, we say to the husband: Stand and give to her, and you are not believed in this claim unless you bring proof of your words. If the husband said on his own: Swear to me on my claim... we say to her: Swear and take, and she swears while holding an object.

2. The Plain Meaning of the Rambam

Everywhere we said that a wife receives only with an oath, she must swear before taking. And when it states that she receives her ketubah without an oath, we say to the husband that he must pay her and we do not believe him unless he brings proof. But if the husband demands on his own that she swear to him against his claim, she must swear (while holding an object) and only then take the ketubah.

3. Insights and Explanations

* **The question on the Rambam's order and the answer:** Why does the Rambam suddenly need to explain here the simple principles of what it means "does not collect except with an oath" and "collects without an oath"? Seemingly this should have stood as an introduction before all the previous halakhot! The answer is that the Rambam is not saying here any new innovations, but rather he lays down the principle as an introduction to the coming halakhah – in order to bring out what happens when there is an "exception to the rule," namely when the husband makes a condition to believe her without an oath (R' Yoel Asher and R' Yitzchak).

Part B: When the Husband Makes a Condition of Credibility

1. The Rambam's Words

If he made a condition with her that she should collect her ketubah without an oath, or that she is believed in all that she claims, she collects from him without any oath. But if she came to collect from his heirs, she swears and then takes. If he made a condition with her that she should take from his heirs without an oath, or that she should be believed regarding his heirs, she takes from them without an oath. But if she came to seize from encumbered properties, she does not seize except with an oath, even though the husband believed her, for the husband's condition only helps regarding himself and his heirs, but to cause loss to others' money it does not help.

2. The Plain Meaning of the Rambam

If the husband made a condition (with two witnesses or written in the ketubah – R' Yoel Asher and R' Yitzchak) that she can collect without an oath, it only helps against him, but not against the heirs (and she must swear to them). If he explicitly made the condition also regarding the heirs, she takes from the heirs without an oath. But if she comes to seize from purchasers (encumbered properties), she must always swear, even if the husband believed her also against purchasers. The principle is that the husband's condition only helps regarding himself and his heirs, but not to cause loss to someone else's money (the purchasers).

3. Insights and Explanations

* **Question on the power of the condition regarding heirs:** We understand why the husband cannot make any condition on the purchasers ("you cannot make a condition on someone else"). But why can he indeed make a condition on his heirs? The heirs are also other people and not him! This question remains requiring investigation (R' Yitzchak).

Halakhot 17-18 (20-21): Collecting Ketubah with a Document and Without a Document, the Time of 25 Years, and the Claim "I Married as a Virgin"

Part A: Collection with a Document and Without a Document, and the Time of 25 Years

1. The Rambam's Words

**A widow who has a ketubah document coming out from under her hand swears and collects her ketubah forever, even after one hundred years, whether she was in her husband's house or in her father's house. And if she does not have a ketubah document coming out from under her hand, she has nothing, not even the principal ketubah, even if she claimed on the day of her husband's death. And similarly a divorcee – even the principal she does not have until she produces a ketubah document. When does this apply? In a place where their custom is to write a ketubah, but in a place where their custom is not to write a ketubah but rather they rely on the condition of the court, she collects the principal ketubah even though she does not have a ketubah document in her hand, whether she was divorced or widowed, whether she was in her husband's house or in her father's house. But additional amount she does not have in any place except with clear proof. And until when does the widow collect the principal in a place where they do not write a ketubah? If she was in her husband's house – forever, and if she was in her father's house – until twenty-five years. And if she came to claim after twenty-five years, she has nothing, for if she had not forgiven

she would not have been silent all this time, for she is not with the heirs so that she could say I was ashamed to claim and they are with me in the house. Therefore, if the heir himself was bringing her sustenance to her father's house and taking care of her, she may claim her ketubah even after twenty-five years, because the reason she was silent and did not claim is because she is ashamed of the heir.**

2. The Plain Meaning of the Rambam

If a widow has a ketubah document in her hand, she can swear and collect forever, even after one hundred years, whether she lives in her husband's house or in her father's house. If she does not have a document, she receives nothing (not even the principal ketubah of one hundred or two hundred), even if she claims it on the same day the husband died (and the same with a divorcee).

This is only in a place where one writes a ketubah. But in a place where one does not write a ketubah but rather relies on the condition of the court, she collects the principal ketubah without a document. But "additional ketubah" (what the husband adds from his own will) she does not receive in any place without clear proof.

Until when can a widow claim the principal ketubah in a place where one does not write a ketubah? If she lives in her husband's house – forever. If she is in her father's house – only until 25 years. After 25 years she loses it, because her silence proves she forgave it. When she lives in her husband's house she can say she was ashamed to claim from the heirs when she lives with them, but in her father's house this claim does not apply. Therefore, if the heir brings her sustenance to her father's house and takes care of her, she can indeed claim even after 25 years, because here there is still the reason of shame.

3. Insights and Explanations

* **The reasoning in "on the day of her husband's death":** Why does the Rambam need to emphasize "even if she claimed on the day of her husband's death"? One might have said a reasoning: When did he pay her the ketubah? He lived until now (and ketubah is only paid to a widow or divorcee)! Therefore the Rambam says she receives nothing without a document, because we say perhaps he already paid her earlier (R' Yoel Asher).

* **The widow's cleverness ("plays victim"):** In the law of a widow who lives in her husband's house for 25 years lies a psychological point: she claims before the court "I was ashamed" – I was ashamed of the heirs because they are so good to

me and support me (according to the ketubah condition of "you shall sit in my house and be sustained from my properties"). She plays as if she is a "victim" who is ashamed. But in truth we know very well why she waited: she is clever! As long as she does not claim the ketubah, the heirs must give her sustenance and support her on their budget; once they pay out the ketubah, they become exempt from sustenance. Therefore she waited 25 years. Therefore her claim of "shame" is a good claim according to halakhah (R' Yoel Asher).

* **The definition of "in her father's house" and the Rambam's order:** According to the end of the halakhah ("Therefore if the heir himself was bringing her sustenance...") it emerges that the distinction between "her husband's house" and "her father's house" is not dependent on the place where she lives, but rather whether she is being supported (sustained) and receives benefits from the heirs (which creates shame). Why does the Rambam write it in a backwards way – first making it dependent on "her father's house" and then explaining that it depends on shame? The answer is that the Rambam simply follows the order of how the sugya is presented in the Gemara (R' Yitzchak and R' Yoel Asher).

Part B: The Claim "I Married as a Virgin" versus "I Married as a Non-Virgin"

1. The Rambam's Words

She says I married as a virgin and my principal ketubah is two hundred, and the husband or the heirs say she married as a non-virgin and she has only one hundred: if there are witnesses that they conducted themselves in that city to make for a virgin such as types of celebration or known clothing or crowns or other things that they only do for a virgin, she takes two hundred. And if she has no witnesses in this, she takes one hundred. And if the husband was alive, he administers to her a Torah oath, for he admitted part of the claim... And a minor is believed to testify when he becomes an adult... And all these matters are in a place where they do not write a ketubah.

2. The Plain Meaning of the Rambam

If there is a dispute about how much the ketubah was initially – she claims she married as a virgin and is owed two hundred (200), and the husband or the heirs claim she was a non-virgin and is only owed one hundred (100):

If there are witnesses who say that at her wedding they made the customs that are made in that city only for a virgin (like a certain celebration, a known garment, or crowns), she takes two hundred. If she has no witnesses, she takes only one hundred (because the burden of proof is on the claimant). But if the husband himself is alive and he is the one denying, she can administer to him a Torah oath, because he is "admitting partially" (he admits to one hundred and denies the second hundred).

For the testimony about the customs of the wedding, a minor is believed to testify when he becomes an adult about what he saw as a child. All these halakhot are only in a place where one does not write a ketubah, because if one does write a ketubah, it is clearly stated in the ketubah document.

3. Insights and Explanations

* **The custom of the hinuma:** The Rambam's words "known clothing" mean a certain garment like a "hinuma," and the custom is indeed that at a second marriage one does not cover the bride with a hinuma (R' Yoel Asher).

* **The definition of testimony on signs of virginity:** Why is a "minor who testifies when he becomes an adult" believed here? Because although the signs of the wedding are not one hundred percent proof (because who says, perhaps specifically with her they put on such a garment even though she was not a virgin?), it is nevertheless enough for the court. And since one does not need full testimony here, the Sages were satisfied with weaker testimony from one who was a minor at the time of the wedding (R' Yoel Asher).

Halakhot 19-22 (22-25): Claims About Divorce, Multiple Divorces and Ketubot, and "My Husband Died"

Part A: A Woman Who Said to Her Husband "You Divorced Me"

1. The Rambam's Words

A woman who said to her husband "you divorced me" is believed, for there is a presumption that a woman does not act brazenly before her husband. Therefore, a woman who produced a ketubah document and there is no divorce document with her, and she said to her husband "you divorced me and my divorce document was lost, give me my ketubah," and he says "I did not divorce you" – he is obligated to give her the principal ketubah, but he does not give the additional amount until she brings proof or produces a divorce document. If the husband said to her "yes, I divorced you and gave you all your ketubah, principal and additional amount, and you wrote me a receipt and my receipt was lost" – since he could have said "I did not divorce you," he is believed, and he administers to her an oath while holding an object and gives her the principal, and he swears a heset oath on the additional amount.

2. The Plain Meaning of the Rambam

A wife who says to her husband "you divorced me" is believed, because there is a presumption that a wife does not have the brazenness to say such a lie to her husband face to face. Therefore, if she brings a ketubah document without a divorce document and claims the divorce document was lost, and he denies that he divorced her, he must pay the principal ketubah (due to her credibility), but not the additional ketubah until she brings a divorce document or proof.

If the husband admits he divorced her, but claims he already paid the entire ketubah (principal and additional amount) and the receipt was lost – he has a "migo" (he could have said "I did not divorce you" and been exempt at least from the additional amount). Therefore he is believed regarding the additional amount with a shevuat heset, and regarding the principal ketubah he must pay after he administers to her an oath while holding an object that she has not yet received it.

3. Insights and Explanations

* **Question on the distinction between principal and additional amount, and the objection of the Raavad:** Why does the presumption of "she does not act brazenly" only work on the principal ketubah and not on the additional amount? Can one make such a "splitting of the statement" in credibility? (R' Yitzchak and R' Yoel Asher).

The **Raavad** indeed writes on the Rambam: "These words are hanging on nothing and have no reason," and asks what is the distinction between principal and additional amount (and in the Mishnah there is no such distinction). The Raavad relates that he already wrote about this to one of the colleagues and showed that the Rambam is not correct. According to the Raavad, the Mishnah's meaning of "she is believed" does not at all mean that she is believed regarding ketubah or to marry initially, but only for stringency ("they hold her to the marriage" if a second man betroths her, or "if she married she does not leave"). Because if one were to say she may marry initially (or take ketubah), "you would not leave a daughter of Abraham our father sitting under her husband" – every wife will say she is divorced! This is a dispute among Rishonim in the plain meaning of "she is believed" in the Gemara, and the Rambam (who holds she is believed completely on the principal ketubah) is not discussing here at all whether she may marry or not (R' Yitzchak).

* **The words of the Maggid Mishneh and the meaning of "hanging on nothing":** The **Maggid Mishneh** writes a beautiful language about what the Raavad calls the Rambam's words "hanging on nothing": "Many commentators have already brought sacrifices upon them" –

many commentators have brought proofs that the Rambam is correct and have reconciled the Rambam and appeased the Raavad (and humorously: they are good altars where one can sacrifice – R' Yitzchak and R' Yoel Asher).

[Digression: The source of "hanging on nothing" and "my receipt was lost"]: The source of the expression "hanging on nothing" is a verse in Ezekiel ("and you made for yourself hanging altars and fornicated upon them"). According to Rashi, "hanging" means covered with many patches (a type of curtain on the altar). The Raavad uses it as a metaphor for built-up, holey reasonings (R' Yitzchak). Also incidentally, "and my receipt was lost" sounds like the verse in Lamentations "my hope and expectation are lost" (R' Yoel Asher).

* **Explanation of the husband's migo:** In the second case (when the husband says "I divorced you and gave you everything and my receipt was lost"), how does the migo work? This is connected to the first law: if he had said "I did not divorce you" he would have been exempt only from the additional amount (and obligated for the principal). Therefore he has a migo only on the additional amount! Therefore the law is that the principal ketubah he must indeed pay (but he can administer to her an oath while holding an object that she has not yet received it), and on the additional amount he is believed with the migo and swears a shevuat heset (R' Yoel Asher).

Part B: She Produced a Divorce Document and Does Not Have a Ketubah Document

1. The Rambam's Words

If she produced a divorce document and does not have a ketubah document in her hand, if the custom of that place is not to write a ketubah – she collects the principal ketubah with the divorce document in her hand. And if their custom is to write a ketubah – even the principal she does not have until she produces a ketubah document as we explained, and the husband swears a heset oath on her claim and is exempt.

2. The Plain Meaning of the Rambam

If a wife brings a divorce document without a ketubah document: in a place where one does not write a ketubah (but rather relies on the condition of the court), the divorce document alone is enough to claim the principal ketubah. But in a place where one does write a ketubah, she does not receive even the principal ketubah until she brings the ketubah document. The husband swears a shevuat heset on her claim and is exempt.

3. Insights and Explanations

* **Principles of oaths:** Why does the husband swear a shevuat heset here? According to the fundamental principles of oaths, a Torah oath is only here with "admitting partially" or when there is "one witness." But when someone is "denying everything" (as here, where the husband denies entirely that he still owes her), the Sages enacted a shevuat heset from rabbinic law (R' Yitzchak).

Part C: She Produced Two Divorce Documents and Two Ketubot (and Other Variations)

1. The Rambam's Words

If she produced two divorce documents and two ketubot – she collects two ketubot. If she produced two ketubot and one divorce document – she only collects one ketubah. If both are equal – she only seizes from the time of the later one. And if one of them had an additional amount over the other – she collects with whichever she wishes and nullifies the second. If she produced two divorce documents and one ketubah – she has only one ketubah, for one who divorces his wife and takes her back without specification takes her back on her first ketubah. If she produced a divorce document and a ketubah after her husband's death: if the divorce document preceded the ketubah – she collects with this divorce document the principal ketubah if their custom is not to write a

ketubah, and she collects all that is in the ketubah for she acquired it at his death. And if the ketubah preceded the divorce document – she has only one ketubah, for one who divorces his wife and takes her back on the first ketubah takes her back.

2. The Plain Meaning of the Rambam

1. **Two divorce documents and two ketubot:** She claims both ketubot (he divorced her and became obligated for the first ketubah, then married again with a new ketubah and divorced again).

2. **Two ketubot and one divorce document:** She receives only one ketubah. If both ketubot are for the same amount, she can only seize from purchasers from the date of the second ketubah (because with the second he nullified the first). If one is larger than the other, she can choose which one she wants and the other becomes nullified.

3. **Two divorce documents and one ketubah:** She receives only one ketubah, because when a person divorces his wife and takes her back without specification (without writing a new ketubah), he takes her back based on the first ketubah.

4. **A divorce document and a ketubah after the husband's death:** If the date of the divorce document is earlier than the ketubah (he divorced her, then married again and wrote a ketubah, and then he died), she receives two ketubot: for the divorce document she receives the principal ketubah (if it is a place where one does not write a ketubah), and for his death she receives the entire second ketubah. But if the ketubah was written before the divorce document, she receives only one ketubah, because when he took her back after the divorce document he did so based on the first ketubah.

3. Insights and Explanations

* **Explanation of "two ketubot and one divorce document" when one is larger:** When both ketubot are equal, we understand that the husband wrote the second ketubah in order to protect the purchasers who bought fields between the first and second ketubah (he nullified the first lien). But when one has an additional amount over the other – presumably the second ketubah is the larger one (he wanted to add to her ketubah); if so, why would she want to choose the first, smaller ketubah? The answer is: because she wants to be able to seize the properties from the purchasers who bought after the first ketubah! We tell her: you have a choice – if you want the larger amount (from the second ketubah), you must waive the earlier lien time (because the first document becomes nullified); and if you want to seize from the first time, you can only take the smaller amount of the first ketubah (R' Yitzchak).

* **Why does she receive two ketubot when the divorce document preceded the ketubah:** Since it is a place where one does not write a ketubah, one is obligated for the principal ketubah with the very marriage (condition of the court). Therefore the divorce document proves the first marriage and divorce (and she takes the principal ketubah), and the ketubah document that was written later proves that he took her back and obligated himself for a new ketubah, in which she acquires through his death. But when the ketubah is before the divorce document, one cannot claim twice, because one can marry twice on the same ketubah ("on the first ketubah he took her back") (R' Yitzchak and R' Yoel Asher).

Part D: A Wife Who Says "My Husband Died" Regarding Ketubah (End of Chapter 16)

1. The Rambam's Words

And from the conditions of the ketubah is that if she marries another after his death, she takes all that he wrote for her in her ketubah. Therefore, if she came to court and said "my husband died, permit me to marry" and did not mention ketubah at all, they permit her to marry and administer an oath to her and give her her ketubah. If she came and said "my husband died, give me my ketubah," even to marry they do not permit her, for she came regarding ketubah matters, and he

is presumed not to have died, and her intention is not to marry but only to take ketubah during his lifetime. If she came and said "my husband died, permit me to marry and give me my ketubah," they permit her to marry and give her her ketubah, for the essence of her words is that she came regarding marriage matters. But if she said "give me my ketubah and permit me to marry," they permit her but do not give her her ketubah, and if she seized, they do not take it from her hand.

2. The Plain Meaning of the Rambam

It is a condition of the ketubah that once a wife becomes permitted to marry a second man after her husband dies, she automatically receives the right to her ketubah money. This divides into four cases, depending on how she presents her request in court:

* **First case:** She says "my husband died, permit me to marry" and does not mention ketubah at all. Then we believe her (due to the reasons in the Laws of Divorce why a wife does not lie about such a thing), we allow her to marry, and therefore she swears (like every widow who claims from heirs) and takes the ketubah.

* **Second case:** She says only "my husband died, give me my ketubah." Then we do not even allow her to marry, because we see she came only for money, and the husband has a presumption of life.

* **Third case:** She says both things, but she puts marriage first ("permit me to marry and give me my ketubah"). Then we believe her on both, because her main intention is on marriage.

* **Fourth case:** She says both things, but she puts the money first ("give me my ketubah and permit me to marry"). Then we allow her to marry, but she does not receive ketubah. But if she herself seized (took possession of) properties, we do not take it back from her.

3. Insights and Explanations

* **The source of the ketubah condition (Mishnah in Eduyot and Yevamot):** The background of this halakhah is a dispute between Beit Shammai and Beit Hillel in a Mishnah (in Eduyot and in Yevamot). Beit Hillel initially held that a wife who says "my husband died" is believed to marry, but not to take ketubah money, because with money one follows the principle of "the burden of proof is on the claimant," and the presumption that makes her believed regarding the prohibition of a married woman does not help to take money. Beit Shammai asked them a question (a kal vachomer): how can it be that regarding a married woman, which is severe, she is believed, and regarding money, which is lenient, she is not believed? Beit Hillel retracted to rule according to Beit Shammai, due to the teaching of "is not the amount of her ketubah learned" – there lies a condition in the ketubah that "if she may marry, she can take money." The foundation is thus: although fundamentally she would not have credibility on money, the condition of the ketubah is that if she is "widow enough" to be allowed to marry, she is automatically "widow enough" to take the ketubah (R' Yitzchak and R' Yoel Asher).

* **Why the second case does not disturb her presumption of propriety:** In the second case (when she asks only for money and we do not permit her to marry), one asks: seemingly every wife has a presumption of propriety that she will not go sin and be a married woman with a second husband, so why don't we believe her? The answer is that the Rambam says "and her intention is not to marry but only to take ketubah during his lifetime" – we hold that she is a money-greedy wife who has no intention at all of marrying. She actually plans to remain sitting alone (therefore she will not transgress any prohibition of a married woman), and she says "my husband died" only to extract the money while the husband is still alive, and he has a presumption of life (R' Yoel Asher).

* **The reason why seizure helps in the fourth case:** Regarding the fourth case, where she says "give me my ketubah and permit me to marry": since she did say the words "permit me to marry," we permit her to marry, but since she

began with the money, we do not give her the ketubah. But here comes in a fundamental distinction: that she is not believed regarding the ketubah in this case is not because there is a deeper deficiency in her credibility, but simply because regarding money there is a doubt ("who says?"), and she is a "claimant from another." Therefore, if she already seized properties ("seized"), it turns around and the heirs become the "claimant from another." Since we do believe her regarding being allowed to marry that perhaps the husband indeed died, we cannot take the properties from her hand ("they do not take from her hand") – and this fits with the principles of the Laws of Collecting Ketubah that were learned earlier in Chapter 10 (R' Yoel Asher and R' Yitzchak).

Full Transcript

Rambam Laws of Marriage – Chapter 16: Laws of Collecting the Ketubah and Dowry

Introduction to Chapter 16: Overview of the Chapter

〚#1〛 **R' Yitzchak:** One, two, three. Good. Today we're learning Chapter 16.

R' Yoel Asher: Laws of Marriage, in the Book of Women, Laws of Marriage Chapter 16. The chapter begins with the word "hanechasim" (the properties). Everything begins with nechasim (properties). We want to thank the baal hanechasim (master of properties), the baal hameah shehu baal hadeah (the one with the hundred who is the one with knowledge), who sponsors our shiur, Rabbi Yoel Wertzberger, yasher koach for being the donor of our shiur.

So, we have already learned various laws regarding the ketubah, the obligation of ketubah, the parts of the ketubah which is – meaning first the obligations of the husband to his wife which are all under the category of ketubah, not necessarily the document that one signs. After that there is what is called the ikar ketubah (principal ketubah) which is written in the document, one hundred and two hundred, and after that there is tosefet ketubah (additional ketubah), there are conditions of ketubah. This is all the lechatchilah (initial situation) when one has a wedding.

Here, baruch Hashem, one has already had a wedding, one is already living well, one already loves his wife as himself, and now comes a time when one must collect the ketubah. Here we will learn everything about how the ketubah works, but mainly how one collects the ketubah. That means when the husband dies, or when the husband divorces her, she can collect her ketubah, and from where one collects, and what happens when there are disputes whether she has already received the ketubah or not, and so on – everything, all these things will be in our chapter.

R' Yitzchak: Okay, very good. Does the Rambam make an introduction, yes?

Laws 1-2: Defining the Terms – Nedunya, Nichsei Tzon Barzel, Nichsei Melog and Ketubah

The Reason for the Introduction and the Definition of "Nedunya"

〚#2〛 **R' Yoel Asher:** Yes, so the Rambam begins with an introduction, and he says that there are two basic categories of properties that the wife brings in.

R' Yitzchak: That means, the introduction works like in all introductions in Laws of Marriage: first one does the terms, he explains what the words mean that he's going to use, then one goes and uses the words.

R' Yoel Asher: Yes? Yes. Once the words are made clear, I can continue quickly and say the word "ketubah," and one collects such and such without explaining again. Very good.

The Rambam says: **"The properties that the woman brings to her husband,"** when the

wife has a wedding, she brings in properties. Interesting, the language "to her husband," she brings it to the husband. But simply speaking, she brings it into the marriage, she brings it into the new space. It doesn't remain in the father's house, it's joint now. Yes. They're now going to live together, she brings in properties. No difference what the properties are: **"whether land or slaves or movable property."**

R' Yitzchak: Aha.

R' Yoel Asher: "Even though they are written in the ketubah document," even if – many times there is that this is written into the ketubah, that such and such she brings into the household – so even if it's in the ketubah, it's not called ketubah. When we will speak about the properties, it will be called **"nedunya,"** the language of the Sages "nedunya."

So now he wants us to know that when one speaks about ketubah, one speaks about what we already know from before that ketubah is that a husband gives one hundred or two hundred, or he can add, but what the husband gives for the wife. What the wife brings in as properties, and whatever happens regarding the properties, will be called "nedunya."

Two Categories in Nedunya: Nichsei Tzon Barzel and Nichsei Melog

⟦#3⟧ Now the Rambam says: in the nedunya there are two categories, there is this: there is that the wife brings in her properties, and the husband accepts responsibility, he says: very good, now it becomes ours, and I take responsibility for it. What? **"If the husband accepted responsibility for the nedunya upon himself,"** he accepted the responsibility for the nedunya, **"and it became in his possession,"** so what was his condition? What did he stipulate? That **"if it decreased, it decreased for him,"** that if the value of the properties falls, it falls on him, but when he will for example – if he will give her a get, he will return to her the entire properties without the loss that was damaged. **"And if it increased, it increased for him,"** if he profited, then it remains his, that's the deal. **"This is called nichsei tzon barzel,"** when one makes it in such a manner, when one stipulates in this manner, it's called "nichsei tzon barzel."

"Nichsei tzon barzel" means, properties that she is insured with, that at least the principal that she brought in remains forever hers. "Barzel" is a strong metal, a strong thing, so this is nichsei tzon that is very strong, that she knows she can rely on it.

I just now found that there is a law of when a shepherd and a property owner make a deal about their sheep, about their tzon, there is a way that the shepherd – as we've seen there is a Tosefta – that the shepherd takes on responsibility, that the shepherd will have the wool, the shearing and milk, whatever profits from the sheep, but if it dies under his responsibility he will have to pay the property owner, this is called "tzon barzel." It could be that from here began the expression "tzon barzel," so it means properties that the wife is insured with. This is one type of properties.

"And if he did not accept responsibility for the nedunya upon himself," if the husband did not accept the responsibility, **"but it remains in the wife's possession,"** the properties are still called in the wife's possession, they are actually in both their possession,

R' Yitzchak: But they are still in the wife's possession.

R' Yoel Asher: What does this mean that... it says earlier "brings to her husband," she brought to her husband, but it's still in the wife's possession, we'll see. Such a type of properties there is no responsibility, **"if it decreased, it decreased for her,"** if the husband dies she takes the field as it is, even if it became less valuable, but on the other hand **"and if it increased, it increased for her,"** if there are indeed profits it's hers.

R' Yitzchak: It's for her. So that means it's in her possession, she receives both the loss and the profit. By nichsei tzon barzel it's in his possession, he receives the profit and also the loss, because it's as if like a loan by him as if, he

owes her back the entire money, that's the difference.

R' Yoel Asher: And this is called **"nichsei melog"**. This type of manner is called nichsei melog.

R' Yitzchak: It's still yes her properties, regarding this. So the meaning, it was said, just last time when we learned we learned it at length why it's called nichsei melog. He doesn't even bring. Ah, I remember that the Rishonim say that melog is a language of cutting off, meliga, that meliga means shearing, as if the same thing, he shears off... I don't know, melikah? Meliga? I don't know. So he says. The husband only eats the fruits but the principal remains hers, so it's a meliga.

R' Yoel Asher: He can eat the top of it.

R' Yitzchak: He can eat the hair as if, ah the top.

R' Yoel Asher: I don't know. So what does it mean yes that it's in the husband's possession? That the husband can eat the fruits from it, the profits that it brings in because they are together is the husband's.

R' Yitzchak: Yes, that's the law of nichsei melog. But nichsei melog – in other words, nichsei tzon barzel is his, and indeed regarding this he owes more for her when she goes back; nichsei melog remains hers, that's the basic approach of this.

The entire law apparently that the Rambam needs to say here is as if because the reality is, when a person dies or he divorces, the wife receives all three things. That means she comes, she takes ketubah, nedunya, all – all these things that belong to her within the marriage. When the marriage breaks up, it ends, she receives all these things. The Rambam needs to explain that what we're going to speak about is different the law of ketubah from nedunya, even though one does write it into the ketubah sometimes, because it's part of the deal. One writes in the ketubah "and the law of nedunya that she brought to him," one writes in that she brought in, so one should know how much she brought in, how much he has responsibility, but it's not to do with this, that it's not the same law. Right. Yes? Right.

Digression: What is the Enactment of the Sages Against Eating Fruits?

R' Yoel Asher: Interesting, on the nichsei melog there is no reciprocal as if.

R' Yitzchak: We learned that in exchange for the husband supporting her,

R' Yoel Asher: He receives her handiwork. What is there? What is there? Handiwork. What is there in exchange for nichsei melog?

R' Yitzchak: It means that he receives her redemption in exchange for eating fruits etc., so it says I think. Eating fruits during her life, ah, redemption, yes?

R' Yoel Asher: No, redemption was,

R' Yitzchak: Something he receives for this.

R' Yoel Asher: Something, it means, something, well, behold, it says yes. Let's look. What to look? In which society, no, in which chapter? Let's see how it was that the Sages

R' Yitzchak: Made this in exchange for that. What? 12? But we're not learning now about eating fruits. Okay. We're learning now about redemption, as I said, redemption in exchange for eating fruits of her properties. Ah yes, in nichsei melog. So it says in Chapter 12. Ah. So we're not learning now about this. Now we're learning about what belongs yes to her, not what he receives from it. Right. Right.

The "Default" is Nichsei Melog (and the Dispute of the Rishonim)

⟦#4⟧ **R' Yitzchak:** Okay, now the Rambam says further, that not only what she brings in at the time of the wedding is called nichsei melog, but simply so, or what one writes in the ketubah,

R' Yoel Asher: Ah, not only what she brings in intentionally that she wants to bring for the husband, but the Rambam says here that it's his right,

R' Yitzchak: That he automatically acquires everything she has.

R' Yoel Asher: The default is nichsei melog,

R' Yitzchak: It's hers. Let's understand the opposite, right? Nichsei melog is a thing that remains hers. He has a right to fruits, but nichsei melog is a thing that remains hers.

R' Yoel Asher: It's the default. But all properties become one of the two categories,

R' Yitzchak: There isn't something another way.

R' Yoel Asher: No, but look what he says. The Rambam says: **"And so all properties that the wife has that she did not bring to her husband and did not write them in the ketubah,"** she didn't mention it in the ketubah, **"but they remained for herself,"** they remained hers, **"or fell to her in inheritance after she became betrothed,"** or she inherited it after she became betrothed, **"or were given to her as a gift,"** or a gift was given after she became betrothed, **"all are called nichsei melog, for they are all in her possession,"** all these are called nichsei melog, it means that it's in her possession. In all these things the husband has the same rights that he has in nichsei melog. But now we're not actually speaking about him, now we're speaking about that "all are in her possession."

R' Yitzchak: No, the main point is now that it's the opposite that it's hers, nichsei melog is hers. Default is that it's hers; if she wants it to be his one needs to make a direct condition that it's nichsei tzon barzel. So says the Rambam, right? Right. Okay.

〚#5〛 **R' Yoel Asher:** The Rambam says... and again the Rambam finishes, because the chapter...

R' Yitzchak: There was a difference on this, I wrote a note, because the Maggid Mishneh brings that there were others who argue on this.

R' Yoel Asher: There are those who say that it's not... the Rambam holds that default everything is nichsei melog, he needs to explicitly accept responsibility in order for it to be called nichsei tzon barzel. There are those who disagree on this, who hold that there are other ways how things should be his responsibility in other ways.

So... what does this mean? "All that a wife acquires her husband acquires," on this there is a dispute? Or not in this? What does this mean "her husband acquires"? Ah, that is after she acquires after her wedding. As if, but here... what does this mean? That she is entitled to something,

R' Yitzchak: She found say a...

R' Yoel Asher: What does he receive from it?

R' Yitzchak: He can eat the fruits. No. Her findings? Her findings are entirely his. No, now we're speaking about things she owns. How does she receive things? If someone gives her gifts and he means to give for the groom, for the husband. This is all details, for other details. But the Rambam says that normally it's nichsei melog. There are those who say that usually when one writes it into the ketubah it becomes yes nichsei tzon barzel and other types of things. In any case, this is the Rambam's position.

Definition of "Ketubah"

〚#6〛 **R' Yoel Asher: "And nothing is called ketubah except the principal ketubah."** In this chapter when I'm going to speak about ketubah I'm going to speak about ketubah, it's not nedunya. And something else about ketubah, but not tosefet ketubah, but the **"principal ketubah which is one hundred or two hundred."** Excuse me. Ketubah, when one speaks of ketubah means principal ketubah, **"which is one hundred or two hundred with the addition only."** Also the... if the husband adds more money than one hundred or two hundred it's also called within ketubah.

R' Yitzchak: Right. It means regarding... regarding certain laws that he's now going to say. Like we're now going to learn from where one collects the ketubah, from what and the like. Continue.

R' Yoel Asher: The Rambam says: **"We have already informed,"** yud zayin mem.

R' Yitzchak: Are we going to learn this now?

R' Yoel Asher: Yes. We have already informed **"that the Sages enacted a ketubah for a**

wife," that the Sages...

R' Yitzchak: No. Her findings? Her findings are entirely his. Her findings, now we're speaking about things she receives. How does she receive things? If someone gives her a gift, whether he means to give for the groom or husband, this is all details of other details. But the Rambam says that normally it's nichsei melog. There are those who say that usually when one writes it into the ketubah it becomes yes nichsei tzon barzel and other types of things. In any case, this is the Rambam's position.

R' Yoel Asher: "And nothing is called ketubah except the principal ketubah" – in this chapter when I'm going to speak about ketubah, I'm going to speak about ketubah, it's not nedunya, and something else about ketubah, but not tosefet ketubah, but the principal ketubah **"which is one hundred or two hundred"** – excuse me, ketubah when one speaks of ketubah means principal ketubah, **"which is one hundred or two hundred with the addition only."** Also the, if the husband adds more money than one hundred or two hundred,

R' Yitzchak: It's also called within ketubah. Right. That means regarding, yes, the laws that he's going to say we're going to learn from how one collects the ketubah,

R' Yoel Asher: From what, and the like. The Rambam says:

Law 3: The Time of Collecting the Ketubah – "A Debt That Has a Fixed Time"

R' Yitzchak: "We have already informed," are we going to learn this now?

R' Yoel Asher: Yes. We have already informed, **"that the Sages enacted a ketubah for a wife."** The Sages enacted a ketubah for a wife, as the Rambam said, it's not something that the obligation comes through the action, it's an obligation from the Sages. And **"the law of the addition is like the law of the principal,"** and the Sages also made the law that when the husband adds tosefet ketubah, it receives the same laws regarding collection, and so on it receives the

R' Yitzchak: Same laws as the principal ketubah.

R' Yoel Asher: Ah, yes. The Rambam says further: **"And they did not enact it,"** when the Sages enacted a ketubah, they enacted it as a unique obligation of money. It means, they didn't enact that she can always request the money from her husband, that it's money that she has a right in it in any case, **"whenever she wants."** It doesn't work that way. They didn't enact that she can take it when she wants, saying: you must give me the two hundred that you undertook. **"Rather it is like a debt that has a fixed time."** A ketubah is like a debt that one has made on it a time, at such and such time you will be able to claim it.

What is the time? Or at which point will she be able to collect the ketubah? The Rambam says: **"And the ketubah is not collected,"** the ketubah can only be collected, one can only collect it after one of two things:

1. Either **"the death of the husband,"** if the husband died,

2. Or he gave her a get.

Then it's as if when the time happened.

Innovation and Discussion: The Meaning of a "Debt That Has a Fixed Time"

R' Yitzchak: Right, it's a bit funny that one needs to say this law, because until now we've learned that a ketubah is such a simple thing that he says that if I will die I must give you two hundred zuz. It looks here, also in general from what was included in the same – the Rambam says it's not, but he needs to speak about this that the ketubah is different from the nedunya etc. – it looks as if originally, or something a certain idea of ketubah, that ketubah is like money that belongs to her, like a debt at least, but a money that belongs to her. The way how she receives it is only after the death of the husband or after a get, but so it looks here.

English Translation

This is very interesting. It relates to what we discussed earlier, that originally the ketubah was something that was paid at the wedding. They used to pay her father money for him to give her vessels. And the Chachamim (Sages) said no, we'll give her vessels, we'll make this an obligation now, but she only receives it after death, because it's obvious that it's only relevant after the wedding ends that she should have it, right? When she lives with him...

R' Yoel Asher: That's the point! I already know what the point is. Since the husband is the one who supports her, the husband has she'er kesus v'onah (food, clothing, and conjugal rights). As long as she's with a husband she's taken care of, she doesn't need the money so urgently. The husband has to take care of her.

And then I think, perhaps the chiddush (novel point) that the Rambam wants to bring out here is that we did have certain halachos, for example by leraposah (to heal her), that if he sees it's coming to the amount of the ketubah, he can say I want to give her a get - understand when yes, when no. So we see that a husband sometimes thinks I'm better off giving the ketubah, it costs me too much money. The Rambam says that ketubah is entirely dependent on what happens after death and divorce.

R' Yitzchak: No, it's not entirely, it's just like a chov shekavua lo zman (debt with a set time), but it's already a debt now.

R' Yoel Asher: And there's a certain...

R' Yitzchak: Simply what ketubah is what she has. As you say the opposite, you see from that halachah that you bring that there is something such that ketubah is how much the husband owes the wife in total. Okay, you're right, plus a lot of she'er kesus v'onah, but that's already an amount.

R' Yoel Asher: Also for example it should apparently be relevant that it's called like a chov shekavua lo zman, therefore she can collect even from nechasim meshu'abadim (encumbered properties). That means, when you sold it, it was already hers, it's not a debt

R' Yitzchak: What happens when he dies, yes.

R' Yoel Asher: That's clear.

R' Yitzchak: What happens when he dies, or happens when he divorces her, but what, yes. The chiddush here is what? That chov shekavua lo zman,

R' Yoel Asher: That it's only collected after death. That we view it as a debt is the chiddush. We could have viewed it as it's a din derabbanan (rabbinic law) that he has to give her when he dies or when he...

R' Yitzchak: That's not a chiddush, it's obviously so, we make her a shtar (document). What the Rambam wants to say is that she can't collect it.

R' Yoel Asher: Always he's obligated in it, it could be that he's obligated in it that when something happens I'll make a kinyan then, and then I'll become obligated,

R' Yitzchak: He's obligated in it to a person. Yes, no, but what he says here isn't that, what he says here is the other side, that she can't collect it when she wants.

Halachah 4: The Enactments Regarding Collection of the Ketubah - Ziburis, the Widow's Oath, and Clothing

Collection from Ziburis

R' Yoel Asher: Yes, I know already. The Rambam says, **"And likewise they enacted"**, the Chachamim also enacted: **"that if the husband had good, bad, and medium fields"**, if a man has three categories of fields, he has better ones, medium ones, and weak ones. **"And the woman comes to collect her ketubah from him"**, a woman comes to collect the ketubah, from which properties should she take? **"She may only collect from the worst of his properties"**, she can only demand, or rather he can tell her take from the weakest of the properties, **"and this is called ziburis"**. Not the medium ones but the bad ones, the weaker ones.

So what needs to be added here is that ketubah is like a debt. Fundamentally, a creditor would have only had to collect from ziburis,

R' Yitzchak: No from medium, ah,

R' Yoel Asher: From ziburis. The Chachamim enacted that a creditor takes from medium properties, because if not, no one will want to lend to another. In order to help people be able to get a loan, the Chachamim said one must pay with medium properties. This they only did for a regular debt, **kedei shelo tin'ol deles bifnei lovin** (so as not to lock the door before borrowers), as the Gemara calls it, not to close the door to poor people who need to borrow. But a wife doesn't have that thing, it's not a loan, it's a different kind of thing, it's a matter of ketubah at the wedding, so the halachah remained that one can give ziburis as long as he pays it.

R' Yitzchak: Here there's no reasoning of lo tin'ol deles, a woman wants to get married anyway, it's not because of that that one has a wedding. Yes, so automatically it remains by ketubah that one collects from something called ziburis. Ziburis, ziburis, I don't know. Ziburis they say, no one knows. Ziburis.

Anyway, another thing, so we've learned until now like one-two leniencies as it were of a ketubah: meaning she can't receive it when she wants, she doesn't get the better land but ziburis, and now we're going to learn another like a leniency on her or a stringency.

R' Yoel Asher: The Chachamim also made another enactment in the ketubah, in a way to say that since the entire law is a din derabbanan they can play around with it.

R' Yitzchak: Yes, they can anyway, can be lenient a bit...

The Widow's Oath and Assessing the Clothing at Death

R' Yoel Asher: Yes, **"And likewise they enacted"** that **"when she comes to collect after his death"**, when she comes to collect, to claim the ketubah, **"she may not collect"**, she can't claim it, **"until she swears with the holding of an object that he didn't leave anything with her"**, until she makes a proper oath, **"with the holding of an object"**. Holding an object means what? A Sefer Torah?

R' Yitzchak: Yes. Yes?

R' Yoel Asher: Yes. **"That he didn't leave anything with her"**. She has to swear, he can demand from her or...

R' Yitzchak: No, not he. It's demanded from her.

R' Yoel Asher: It's demanded from her that she only receives the ketubah with an oath.

1. An oath, **"that he didn't leave anything with her"**, because perhaps he already gave her movable property, gave her things for the ketubah, she has to swear that she received nothing.

2. And she has to swear, **"that she didn't sell him her ketubah"**, that she didn't sell it to him himself. It seems we already had such a thing that a woman can do business with the ketubah and sell it

R' Yitzchak: To the husband himself.

R' Yoel Asher: 3. And, **"and didn't forgive it"**, a woman can sometimes forgive the ketubah to the husband as we've also already had.

She has to swear that it wasn't one of these three things: he didn't leave her money, she didn't sell it to him, or she didn't forgive him.

And after she swears like this, the Chachamim added further: **"And we assess all that is upon her"**, we assess what she has on her. If she has expensive clothes or jewelry, it's not simple that she can get away with this, it's also taken from the husband, the husband bought her clothing,

R' Yitzchak: "And we deduct it from her ketubah",

R' Yoel Asher: And this is calculated down **"from her ketubah"**, if she wants to take it with her, the heirs can deduct the value also from the ketubah, and the remainder they'll have to give her.

R' Yitzchak: The entire halachah is when he died.

The Law by Divorce with His Consent

R' Yoel Asher: This is when he died, as it says, **"after his death"**. **"But if he divorced her**

with his consent", but if he wants, it's his will to divorce her, then she doesn't have to swear. It seems that this swearing, wait a moment, **"she collects without an oath"**, yes, if it means he gives her a get...

R' Yitzchak: With his consent, meaning interesting, like not when they force him or she did something as a moredet (rebellious wife) or something, then perhaps it's different. Right, right. Perhaps soon we'll see about this more.

R' Yoel Asher: "She collects without an oath", she can collect without an oath, because he's alive. If he would have said that she forgave or something, he would have had to bring it up, she doesn't need an oath. We'll see later if he says yes, but wait, if he has any claims, we'll learn later what will be. But if he has no claims, the Chachamim won't make her swear, because she comes and she collects, and yes, he gives a get.

"And we don't assess the clothing that is upon her", in such a case we don't assess how much the clothing she has on is worth, **"for he bought them for her"**, he bought it for her, **"and she acquired"**, because she acquired. And one understands by itself that you've agreed to divorce her, what would you have expected? That she should undress? She shouldn't be able to go out with her normal respectable clothing? Perhaps not jewelry,

Discussion: The Reasoning for the Distinction Between Widow and Divorcee Regarding Clothing

R' Yitzchak: What's the difference if he died? What? Can you make such a thing, what's the difference if he died?

R' Yoel Asher: Is what? She's taking out assets from him, let this bit go down from the value of the ketubah, at least yes or an option.

R' Yitzchak: And when he gave a get...

R' Yoel Asher: Who asked him to give a get?

R' Yitzchak: You gave her a get. What does it have to do with it?

R' Yoel Asher: Is it his money or not his money? Well, and **"for he bought them for her and she acquired them, and he wants to divorce her, not she"**.

R' Yitzchak: He wants. So what's the difference that he wants? Because he wants he doesn't get his money? It's not very clear to me. By a widow, what is the widow? He didn't want to die, he could have stayed alive, he could have continued to live, it's not his fault. This is his fault. So what? He loses money? It's a penalty on wanting, what is this exactly? Not clear to me what the reasoning of this is.

The Rambam says so, but it seems like a whole thing here, we already learned a bit earlier also by those whom we force to divorce, it seems for some reason that what we give her yes or not, her clothing and such things, it's somehow dependent on...

R' Yitzchak: So what? He loses money? It's a penalty on... what is this? What is this exactly? It's not clear to me what the reasoning of this is.

The Rambam says so, but it seems like a whole thing here that we already learned earlier also by those whom we force to divorce, it seems for some reason that what we give her yes or not - her clothing and such things - it's somehow dependent on the mood of the beis din.

I don't mean mood, I mean to say: if we would hold that she's right, then she should have this also. Not right, but as it were he wants to give a get, he pays for this. I don't understand clearly the reasoning why it should be so. Do you understand it that way? Yes.

And it's actually not agreed upon. The commentators here bring that there are other opinions about this, they distinguish between weekday clothing,

R' Yoel Asher: Sabbath clothing. I see he also brings from the Rambam in the responsa, that when it says **we don't assess the clothing upon her** doesn't mean to say jewelry for example.

R' Yitzchak: So what exactly is this?

R' Yoel Asher: It seems like it's something such, one shouldn't be cheap, she has some garment,

R' Yitzchak: Be generous to her,

R' Yoel Asher: Don't be stingy. And not so by a widow? From the children, his children, it's not required. I mean, whatever, when it's both of theirs,

R' Yitzchak: When it's their children, it's their children.

R' Yoel Asher: But that's not the topic. But from them generosity is not required, because they've now inherited assets, they don't have any obligation to her. He lived with her, now he's decided to divorce her,

R' Yitzchak: Are you now going to be cheap and deduct her shirt? In short, lo barur (not clear). What does this seem like?

Okay, that's the third. But in any case, that's the thing, yes? There's an enactment that one must make an oath when it's a widow. That's the... ⟦#2⟧ **And likewise they enacted**, yes? Let's go further.

Halachos 5-6: Leniencies of Ketubah - Collection from Land and the Laws of Appreciation

Collection from Land and Not from Movables

R' Yoel Asher: Another thing the Chachamim...

R' Yitzchak: And likewise they enacted.

R' Yoel Asher: It's another thing from the leniencies of ketubah as it's called, right? **"And likewise they enacted that the widow may only collect her ketubah from land"**, that she shouldn't claim from movables but from land. It's stuck here. Yes. Come on, a guy. This he makes stuck. What is the video stuck?

R' Yitzchak: Okay, let's go further, friends. Yes, they made an enactment, another enactment, that she only receives from land. What does land mean? Not from movables, right?

R' Yoel Asher: Yes, not from movables, only from land.

R' Yitzchak: And another thing, it's a continuation of this, well?

R' Yoel Asher: Like that the simple meaning is that other things don't become encumbered, only the land becomes encumbered. Other things, if she won't find movables,

R' Yitzchak: Are lost. No, one doesn't have to find, even if one finds yes.

R' Yoel Asher: She can't go retrieve the movables that he sold.

Appreciation that Properties Appreciated After the Husband's Death

"And she doesn't collect", the second halachah, **"and she doesn't collect from the appreciation that properties appreciated after the husband's death"**. After the husband died, the field for example grew fruits, she doesn't say: this is the field that's designated for my ketubah. Rather since the part that grew wasn't there when it was in the husband's possession, it was already after the heirs inherited it, so the appreciation - how much it became better -

R' Yitzchak: Belongs to the heirs. ⟦#3⟧ And another thing,

R' Yoel Asher: Just to understand a bit again. One shouldn't say that it means like she collected this immediately when the husband died, and now it became hers at the time of death, and now whatever grew, already grew in her field. Because what grew during the husband's lifetime is also not relevant to her, she only receives the value of two hundred zuz.

R' Yitzchak: Yes, yes, that's not the question. The question is that there isn't enough and nothing remains.

R' Yoel Asher: But you shouldn't view it as there was an automatic acquisition that when he died the field became hers and it already grew - no,

R' Yitzchak: Again, all these things **"she doesn't collect"** means if there doesn't remain enough. If he died without a penny, she can burst, there's no one to collect from. It shouldn't become more, she doesn't receive more than the two hundred zuz, that's not the topic.

R' Yoel Asher: No, you could have thought in this case, that one could have said that what grew from the inheritance,

R' Yitzchak: Already grew on the field that belongs to her,

R' Yoel Asher: That's encumbered to her. I don't know why, why should someone think that.

Support of Daughters and Appreciation that the Purchaser Appreciated

Okay. **"And the daughters are not supported after their father's death"**, we learned that there are other laws of ketubah, that the daughters can remain in the house of the deceased father and they eat from his properties. So the halachah is also actually only on the properties that he left, but whatever is the appreciation that properties appreciated, whatever became more valuable after his death, when it was already in the time of the heirs, the appreciation is the other heirs', not the daughters'.

〚#4〛 Another thing: **"And she doesn't seize with her ketubah from the appreciation that the purchaser appreciated"**. If she goes to seize - the Rambam hasn't yet said clearly, plainly the halachah that she can seize properties. If the husband went and he sold a field, she can go tear it away - toreif is a language of tearing, tearing away from the purchaser - because the field is encumbered to her.

But she can only do it further from the principal of the field, from what the field was worth before he sold it. She can't say: it's my field, there was no legitimate sale, and everything that became more valuable is mine. No, it doesn't work that way. Until she takes it, it belongs to the purchaser. So whatever grew in the time, from when he sold it until now when she seizes it, belongs to the purchaser.

"Even though a creditor collects the appreciation", by a creditor the halachah is different. If one encumbers land to pay, from when the time of payment comes, it means it must go to the creditor. And if it appreciates, it doesn't appreciate for the purchaser, rather the creditor collects the appreciation.

R' Yitzchak: From when he bought it? Bought, right? From the time of the debt.

R' Yoel Asher: Bought? Yes, what some time of payment? From when one...

R' Yitzchak: The debt becomes encumbered from... No, every creditor, a debt becomes encumbered from the time of the debt, not from the time of payment.

R' Yoel Asher: Okay, we see...

R' Yitzchak: Yes, yes, that's a clear... the question here is that the ketuva is different. 〚#5〛 **Udevarim elu... yes, why not indeed?**

Discussion: The Geder of "Kulei Ketuva" – Balancing the Takana or Weaker Obligation?

R' Yoel Asher: The answer is, the Rambam says: **"Udevarim elu mikulei ketuva hen"**. These things the Chachamim made easier for the other side, for the heirs or for the father in...

R' Yitzchak: For the...

R' Yoel Asher: For the creditor.

R' Yitzchak: For the buyer. Whatever. Kula and chumra means that it's less of a harsh obligation.

R' Yoel Asher: That means, the entire ketuva is for the benefit of the wife. But they then inserted into it a few conditions that balance it out, so it shouldn't be so strong.

R' Yitzchak: It's not exactly balance, because this is the creditor who goes...

R' Yoel Asher: The purchasers are the... the heirs. We're dealing here with...

R' Yitzchak: Not for the... what do you have with balance? The concept of balance isn't stated here. It says that they don't make it so strong. If there's something like the severity of the debt, meaning how strongly one can collect. Every chumra is a kula for this one and a kula for that one.

The word kula is a bit of a funny word, it doesn't mean that something is easier, it's an easier strength, a type of debt, and this isn't to the

extent that one can collect from the enhancement.

R' Yoel Asher: I think it is balanced. Why? Because they instituted the ketuva so that she shouldn't be light in his eyes to divorce her, she should have peace of mind. Ah, right. In practice they saw that with a creditor they actually did the opposite thing. With a creditor they made it the opposite, that the creditor should be able to do more things, so that people should lend. He can extract more money from the debtor.

They saw that with ketuva it's not necessary to be so strong for the women, because women want to get married anyway. With a creditor they understood that it's important for the purpose of the matter. Therefore it seems to me that they can play with the halachos according to the need of the hour, according to how hard it is to find a wife, and according to how hard it is to find a loan.

R' Yitzchak: Yes, but the halachos, all kulei ketuva are certain leniencies of ketuva.

R' Yoel Asher: Right, further the Rambam: **Vechen**.

R' Yitzchak: You don't need to explain every thing as if there's a second side that makes it easier. Who are we making it easier for here? For the husband, that he shouldn't have to pay? He has to pay the ketuva.

It's all such like side things as if in the halachos of how strong the debt is, that it's not such a strong debt. It could be the opposite: initially it's also not so strong, it's only a takanas Chachamim, it's not really a debt. Not clear. Okay.

Halacha 7: Kulei Ketuva – Collection from the Lowest Currency

The Din of the Place of Marriage and Place of Divorce

R' Yoel Asher: Another of the things that they made kulei ketuva: ⟦#6⟧ **"Shetitol ha'isha ketuvatah min hapachot shebematbe'ot"**. Just as with land she takes from ziburit, what happens when the husband pays it with money? She will also have to be able to be given the weakest coins, meaning weaker currency. And the Rambam immediately explains: **"Keitzad? Nasa isha bemakom"**.

R' Yitzchak: Meaning not only when he pays with money, apparently it means that he has to pay her less money, right?

R' Yoel Asher: So be it. **"Nasa isha bemakom"**, he got married in one place, **"vegerasha bemakom acher, im hayu me'ot makom hanisuin tovot mime'ot makom hageirushin"**, he got married with her in America, and the divorce is in Mexico, whatever, where the money is worth much less, **"noten lah mime'ot"** – he gives her the cheaper, he gives her **"mime'ot makom hageirushin"**, he gives her what is called two hundred in the place where they are now. Even at the marriage, when they spoke about two hundred at the time of the marriage, it was worth more.

And the opposite: **"Ve'im hayu me'ot makom hageirushin tovot mime'ot makom hanisuin, noten lah mime'ot makom hanisuin"**. He can give her the cheaper. He can always give her the cheaper, from either the place of marriage,

R' Yitzchak: Or the place of the get. Right.

R' Yoel Asher: So it's very similar to the matter of ziburit, but it's even more.

Discussion: The Raavad's Question and the Difference in the Value of Coins

R' Yitzchak: But it's much more. It's very strange. The Raavad immediately asks: what does this mean? I'm saying,

R' Yoel Asher: What does this mean at all? **Bameh devarim amurim**.

R' Yitzchak: Let's see further in the Rambam. I know, no, but... soon... What the Raavad says, the Rambam also says. You see that the Raavad also read further, and he wasn't happy.

It means there's some concept that he gives her two hundred zuz, but the thing "zuz" isn't like in America there's inflation. I don't know how this is calculated as possible. The word zuz – a zuz

from New Jersey is worth more than a zuz from New York. How can this be? Both are a zuz, I don't know, some kind of reality, and there you give less. Hey, a ketuva has to be two hundred zuz? They have a question.

R' Yoel Asher: The amount is...

R' Yitzchak: The Rambam goes into the exact amount.

R' Yoel Asher: It depends on the weight, how many barley grains it is there. Yes, so the Rambam...

R' Yitzchak: So what works?

R' Yoel Asher: That's what the Raavad asks. The Raavad asks...

R' Yitzchak: I don't know if the Raavad asks that.

R' Yoel Asher: It's one eighth in kesef tzuri, there's a certain weight of money, so what does it matter where it is? It could be we're talking about the currency thing. That what? That both are worth approximately the same, but with this one it's harder to do business...

R' Yitzchak: No, no, that's not the meaning, but... ah, that's clear, what he's saying, it's a kula. Kula is that he gives less.

R' Yoel Asher: One can give her from the pachot shebematbe'ot, he doesn't say...

R' Yitzchak: He doesn't mean now to give money. I'm saying, it doesn't say that he gives her money at all. He gives her land altogether. There's no difference what he gives her, but he gives her the value of how much the numbers are worth. That means, this is the lomdus of the halacha. There's such a thing that a person makes like a condition in a document,

Me'ot Setam and Matbe'a Yadu'a

R' Yoel Asher: That he gives less. Both are worth approximately the same, because with this one it's harder to do business...

R' Yitzchak: No, no, that's not the meaning, but... you see clearly, that's the thing, it's a kula, kula is that he gives less. Mah she'ein ken matbe'ot...

R' Yoel Asher: We're talking about min hapachot shebematbe'ot,

R' Yitzchak: He doesn't say... he won't now give money, I'll say, it doesn't say that he gives her money at all. He gives her land altogether. There's no difference what he gives her, but he gives her the value of how much the number is worth.

That means, let's explain the halacha. There's such a thing that a person makes like a condition, a ketuva document, somehow he fulfills the two hundred zuz, perhaps we're saying that already, even the smallest, so says Rav – what's his name – that it must be that even the smaller number is more than the two hundred zuz of kesef tzuri. But he promised two hundred shekel, you have to give shekel. If a shekel from another place is worth less, you're exempt, as if you said that number.

R' Yoel Asher: ⟦#2⟧ So the Rambam says: **Bameh devarim amurim**, this halacha that I said that one can give the pachot shebematbe'ot, the least valuable money, this is only **beshehayta bichtuvatah me'ot setam**. They inserted that one must give two hundred. And two hundred what? Two hundred pesos, or two hundred dollars?

R' Yitzchak: Me'ot, perhaps me'ot.

R' Yoel Asher: Whatever, me'ot. Yes, it said me'ot setam, money. **Aval im peiresh**, meaning, it said two hundred me'ot, whatever, a name of money. **Aval im peiresh bah matbe'a yadu'a**, it said a dollar symbol or a shekel symbol, he specified, **bein be'ikar bein betosfet**, no difference whether on the two hundred, or on the money that one adds to the ketuva, on that it won't help. Why should it help that one gives the cheaper? **Harei hi kedin hamalveh et chavero matbe'a yadu'a shenotan lo kamah shehalvahu**,

R' Yitzchak: He must pay him as much as he lent him,

R' Yoel Asher: Because one borrowed a certain coin,

R' Yitzchak: Kemo sheyitba'er behilchot halva'ah. Just as one cannot fulfill with a cheaper... yes, in short there's a halacha regarding a loan.

Yes, it's a strange halacha, but it's a kula, this is the meaning: such a thing that is ambiguous, it's not clear in the ketuva whether it means, what he means, we go lekula. This isn't really a kula in the collection, I'm saying, it's more a kula in the essence, like it's even a kula in the essence of the obligation, that if there's no clear language, we go in his favor as if. ⟦#3⟧ Right. So until now we learned

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Halacha 8: The Takana of the Geonim to Collect Ketuva from Movables

R' Yoel Asher: So until now we learned the takanos Chachamim, that one only collects from real estate. Now the Rambam says: However, the Geonim came after the times of Chazal, and they wanted to change the halacha, they said that one can indeed collect from movables. The Rambam says thus: **Tiknu haGeonim bechol hayeshivot**, the Geonim, the heads of yeshivot, but the Geonim of the yeshivot, instituted among their people, among the students of the yeshivot,

R' Yitzchak: Not yet, all yeshivot means literally the two yeshivot that were the yeshivot of the Geonim, both of them

R' Yoel Asher: Made such a takana. They didn't make the takana on the students of the yeshiva, they made the takana on Jews. No, no, yeshiva means beit din, yeshiva doesn't basically mean yeshiva.

R' Yitzchak: Ahh. **Bechol hayeshivot**, the institution of the Geonim is called a yeshiva. Ahh. But the yeshiva, the job of the yeshiva was to say the halachos, so the yeshivot, there they used to ask the questions. Yeshiva can be said Sanhedrin instead of yeshiva as if, and all the yeshivot of the Geonim were...

R' Yoel Asher: They introduced thus: **Shetehei isha gova ketuvatah achar mot ba'alah af min hamitaltelin**, that a woman can collect the ketuva, not after a get, but after death also from movables. **Kederech shetiknu leba'al chov ligbot min hamitaltelin**, just as the Chachamim instituted for a creditor that he can demand the debt not only from real estate but also from movables.

R' Yitzchak: The Geonim made the same takana. Yes, it's also only the Geonim, the same thing, a creditor also only collects from land according to the basic law of the Chachamim.

R' Yoel Asher: Yes? That one should indeed be able to collect also from movables, **ufashta takana zo berov Yisrael**, in other editions it says **bechol Yisrael**. The takana of the Geonim was accepted among Jews.

He notes that the Meiri says that the reason is because it became harder to always collect from land, not everyone owned real estate, it's simply the reality changed, Klal Yisrael became it seems poorer, or there were hard times, and therefore it was very difficult to keep up with the halacha of specifically land, so they instituted for a creditor and for a woman also from movables. The Rambam says:

Other Conditions of Ketuva and Ketuvat Benin Dichrin

R' Yitzchak: Vechen she'ar tena'ei ketuva, that means, when the Geonim made the takana they didn't make it only

R' Yoel Asher: Regarding the principal ketuva,

R' Yitzchak: But also other halachos of ketuva,

R' Yoel Asher: For example tena'ei ketuva. **Veyeshnan bemitaltelin kekarka**. Meaning, the obligation that the husband, any obligation that the husband must give

R' Yitzchak: For the wife money, is on movables. Because while he's alive it's not relevant, there isn't this whole thing of collecting. What they're saying is that apparently all these conditions that we're going to learn is what one... ahh, yes, but still I think it means mainly all these kinds of things that one collects. It could be also together with mezonot and the like, yes. But when he's not here,

R' Yoel Asher: Right? On all these things the Chachamim instituted that movables should have

a law like land – the Geonim. **Chutz**, says the Rambam, where didn't the Geonim institute the takana? **Chutz miketuvat benin dichrin**. We learned that there's something called ketuvat benin dichrin. One writes into the ketuva the law of male children, that the male children who are born from the wife should be the first to collect the inheritance.

R' Yitzchak: They receive the ketuva.

R' Yoel Asher: Not the first, they receive the ketuva, yes, receive her ketuva, that they should receive first among the children.

R' Yitzchak: Not only first, in addition to their portion,

R' Yoel Asher: They receive the ketuva. The Rambam says, on this thing **shelo matzanu minhag yerushatah pashut bechol hayeshivot**, on ketuvat benin dichrin it wasn't introduced that the male children can collect her ketuva also from movables.

R' Yitzchak: Ahh, there's a dispute about this.

R' Yoel Asher: There are those who say that the Geonim introduced it,

R' Yitzchak: But the custom didn't become so widespread like that.

R' Yoel Asher: The Rambam says: **Lefikach**, because there's a dispute about this, meaning, the takana of the Geonim that was accepted among all Jews, well, was already accepted among all Jews. But what wasn't accepted among all Jews, and one asks the Rambam what to do, I say thus: **Ma'amidin otah al din haTalmud she'ein yorshin ketuvat imam ela min hakarka**. Since the law of the Talmud, the law in the Gemara is that on all these in the laws of ketuva it's only from land, so places where the Geonim already managed to introduce among Klal Yisrael, well, what is, is. But since ketuvat benin dichrin remained open, it still wasn't so strongly accepted, one should indeed return to the law of the Talmud.

R' Yitzchak: Even though the reasoning is the same. That means, whatever the reasoning, the reasons why the Geonim made the takana – if you say that no one has land, or everything is whatever, the approach of collecting from land doesn't work, because of that the Geonim changed – there's no difference between ketuvat benin dichrin and all others; just as ketuvat benin dichrin makes sense so it makes sense for everyone.

But the Rambam was very much, you could say, a formalist regarding this matter. The Rambam says, you can't take someone's money because you hold such a reasoning. When all Jews agree, then. By the way, when the Rambam wrote his book all Jews would have already started to agree, at least more, but the Rambam thought that one can't, one must stay with the law of the Talmud, even though it doesn't work, because you don't have the right, you don't have a source from where to take someone's money, something like that I think.

Halacha 9: The Custom to Write in the Ketuva "Whether from Real Estate or from Movables"

R' Yoel Asher: ⟦#4⟧ So now the Rambam goes and adds a very interesting thing to the custom of the Geonim. The Rambam says: **Kevar nahagu bechol hamekamot sheyada'nu vesheshama'nu shim'am**, all places that I know about and that I heard told about them, a custom was already introduced. It appears from this language of the Rambam that he inquired about this.

R' Yitzchak: What he heard, yes? Ah, **sheyada'nu** means where he was born, and **shama'nu** means,

R' Yoel Asher: Vesheshama'nu shim'am, that when a Jew came from another land he quickly asked him: Nu, what's happening with the custom there?

R' Yitzchak: About which I think **shama'nu** means literally he looked, perhaps looked in halacha books that were before him, I don't know.

The Power of Tenai Shebemamon Against Takanas Acharonim

R' Yoel Asher: ⟦#5⟧ Okay, the Rambam says it was already introduced, that what? **Sheyichtevu baketuva**, that one should write in the ketuva, that one will be able to collect the ketuva **bein mimekarka'ei bein mimitaltelei**. They didn't leave it to happen by itself because that's how the Geonim introduced a takana, rather they began to write it in, in the ketuva one writes in that we take ourselves out thus.

The Rambam says: **Vedavar zeh tikun gadol hu**, this is a very good correction that they made this writing in the ketuva, **va'anashim nevonim hinhigu bo**, wise people introduced this. The Rambam says why? **Sheharei zeh tenai shebemamon**, whether one can collect the ketuva from land or movables is a tenai shebemamon that the husband and wife can stipulate.

R' Yitzchak: Sheharei zeh means to say now what you wrote in the ketuva

R' Yoel Asher: It becomes a tenai shebemamon, so if it's a tenai shebemamon then one can write it in the ketuva. Not everything can be written in; if it were a takanas Chachamim, because that's how the Chachamim said you can't make it different in the ketuva from how we said

R' Yitzchak: Regarding niyin, but regarding onah, and inheritance, whatever, it's a davar shebemamon. What the Rambam, I think that the meaning of this tenai shebemamon is that now when one writes it in the kesubah it becomes a tenai shebemamon, and as is known that davar shebemamon tenao kayam,

R' Yoel Asher: And tenao kayam, so consequently he will indeed be able to collect from movables. **Venimtze'es ha'almanah govah min hamitaltelin**, a widow will want to collect, she will indeed be able to take from movables. Why? Because she has a tenai, **lo betakanas acharonim**.

Here he gives such a beautiful patch. He says that until now people have done a problematic thing, they went against the Chachamim with a takanas acharonim, with a takanah of the Geonim, who are acharonim relative to the Amoraim, the Gemara, and they took out money shelo beyosher. That means, in a case when there were only movables, which at that time according to the law of the Gemara she cannot be motzi mamon, they were indeed motzi mamon with the power of takanas acharonim. The Rambam didn't like it. He didn't say anything, he wasn't protesting because it was accepted by all Jews, he didn't like it. But if there is a solution for this, that one makes it so that one should indeed be obligated to give from the movables through writing it in, ⟦#6⟧ very good,

R' Yitzchak: One could already fulfill according to the shitah of the Rambam.

R' Yoel Asher: The Rambam here is very sweet, and very interesting. Touch it like this, it's not personal here. He doesn't hold, he lets. He says very good, she collects from movables, we don't take. He only says basically that collecting only with a... his problem here is the principle, that acharonim, that it's a problem that acharonim go against Amoraim.

R' Yitzchak: It's not just going against Amoraim, but there's no right,

R' Yoel Asher: You can't do, you can't take money from someone, because you don't have the right. But in the original halachah he doesn't say that you don't have the right, he says **pashtah takanah zo berov Yisrael** as if yes. Whatever it is,

The Law of Nasa Setam: If He Knew About the Takanas HaGeonim

R' Yitzchak: The Rambam says, look at the Rambam, by the way, but earlier he wrote what the Geonim say. Before halachah lema'aseh the Rambam is not actually so sure to rule this way.

R' Yoel Asher: Look in the Rambam in the halachah,

R' Yitzchak: Look in the Rambam,

R' Yoel Asher: What's happening? Someone who didn't do the new takanah, the clever takanah of writing in that one can collect from movables. **Harei shelo kasav kach beshtar kesubah, ela nasa setam**, he gave a regular kesubah which says nothing about land or

movables. So now the question is whether to do like the custom that was introduced after the Geonim or not?

The Rambam says like this: **im hayah yode'a betakanah zo shel Geonim**, if he knew that there is a takanas haGeonim that one can also collect from movables, **govah**, because we can say that al da'as zeh, he knew that this is the custom, so it's obvious that when he undertook the kesubah he agreed that his wife should take movables.

Halachah 10: The Power of Takanas HaGeonim Against the Sanhedrin HaGedolah

R' Yoel Asher: The Rambam says: **"misyashvin badavar hazeh harbeh"**, one must think seriously about this. Why? **"She'ein koach betakanas haGeonim lidon bah af al pi shelo nispareshah"**. According to law, the takanas Chachamim doesn't have a law, doesn't have enough power that one should be able to judge with it at a time when the Chachamim didn't explicitly say so,

R' Yitzchak: It's not explicit in the Gemara.

R' Yoel Asher: "Af al pi shelo nispareshah" means that it wasn't written in the kesubah. In a case when it wasn't written in the kesubah, it wasn't clearly explicit in the kesubah what one wants, and you say that one should be able to do it only from the power of takanas haGeonim, it's not so simple.

He says, **"kisnai kesubah shehem takanas haSanhedrin haGedolah"**. The regular tenai kesubah, that which a woman can take out money from the man, is a takanas Sanhedrin haGedolah. That means the Chachamim of the Gemara, they have a law of Sanhedrin haGedolah. As the Rambam says it in the introduction,

R' Yitzchak: He never says

R' Yoel Asher: Explicitly in the Rambam only here. Very good. They have a power to be motzi mamon, they can be mafkir mamon. I understand that on tenai kesubah one can take out from the man's property, even from the yes, **"ad shenozi bah mamon mehayorshin"**. But something that is only a takanas haGeonim, I don't know if they have such power, so consequently **"misyashvin badavar hazeh harbeh"**. Perhaps one should make a compromise with them, one should work something out. It's not so simple.

Discussion: What Does "Misyashvin Badavar Hazeh Harbeh" Mean and How Does One Determine the Man's Intent?

R' Yitzchak: Very good. It could be as if the Rambam agrees that one can make a takanah. The Rambam only says: You want to make a takanah? Make it so that one should write it in the kesubah. If one doesn't write it in the kesubah, the Rambam doesn't know if you have a right.

What it says **"misyashvin badavar hazeh harbeh"** is a bit funny, because seemingly it means, what is there to be misyashev? The Rambam says there's no power, so there's no power. What the Rambam means to say, that since the Rambam says here, that if he knows you can say, okay, he was misyashev on this understanding, so one must indeed – there is much to be misyashev whether the person knew. How much he knew, what does **"nistapek lanu"** mean? One can't ask him, there's much to think about what he knew, whether he indeed knew, whether he didn't know.

But certainly, if it's clear that he didn't know, the Rambam is basically ruling that one cannot take this out. So basically what it says here. It's understood, the Rambam is not opposed to the takanah. The Rambam says, you want to make a takanah? Make it in the right way, write it in the kesubah. That's basically what the Rambam, I think.

R' Yoel Asher: A mesi'ach lefi tumo is also, if one goes to ask him directly, "Did you want?" he'll see a choice, he'll say no, I mean who knows, yes yes, one hundred percent. But the Rambam perhaps holds that the fact that all his friends did so, is enough that he should know that al da'as zeh, even if he doesn't know the details – which

is the Gemara, which are the Chachamim – al da'as zeh, about this is mesi'ach lefi tumo

R' Yitzchak: It's a tricky thing. Yes, okay.

R' Yoel Asher: Many of the halachos also that are stated here, don't work when there's a claim. Today there's a modern reality that everyone is sophisticated, everyone knows about the migo. Here one speaks when more natural, about this mesi'ach lefi tumo must know what he actually knew. The Rambam says further:

Halachah 11: The Lien of All Property for the Kesubah

R' Yitzchak: **"Ve'od"**, so this is until now we learned about collecting the kesubah normally, now from the,

R' Yoel Asher: From the leniencies, now we're going to learn back a

R' Yitzchak: Stringency on the kesubah,

R' Yoel Asher: Yes? A leniency of kesubah, now we're going to go back to the laws of kesubah,

R' Yitzchak: Stringencies of the kesubah,

R' Yoel Asher: Yes? The Rambam says: **"Ve'od tiknu Chachamim sheyihyu kol nichsei haba'al acharain ve'arva'in likesubasah"**, all the property of the husband should be responsible, should be a guarantor for the kesubah. What does this mean? What does **"kol"** mean? He doesn't mean here the topic of land with movables, he means something else. Let's see. He says: **"afilu kesubasah maneh"**, the kesubah is a maneh, **"veyesh lo karka"**, he has a very expensive piece of land **"be'alpayim zehuvim"**.

R' Yitzchak: Alpayim?

R' Yoel Asher: Alpayim? Whatever, thousands of dollars, a heavy million-dollar piece of land. So it's a joke, a maneh against alpayim zehuvim is nothing, but nevertheless he may not sell, she has some right, she has some claim in the land, **"hakol tachas shibud hakesubah"**,

R' Yitzchak: The entire land becomes somewhat obligated from it.

R' Yoel Asher: **"Vechol sheyimchor achar hanisu'in minichsav"**, so consequently because it's tachas shibud hakesubah it comes out the halachah that anything he sells after his marriage, **"af al pi shemimcharo kayam"**, although the halachah is that he may sell, it's not obvious that one stops him from selling, **"veyesh lo limchor kol nichsav im yirtzeh"**, he may even sell all his property if he wants, but what right does she indeed have? **"Yesh lah"**, she has the right, **"litrouf osan bikesubasah"**, to be toref, to tear away whatever comes to her for her kesubah, **"kesheyegarshenah o kesheyamus, im lo simtza nichsim benei chorin"**. If she won't find other property, she will be able to collect even from the expensive land. What is the novelty here?

The Novelty That the Husband Cannot Designate One Piece of Land for the Kesubah

R' Yitzchak: Not from the expensive one. The novelty is, that normally a person could have said, could have done, he will designate a certain piece of land. He says, "This land is for the debt, not all my property in the world. Not all my property in the world is obligated for the debt." Kesubah is equally translated, it doesn't matter. Then it would have been,

R' Yoel Asher: If the land becomes destroyed, then there's a problem. One says no, all property is a guarantor for this.

R' Yitzchak: Yes, you can't. Consequently, now matter what, you won't be able to collect alpayim, you'll collect a maneh, but no difference, all his property – a maneh from them or ma'asayim from them, whatever according to the kesubah – are obligated for the kesubah.

The Oath with Taking an Object When Being Toref from Purchasers

R' Yoel Asher: The Rambam says: Another halachah is stated here like this, that when the woman takes out her kesubah, but from property that has already been sold,

R' Yitzchak: Later one will see

R' Yoel Asher: About her oath simply regarding kesubah, but here one speaks **"keshetitrouf"**, when she is toref the kesubah, she doesn't have the right to be toref it, to pull it out from the purchasers, **"ela bishvu'ah binekitas chefetz"**, only with a proper legitimate oath, **"kedin kol ba'alei chovos"**, like every

R' Yitzchak: Ba'al chov, he must swear that he hasn't received the money.

R' Yoel Asher: He says although not always by kesubah is it like a law of a loan, but here she gets a law like a regular ba'al chov,

R' Yitzchak: She must swear, if she is toref from purchasers. Simply, if she is a widow, she must collect, she must swear a shvu'as almanah, but if she is toref from purchasers, she must even not as a widow swear.

The Reason for the Takanah: "Shelo Tehiyeh Kesubasah Kalah Alav" and the Historical Beraisa

R' Yoel Asher: "Vetakanah zo", why did the Chachamim make the takanah that all property is responsible? As we say in the kesubah we say **"afilu gelima de'al kasfa'i"**. **"Kedei shelo tehiyeh kesubasah kalah alav"**, so that the kesubah shouldn't come easy to him, so he could easily be rid of it.

R' Yitzchak: Yes, the meaning is, there's a beraisa in the Gemara, as it says here on the page, that it says such a story. It was previously written, what is it called? The Chachamim instructed to write, in the beraisa it says like this in two steps: The Chachamim instructed to write two hundred zuz, a person said, "No, I don't want."

R' Yoel Asher: He didn't have a wedding.

R' Yitzchak: Too much money, a person didn't have a wedding, too expensive. They said, you know what? Let him put aside a certain amount of money and give it at the father-in-law's house that this should be for the kesubah. People said, "Nu, nu, here is your kesubah." When he was angry with her, he said, "Here is your kesubah, get out of here." Because it was lying there, it was too easy, it became kalah. Not because it's too much money, they already solved the problem of too much money, but it's lying here on a shelf, I know, a golden ring, whatever, it's two hundred zuz. Just take the whole thing, it's already there, it became very easy.

Shimon ben Shetach said, we'll make **"kol nichsav"**. That means, not that he should designate certain property, which then, as if, he has already renounced the property, as if, "This is your kesubah, go away." No, it's all his property, so consequently it's more of a serious matter. He doesn't want to just now go away, sell his field, or whatever, give for the kesubah, some such kind of story. So the **"kalah be'einav"** is not about the money, it's more that it shouldn't be a certain thing that he knows, he already says "This is the kesubah, go away."

R' Yoel Asher: Now, from here comes the expression that I said, balance, as if, one always looks according to the situation. One gets such a kind of feeling here.

Halachah 12: The Widow's Oath Outside of Court

R' Yoel Asher: Already, the Rambam says further, **"keshemashbi'in beis din"**... Here one goes back to a regular case. The husband died, and now the woman wants to collect the kesubah.

R' Yitzchak: But one wants to know how the oath goes.

R' Yoel Asher: There's a law called an oath, one takes upon oneself regarding orphans. Shvu'as almanah. When the husband would have lived, he would perhaps have told her, "I do owe you the kesubah, but this I already paid" and the like. When the heirs inherit, they don't always know everything that happened between the father, the person from whom they inherit. So, the Chachamim introduced for her an oath.

"Keshemashbi'in beis din o hayorshin es ha'almanah keshesavo ligbos kesubasah", when she comes to collect her kesubah, the heirs can demand that they want to give it to her only

if she swears. Or the beis din, often will do it if the heirs are children, for example they shouldn't take upon themselves, the beis din will demand it for them, yes? About this it says **"beis din o hayorshin"**. **"Keshesavo ligbos kesubasah"**, the Rambam says, how does one do the oath?

The Rambam says such a halachah: **"Ein mashbi'in osah ela chutz lebeis din"**. One indeed makes an oath, but one doesn't do it in the beis din, because an oath in the beis din is a great shame that in front of three rabbis with white beards she will swear falsely. And we know that there are many times that the oath is not so kept. Why? So consequently one does that if she must swear she should at least not make an oath. It's like we don't want to be machshil, we don't want to extend a hand.

The Rambam says, we, **"shebatei dinin hayu nimna'in mehasbi'ah"**, the batei din didn't like, they refrained from making a widow swear. Why? **"Shechoshin lah"**, they are afraid, **"shema lo sedakdek al atzmah bishvu'ah"**, she won't be so careful. Let's say that the husband already once paid her something a bit from the kesubah. So she permits herself, "The money is indeed coming to me." A woman permits herself, she doesn't hold that she's swearing falsely. Certainly I must say, it doesn't hold that all women are wicked, about this he says **"shelo sedakdek"**, one isn't afraid that she swears falsely. But she has some self-permission why she's not medakdek, why she thinks it's hers, she says she hasn't received any money. Here she received a bit,

R' Yitzchak: Here a bit... It was indeed her husband, that's the point. Suddenly when her husband died it becomes a proper legal concern, so. So about this the beis din didn't do it. So consequently one found a solution, one should make it outside the beis din the oath.

Discussion: What Does It Help That the Oath Is Outside the Beis Din?

R' Yoel Asher: A weaker,

R' Yitzchak: A weaker oath indeed. There's no difference. But that the beis din don't want to make a desecration of the beis din.

R' Yoel Asher: Again, the heirs still feel that, let's say that one out of ten women, once one instructs to swear, they admit and they say "I don't swear, I admit I already received my kesubah." Right. But most women say, so among them there are many who are not medakdek. So? One says one should still swear.

R' Yitzchak: So a portion of women have a... What does it help that it's outside the beis din?

R' Yoel Asher: Simply because the beis din stay outside?

R' Yitzchak: So what? It's the same sin to make a false oath in beis din as outside.

R' Yoel Asher: Ah no,

R' Yitzchak: It's a greater shame.

R' Yitzchak: It's a cheap solution. What comes in shame? The beis din,

R' Yoel Asher: A false oath is also something again,

R' Yitzchak: The beis din didn't want to make for her a false oath, so one found a solution: You do it outside the beis din.

R' Yoel Asher: No, not that one didn't want.

R' Yitzchak: It says here: **batei dinin hayu nimna'in mehasbi'ah shechoshin lah**. Okay.

R' Yoel Asher: So consequently what? But still the heirs have the right to her,

R' Yitzchak: To make her swear. The beis din makes her swear by the way, not just a right, the beis din makes her swear.

R' Yoel Asher: O hayorshin, yes.

R' Yitzchak: So be it, but I'm saying, the fact is that the beis din tells her. What the heirs don't know, it's not clear. You said earlier there's a distinction regarding minors, but it's not clear, because heirs never know, that's the law of heirs, therefore one must always make an oath. So, I don't know what heirs means. It's the same thing.

But in any case, what does it help me that they do it outside? Can you tell me? I don't know what it helps. It's just, one goes outside from the beis din. If the beis din doesn't hold with doing it, one goes outside from beis din. I don't know what the difference is.

R' Yoel Asher: Perhaps outside of beis din also means that there's no nekitas chefetz there, they make a weaker type of oath?

R' Yitzchak: But it doesn't say that here, the Rambam says **chutz l'beis din**. That's all.

R' Yoel Asher: What are the initials here? He brings: **limnoa bizayon gadol yoser im tishaker, m"e r"k**.

R' Yitzchak: You're bringing people who say things. I'm talking about what it says in the Rambam. Ma'aseh Rekach perhaps, but what does bizayon have to do with it? I don't understand. You're talking about **nimne'in m'lehashbi'ah**, because she's going to make a shevuas shav. Or does it mean to say that it doesn't help anyway, they don't trust the oath, or does it mean that they simply don't want to cause a Jew to stumble with a shevuas shav. What in short is, she can't receive the kesubah now.

R' Yoel Asher: No, she does receive it. No. They have no way to prove that it's a shevuas shav.

R' Yitzchak: Nimne'in m'lehashbi'ah doesn't mean she receives it. No, but if one doesn't administer the oath, it must be stuck.

R' Yoel Asher: That she remains without the kesubah? You can't not give her the kesubah because you're nimna from administering the oath. Ah, okay. No, you see, one is still administering the oath, but they do it **chutz l'beis din**. Okay. Because we're afraid that perhaps she really isn't right. She has no choice. If they have proof, when the heirs have proof that her oath is false, then one can make a fresh din Torah. But the Chachamim held that with many of the widows there are situations when they can't hold out anymore.

R' Yitzchak: Yes yes, in short, to my question, what does it help chutz l'beis din? And the Rambam doesn't say, so what should I do? There's a sound from the Rambam, that the beis din doesn't want to, the heirs go outside, they do it anyway.

The Advice of Making a Neder in Beis Din

R' Yoel Asher: The Rambam says, there's another advice how one can give advice with this administering of an oath. One can make her take a neder, one can make that she should make a neder that she's not going to do a

R' Yitzchak: Certain thing because

R' Yoel Asher: She's not going to eat grapes. If the orphans want to do differently, they want to make a neder on her,

R' Yitzchak: If they agree, that they're going to pay in place of the neder without an oath.

R' Yoel Asher: Instead of an oath they're going to make a neder. Since the oath is a problematic thing, the orphans can do this. And **noderes lahen kol mah she'yirtzu**. She must make such a neder, that if I take money shelo b'yosher, or if the kesubah isn't coming to me, then I shouldn't be allowed to eat a certain thing. And then they do it yes. This neder one can indeed make in beis din.

On this neder there's no shame that she's making a shevuas shav. Because with a neder it's a completely different matter altogether. If she later does eat an apple, even though she's not allowed to, she's not going to do the aveirah in front of beis din, she's going to do the aveirah at home by herself. That's already her problem. But there's something of an inyan of kavod beis din, it's a shame for a beis din or it's a zilzul in beis din, that women permit themselves to swear false things in front of dayanim. We're not talking here about wickedness, one isn't medakdek in the oath as it should be. ⟦#2⟧ But on a neder there isn't this problem. **U'madirin osah b'beis din v'achar kach noteles kesubasah**. It says already, because when she makes the neder, in front of beis din she makes a good neder. That if later she becomes nichshal, she eats grapes, even though she wasn't allowed to eat grapes.

R' Yitzchak: Perhaps she won't, and why does she have more fear from a neder than from an

oath? You've put into the whole matter that she's just as chashud on the neder as on the oath perhaps, huh? No.

R' Yoel Asher: But I mean the word isn't about she is, she's not chashud on an oath that she doesn't take an oath seriously. It's something of such an inyan shelo tedakdek. It's something of such an inyan that beis din holds that widows generally, it's very hard for them to fulfill every, if there wasn't once some incident that the husband gave them money al da'as the kesubah. That's what the word looks like, not about they're in general easy with oaths.

R' Yitzchak: I don't know, the beis din doesn't agree to make an oath, but nedarim they do agree to make, so it looks. Yes. And consequently it will work that way. He brings that there's a teshuvos haRambam, to try to explain the halachah.

What the Rambam says "**ratzu**" means apparently that they need to agree. Does this mean that a neder, the Chachamim made a takanah that she can't be goveh except with an oath. With an oath, right. That a neder they need to agree to. Yes. That's how I understand it. But I don't understand clearly. This is dependent, it could be this is all dependent on reality that the oath works, it doesn't work and so on, this will work, this won't work. I don't know. Okay. ⟦#3⟧

Halachah 13: A Widow Who Died or Got Married Before Swearing

The Definition of the Oath as a Condition in the Chalus of the Kesubah

R' Yitzchak: Further, what happens if she didn't swear?

R' Yoel Asher: Yes? "**Meisah ha'almanah kodem shetishava**", if the widow died before she can make the oath,

R' Yitzchak: Before she made the oath, uh-huh.

R' Yoel Asher: It means, the husband died and she came to be goveh, but she didn't manage to swear. Now the question is about the heirs, uh-huh. The heirs can't swear. The heirs can't swear that what? The heirs weren't always there, they don't know if their mother's husband once already paid her, it's a problem: "**ein yorsheha yorshin mikesubasah kelum she'ein lah kesubah ad shetishava**", they inherited nothing.

The simple meaning is, it's not simple that the oath is some side law such that she receives the kesubah because the kesubah is coming to her and she was already zocheh in it, but there's some side halachah that she needs to swear to give more trustworthiness. No! It looks like the oath makes the chalus that it should become hers, and before the oath it's not hers at all. The heirs inherited nothing. Very good. That the oath is more than a birur.

R' Yitzchak: The oath, it means the oath says that the takanah is that she can't receive without an oath, that's a condition.

Nis'as Kodem Shetishava: The Concern of Shema Yafer HaBa'al with a Neder

R' Yoel Asher: "**V'im nis'as kodem shetishava**", if she got married again before she swore,

R' Yitzchak: Can she now make an oath.

R' Yoel Asher: Then "**harei zo nishba'as achar hanisu'in v'noteles kol zman shetirtzeh**".

R' Yitzchak: No,

R' Yoel Asher: What's coming here? Can she still swear, the money is still coming to her, "**kol zman shetirtzeh**". "**Aval**", but a neder she won't be able to make if she got married again, it won't help. Why? "**Aval einah noderes v'noteles**", meaning, if the heirs say no, only on condition that you make an oath, she can't say: ah, I'm ready to make a neder. In such a case she can't make a neder, because if she got married again she has a way out from the neder, "**shema yafer haba'al**", perhaps the husband will be mefer the neder, so a neder will cease to be trustworthy in such a case. Yes, good.

Halachah 14: Yichad Lah Karka O Mitaltelim Bikesubasah

Why Doesn't an Oath Fall Away When the Husband is Meyached Her a Karka or Mitaltelim?

R' Yoel Asher: The Rambam says such a case, what happens, "**yichad lah karka bikesubasah**", if the husband was meyached a certain karka from which karka she'll be goveh the kesubah. The Rambam says: **bein sheyichadah b'arba'as hametzarim**, whether when he marked very clearly which piece of karka he's giving her, from where to where, on all four sides, **bein b'metzer echad**, or even he only points here and he only points to an approximate area, where it is from one side, **govah es kesubasah mimenah b'lo shevuah**.

In such a case one can see the karka. The karka isn't yet with her. The karka is whatever it is, it was sold or whatever it's lying. Can she indeed be goveh b'lo shevuah, because... Yes, that's the word, because... Listen, I don't know. Because he strengthened more by making an apotiki?

R' Yitzchak: It doesn't help, right? Because anyway kol nichsuhu arevin likesubasah, as we just learned earlier. But perhaps it means that he's more relying on her or something.

R' Yoel Asher: But it could be because **yichad lah karka bikesubasah**, we know that he never simply paid her. The whole time there was a fear that perhaps he once gave her money and said this should be for a part of the kesubah. But if he was **yichad lah karka**, one knows that he's not going to... he's never going to give something else.

R' Yitzchak: Right.

R' Yoel Asher: Because he gave this. Right.

In the next halachah the same thing: **v'chen im kasav lah mitaltelim**, you'll inherit the wine bottle,

R' Yitzchak: Yes? Not inherit, the kesubah, yes?

R' Yoel Asher: You'll receive for the kesubah the wine bottle, **v'hen atzman kayamin**, and the mitaltelim are still lying there. Then also the same thing, **noteles osan b'lo shevuah**, because if the husband paid her, he would have given her the mitaltelim, and if it's still lying here in the inheritance.

R' Yitzchak: Everything is more mistaber, everything could be,

R' Yoel Asher: But one goes according to how it shows. **V'chen im nimkeru v'nilkach bahen mitaltelim acherim**, in a case when he wrote mitaltelim, it's not only if the mitaltelim are still lying in the inheritance, but even the husband went and he sold the mitaltelim and he bought other things, **v'noda she'elu hashenayim midmei hamitaltelim harishonim**, the menorah he bought from the wine bottle that he sold, then further that **noteles b'lo shevuah**, because if it's lying here, and one knows the history of it, one knows that she hasn't yet received the kesubah, in such a case the oath doesn't fall away. Very good. Further, the Rambam says further.

Halachah 15: HaPogemes Kesubasah V'Ed Echad Meid SheHi Pru'ah

The Din of Modeh B'Miktzas on a Shtar Kesubah

R' Yitzchak: Now let's learn another woman who needs to receive only with an oath. It means even when she's not a widow apparently,

R' Yoel Asher: Right? Right. The Rambam says: **hapogemes kesubasah**, one who is pogem, it means she herself makes that her kesubah should become half of what it was.

R' Yitzchak: He's going to explain.

R' Yoel Asher: She makes a pgam, she makes a mistake, yes? Yes, she's pogem in the kesubah, she makes the kesubah should be faulty, yes, very good. Then also that **lo tipara ela bishevuah. Keitzad? Hotzi'ah shtar kesubah sheyesh bo elef zuz**, she comes with a shtar kesubah that says that the husband made a kesubah of a thousand zuz. **Haba'al**, if the husband says: **nitkablah hakol**, I already paid her the entire thousand zuz. This means, here we're talking when she's a megureshes, he says that she already received the entire thousand zuz.

R' Yitzchak: How did we,

R' Yoel Asher: She says? So it is, if she would have said,

R' Yitzchak: What happens in such a case?

R' Yoel Asher: She says: **lo nitkabalt ela kach v'chach**. True that he gave me, he didn't give me a thousand,

R' Yitzchak: He gave me five hundred.

R' Yoel Asher: ⟦#4⟧ And in such a case the simple meaning is that she's modeh b'miktzas. She's modeh in a part of it, she's already made the kesubah become weak, it was pogem the strength of her kesubah.

In such a case, **afilu yesh aleha edim b'miktzas shenatla**, even if there are witnesses on the miktzas that she took, consequently she can say: see, always when we settled accounts it was with witnesses; **afilu dikdekah b'cheshbon mah shenatla b'chatzi chatzi prutah**, she shows: see, I have a note, every time he gave me down to the penny, she has tremendous proofs that make exactly

R' Yitzchak: That

R' Yoel Asher: She was very medakdek, and indeed the husband only paid as much as she says, but in practice, since it's already lacking in her trustworthiness, she's already a modeh b'miktzas,

Ed Echad Meid SheHi Pru'ah

R' Yitzchak: Already.

R' Yoel Asher: That's the case of pogemes kesubasah. What happens, **amar haba'al nitkablah hakol**, the husband says she already received everything paid, **v'hi omeres lo nitkabalt kelum**, she says I received nothing, she's kofer hakol.

R' Yitzchak: She denies the entire claim of the husband. Yes.

R' Yoel Asher: She says **lo nitkabalt kelum**, what happens in such a case? **V'ed echad meid aleha shenitkablah hakol**,

R' Yitzchak: The husband brings an ed echad.

R' Yoel Asher: An ed echad isn't ne'eman in dinei mamonos, but a little trustworthiness - an ed echad certainly has enough trustworthiness to obligate an oath. So even if she's kofer hakol, but he brings an ed echad who says on hakol or on miktzas,

R' Yitzchak: Lo tipara kol kesubasah ela bishevuah.

R' Yoel Asher: It means to receive the whole, if she yes, **lo tipara kol kesubasah ela bishevuah**. Very good. It means the part that she, it means if she swears then he must give her the whole. She swears on **lo nitkabalt kelum**. Then her oath will be stronger than the ed echad. Yes.

Halachah 16: HaNifra'as Shelo B'Fanav

R' Yitzchak: Further, **hanifra'as shelo b'fanav**.

R' Yoel Asher: The Rambam says thus: **hanifra'as shelo b'fanav**, what happens when the woman receives paid her kesubah shelo b'fanav? **Lo tipara ela bishevuah**. It means we learned that a widow must swear shevuas almanah. A woman who is divorced doesn't need to swear anything, except in cases when she's modeh b'miktzas and the like. But a woman who receives the money from the kesubah without the husband being there, she does need to swear. So the Rambam explains: **keitzad, harei shegerash es ishto v'halach lo**, he gave a get to the

R' Yitzchak: Wife and he disappeared.

R' Yoel Asher: In such a case **beis din yordin l'nichsav achar shetishava**, the beis din will deal with it and take out from his properties **achar shetishava**. She needs to swear,

R' Yitzchak: Because **u'magbin osah kesubasah, u'magbin osah kesubasah**.

R' Yoel Asher: And, yes. First of all, **yordin l'nichsav** is an interesting thing. The properties used to be down from the mountain, because the fields need to have a lot of rainwater. So a good settlement was up, I know, Tzfas, one lives on the mountain, and down are the fields. So beis din goes out from their mountain peak, sha'ar ha'ir from the beis din, and they go down into the

properties, and they take out from the fruits that they take out from the fields.

But in such a case she needs to swear. What does it have to do with ishah me'izah paneha, or... No, why when the husband isn't there? Ah, because perhaps the husband would have claimed that she already received.

R' Yitzchak: Yes yes, the same thing as... No,

R' Yoel Asher: Normally with a get she doesn't need to swear.

R' Yitzchak: Because when he's here, he'll bring a clear claim, right. The Rambam says,

R' Yoel Asher: V'hu sheyihyeh, that the beis din goes and pays the kesubah,

R' Yitzchak: Even with an oath,

R' Yoel Asher: This isn't done always. This is only done when he's **b'makom rachok sheyesh lahem torach l'hodi'o**, it's hard for the beis din to travel to the other end and inform. Then the beis din takes on for the woman and they go, they take from the properties. **Aval im karov hadavar l'hodi'o**, he's not so far, and the beis din can inform, **sholchin lo u'modi'in oso**, then one informs him. And one tells him that **im lo yavo**, if he's not going to come and pay, she'll swear and take.

Discussion: Why Must One Inform the Husband When He's Close?

R' Yitzchak: Ah, this is one informs him? Or do you mean to say one informs him, and if he doesn't come, **im lo yavo**,

English Translation

R' Yoel Asher: So then they go down? But first of all, the question is if... what does his coming help? Maybe she'll admit in front of him or what?

R' Yitzchak: If he comes... what's missing? No, why is it important here? It seems that it's important that he should indeed be notified. Even though the maximum he can do is obligate her in an oath, that they already, they always do for him anyway. There's a concern about evidence.

Again, when there's a din Torah, it's not proper that one shouldn't give the person time. If not for this, the Chachamim enacted that a widow should make an oath. Here the person is present, he's in the next city.

R' Yoel Asher: Call him! No, I understand, but the Rambam here doesn't go because by every din Torah one must give a person a chance, it seems that... yes,

R' Yitzchak: Every kesubah, it's a normal thing that kesubah...

R' Yoel Asher: He can say I would have claimed something. It doesn't matter what he could have claimed. According to how it looks here, he could always only obligate her in an oath.

R' Yitzchak: Why? He can bring proof, maybe he has witnesses.

R' Yoel Asher: One can think, it could be that he'll claim that if I had been there she would have admitted.

R' Yitzchak: I don't understand, he can have a son-in-law, I don't understand what you need to have this for?

R' Yoel Asher: He can have a son-in-law too. Good, the Rambam says further, **hapochetes kesubatah**.

R' Yitzchak: It appears from all these halachos that it's a normal thing that a woman has already received a bit from the kesubah, for various reasons. So the beis din must use their common sense and say, if one can call him, one should call him and ask if there's any issue, and even if not, she has a kesubah, she has a right to take it with an oath.

Halacha 17: Hapochetes Kesubatah

R' Yoel Asher: Yes, good.

R' Yitzchak: The Rambam says further **hapochetes kesubatah**. Another type that requires an oath,

R' Yoel Asher: Hapochetes, pochetes or pochetes, a woman who makes her kesubah worth less. She admits to something that the kesubah is worth less. We'll see. So such a woman is **nifre'es shelo bishvu'ah**.

The Rambam says thus: **Keitzad, hotzi'ah shtar kesubah be'elef zuz**, she came and she brought a shtar kesubah that the husband must pay her a thousand zuz. **Vehu omer**, he calls out **nitkablah hakol**, I already paid everything. **Vehi omeres**, she says thus: **Lo nitkabalt kelum**, you didn't pay me anything, but I do want to say something. **Ve'ein li ela chamesh me'os**, it's true that in the shtar it says a thousand zuz, but the truth is he only owes me five hundred. **Vezeh shekatav li elef amanah haytah beini leveyno**, he wanted to sound like a big wealthy man, so he wrote a thousand, but we had an understanding between us. Amanah means a trust. He trusted me that I would be truthful and I would tell the secret that it was only five hundred zuz.

So it's clear here that the woman showed great trustworthiness. Because she could have, she knows she's a smart woman, she could have said lo nitkabalt kelum and you must give the whole thousand more, and he could only request an oath and she would receive it. But she went and admitted to something. We see her trustworthiness, in the Gemara this is called a migu. She could have said he owes the whole amount. So we see that she's an honest woman and she's telling the truth, in such a case **nifre'es shelo bishvu'ah**. It's a kind of proof, this shows that she's honest, so she can claim the five hundred that she's claiming shelo bishvu'ah.

But **im amrah ein bishtar kesubati ela chamesh me'os**, not that she says the explanation that amanah haytah beini leveyno, rather she says that this is actually a false shtar. Really the shtar is a fraudulent shtar. It says in the shtar a thousand but really it's five hundred. Then she can no longer request anything from the shtar. **Einah nifre'es bishtar zeh sheyesh bo elef kelum, sheharei bitlah oso**, she herself said the shtar is a false shtar. **Ukhe'ilu hodes shehu sheker**, as if she admitted that the kesubah is false. So it's different from the previous case, when she has an explanation, yes, when she doesn't have an explanation.

Discussion: The Logic of Amanah and the Law of Canceling the Shtar

R' Yitzchak: Not that it's an explanation. In the previous case she has a valid shtar. She has a shtar. The shtar is truly obligating him to give a thousand zuz. By the way, it's not clear at all why she needs a migu to say that she's right, she's right befanav. She's simply right, she has a shtar kesubah. The whole thing, the Gemara says, she says she doesn't want five hundred... Yes, the word amanah that we have in Kesubos means that

R' Yoel Asher: They simply filled in a shtar, not the correct number, that's the word. Exactly.

R' Yitzchak: It's a valid shtar, if she says I only want five hundred, because she's actually fulfilling the amanah, no problem, take five hundred. But if she says that the shtar is fake, it's clear she's saying there's no shtar, so on what basis are you collecting kesubah?

R' Yoel Asher: But it's a strange thing, because the husband doesn't say that the shtar is fake, the husband only says **nitkablah hakol**. The husband says yes, we had a wedding, we wrote the kesubah under the chuppah. He only says it's already been paid. It seems because she decided... Not the fact,

R' Yitzchak: Because it's not a modeh bemiktzas that he said. Again, the **nitkablah hakol** is only a problem when she admits a bit. If she doesn't admit anything, it doesn't do anything. He needs to have some reason to obligate her even in an oath. Simply that he says **nitkablah hakol** nothing happens, she's a kofer hakol. She's still a kofer hakol, the woman as if. She only says that I agree, I'm carrying out our agreement to claim only five hundred. But there's no admission whatsoever regarding the essential obligation. That's the meaning, as opposed to the...

R' Yoel Asher: But when she says **ein bishtar kesubati ela chamesh me'os**...

R' Yitzchak: It depends if she says amanah.

R' Yoel Asher: What did he say?

R' Yitzchak: He says **nitkablah hakol**, but she says for some reason that only five hundred is coming to her, because there's nothing in the shtar except five hundred.

R' Yoel Asher: And what about the shtar? It's fake. If it's fake, what do you want at all? It's strange to me, because if he's there and he says **nitkablah hakol** he confirmed the shtar. It could be we're talking here at all, let's say when there's a shtar,

R' Yitzchak: He's not there. The beis din calls her, or she came with a shtar, and she says I have here a shtar for a thousand zuz, but really they owe me five hundred. What do you mean? If she, he can say from now until tomorrow that she doesn't want, if she says there's no shtar, there's no reason to give money, I don't understand. Why would one give? For another person?

R' Yoel Asher: But it's a strange thing,

R' Yitzchak: Because we don't say

R' Yoel Asher: Here that the shtar is a false shtar.

R' Yitzchak: We say yes.

R' Yoel Asher: No,

R' Yitzchak: Because even the husband didn't say it.

R' Yoel Asher: No, the Rambam says something that when she says against the kesubah she's canceling it, as if. He says here something a "as if." Nobody says it's a false shtar. She doesn't say it's a false shtar, it's an "as if." As if. The husband didn't even say that

R' Yitzchak: It's a false shtar. It's not necessary for the husband to say,

R' Yoel Asher: The husband says **nitkablah hakol**.

R' Yitzchak: She says in the shtar it's five hundred.

R' Yoel Asher: But since by saying these words she canceled the shtar, not that the husband says that... The husband says yes, on this shtar we signed under the kesubah. But by saying **ein bishtar kesubati ela chamesh me'os**, she canceled the kesubah.

R' Yitzchak: Lefikach, therefore she has no shtar to collect anything, there's no shtar at all. There's simply a claim without a shtar. Simply a claim without a shtar, so very good, he can with this be... He's a kofer hakol, he makes a shevu'as heses and he's exempt.

R' Yoel Asher: In another case, it means like she doesn't have... Her shtar is invalid, but can she indeed demand from him a shevu'as heses, swear

R' Yitzchak: That you don't owe me anything, and then he's exempt.

R' Yoel Asher: Nothing different from every time someone is called to beis din and one says you owe me, and you don't owe me, swear heses and one is exempt. Done. Later the Rambam of course qualifies all these things, that in a place where one doesn't necessarily need to have a shtar, where everyone knows that everyone has a kesubah, certain halachos will actually be different, but we'll see that later.

Halacha 18: Kol Makom She'amarnu Lo Tipare Ela Bishvu'ah

R' Yoel Asher: The Rambam says: **Kol makom she'amarnu lo tipare ela bishvu'ah**, everywhere we said that she only receives her kesubah if she swears, **omrin lah**...

The Meaning of "Tipare Shelo Bishvu'ah" and a Condition from the Husband

R' Yoel Asher: Nu, and what did you mean?

R' Yitzchak: He's explaining.

R' Yoel Asher: Lo tipare ela bishvu'ah means that she receives her money after she swears. **Umakom shene'emar tipare shelo bishvu'ah, omrin laba'al, amod veten lah,** please, pay her her money, **ve'ein atah ne'eman bita'anah zo ad shetavi ra'ayah lidvarecha.**

R' Yitzchak: Ah, now one can see what happens if he actually does have evidence. Yes?

R' Yoel Asher: Ah, this is an introduction to the...

R' Yitzchak: Next halacha it means.

R' Yoel Asher: Yes yes. **Amar haba'al me'atzmo tishavei li al ta'anati,** when the husband says: should she swear on **al ta'anati**, on my claim?

R' Yitzchak: Because I have a claim.

R' Yoel Asher: Ah, when he has a claim, he says: I want her to swear against my claim, then we say **lah hishavei utli, vetishava binikitas chefetz.**

R' Yitzchak: Uh-huh.

R' Yoel Asher: But what did he add here? Further, look further, look further, but...

Halacha 19: When the Husband Makes a Condition of Trustworthiness

R' Yoel Asher: Hisnah imah, ah, if they have a condition, **shetigbeh kesubatah belo shevu'ah,** that when the time comes she should be able to take the kesubah without an oath, uh-huh. Or they made an exception, a condition, **shehi ne'emenes kol mah shet'on,** what's the condition? Presumably there must be two witnesses that there was such a condition, yes?

R' Yitzchak: One writes such a condition in the kesubah. Ah,

R' Yoel Asher: In the kesubah, **o shehi ne'emenes kol mah shet'on,** then **govah mimenu shelo bishvu'ah kelal.** And this helps between her and her husband, **aval im ba'ah lipro miyorshav,** it doesn't even help what's written in the kesubah. Uh-huh. **Tishava ve'achar kach titol,** then in any case she must swear first.

R' Yitzchak: Uh-huh. What if he made a condition on this itself?

Discussion: The Order of the Rambam in Halacha 18

R' Yoel Asher: Yes? What, again it's still a bit strange to me the second part of 18,

R' Yitzchak: What he wanted to open with the... The whole order,

R' Yoel Asher: The Rambam is explaining how it works, him... Yes all things he either had to say an introduction for all these previous halachos what means a whole **tishava.**

R' Yitzchak: No, he doesn't say any novelties. Okay, **hisnah imah...** He's only explaining the principle,

R' Yoel Asher: And then he says when there's an exception to the rule.

A Condition of Trustworthiness Regarding Heirs and Buyers

R' Yoel Asher: The Rambam says thus: when he made a condition **shetehei noteles miyorshav belo shevu'ah,** previously it was said, if he can't make, that if he made a condition between the two of them, it doesn't automatically go

R' Yitzchak: Over to the heirs.

R' Yoel Asher: But if there indeed was a clear condition on the heirs, but a condition **shetehei ne'emenes al yorshav,** then **harei zo noteles mehen belo shevu'ah.** The condition between the two of them is, that her kesubah shouldn't turn into an oath for the heirs.

The Rambam says, this is only when she takes out directly from the heirs. But if the heirs or he sold **minichasim meshu'abadim, aval im ba'ah litrofe minichasim meshu'abadim,** then, then **lo titrofe ela bishvu'ah. Ve'af al pi shehemin haba'al,** even if the husband believed her, the husband indeed made a condition that he believes her, even he says a condition that you can also take from buyers without an oath.

R' Yitzchak: Even on the buyers.

R' Yoel Asher: Ah, so let's go back again. Usually when the husband makes a condition, it only helps on himself. If he makes it clear on the heirs, it also helps on the heirs. But on the buyers he can no longer make any condition. **She'ein tenai haba'al mo'il ela alav ve'al yorshav. Aval lehafside mamon acheirim,** at the expense of the buyers who bought, the buyers always have the right to say, that they only give on their

R' Yitzchak: Land with an oath.

R' Yoel Asher: Aval lehafside mamon acheirim eino mo'il,

R' Yitzchak: Her oath doesn't help. Very good. Now we'll learn until when,

R' Yoel Asher: The condition he made for her doesn't help.

A Novel Point and Question: Why Does the Condition Help on the Heirs?

R' Yitzchak: Yes, you can't make a condition on someone else, it doesn't work that way. Why on your heirs you can, I also don't know. Because your heirs aren't you.

R' Yoel Asher: Somehow you can. Don't know why. Okay,

R' Yitzchak: One must think. Somehow he can, I don't know. Okay.

Halacha 20: Collecting Kesubah with a Shtar and without a Shtar, and the Time of Twenty-Five Years

R' Yitzchak: Now we'll learn until when one can collect the kesubah. There's a limitation.

R' Yoel Asher: Yes, the Rambam says thus: **Almanah shehayah shtar kesubah yotzei mitachas yadah,** that she has a shtar kesubah in her hands, **nishbe'es,** can always swear, **vegovah kesubatah le'olam, afilu achar me'ah shanah,** even after a hundred years that the husband died or divorced. If she has the kesubah, she can come to beis din and say: this is the kesubah, I've never yet received any of the money. **Bein shehaysah beveis ba'alah,** whether she's still sitting in her husband's house and she says now I remembered to collect, **bein shehaysah beveis aviha,** even she went back to her father's house, she can always remember.

This is when she has a shtar. **Ve'im ein shtar kesubah yotzei mitachas yadah, ein lah kelum,** she has nothing, **va'afilu ikar kesubah,** she also doesn't have the maneh masayim. **Va'afilu tiv'ah beyom miyas ba'alah,** even that day when the husband died, she comes to beis din saying: I need my money. There's still a logic to say: when did he pay her? He lived until now! But it doesn't help, she doesn't have a shtar. Perhaps he paid her, she doesn't have a shtar. **Vechen hagerushah, afilu ikar ein lah ad shetotzi shtar kesubah.**

In a Place Where They Don't Write a Kesubah

R' Yoel Asher: The Rambam says: **Bameh devarim amurim,** these halachos that everything depends on the shtar kesubah, of course, not of course, of course what the Rambam must say this. The Rambam says: it's **bemakom shedarkan lichtov kesubah.** In a place, when this is the order to write a kesubah, there's a claim: if they still owe you, you must bring the kesubah.

Aval bemakom she'ein darko lichtov kesubah, ela somchin al tenai beis din, everyone knows that one gives kesubah, because this is the takanas Chachamim, the condition of beis din. **Harei zo govah ikar kesubah af al pi she'ein beyadah shtar kesubah,** because everyone knows that he died, it's a sign that one must pay kesubah. **Bein nisgareshah bein shenisalmena, bein shehaysah beveis ba'alah bein haysah beveis aviha.**

The Rambam says: this is all on the kesubah that is takanas Chachamim. **Aval tosefes,** what the husband adds, is not a takanas Chachamim, he does it with his own will, so certainly such a thing is **ein lah bechol makom,** anywhere, no difference where, there's only **bera'ayah berurah,** on this there isn't the thing that every woman must receive kesubah automatically.

The Distinction Between Beis Ba'alah and Beis Aviha (Twenty-Five Years)

R' Yoel Asher: The Rambam says: **Ve'ad kamah tigbeh ha'almanah** now, he says thus,

R' Yitzchak: Now we learned that there's such a way that one doesn't need a shtar. When there's a shtar, there's no limit, we learned. But when there's no shtar, there's a limit.

R' Yoel Asher: Says the Rambam: **"And how long can the widow collect the principal," the principal of the kesuvah, **"in a place where they don't write a kesuvah? If she was in her husband's house,"**

R' Yitzchak: That means how long she

R' Yoel Asher: Lives in that condition, if how long she lives in the husband's house, we'll soon see an explanation why, she can always collect from the heirs and say: I haven't yet received my kesuvah. **"But if she was in her father's house,"** she's already gone home, she's sitting back in her father's house, then until twenty-five years.

Says the Rambam like this: But **"if she comes to claim after,"** after the time, after twenty-five years, then **"she has nothing,"** she gets nothing. Why? Says the Rambam: **"For if she hadn't forgiven, she wouldn't have been silent all this time."** Twenty-five years she said nothing: I want my kesuvah.

R' Yitzchak: "For behold,"

R' Yoel Asher: Ah, why then when she is in her husband's house do we understand that she was silent so long? Says the Rambam that the woman who is in her father's house doesn't have any explanation for why she was silent. **"For behold, she is not with the heirs,"** she's not with the heirs, which would give her the reason to say **"I was embarrassed,"** I was ashamed, **"to claim when they are with me in the house."** When she lives with the heirs, they are nice to her, they let her live in the man's house, they even bring her, bring her food as is the law, **"that she should sit in my house,"** and eat from the property, I was embarrassed, they are so nice to me I was embarrassed. She has a claim, she has an explanation for why I waited twenty-five years. But when she doesn't live with them in the house, there isn't that embarrassment, there isn't that shame. So what then? The reason for twenty-five years that you were silent, is a sign that you either sold or forgave and they don't really owe you.

Note: The Cleverness of the Widow

R' Yoel Asher: It's interesting, because the woman, supposedly she's playing victim, but we know why she waited, because this way she ate from them all those years, once they pay the kesuvah, they become exempt from supporting her. So she's clever. Twenty-five years she sat there and lived on their budget, and now she's asking for the kesuvah. But she can say I was embarrassed to...

When the Heir Brings Her Support to Her Father's House

R' Yitzchak: "Therefore," since it depends on whether she lives with them,

R' Yoel Asher: Says the Rambam **"therefore,"** the thing, if the word is the shame, **"if the heir himself was bringing her support to her father's house and taking care of her,"** that means she's not living with him,

R' Yitzchak: He sends her the money by mail, she lives in her father's house,

R' Yoel Asher: Meaning, since the reason is that from a person from whom I receive favors, a person who is so nice to me I can't demand, that's a strong claim. Therefore a case when she is indeed in her father's house, but in that case the heir brings her food every day, because he follows the mitzvah of **"that she should sit in my house,"** he brings her support, then **"she can claim her kesuvah even after twenty-five years."** Why? Because here there was still the matter of shame. **"Because that she was silent and didn't claim"** is not proof that she's not entitled to kesuvah, rather there's a reason that explains the thing, **"because she is embarrassed before the heir,"** she's embarrassed before the heir, and that's the reason why she didn't ask for kesuvah all these twenty-five years.

Discussion: The Definition of "Her Father's House" and the Rambam's Order

R' Yitzchak: In other words, what it says **"in her father's house"** doesn't necessarily mean in her father's house, it means as long as she's being supported from her husband's house. He says it in a backwards way,

R' Yoel Asher: He says that that twenty-five years is proof that you forgave is only when there's no explanation of shame.

R' Yitzchak: I mean it's clear that the Gemara is in that order and he follows the order.

Law 21: The Claim of "I Married as a Virgin" Against "You Married as a Non-Virgin"

R' Yoel Asher: Okay, says the Rambam, what happens in such a case?

R' Yitzchak: When until now we've learned until when she can collect. Now we come to see in such a manner it's not clear how much the kesuvah is to begin with,

R' Yoel Asher: Right?

R' Yitzchak: We learned that a virgin is...

R' Yoel Asher: Is two hundred, and a widow is only one hundred. So what happens in such a case? **"She says 'I married as a virgin' and the principal of my kesuvah,"** the kesuvah of one hundred or two hundred, is **"two hundred"** of a virgin. And the husband or heirs claim: No, **"you married as a non-virgin,"** they say to her: What, father had a wedding with you when you were already a non-virgin, **"and she only has one hundred."** So what does one do in such a case?

Says the Rambam like this: **"If there are witnesses,"** if there are witnesses who say that they saw the customs **"that the people of that city practiced for a virgin,"** there's a certain kind of wedding, kind of celebration that's made for a virgin, **"such as types of celebration, or known clothing,"** a certain gown, perhaps the hinuma, I mean the custom is that for a second marriage they don't cover with the hinuma, **"or crowns,"** or a crown, **"or other things that they only do for a virgin, she takes two hundred,"** that's... witnesses have proof in this.

"But if she doesn't have witnesses in this," if she doesn't have the proof, the witnesses, then they claim...

R' Yitzchak: That she married as a non-virgin,

R' Yoel Asher: Then **"she takes one hundred,"** she's the one who must extract from another. It says in the Rambam: **"And if the husband is alive,"** if the husband is alive and the husband is the one who says she married as a non-virgin, can she make him swear a **"Torah oath"**? I'm making you swear that you must swear a Torah oath. Why? **"For behold he admitted to part of the claim."**

R' Yitzchak: He admitted to part of the claim.

R' Yoel Asher: He's not saying: I already paid you everything. He admits that one hundred is due to her. Well, it comes out that this is an admission to part, which obligates an oath.

The Definition of Testimony on Signs of Virginity: A Minor Testifying When Grown

R' Yoel Asher: Says the Rambam further, the credibility to say that she was a virgin, one doesn't need actual witnesses. It's enough that one says the way. Who says, perhaps just at her wedding they put on a gown? But a weaker testimony is enough. Says the Rambam, for the same reason **"a minor is believed to testify when grown."** Someone who was small at the wedding, may testify that now he's already an adult, he may say: I was at that wedding, but I was small.

End of Law 21: In a Place Where They Don't Write a Kesuvah

R' Yoel Asher: That means, since one doesn't need full testimony, since now he's an adult, even though he's recounting something that was when he was a minor, he's believed in such a case.

Says the Rambam: All these laws that we've just discussed are **"in a place where they don't write a kesuvah"**. Then there can be such a dispute, was she a virgin or a non-virgin, but if not it says in the kesuvah.

Law 22: A Woman Who Said to Her Husband "You Divorced Me"

R' Yoel Asher: Says the Rambam further:

R' Yitzchak: Another claims and counterclaims.

R' Yoel Asher: Yes, **"a woman who said to her husband 'you divorced me'"**. She says: You divorced me and you must give me kesuvah. And he claims: Divorced? You were properly married to me. **"She is believed,"** she is believed, **"for she doesn't act brazenly before her husband"**. We have a presumption

that a woman can't be such a brazen person in front of her husband. Therefore she's believed and he must pay her.

"Therefore," from this comes out such a law: **"A woman who produced a kesuvah document and doesn't have a get with her,"** a woman who brings the kesuvah document and she demands her money. She doesn't have a get. Yes. **"And she said to her husband 'you divorced me,'"** you divorced me, **"and my get was lost,"** my get was lost, and she says **"give me my kesuvah. And he says,"** he says, **"I didn't divorce,"** he never divorced her, then **"he's obligated to give the principal kesuvah"**. He must give her the principal kesuvah, because she has the credibility **"that she doesn't act brazenly before her husband. But he doesn't give the addition,"** but he doesn't have to give her more than the get, until she brings proof **"that he divorced,"** or until she brings a get. Then he must also give her the addition. Because the credibility only works on the principal.

Discussion: The Distinction Between Principal and Addition and the Raavad's Objection

R' Yitzchak: Ah, the credibility,

R' Yoel Asher: Why? The credibility of **"she doesn't act brazenly before her husband"** only works on the principal.

R' Yitzchak: Why? What's the difference?

R' Yoel Asher: It could be that... I don't know.

R' Yitzchak: The holy Raavad disagrees with this?

R' Yoel Asher: Should it be a splitting of words like this?

R' Yitzchak: "Abraham said, these words are hanging matters, and they have no reason." The Raavad asks my question: If she's not brazen, what's the difference between principal and addition? And in the Mishnah there's no such distinction. Says the Raavad, **"I've already written all that's needed to one of the colleagues,"** the Raavad had colleagues, and one of them had a discussion about this thing, so they indeed had the... and proved that the Rambam isn't right.

And the Raavad says, **"and I say,"** that credibility doesn't mean at all that she can marry or that she's divorced, **"but rather that we hold her in a state of betrothal,"** only stringently. Yes. Says the Raavad, **"or perhaps if she married she doesn't leave, but if you say she may marry ab initio, you haven't left a daughter of Abraham our father sitting under her husband"**. Every woman will say that she's divorced.

R' Yoel Asher: There's no way. The Raavad held that women are indeed brazen.

R' Yitzchak: No, the law is that she's not brazen, but only regarding this, that she can **"if she married she doesn't leave,"** we should also be stringent, but to say that ab initio she can get away with a kesuvah also, the Raavad doesn't agree. Okay. Let's look at commentators here on the Rambam if he had a... In practice there is a Mishnah like this, it's not clear. It says **"she is believed,"** it's not clear what the meaning of the belief is. That's the...

R' Yoel Asher: Certainly there are later authorities who elaborate.

R' Yitzchak: One must remember the language here of the Maggid Mishneh, yes? The Raavad says that **"our rabbi's words are hanging matters,"** says on this the Maggid Mishneh, **"many commentators have already brought sacrifices upon them,"** and they brought proofs that no, the Rambam is right that this is the meaning of believed.

R' Yoel Asher: "Hanging matters"? They're not such hanging matters, they're nice good altars, one can go offer sacrifices on them. Okay.

R' Yitzchak: Literally he means a sacrifice, as if one resolved the Rambam's position, one sort of appeased the Raavad's.

R' Yoel Asher: Where is there **"hanging matters"** at all?

R' Yitzchak: "Hanging matters" is an expression,

R' Yoel Asher: In a verse.

R' Yitzchak: Teluyos means hanging?

R' Yoel Asher: Like by Achav there were hanging altars, hanging altars?

R' Yitzchak: I remember that last time we learned, we looked this up, and I'm a bit embarrassed that I don't remember, a verse in Yechezkel. **"Hanging altars."**

R' Yoel Asher: Who knows what it is with so many patches.

R' Yitzchak: "And you made for yourself hanging altars and fornicated upon them." In short, it speaks of the altars apparently. Rashi says, teluyos - covered with patches. **"Hanging altars,"** they slaughtered on altars, on the altar they placed such a little curtain.

R' Yoel Asher: It's something like that. Okay.

R' Yitzchak: And the Raavad means to say that they're built-up nonsense, yes, such ridiculous... He says, no, it's good. In short, in the Gemara it says **"she is believed,"** there's a dispute among Rishonim, how far is she believed? The Rambam holds that she's believed completely, but only up to the principal kesuvah.

R' Yoel Asher: Only on the principal kesuvah.

The Husband's Claim: I Divorced and Gave Everything and My Receipt Was Lost

R' Yoel Asher: Already, says the Rambam further. The Rambam hasn't yet said anything about whether she may marry or not. The Rambam doesn't speak of that.

"The husband said to her," what happens in such a case? The husband says, **"yes it was,"** it's true, you divorced me, **"I divorced,"** I already gave **"all the kesuvah, principal and addition, and you wrote me a receipt"**. You even wrote me a receipt, **"and my receipt was lost."** So, **"my hope and expectation are lost,"** yes, it's the language of the verse. The receipt was lost, then **"since he could say 'I didn't divorce'"** in such a case the husband has a nice migu, the husband has credibility. Why? He could have said **"I didn't divorce,"** in such a case... ah, it's connected to the previous law. At least on the addition he would have been exempt. But he says yes **"I divorced,"** then **"he is believed."** Interesting, because now he becomes exempt from everything. Right.

"And he makes her swear," he can make her swear **"with the holding of an object"**... ah, **"he is believed"** indeed on the addition, ah. **"And he makes her swear with the holding of an object,"** he can make her swear with the holding of an object above that she should swear on her claim that she hasn't yet received anything, **"and gives her the principal,"** and he can swear a **"hesitation oath on the addition"** on the rest. Because this in the Rambam is connected to the previous law.

Law 23: She Produced a Get and Doesn't Have a Kesuvah Document

R' Yoel Asher: What happens in such a case? **"She produced a get and doesn't have a kesuvah document in her hand,"** she doesn't have a kesuvah, she only has a get. Says the Rambam, **"if the way of that place is not to write a kesuvah,"** just as the Rambam said earlier, if in that place they don't write a kesuvah, rather everyone gives the kesuvah anyway because of the rabbis' enactment, then the get is enough. **"She collects the principal kesuvah with the get in her hand. But if their way is to write a kesuvah,"** if in that place they do write a kesuvah, she gets nothing, **"even the principal she doesn't have until she produces a kesuvah document,"**

R' Yitzchak: "As we explained." Ah, she has a claim, is there a hesitation oath?

R' Yoel Asher: "And the husband swears," in such a case the husband can

R' Yitzchak: Swear a **"hesitation oath on her claim and is exempt."** Yes, one must always remember the basic rules. Every admission to part in Torah law has an oath. Everyone who has witnesses, or who has a complete denial, there is rabbinically an oath, a hesitation oath. That means, witnesses make a Torah oath, but anyway, one witness, yes? Yes. New case.

Law 24: She Produced Two Gittin and Two Kesuvahs (and Other Variations)

Two Gittin and Two Kesuvahs

R' Yoel Asher: Says the Rambam such a case: **"She produced two gittin and two kesuvahs."** She brought two gittin and two kesuvahs, that he

R' Yitzchak: Married her twice and divorced her twice.

R' Yoel Asher: That means, one kesuvah is the last kesuvah. Now she comes to say two times that he obligated himself in kesuvah. Then **"she collects two kesuvahs,"** because we say that it could indeed be that he married her, wrote one kesuvah, and afterwards obligated himself in a larger kesuvah, therefore she can collect both. Married twice,

R' Yitzchak: Divorced her. He had to pay her a kesuvah and married again,

R' Yoel Asher: He owes from the previous kesuvah, and freshly divorced. That's an answer that he's obligated in both.

Two Kesuvahs and One Get

R' Yoel Asher: But **"she produced two kesuvahs and one get,"** then **"she only collects one kesuvah."** Right. Why?

R' Yitzchak: Because he only divorced once. What? He only divorced once, it looks like the other is a repetition of the kesuvah, some new kesuvah.

R' Yoel Asher: Again, **"one get,"** and what happened now,

R' Yitzchak: He died? No, no, he divorced once and he's still alive, he gave one get but she has two kesuvahs, she wants double money for the same get. Right?

R' Yoel Asher: So what? So how does one collect, which one will they collect? So like this: **"If both are equal,"** if they're both equal, then it doesn't matter about the money, but it does matter, we'll soon see where it matters, but one goes by the later one. Where is there a practical difference? That **"she only seizes from the time of the later one,"** if she goes to seize from the buyers she can only seize what he sold after making the kesuvah. Because we only reckon with the second kesuvah, we say that he meant to nullify the previous kesuvah and make the new kesuvah, one goes by the second which is the main one.

But **"if in one of the two there was an addition over the other,"** one is more than the other, meaning the first is more expensive or the second is more expensive, then **"she collects with whichever one she wants,"** she can take the more expensive one **"and the second is nullified."** Interesting, we don't know for sure which one was important to him.

R' Yitzchak: So, right, so why can she take whichever she wants?

R' Yoel Asher: Because she has a document, I don't know.

R' Yitzchak: If they're both the same then apparently... we assume that he simply meant to make a new one because he wants to save the buyers from before basically, and he does that. But if one is more then presumably he wanted to add, then she can take the second amount, or vice versa. How can it be vice versa though, if the second is later?

Ahh, the meaning is not that the second is certainly greater, but she wants it from the first because she wants the property from the first. We tell her: if you want the larger amount you cannot take the property from the first because you have claimed that that document is void, right? So she has a choice, either she has the buyers or she has the more money.

Two Gittin and One Ketubbah

R' Yoel Asher: Got it. What happens with **hotzi'ah shnei gittin u'ketubbah achat**? She has two gittin with one ketubbah.

R' Yitzchak: Ah, and she claims, he divorced her twice, does she get a ketubbah twice?

R' Yoel Asher: She claims that I actually only have one ketubbah, but when he remarried her, he became obligated for a new ketubbah. **Ein lah ela ketubbah achat**, because we say in

such a case that he remarried her al da'at the previous ketubbah, she only has the one ketubbah. **Shehamgaresh et ishto v'hechezira stam, al ketubbatah harishonah hechezira**.

Halachah 25-26: Hotzi'ah Get U'Ketubbah Achar Mitat Ba'alah V'Amrah Met Ba'ali

R' Yoel Asher: What happens with **hotzi'ah get u'ketubbah achar mitat ba'alah**? The husband died, and now she brings a get with a ketubbah that before he died he gave me a get. So **im get kodem l'ketubbah**, we say that he divorced her, and they remarried, and now he died. So **govah b'get zeh ikar ketubbah**, but **im ein darkan lichtov ketubbah**. If **ein darkan lichtov ketubbah**,

R' Yitzchak: Why do we say that he remarried? Why did she need the ketubbah? The previous ketubbah is worth nothing. So, again, **get kodem l'ketubbah**, she gets the ikar ketubbah from the get. Why? Because the first marriage was a valid marriage, she doesn't need to have any ketubbah document for that, and the second ketubbah is on the current marriage, therefore she gets twice.

R' Yoel Asher: V'govah kol mah sheyesh b'ketubbah sheharei zachta zo b'mitato, but **v'im ketubbah kadmah et haget**,

R' Yitzchak: She gets two ketubbot, once for the get, once for the marriage. Eh, there's no extra ketubbah? What's missing,

R' Yoel Asher: Because one is obligated without a ketubbah, with the very essence of marriage.

R' Yitzchak: But we say the ketubbah comes before the get,

R' Yoel Asher: V'im ketubbah kadmah et haget, ein lah ela ketubbah achat,

R' Yitzchak: Because she has the same halachah.

R' Yoel Asher: Hamgaresh et ishto al ketubbah harishonah hechezira.

R' Yitzchak: Ah, she was married twice, but one can be married twice with the same ketubbah.

Now we're going to learn whether she can say **met ba'ali**.

R' Yoel Asher: The ne'emanut (credibility) of a woman to say **met ba'ali**, regarding ketubbah and regarding other things.

A Woman Who Says "Met Ba'ali" Regarding Ketubbah

The Condition of Ketubbah and Its Source in the Mishnah

R' Yoel Asher: Ahh. "**U'mitnai**" — what happens regarding the money by a woman who says "met ba'ali"? "**U'mitnai haketubbah she'im tinase l'acher achar moto**", that when she marries a second after he dies, "**titol kol mah shekatav lah b'ketubbatah**".

R' Yitzchak: "**L'fichach**" means,

R' Yoel Asher: From the condition of ketubbah is, that once she becomes permitted to the market, then she can take, that's the point?

R' Yitzchak: This is a Mishnah, there's a Mishnah, so a Mishnah in Eduyot and also in, I think in Yevamot to such an extent. And yes, it says what? That there was Beit Shammai and Beit Hillel, and "**chazru Beit Hillel l'horot k'divrei Beit Shammai**".

Beit Hillel said: "**omeret met ba'ali**", so "**ne'emenet l'hinase**", but she is not believed regarding money. Why? Because money is "hamotzi mechavero alav hara'ayah", so there's no chazakah that ishah ne'emenet lomar met ba'alah. They asked them a question: how can it be she is believed regarding eshet ish hachamurah, not regarding mamon hakal? They finally said: "**Halo mispar ketubbatah nilmad**", it's written in the ketubbah, that's the condition. That is, even though l'madish regarding money she wouldn't be believed, but that's how it's written in the ketubbah, that if she may marry, she can take money.

R' Yoel Asher: If she is enough of a gerushah to be able to marry, she is enough of a gerushah to be able to take money. Yes,

R' Yitzchak: So she is enough of an almanah.

R' Yoel Asher: Ah, enough of an almanah.

R' Yitzchak: "Met ba'ali", so the Rambam says thus:

The Four Cases of "Amrah Met Ba'ali"

First Case: She Only Asks to Marry

R' Yoel Asher: "**Mitnai haketubbah**", so "**titol kol mah shekatav lah b'ketubbatah. L'fichach**", because of this, "**im ba'ah l'veit din v'amrah met ba'ali hatiruni l'hinase**" ⟦#3⟧ ahh.

R' Yitzchak: My husband died,

R' Yoel Asher: Permit me to marry, "**v'lo hizkira shem ketubbah ba'olam**",

R' Yitzchak: She didn't mention money at all,

R' Yoel Asher: Then "**matirin otah l'hinase**", we believe her that "met ba'ali", for the reasons that we're going to learn in Hilchot Gerushin that a woman has ne'emanut to say the husband died, I think because a woman doesn't tell a lie about such a thing. So since we believe her, we also believe regarding money: "**matirin otah l'hinase**", we believe her regarding that she is not an eshet ish, and "**mashbi'in otah**" just like always when the husband dies, when one takes from the heirs, we make her swear, "**v'notnin lah ketubbatah**".

Second Case: She Only Asks for the Ketubbah

R' Yitzchak: But,

R' Yoel Asher: "**Ba'ah v'amrah met ba'ali**", my husband died, give me the money. Then we see that we're dealing with a money-greedy woman, she's simply here for money. "**Af l'hinase ein matirin otah**", we don't let her marry, "**she'al iskei haketubbah ba'ah**", we don't believe her, what she's asking is only because she says so, because she wants money. "**V'harei b'chezkat shelo met**", the husband had a chazakah that until now he lived, as long as one doesn't die one lives.

"**V'ein da'atah l'hinase**", we say that what she says "met ba'ali", she doesn't even mean it seriously, "**ela litol ketubbah mechaim bilvad**", she doesn't even want to marry. Perhaps — she also has a chezkat kashrut that she won't go be an eshet ish, but she doesn't mean to marry at all and such, she wants to remain sitting, she wants money. So we don't believe her.

Third Case: She Asks for Both and Begins with Nisuin

What happens when she says both things? "**Ba'ah v'amrah met ba'ali**", and she says both: I want to marry, "**u'tnu li ketubati**". But the first thing she said was "**hatiruni l'hinase**", she spoke like a person. "**Matirin otah l'hinase v'notnin lah ketubbatah**", because we say that "**she'ikar devareha al iskei nisuin ba'ah**", her main point of what she's saying is regarding nisuin.

Fourth Case: She Asks for Both and Begins with the Ketubbah

R' Yitzchak: "**Aval im amrah tnu li ketubati v'hatiruni l'hinase**",

R' Yoel Asher: Then, the first thing she speaks about is money,

R' Yitzchak: We permit her, can,

R' Yoel Asher: We say finally she is not, she doesn't only say "tnu li ketubati" — "**matirin otah**". She did say the words "hatiruni l'hinase", but regarding ketubbah she is not believed, because regarding ketubbah one needs, so she is a motzi mechavero.

Since the entire reason is because of motzi mechavero, the meaning is not some deeper explanation that she is not believed because of some reason, but her non-credibility is simply because she — who says? So "**v'im tafsah ein motzi'in miyadah**". If she seized, then he will be the motzi mechavero, so perhaps she is actually — since we actually believe that perhaps he is actually dead, so in such a case "ein motzi'in miyadah", she can keep the property that she seized. This is what we learned in Chapter 9,

R' Yitzchak: All the laws of collection of ketubbah basically. Yes. Okay.

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