Laws of Marriage Chapter 17 (Auto Translated)

English

Auto Translated

Shiur Overview

Summary of the Shiur on Rambam Hilchot Ishut Chapter 17

Introduction to Chapter 17

1. **The Rambam's Words**

(Introduction to the content of the chapter)

2. **Plain Explanation**

The chapter deals with the laws of collecting the ketubah when there are multiple claimants on the husband's assets.

3. **Insights and Explanations**

* **The distinction between Chapter 16 and Chapter 17 (R' Yitzchak and R' Yoel Asher):** In Chapter 16, we learned the laws of collecting the ketubah regarding the law when the husband (or his heirs) argue with the wife – how much she is owed, and the concerns that she may have already received part of the ketubah (which requires an oath). In Chapter 17, there is no question of how much she is owed, rather the question is "laws of priority" – when the husband's assets are encumbered to more than one person (for example, two wives, a creditor, or purchasers) and there isn't enough for everyone, and two other people are arguing who is first to take the assets.

Halakha 1

1. **The Rambam's Words**

One who was married to many wives and died, each one who was married first takes precedence to collect her ketubah, and none of them takes except with an oath, and the last one has only what the one before her left over, and she too swears and takes the remainder. Similarly, if he had a promissory note, if the debt preceded, the creditor collects first, and if the ketubah preceded, the woman collects first and the remainder goes to the creditor.

2. **Plain Explanation**

If a man was married to many wives and he died, the collection of the ketubah goes according to the order of who was married first, because at each marriage the assets become encumbered to that ketubah. Each wife can only take her ketubah with an oath. The last wife receives only what is left over from the previous ones, and she too must swear before she takes the remainder. The same applies if there is a creditor with a promissory note: we look at which encumbrance was first – the promissory note or the ketubah – and that one collects first.

3. **Insights and Explanations**

* **[Digression: A side note about pronunciation]:** R' Yoel Asher notes that the word "nasui" (married) is pronounced in the Hasidic pronunciation exactly like "nasi" (prince in Israel), and one must know the difference. R' Yitzchak says a joke that the Hasidic pronunciation is not made for people who need their words to actually mean what is written.

* **Why must each wife swear ("ve'ein achat mehen notelet ela bishvu'ah") and why does it specifically say "umet"?**

* R' Yoel Asher says that although we learned in Chapter 16 that a wife doesn't always have to swear (only against orphans and the like), here when there are multiple wives one must always swear. Why? Because each wife takes at the expense of the other wife; if the husband already paid her, she is now stealing from the second wife. (R' Yitzchak initially wants to say that it's simple because one tears from purchasers with an oath, but R' Yoel Asher shows that here we're

speaking even without tearing from purchasers, but directly from the husband's assets).

* R' Yitzchak asks: If the Rambam speaks of "umet," one must swear anyway due to haba lifro'a minichsei yetomim, what is the novelty here? R' Yoel Asher answers that the law is true also in divorce (when he divorced multiple wives, where normally one wouldn't swear), or in a case where he died without any heirs.

* R' Yitzchak rejects the case of dying without heirs, because in halakha there is no such thing as a Jew without heirs (there is always some distant relative). R' Yoel Asher asks whether a wife doesn't take precedence over a distant relative, and R' Yitzchak answers that a wife is not an heir from the husband at all, she only takes a debt of ketubah (and if she were the heir herself, the whole question wouldn't be relevant because she would be taking from herself).

* **To whom does she swear?** R' Yoel Asher brings out a new point: the novelty is *to whom* she swears. With orphans, the orphans bring her to beit din. Here we learned that one can swear shelo bifnei beit din, which means one swears in the presence of the claimant. Here the novelty is that the other wives are the claimants and she must swear to them. R' Yitzchak accepts the principle that there is a new reason for the oath: not only because of the heirs or purchasers, but because of the other wives (but he holds that it's still the same one oath, she doesn't swear four times).

* **Why must the last wife swear ("vegam hi nishba'at")?**

* R' Yoel Asher and R' Yitzchak struggle with the words "vegam hi nishba'at" regarding the last wife. Seemingly, with the last wife there is no longer any competition from other wives (because all the previous ones have already taken their share), why does it say that "she too" must swear?

* R' Yoel Asher initially says that she swears the regular oath to the heirs. R' Yitzchak asks, however, that the language "vegam hi nishba'at" implies that it's a novelty that she too must swear, and if it only refers to the oath to the other wives, why should the last one swear to the other wives?

* R' Yitzchak suggests (looking at a commentator on the spot) that perhaps the entire explanation in the Rambam is not that there is a new oath for the wives, but everything refers only to the oath to the heirs (and the Rambam simply says that each one, including the last, must swear to the heirs). They leave it as not entirely clear.

* **The principle of ketubah against a promissory note (R' Yitzchak and R' Yoel Asher):** A ketubah is exactly like a "shetar chov shekav'u lo zman." Therefore, if the promissory note was before the ketubah, the assets were already encumbered to the creditor, and when he later married he actually didn't have any free assets to encumber for the ketubah (and vice versa).

Halakha 2

1. **The Rambam's Words**

When does this apply? When the land from which they come to collect was acquired by him at the time of marriage and at the time he borrowed, for the law gives that whoever's document preceded acquired first. But if he married wives one after another, and borrowed either before marriage or after marriage, and after he married and borrowed he acquired this land, all divide equally, for the encumbrance of all came at once, for when he acquired it was encumbered to all and there is no law of priority here. Similarly, if the time of the ketubot and promissory notes were all one day, or one hour in a place where they write hours, they divide equally for there is no precedence. And always, whoever came first and acquired movables for his debt or for ketubah, we don't take it from him, for there is no law of priority in movables.

2. **Plain Explanation**

The law of Halakha 1 (that we go according to the time when the document or ketubah was written)

only applies when the husband already had the land at the time he married and at the time he borrowed. But if he first married multiple wives and borrowed money (no difference which was first), and only later acquired land, there is no law of priority; all creditors and wives divide the land equally ("kulam cholkin ke'achat"), because when the land came into his possession, all encumbrances went onto the land at the same moment.

The same applies if all ketubot and promissory notes were written on one day (in a place where they don't write hours), or at the same hour (in a place where they do write hours) — they divide equally, because no one preceded the other.

Regarding movables, the rule is that whoever comes first and acquires the movables for his debt or ketubah, we don't take it back from him, because there is no law of priority in movables.

3. **Insights and Explanations**

* **The reasoning of "shibud kulam ke'echad ba" and the definition of encumbrance of assets versus obligation of the person:**

* R' Yoel Asher explains the Rambam's reasoning: When the land is already in his possession, each encumbrance goes onto the land at the minute the document is written, therefore the first document is first. But when he doesn't yet have any land at the time of the loans and marriages, the encumbrances have nothing to take effect on. It's not that the debt goes onto the person, and then goes from the person to the land according to the order the debts came onto him. Rather, the encumbrance goes directly onto the land, and since the land was purchased later, all previous debts and ketubot fall onto the land at the same second ("ba'im ke'echad"). Therefore, no one has any priority on the land over the other, and all have the same strong claim.

* R' Yitzchak and R' Yoel Asher discuss the distinction: Certainly there is an obligation and a mitzvah on the person to pay his debts. R' Yoel Asher asks: If we went according to the obligation of mitzvah on the person, why shouldn't we say that the first debt comes first, just like with mitzvot (for example, netilat yadayim before Kriat Shema) one does first the mitzvah that came upon the person first?

* R' Yitzchak answers that the law of priority has nothing to do with a "sekhel yashar" that because one borrowed from someone first one is more obligated to him than to the second. The entire law of priority is a law in **encumbrance of assets** — when the second lender came, there was no longer any free land for him because it was already encumbered to the first. But here, when both borrowed, there was no land at all. (R' Yitzchak notes that we do see some encumbrance on the person himself, because the fact is that when he later buys land it automatically becomes encumbered to the old debts; but regarding the land, the encumbrance takes effect at the same time, therefore there is no priority).

* **Custom of writing hours (R' Yoel Asher and R' Yitzchak):** If one doesn't write hours in a document, we only look at the time that is written in the document (the day), and if one made a ketubah in the morning and borrowed in the afternoon, both have the same law. But in a place where they write hours, the land becomes encumbered from the hour in the morning, and we calculate who is first according to the hour.

* **Why is there no law of priority in movables?**

* *The meaning of "kadam vezakhah":* R' Yoel Asher initially wants to say that the distinction between land and movables is that with movables "grabbing" plays a role, whereas land one can't grab but must go to beit din to transfer it. R' Yitzchak strongly rejects this: "kadam vezakhah" doesn't mean grabbing, but that he came to beit din to claim and collect first. And with land it's also possible that the later creditor should come to beit din first and collect the land, but there beit din will later say "a mistake was made" and it will be taken back for the first creditor.

* *Encumbrance of movables without law of priority:* R' Yoel Asher says that the reason is simple because movables don't become encumbered. R' Yitzchak goes further and innovates that even when movables **are**

encumbered — for example, after the enactment of the Geonim, or when someone explicitly wrote in a document that he encumbers his movables — there is still no law of priority!

* R' Yoel Asher poses a strong question on this: If the person explicitly encumbered his movables for the first debt, and the movables are still lying in the deceased's house (we're not talking about taking from purchasers who bought), why shouldn't the first creditor or the first ketubah have a law of priority? If it already became encumbered to the first, how can the second come and take it?

* R' Yitzchak answers that encumbrance on movables is not as "real" as on land. The reason land has a complete encumbrance is because it has a "kol" and it's a fixed thing. (R' Yoel Asher shows that "kol" is a reason why one can tear from purchasers, but here we're speaking even without purchasers!) R' Yitzchak explains that even without purchasers, the very nature of encumbrance of movables is only that one has a **right to collect** from it (not that one grabs without a right), but it doesn't create a taking effect of encumbrance on the object with an accounting that this is taken for the first and not for the second. Therefore, whoever comes first and collects with his right, it remains with him.

Halakha 3 (in Part 3 designated as Halakha 7): Priority between a creditor and a woman when there is no time priority

1. **The Rambam's Words**

One who divorced his wife and has a promissory note upon him, and the creditor and the woman come to collect, and he had money and land for the debt and ketubah — the creditor takes the money, and the woman collects her ketubah from the land. And if he has only land that doesn't have enough to collect for both, and there was no law of priority — we give it to the creditor, and if anything remains for the woman she takes it, and if not she is pushed aside because of the creditor. For the creditor lost and gave out his money, and the woman lost nothing, for more than the man wants to marry, the woman wants to be married.

2. **Plain Explanation**

A person who divorced his wife and also has a promissory note upon him, and both (the creditor and the wife) come to collect: if he has enough money (cash/movables) and land for both, the creditor takes the money and the wife collects her ketubah from the land.

If he has only one piece of land that isn't enough for both, and there is no law of time priority between them, we give the land to the creditor. If anything remains, the wife takes it, and if not, she is pushed aside because of the creditor. The reason is because the creditor gave out and lost his own money, whereas the wife lost nothing, because more than the man wants to marry, the woman wants to be married.

3. **Insights and Explanations**

* **Transition to a new type of priority (R' Yitzchak):** Here the topic changes from "law of time priority" to a new type of priority: when there is no time priority, which type of debt is more important and stronger.

* **Why does the creditor take the money and the wife the land?**

* R' Yitzchak initially says that the reason is simple, because a woman has no right to take money at all (movables don't become encumbered to a ketubah by law), only land.

* R' Yoel Asher adds another approach: a creditor has a law in "beinonit" and a woman has only a law in "ziburit." Money is a better thing because it's "liquid" (ready money that can be used immediately), therefore it goes to the creditor and the land goes to the wife as ziburit.

* R' Yitzchak is uncertain about this, because money is not calculated as eidit/beinonit regarding land ("money is money"). He brings in that there is a long Gemara and a Rif on this, and the reason is not entirely clear, but this is how the Rambam rules.

* **The reason why a creditor is first to a ketubah with one piece of land, and the "trade balance" in a match:**

* The Rambam says that the creditor lost money ("hifsid vehotzi me'otav") and the wife lost nothing ("lo chasrah davar").

* R' Yitzchak and R' Yoel Asher ask a strong reasoning question: What does it mean the wife gave out or lost nothing? She married him and gave him her whole life, and therefore she is a loser just like a lender!

* They answer that precisely on this claim the Rambam brings the second half of the sentence: "sheyoter mimah she'ha'ish rotzeh lisa ha'ishah rotzah lehinasei." R' Yitzchak explains that in a loan, the lender is always the one who loses money (even if he does a mitzvah); no person wants to simply give away his money to another, therefore his giving out the money is a real loss and his debt is stronger. In a marriage, although both give and lose something, Chazal tell us that the ketubah is not compensation for her loss. On the contrary, because a woman wants marriage more than the man, it comes out that in the general "trade balance" of the match, the wife is the one who gains and the man is the one who "loses," and what she lived with him is not calculated as a loss from her side. Therefore, one doesn't need to worry so much about her when it stands against a creditor who truly lost his money.

Halakha 4 (in Part 3 designated as Halakha 8): One who died and left a wife and a creditor, the enactment of the Geonim regarding movables, and nichsei tzon barzel

1. **The Rambam's Words**

Similarly, one who died and left a wife and a creditor and land where there is no law of priority, the woman is pushed aside because of the creditor and he collects all his debt first. And since the Geonim enacted that the woman and creditor collect from movables, and it is known that there is no law of priority in movables, if he didn't leave movables enough to give to both, we give to the creditor all his debt first and if anything remains for the woman what she takes in her ketubah or she is pushed aside. If nichsei tzon barzel were written in her ketubah and she claims they were lost or the husband took them, she is with her nichsei tzon barzel like other creditors, and she swears that she didn't take them and didn't give them and didn't forgive, and divides with the creditors.

2. **Plain Explanation**

The same law (that a creditor is first to a ketubah when there's no priority, such as land he bought after both) is also when the husband dies. And just as the Geonim enacted that both a creditor and a woman can collect from movables, and with movables there is no law of priority, the law is that if there aren't enough movables for both, the creditor takes everything first, and the wife takes only what remains, or she is completely pushed aside.

If the wife brought in nichsei tzon barzel (dowry that is written in the ketubah and the husband takes upon himself responsibility to pay their value as they were worth at the marriage), and she claims they were lost or the husband took them, she has on this a law like all other creditors. She swears that she didn't take it, didn't give it away and didn't forgive, and she divides with the other creditors.

3. **Insights and Explanations**

* **Why does the Rambam repeat the law by "met" after he already said it by "geiresh"?**

* **Answer 1 (R' Yoel Asher):** One might have thought that only when the husband is alive (in divorce) does the creditor go first, because on the husband lies a "mitzvah lifro'a chobo" (a mitzvah to pay the creditor). Therefore, the Rambam must say that even when he dies ("mi shemet"), where it only goes according to the pure law of ownership of the assets without the mitzvah, the creditor is also first.

* **Answer 2 (R' Yitzchak and R' Yoel Asher):** R' Yitzchak wonders why the Rambam didn't simply include it in one halakha ("mi shegeiresh et ishto o met," as R' Yoel Asher suggests). R' Yitzchak answers that presumably it's because in the Gemara it appears as two separate statements/cases, so the Rambam followed the order of the Gemara.

* **What is the novelty regarding movables after the enactment of the Geonim? (R' Yitzchak and R' Yoel Asher):**

* R' Yitzchak asks what the Rambam innovates here, it's the same halakha. R' Yoel Asher answers that one might have thought that when the Geonim enacted to collect from movables, they made movables entirely like land, that it should also have a law of priority. The Rambam comes to exclude that movables didn't become a "new type of land" regarding priority.

* **The practical reversal (R' Yitzchak):** R' Yitzchak sharpens it, that through the enactment of the Geonim (which was made because people mostly have movables and not land), it comes out that in practice the entire law of priority between woman and creditor is almost nullified. Because in movables there is never any priority, therefore the creditor will *always* go before the wife with movables, even if her ketubah was much earlier than the loan.

* **The two sides one might have thought regarding nichsei tzon barzel (R' Yoel Asher and R' Yitzchak):**

1. One might have thought that nichsei tzon barzel is essentially "hers" (it was never really the husband's), therefore she should be able to take it back immediately before all creditors.

2. Or conversely, one might have thought that since it's written in the ketubah, it has a law like the main ketubah (maneh matayim), and a creditor should be first to her.

* **The Rambam's novelty:** On nichsei tzon barzel (where she brings in her own property and loses it) she is a proper creditor. She is not weaker than a creditor (like with main ketubah), and not stronger. If there is a law of priority (in land), we go according to priority; if not, she divides equally with the other creditors.

* **The oath regarding nichsei tzon barzel (R' Yoel Asher and R' Yitzchak):**

* R' Yoel Asher questions what the Rambam says that she must swear. They debate what kind of oath this is: whether it's only when the husband died (oath of widow / haba lifro'a minichsei yetomim), because in divorce she would only swear if the husband claims something against her.

* R' Yitzchak and R' Yoel Asher add that every creditor who collects from purchasers or at the expense of other creditors must swear. R' Yitzchak points out that although the main topic of the Rambam here is laws of priority (and not laws of oaths), he mentions that although nichsei tzon barzel is not main ketubah, the oath of widow still applies when she comes to collect.

Halakha 5 (in Part 3 designated as Halakha 9): Division of assets among many wives when there is no law of priority

1. **The Rambam's Words**

One who died or divorced and has many wives and there is no law of priority and he doesn't have enough for all the ketubot, how do they divide? We see if when the money is divided by the number of wives, it will reach the smallest of them the amount of her ketubah or less than her ketubah, they divide equally. And if there is more money than this, they divide from it so that it reaches the smallest of them the amount of her ketubah, and they return and divide the remainder among those remaining according to the first way. How? ... four hundred... three hundred... two hundred... one hundred, the total is one thousand... he left four hundred or less... he left eight hundred, if it's divided among all equally, the fourth takes two hundred and her ketubah is only one hundred. Rather, how do we do?

We take four hundred and divide it among them equally, one hundred each, and the fourth takes her ketubah and leaves... if we divide... the third takes two hundred thirty-three and a third and her ketubah is only two hundred, therefore we take from the four hundred, three hundred and divide among the three equally so the third took her two hundred and left. We divide the one hundred equally between the first and second, so the first has two hundred fifty and so does the second, and the third has two hundred and the fourth has one hundred. And in this way they always divide even if they are one hundred.

2. **Plain Explanation**

A man who has many wives (with different amounts in their ketubot), and there is no law of priority between them (for example, he married or wrote the ketubot for all at once), and there isn't enough money to pay all ketubot. How do we divide it? We look at the total money: if when we divide the money into equal parts according to the number of wives, it will come out for each wife the value (or less) of the smallest ketubah, they all divide equally.

But if there is more money than this, we can't divide everything equally, because then the smallest would receive more than her ketubah. Therefore, we do it in steps:

The Rambam brings an example of four wives with ketubot of 400, 300, 200, and 100 (total 1,000).

* If he left 400 or less: we divide it equally among all four, and each receives 100 (or less).

* If he left 800: If we divide it equally into four, the fourth would receive 200, but she's only owed 100! Therefore, we first take 400 of the 800, and we give each wife 100. The fourth wife is now fully paid and goes home ("vehalkhah lah").

* Now 400 remains for the remaining three wives. If we divide the 400 equally into three (133.33 each), it comes out that the third wife (who already has 100) would have a total of 233.33, but her ketubah is only 200! Therefore, we only take 300 of the remaining 400, and divide it into three – each receives another 100. Now the third wife has her 200 and she leaves.

* Finally, 100 remains for the first two wives. We divide it equally between them (50 each). It comes out that the first and second receive 250 each, the third 200, and the fourth 100.

3. **Insights and Explanations**

* **Division according to amount of money (percentage) versus division according to "ketubot" (R' Yitzchak and R' Yoel Asher):**

* R' Yitzchak explains the foundation of the law in a simple way (he notes that the Rambam's language looks more complicated than it actually is): When there are, for example, two debts – one of 100 and one of 900 – and there is only 500 zuz, the simple logic would be to divide according to percentages ("lefi hamamon," the one who has a tenth of the debt takes 50, and the one who has nine-tenths takes 450). R' Yitzchak notes that there are indeed poskim who hold this way with creditors.

* But here with ketubot the Rambam says a different system: We don't look at percentages, but we try first to "fill ketubot" one by one. That is, up to the amount of the smallest ketubah, all wives have equal power, and we divide the money entirely equally ("lefi gulgolot") so each wife should first receive at least the "smallest ketubah." Only what remains higher than this, we divide further among those who have larger ketubot.

* **An attempt to understand the logic (main ketubah versus tosefet) and its application:**

* R' Yoel Asher initially wants to say that perhaps the logic of the Rambam's division is because the smallest ketubah (100 or 200) is the "main ketubah" that the Sages enacted (or from the Torah), and the rest is only "tosefet ketubah." Therefore, we say that first each wife should at least receive the main ketubah equally, before we start paying the tosefet.

* R' Yitzchak rejects this distinction in two ways: First, it doesn't say so in the Rambam. Second, as the **Maggid Mishneh** brings, the halakha is not specifically with ketubot, but with all promissory notes! In **Hilkhot Malveh VeLoveh** the Rambam brings the dispute regarding regular creditors: one opinion holds that we divide it "lefi mamon" (according to the percentages of the debt), and a second opinion holds that we divide it "beshaveh" (in the same way as here). Interestingly, in Hilkhot Malveh VeLoveh the Rambam brings both opinions and doesn't decide, whereas here with ketubot he clearly rules like the opinion of "beshaveh." The **Ra'avad** attacks the Rambam and calls it a "shitah serucha" (a rotten opinion) and uses the language "lokeh midat hadin," holding that one must go according to the value of the money.

* **The analytical inquiry between Rambam and Ra'avad (encumbrance on the entire sum versus percentages):**

The chavruta deepens to understand the reasoning of both opinions. What is actually more "fair" when a person owes Reuven 100 shekel and Shimon 200 shekel, and he has only 150 shekel?

* **The Ra'avad's reasoning (R' Yoel Asher's explanation):** We look at the debtor's property like one big pot ("income versus expenses"). Beit din places the entire sum of all debts against the entire sum of money that exists. Since the one with the larger ketubah or debt has a larger share ("slice") in the general obligation of the person (or, with a ketubah, the husband wanted her more and gave her a greater power in his assets), we must divide the property according to the percentages (lefi erekh hamamon).

* **The Rambam's reasoning (R' Yitzchak's explanation based on Rambam and Rashi):** R' Yitzchak explains that analytically it's very difficult to say that a creditor has a "percentage" (a third or two-thirds) in the money. The debt has no connection whatsoever to thirds! Reuven has an encumbrance on 100 shekel, and Shimon has an encumbrance on 200 shekel. On the first 100 shekel lying on the table, both creditors have exactly the same strong encumbrance ("equal relationship to the money").

R' Yitzchak asks: Why should the smaller creditor (Reuven, who only needs 100) have to lose from his money only because Shimon has a problem that he lent 700 shekel and there isn't enough in the world for him? For Reuven's debt there is enough money!

* **Debate and clarification about the Rambam's opinion:**

* **R' Yoel Asher's second attempt:** R' Yoel Asher tries to say another reasoning for the Rambam: The borrower has an obligation to pay each one. With the smaller creditor he can fulfill the "mitzvah completely" and pay him entirely, therefore we give him priority. R' Yitzchak rejects this: We're not talking here about mitzvot and not about any law of priority, but about laws of encumbrances on money.

* **R' Yoel Asher's question on R' Yitzchak's explanation:** What does it mean "for the small one there is enough money"? When the small one would come in alone and grab the money, it would be true. But here the money is lying in beit din! When beit din looks at the whole "pot" of all debts against one "pot" of rights (money) together, the money isn't for anyone in particular that one could say "for me there is enough," but until the judges decide everything is in doubt and there is nothing for anyone! Why should the smaller one receive his entire debt, while the larger one receives only a part and loses more?

* **R' Yitzchak's clarification and the parable of 700 and 600:** R' Yitzchak thinks that the explanation in the Rambam is not that we give to the small one because "there is enough for him." Rather, the foundation is **equal division** – we divide the money equally among the people (heads), because every shekel is exactly as important as another shekel, and the fact that one has more debt doesn't give him any law of priority or stronger right to take away from the other. He makes

it clearer with an example where there isn't enough for anyone: if one owes someone 700

dollars and the other 600 dollars, and there is only 1,000 dollars total – according to the Rambam we give each one 500 dollars (equally). In our case (when one has a small debt of 100), when we divide the money equally it comes out that his share is more than what he is owed (for example, we can't give 250 to someone who is only owed 100) – therefore the Rambam must make the "steps" that when the smallest takes his hundred and is paid off, he goes out of the picture, and the rest continue to divide equally.

* **Summary between Rambam and Ra'avad:** R' Yitzchak agrees that the Ra'avad has a strong sekhel hayashar, that the one who is owed more should receive according to the percentage of his debt, and it's strange that he should lose more percentage-wise. But the Rambam's opinion also has its own fairness, and it's difficult to say a clear decision in logic who is right.

Halakha 6: Laws of arev and kablan in ketubah

1. The Rambam's Words

A guarantor for a woman in her ketubah, even though they made a kinyan from him, is not obligated to pay, for it's a mitzvah he did and she lost nothing. But if he is a guarantor for his son's ketubah and they made a kinyan from him, he is obligated to pay, for the father because of his son obligates himself completely and finalizes and acquires. And a kablan for a ketubah is obligated to pay even though they didn't make a kinyan from him. And who is a kablan? One who says to the woman: Marry this one and I will give this ketubah. But if he said to her: I am a guarantor for this ketubah, I will pay this ketubah, I am obligated in it, and the like – he is exempt, unless he was his father.

2. Plain Explanation

If a stranger becomes a guarantor (arev) for a wife's ketubah, even if they made a kinyan with him ("kanu mimenu"), he is not obligated to pay when it comes to collection. The reason is because he only meant to do a mitzvah (to bring together the match) and he didn't cause her any loss. But if the guarantor is the groom's father (the father-in-law) and they made a kinyan with him, he must indeed pay, because a father for the sake of his son truly obligates himself wholeheartedly.

A kablan for a ketubah is indeed obligated to pay even if they didn't make any kinyan. Who is called a kablan? One who says to the wife: "Marry this man and I will give the ketubah" (he takes the debt directly upon himself). But if he uses language like "I am a guarantor," "I will pay," or "I am obligated in this," he is exempt because he only has the law of a guarantor – unless the guarantor is the groom's father, in which case he truly obligates himself.

3. Insights and Explanations

* **The Ra'avad's objection and the meaning of a kinyan (R' Yitzchak and R' Yoel Asher):** R' Yitzchak brings out that the Ra'avad attacks the Rambam and holds that if they made "kanu mimenu" it is indeed a real obligation, and the exemption of arev biketubah is only when they didn't make any kinyan. R' Yoel Asher and R' Yitzchak explain the Rambam's reasoning: A kinyan alone doesn't create any obligation yesh me'ayin if the complete intent and reason for the obligation are lacking. The Sages understood that in the social situation of a wedding, when a person presents himself as a guarantor on the ketubah, he doesn't mean it seriously enough to obligate his property, even if he makes a kinyan.

* **The meaning of "shemitzvah asah veharei lo chasrah kelum":**

* *Clarification in the Rambam's language:* R' Yoel Asher initially thought that "shemitzvah asah" refers to the groom (that the husband did a mitzvah of marrying and writing a ketubah). After discussing with R' Yitzchak they conclude that it clearly refers to the guarantor.

* *What is the mitzvah and why is it not a lie/fraud?* The bride was hesitant to marry because the groom has no money, so the guarantor came and gave "encouragement" and

reassured her that he stands behind this, so the match should come about. R' Yoel Asher asks: Seemingly there is fraud here, because the bride relied on him and he deceived her!

* *The answers:* First, the Rambam says "lo chasrah kelum" – he didn't take anything away from her (she didn't give out any money like in a loan), and she wanted to marry anyway (tav lemeitav tan du), and the husband himself is obligated in the ketubah. Second, R' Yitzchak explains that at a wedding one doesn't really think that the young couple will divorce or die; we write in large sums (or as in other halakhot "amanah haytah iti") only for honor and encouragement. Therefore, the guarantor is not a liar and doesn't do any sin, but rather a mitzvah to help make the wedding.

* *The definition of "mitzvah hu she'asah" and a source for matchmakers (R' Yoel Asher and R' Yitzchak):* What the Rambam means by "mitzvah" is not one of the 613 mitzvot that the Rambam counts, but he "grabbed a mitzvah" (got a hold of a mitzvah) through helping two Jews get married, therefore it's not a lie or sin. R' Yoel Asher brings out an innovation that we see here a tremendous source for matchmakers (which can be used for campaigns to make matches): Usually we say that a matchmaker has a mitzvah from the side of peru urevu, but here in the Rambam we see explicitly that one who helps even a little – even if he didn't mean it so seriously – that a groom and bride should marry, he has already done a mitzvah.

* **[Digression: Comparison to promises from Rebbes and the custom of arev kablan at tena'im]:**

* R' Yitzchak compares this to a Rebbe who says "children, life, and sustenance" to whoever will give a certain donation – one can't take him to Torah court on this, because it's a type of encouragement, not a monetary obligation.

* They also compare this to today's custom at "tena'im," where they call up an important person or the wealthy man of the city as "arev kablan." R' Yitzchak notes that although one can't claim from him in beit din on this, it nevertheless has a certain social value in practice: Since they gave him the honor (kibud) at the simcha (for example, the wealthy uncle), one can later go to him and put on him a bit of social pressure to help out the couple if they need money.

* **The distinction with the father ("arev shel ketubot beno"):** When a stranger (even a relative, as long as it's not the father) is a guarantor, it's only an honor thing. But when the mechutan (the groom's father) writes himself in as a guarantor with a kinyan, he can't later claim "I also only meant to do a mitzvah like that person at the previous simcha." Because a father for his son means it one hundred percent seriously ("gomer umkaneh") and truly obligates himself with his property. (They note that this also fits with today's tena'im, where the mechutan himself indeed becomes truly obligated to pay what he promised).

* **The fundamental distinction between an arev and a kablan (R' Yoel Asher and R' Yitzchak):** An arev is only a "back-up" (a second chance) on the person; the guarantor assures the creditor that he himself has the money to pay, one must first claim from the debtor, and if the guarantor pays he will later demand it back from the debtor. A kablan (from the language "mekabel") knows that the other won't pay; he becomes a partner and places himself "in his place" from the outset, saying "ani noten" – I'm giving it from now. According to the Rambam's opinion, he becomes obligated even only through speech, without a kinyan.

* **Question and answer regarding "shelo tehei kalah be'einav lehotzi'ah" with a kablan:** R' Yitzchak asks a strong question: How is a kablan relevant for a ketubah? If the kablan takes over the entire ketubah obligation instead of the husband, where remains the reason for the Sages' enactment of ketubah that "shelo tehei kalah be'einav lehotzi'ah"? If the husband doesn't have to pay from his pocket, it will be easy for him to divorce her!

* **Answer 1 (R' Yoel Asher):** The Sages' obligation is not specifically that the husband

himself should give from his pocket, but that there should be an obligation.

* **Answer 2 (R' Yoel Asher):** In reality, no enemy or stranger will become a kablan; a kablan is always a father, a close brother, or a family member. Therefore, there is still the reason of "shelo tehei kalah be'einav lehotzi'ah," because the husband won't want to easily divorce his wife and thereby put his own father or brother into a large debt.

Halakha 7: One who divorces his wife and collects from the kablan or from hekdesh or from purchasers (concern for conspiracy)

1. **The Rambam's Words**

One who divorces his wife – he should make her forbidden in benefit, and afterwards she collects from the kablan, or from his father if he was a guarantor; lest he take her back, they will be making a conspiracy on this one's assets. Similarly, one who consecrated his assets and divorced his wife – he should make her forbidden in benefit, and afterwards she collects from the one who redeems from hekdesh, lest they make a conspiracy on hekdesh. But one who divorces his wife and she comes to tear from purchasers – we don't obligate him to forbid her, but she swears and tears, and if she wants she can return to her husband; for the purchasers already knew that he has a wife's ketubah upon him, and they lost on themselves that they bought assets that are under encumbrance.

2. **Plain Explanation**

If a husband divorces his wife and she wants to collect her ketubah from the kablan or from the father (as guarantor), the husband must first make a vow ("yadirenah hana'ah") that they should no longer be able to have benefit from each other (so he can't take her back). We are concerned that they are making a conspiracy to extract the money from the kablan and then remarry. The same applies if he consecrated his assets and divorced her: he must make a vow before she collects the ketubah from the person who bought the assets from hekdesh, due to concern for conspiracy on hekdesh. But if she goes to tear the ketubah from regular purchasers (buyers), we don't force him to make a vow, but she swears and takes the land, and she may afterwards return to her husband – because the purchasers knew that there is a ketubah encumbrance on the assets and they lost on themselves.

3. **Insights and Explanations**

* **The precise meaning of "yadirenah hana'ah":** R' Yitzchak and R' Yoel Asher debate the language "yadirenah." R' Yitzchak shows that the word "yadirenah" looks like he makes a vow that *she* should not be able to have benefit from *him* (because if he forbade himself, it should have said "yadir et atzmo"). R' Yoel Asher holds, however, that the purpose is that *he* should not be able to have benefit from her ketubah money and they shouldn't be able to make a "good life" together. In the end, they conclude that both ways come to the same practical result: the prohibition of benefit between them makes it so he can never again be "machzir gerusato" (remarry her).

* **Question why we require such a severe vow on divorce, and not just a vow on the money:** R' Yoel Asher asks a strong question: Why do we require such an extreme thing that he should never be able to take her back? Seemingly it would be enough with a much simpler solution: he should make a vow only on the ketubah money itself (that he won't acquire her money and will never have benefit from the money she takes from the kablan), and marrying her he should be allowed! R' Yitzchak answers that a vow only on the money is not enough to avoid the concern, and therefore the Gemara enacted specifically a complete "yadirenah hana'ah" that forbids him from taking her back.

* **Explanation of "min hapodeh miyad hahekdesh" (R' Yoel Asher and R' Yitzchak):** Why does the Rambam write that

she takes it from the "podeh" and not directly from hekdesh? When one consecrates assets (for example, fields for bedek habayit), hekdesh doesn't hold it itself, but the hekdesh system sells it to a buyer (the podeh). When the wife comes with her ketubah encumbrance (which was before the hekdesh), she goes to take it from the person who bought it from hekdesh.

* **The reasoning distinction between kablan/hekdesh and purchasers (the theory of "calculated risk"):** Why do we say with purchasers "hem hifsidu al atzman" and we're not concerned for conspiracy, while with kablan and hekdesh we do protect them with a vow?

* **R' Yoel Asher's first explanation:** With purchasers there is a shetar ketubah that has a "kol," and a buyer has an obligation to inquire. Hekdesh, however, is a charity fund that accepts everything that Jews donate and sells it further; hekdesh (and the podeh) don't have the obligation to inquire about encumbrances.

* **R' Yitzchak's and R' Yoel Asher's deeper explanation (the economic difference in the risk):** Purchasers enter into a business transaction. When a buyer purchases a house or field that lies under a "lien" (ketubah encumbrance), he takes upon himself a calculated risk. He presumably buys the land much cheaper because of the encumbrance (like buying in "foreclosure" to catch a good "deal"), hoping that the risk will pay off. The risk is already paid for in the cheap price ("derekh avodato" – that's how the industry works). Therefore, if the risk doesn't pay off and the wife divorces and takes the field, the buyer can't have any complaints – that was his business. But a kablan (or hekdesh) didn't buy anything, didn't make any "deal," and didn't earn anything from this; the kablan only took the risk to help pay a true ketubah, but he didn't sign up for a risk that the couple will swindle him through a false divorce! Therefore, there we must make the vow of "yadirenah hana'ah."

Halakha 8: A wife who waives her ketubah encumbrance ("nachat ruach asiti leba'ali")

1. The Rambam's Words

The husband who sold his assets and afterwards his wife wrote to the purchaser "I have no claim or matter with you" and agreed to his actions, even though they made a kinyan from her, she still tears, for she only wrote to him so there wouldn't be quarrel between her and her husband, and she can say "I did nachat ruach for my husband." But if they made a kinyan from the woman first that she has no encumbrance on this place, and afterwards the husband sold it, she doesn't tear. Similarly, if the husband sold and said to his wife to write to the purchaser "I have no claim or matter with you" and she didn't write and didn't agree to his actions and the sale was ruined, and the husband returned and sold to another person, either that field or another field, and after the husband sold she agreed to his actions and they made a kinyan from her that she has no encumbrance on this field, she cannot tear, for she cannot say "I did nachat ruach for my husband," for initially when you didn't want you didn't go according to your husband's will.

2. Plain Explanation

A husband sold his assets (which are encumbered for the wife's ketubah). The purchaser is afraid of the encumbrance, so the wife writes a document for the purchaser "I have no claim or matter with you" (a "waiver" or "indemnification," that she has no complaints and agrees to the sale). Even if they made a kinyan with her, she can later (when the husband dies or divorces her) come and tear the land for her ketubah. Why? Because she can say that she didn't mean it seriously, but did it for shalom bayit ("nachat ruach asiti leba'ali") so as not to quarrel with her husband.

But in two situations she cannot tear:

1) If the purchaser first went to the wife and made a kinyan with her that she has no encumbrance on this place, and only afterwards did the husband sell it.

2) If the husband once sold a field and asked his wife to write for the purchaser "I have no claim or matter with you," and she didn't want to and the sale was ruined ("nifsad hamikach"). Afterwards the husband sold to a second person (either the same field or another field), and this time she indeed agreed after the sale and they made a kinyan with her – she can no longer tear, because she already showed in the first time that when she doesn't want to, she doesn't go according to her husband's will.

3. **Insights and Explanations**

* **The definition of "nachat ruach asiti leba'ali" (not coercion, but normal shalom bayit):** R' Yoel Asher initially wanted to say that we assume there was "pressure" from the husband. R' Yitzchak corrects it: It's not pressure, she does it with her own free will ("free will"), but the purpose of her will is for the sake of shalom bayit. When a couple lives well in peace and harmony, and the husband is a businessman who sells real estate, one can't expect that the wife should now interfere and ruin his businesses just to protect her ketubah encumbrance. Therefore, it's a clear umdana that her waiver is only for now not to make any quarrel, and not a true waiver for later when they are already quarreling (divorced) or he has died.

* **Question of "devarim shebalev einam devarim":** R' Yoel Asher wonders: Usually we say "devarim shebalev einam devarim," why do we reckon here with what she thought in her heart? R' Yitzchak answers that "devarim shebalev" is only with things that aren't clear to everyone, but here it's an "umdana hamuchachat" and "raglayim ladavar" (and there are entire simanim in Shulchan Arukh about things that people don't mean seriously).

* **The reasoning why it helps when one goes first to the wife:** R' Yoel Asher asks a strong question: Even if the buyer goes first to the wife before the sale, why can she still not claim that she did it for "nachat ruach leba'ali" to enable the husband to make his business?

R' Yitzchak brings the language of the Mishnah (Ketubot): "If he bought from the man and returned and bought from the woman, his purchase is void; if he bought from the woman and returned and bought from the man, his purchase is valid." He explains that when the buyer goes first to the wife (before the husband has sold at all and entered into a sale), he comes to her with an independent business proposal ("women can make deals"). Presumably he pays her some small sum (for example, ten shekel) that she should remove her encumbrance from the field, and she calculates that it's worth it for her because she doesn't plan to divorce. Since the husband hasn't yet sold, her agreement is a true sale between her and the buyer, and not just a way to help the husband out of a problem after a sale.

* **Individual assessment in beit din (in the case where she previously didn't agree):** R' Yoel Asher notes that the second situation (where she didn't want to sign at the first sale) is very interesting: Usually Chazal establish general rules for everyone, and here we look at the specific personality of the wife and her individual relationship with her husband – that she is not a "weak wife" who always goes according to his will.

R' Yitzchak adds that the halakha is indeed so until today: The cases in the Rambam are only "general definitions," but practically when one comes to beit din we look at the reality of each situation to see if it's reasonable this way or that. Based on this, R' Yoel Asher says an innovation: If we know in general that in the house the wife is the "manager" and the "boss," she won't be able to claim "nachat ruach asiti leba'ali," even if there has never before occurred an incident where she refused her husband.

Halakha 9: A man with two wives where the first waives for the purchaser (chozrot chalilah)

1. **The Rambam's Words**

One who had two wives and sold his field, and the purchaser made a kinyan from the first that she has no encumbrance on this field and she doesn't tear it from the purchaser, and it was an effective kinyan that she cannot claim "I did nachat ruach for my husband," and afterwards he died or divorced, the second takes from the purchaser for she didn't make a kinyan with him, and the first takes from the second because she preceded, and she only removed her encumbrance from the purchaser. And when the field returns to the first, the purchaser takes from her for they made a kinyan from her to him, and they return in a circle until they make a compromise among themselves.

2. **Plain Explanation**

A person has two wives (both have a ketubah encumbrance, and the first wife has a law of priority over the second). The husband sells his field. The purchaser goes and makes a kinyan with the first wife that she waives her encumbrance on this field and won't tear it from him. The Rambam warns that we're speaking when it was a "kinyan hamo'il" (a good kinyan where she can't claim "nachat ruach asiti leba'ali," as above). Afterwards the husband dies or divorces both of them.

A tangle arises here (a "mavoi satum"): The second wife can go and take the field from the purchaser, because she never waived her encumbrance. But when the field is already with the second wife, the first wife comes and takes it from the second wife, because her ketubah was earlier ("mipnei shehi kadmah"), and she only removed her encumbrance regarding the purchaser. When the field comes back to the first wife, the purchaser takes it back from her (because she promised him), and it turns in a wheel ("chozrot chalilah") until they make a compromise among themselves.

3. **Insights and Explanations**

* **The definition of the first wife's waiver (relative to the purchaser, not absolute on the field):** R' Yoel Asher and R' Yitzchak explain the distinction in the reasoning: One might have thought that when the first wife waives her encumbrance, she has entirely lost her connection to the field. The Rambam says no: Her waiver was only regarding the purchaser ("I only waived for the purchaser, not for the second wife!"). As long as the field is with the purchaser, the connection is missing and the first wife can't touch it; but as soon as the second wife takes it from the purchaser, the field is no longer with the purchaser, and regarding the second wife the connection is back and the first wife still has her full encumbrance and right of priority.

* **The status of the field with the second wife (R' Yoel Asher and R' Yitzchak):** R' Yoel Asher shows that in order for the first to be able to take from the second, we must say that when the field comes to the second wife it's still calculated as the husband's assets (and R' Yitzchak adds that she received a chazakah). One might have thought that since when she collected it she was the only one who had a right in the husband's assets (because the first can't take from the purchaser), it becomes entirely hers and no longer the husband's assets – but we don't say so.

* **The revolving wheel and the question whether it works automatically:** When the field comes back to the first wife, the purchaser comes and takes it from her because she promised him, and then again the second comes and takes it from the purchaser, and one remains stuck (one can "generate electricity" from it) until they make a compromise.

* R' Yoel Asher asks a strong question: If all this works automatically, why shouldn't we say that since the second wife is the one who claimed it from the purchaser and the first already waived it, it automatically goes to the second wife and stays with her? R' Yitzchak answers that it goes to the "ketubah" (and there the first wife comes first). R' Yoel Asher asks, however: Why should there be a concept of a domain called "ketubah" if the first already waived? R' Yitzchak answers that the first didn't waive her ketubah and not even the land itself, but she only made an agreement

("a deal") with the purchaser that from him she won't take.

* **[Digression: The Rambam's principle in muskalot versus mefursamot]:** R' Yitzchak brings out a principle that the Rambam writes in several places: The entire Torah (except for the mitzvah to know that there is a Creator and not two, which is "muskalot" – an absolute truth that one cannot think otherwise, and whoever says otherwise is completely mistaken) is from the category of "mefursamot vehamekubalot." This means that logically every halakha could have been different. Therefore, that one can ask about a halakha "I could have thought differently" is not a question. A question is only when there is an internal contradiction that one cannot understand at all (like parah adumah which purifies the impure and impurifies the pure). With all other halakhot it's enough that one can explain why it can indeed be so. R' Yoel Asher agrees that his question was only a way of sharpening the point.

* **The paradox of the halakha (R' Yitzchak and R' Yoel Asher):** "Chozer halokei'ach umotzei mimenah" doesn't mean that it happens automatically in one second through beit din (because if the purchaser goes away and leaves it, it indeed stays with the first wife). Rather, the Rambam describes here an analytical paradox (a kind of "shnei hafakhim benose echad" or "galgal hachozer"): The one who has the right to take from the field (the second wife against the purchaser) doesn't have the right to hold it for the ketubah (against the first), and the one who has the right in the ketubah (the first) doesn't have any right to take from the purchaser. R' Yitzchak mentions a reasoning in the name of R' Yoel David Shaul that since all these things take no time (it's a halakhic situation), one cannot divide the process, and when we divide the ketubah it must go to the first.

Halakha 13 (according to the order in Part 8–9): A widow and divorcee who sell land for their ketubah

1. **The Rambam's Words**

A widow, whether from erusin or from nisu'in, swears and sells her husband's land and collects her ketubah, whether in an expert beit din or not in an expert beit din, provided that there are three trustworthy men who know land appraisal. And the responsibility of the sale is on the orphans' assets. But a divorcee may only sell in an expert beit din. And anyone who sells in beit din may only sell with a proclamation, and in Hilkhot Halva'ah will be explained the law of beit din's sale, how it is. But one who sells not in beit din doesn't need a proclamation even though they are three trustworthy men who know appraisal.

2. **Plain Explanation**

A widow (whether from erusin or nisu'in) swears the widow's oath to the orphans and sells from the husband's land for her ketubah. She can sell either through an expert beit din or even not through an expert beit din – but on condition that there are three trustworthy men who understand land appraisal. The responsibility of the sale lies on the orphans' assets.

A divorcee (who doesn't need to swear) can only sell through an expert beit din.

Every wife who sells in beit din must sell with a "hakhrazah" (one publicizes the sale to get the best price; the details are explained in Hilkhot Halva'ah). But when she sells not in beit din (like a widow with three men), she doesn't need a proclamation.

3. **Insights and Explanations**

* **The meaning of "mumchin" and the reason why a widow doesn't need beit din:** Initially R' Yoel Asher thinks that "mumchin" means experts in land ("real estate"). Then they conclude that "beit din mumchin" means a complete beit din that knows Choshen Mishpat, whereas the three men with a widow only need to be honest men who can appraise land ("appraisers").

R' Yitzchak brings the reason from the Gemara: "Ein adam rotzeh shetitbazeh ishto bebeit din" – a husband doesn't want his widow to have the

embarrassment of going to court (beit din) to receive her money (as we saw earlier with the oath that going to beit din is embarrassing), therefore we let her go to a committee of three appraisers. With a divorcee, however, the husband doesn't spare her, and he insists on the highest standard (expert beit din with proclamation).

* **Acharayut hamikach al nikhsei yetomim (R' Yitzchak and R' Yoel Asher):** "Acharayut hamikach" is like "title insurance." If a creditor later comes with an earlier encumbrance ("lien") and takes the field from the buyer (or from the wife), the loss doesn't fall on the widow, but it goes back to the orphans' other assets, because the widow must ultimately have her ketubah paid.

* **The reference to Hilkhot Halva'ah (R' Yoel Asher):** The Rambam here refers to Hilkhot Halva'ah to know how beit din's sale works, although the Rambam has already mentioned several times the concept of "beit din yordin lenikhsav" and could have said it there already.

* **The Rambam's language regarding proclamation ("ve'af al pi shehen sheloshah..."):** R' Yoel Asher points to a strange language in the Rambam: He calls the three men "mokheret shelo bebeit din," and then says "af al pi shehen sheloshah ne'emanim...". R' Yitzchak and R' Yoel Asher explain that the Rambam already includes the answer in the question: One might have thought that since we require three men it's essentially a beit din and should have a law of "mekhirat beit din" with a proclamation; therefore the Rambam calls it "shelo bebeit din" to say that it doesn't have the law of beit din.

* **The logic why only in beit din we need a proclamation (R' Yitzchak):** When a beit din sells something, people look at it like a "foreclosure" – a sale where one grabs assets cheaply; therefore one must make a proclamation to protect the price. But when a person himself (the widow with three appraisers) sells privately, it looks like a normal sale and people pay a proper price without a proclamation.

Halakha 14–15: A widow who sells land for her ketubah herself (beinah levein atzmah)

1. The Rambam's Words

A widow who sold land for her ketubah by herself, if she sold worth for worth, her sale is valid, and she swears the widow's oath after she sold. And this is when she sold to another, but if she assessed for herself she did nothing, even if she proclaimed.

**Her ketubah was two hundred and she sold worth one hundred for two hundred, or worth

two hundred for one hundred – she received her ketubah and has nothing, provided that she swears the widow's oath. Her ketubah was one hundred and she sold worth one hundred and a dinar for one hundred – her sale is void, and even if she said I will return the dinar to the heirs, her sale is void. Her ketubah was four hundred zuz and she sold to this one for a maneh and to this one for a maneh and to this one for a maneh worth for worth, and to the last one worth a maneh and a dinar for a maneh – the last one's is void and all of theirs is valid.**

2. Plain Explanation

If a widow sold land from the husband for her ketubah herself (without beit din and without three appraisers) for the correct value ("shaveh beshaveh"), the sale is valid, and she must afterwards swear the widow's oath (that the husband didn't pay her or forgive her, etc.). This only applies if she sold it to a third party ("le'acher"). But if she made an appraisal and took the land for herself, even after a proclamation, it's worth nothing.

If her ketubah is two hundred, and she sold land worth one hundred for two hundred, or land worth two hundred for one hundred – in both cases it means she has already received her entire ketubah, and she only needs to swear the widow's oath. If her ketubah is one hundred, and she sold

land worth one hundred and a dinar for one hundred, the entire sale is void (and she must now go fresh to the heirs to request her ketubah), even if she wants to return the dinar to the heirs. If her ketubah is four hundred zuz, and she sold to three people each a maneh "shaveh beshaveh," and to the fourth she sold worth a maneh with a dinar for a maneh – only the last sale is void, and the first three are valid.

3. **Insights and Explanations**

* **Why "shamah le'atzmah" doesn't work (R' Yoel Asher):** R' Yoel Asher compares this to a halakha we learned earlier (in Masekhet Kiddushin / Hilkhot Sheluchin VeShutafin) with partners, that one partner cannot alone grab a portion and say "this comes to me" without properly dividing. Here too, even if her appraisal is true and she made a proclamation, because she is acting against the other heirs, it must be calculated together; it's not a free-for-all world ("grab-fest") to take for oneself.

* **The reasoning in "shaveh me'ah bimatayim" and "shaveh matayim beme'ah" (R' Yoel Asher and R' Yitzchak):** R' Yoel Asher explains why both cases go against her, although she seemingly could have claimed in both cases that she is still owed a hundred for two opposite reasons:

* When she sells shaveh me'ah bimatayim (she was a good "sales lady"), she could have claimed: From the husband's assets I only took out a value of one hundred, and the second hundred that I managed to squeeze out is my own profit (like a widow's find that belongs to her). We tell her: In practice you already took out two hundred from the husband's land.

* When she sells shaveh matayim beme'ah (she made a bad "deal"), she could have claimed: In practice I only received one hundred in hand! We tell her: In practice you took out from the husband's assets a value of two hundred. R' Yoel Asher adds that this is her own fault ("her fall"), because she shouldn't have sold herself but should have gone to beit din. R' Yitzchak agrees that one can explain it well both ways that she has already received.

* **The widow's oath in these cases (R' Yitzchak and R' Yoel Asher):** What the Rambam writes "uvilbad shetishava shevuat almanah" has nothing to do specifically with the mistaken sale; every widow who collects her ketubah must always swear the widow's oath after selling.

* **Why the sale is void with one extra dinar (even if she wants to return it):** R' Yoel Asher asks: If she sold shaveh me'ah vedinar beme'ah, why can't she simply return the single dinar to the heirs, why does the entire sale become void? R' Yitzchak and R' Yoel Asher answer that generally one must go to beit din (three experts) to sell. The Sages barely gave her a right to sell herself only when she does it precisely and honestly. Once she takes in a dinar that is not hers at all and acts dishonestly, she has transgressed her authority and has no right at all to make the sale, therefore the entire sale falls through.

* **Why we don't count all four sales as one total (R' Yoel Asher):** In the case where she sells to four people and only with the last one she adds a dinar, the novelty is that we don't make all four sales one "total" to say that in the entire process she swindled the heirs and everything should be void. Rather, we look at each sale separately: The first three were with permission and are valid, and only the last sale where she took out money without permission is void.

Halakha 16–18: A wife who sells or gives away her ketubah

1. **The Rambam's Words**

A woman has the right to sell her ketubah or give it as a gift. If the husband died or divorced her – this one comes and takes. And if she died in her husband's lifetime, or before she swore – he has nothing.

If she sold or pledged or gave to another part of it – she sells her husband's land for her ketubah and collects the rest, whether in an expert beit din or with three trustworthy men. And she sells for her

ketubah even many times, whether in beit din or with three trustworthy men who know land appraisal.

2. **Plain Explanation**

A wife has a right to sell the right of her ketubah or give it away as a gift (while the husband is still alive). If the husband dies or divorces her, the buyer comes and takes the ketubah. But if she dies in her husband's lifetime, or she dies before she managed to swear the widow's oath – the buyer receives nothing.

If she sold, pledged, or gave away only a part of her ketubah, she can sell from the husband's land for her ketubah and collect the remainder for herself, either through an expert beit din or through three trustworthy men. Similarly, she may sell land for her ketubah bit by bit many times ("pefa'amim rabot"), either in beit din or through three trustworthy men who understand land appraisal.

3. **Insights and Explanations**

* **The distinction between the law and the halakha that the husband must write a new ketubah (R' Yitzchak and R' Yoel Asher):** R' Yitzchak mentions that we learned earlier that if a wife sells her ketubah, the husband must write her a new ketubah (so it won't be easy in his eyes to divorce her). R' Yoel Asher distinguishes between the two: That halakha is a law in the Sages' enactment of a ketubah (one may not live without a ketubah), but here the Rambam speaks from the laws of Choshen Mishpat – what is the law of the sale itself that she sold to the other.

* **Why the buyer receives nothing if she dies before the oath (R' Yoel Asher and R' Yitzchak):** Because a widow doesn't receive any right in the ketubah until she swears (as we learned earlier that before swearing she has not yet received anything), therefore the buyer cannot come and claim "she died but I'm alive!" – because the buyer is not a party in his own right ("you are not here a man who says"), he can only receive what she receives, and if she was never entitled to it, he has nothing.

* **The novelty of "mokheret... vetigbeh hasha'ar" and "pefa'amim rabot":** When reading the halakha, R' Yitzchak initially wonders what the novelty is that if she sold a part of the ketubah she can collect the remainder.

* First R' Yitzchak lays out one novelty: One might have thought that if she sold a part to another, she must now go to an expert beit din to sell the land; the Rambam comes to say that even in such a case "three trustworthy men" is enough.

* After R' Yoel Asher brings out that in the Gemara (Ketubot) there is an entire sugya and a dispute of Tannaim in the Mishnah whether a wife may sell for her ketubah bit by bit ("pefa'amim rabot") and the Rambam rules like the Sages that she may, R' Yitzchak grasps the general novelty of all these halakhot together: There is a side (and opinions of Tannaim) that when a wife sells a part of her ketubah or goes to collect it in parts, she loses certain rights of her ketubah. The Rambam comes to teach that all her rights remain exactly the same on the part that remains for her.

Halakha 19 (last halakha in the chapter): The distinction between "mokheret ketubtah" and "mochelet ketubtah," and the definition of mechilah

1. **The Rambam's Words**

One who sells her ketubah, whether to others or to her husband, has not lost the other conditions of ketubah. And if she had a male son – he inherits corresponding to this ketubah that was sold from his father's assets in addition to his portion according to the law of this condition. But one who forgives her ketubah to her husband – has lost all conditions of ketubah, and she doesn't even have sustenance from him. And one who forgives her ketubah doesn't need a kinyan or witnesses, like other forgivers who don't need witnesses or kinyan but only with words alone, provided that they are words that the mind relies upon, and

they are not words of jest and frivolity or words of wonder, but with proper intent.

2. **Plain Explanation**

A wife who sells her ketubah – whether to others or to her husband himself – has only sold the main ketubah (maneh matayim vetosefet), but she has not lost the other "conditions of ketubah" (the rights that the Sages enacted). Therefore, if she has a male son (and she dies in her husband's lifetime), the son continues to inherit the value of her sold ketubah from the father's assets (from the law of "ketubot benin dikhrin").

But if she forgives her ketubah to her husband, she loses all conditions of ketubah, and the husband doesn't even owe her sustenance. A mechilah on a ketubah (like every mechilah) doesn't need a kinyan or witnesses, but it works with speech alone ("bidevarim bilvad") – on condition that they are words that the mind relies upon ("devarim shehada'at somekhet aleihen"), not words of laughter, jest, or wonder ("divrei teimah"), but with clear intent ("beda'at nekhonah").

3. **Insights and Explanations**

* **How can the son inherit "ketubot benin dikhrin" if the ketubah is already sold?** R' Yitzchak wonders strongly about this law: The law of "ketubot benin dikhrin" is that the sons inherit the mother's ketubah; but here she already sold the ketubah (to a stranger or to the husband), so the ketubah is no longer with her – what does he inherit?

R' Yoel Asher and R' Yitzchak answer a fundamental distinction: "Ketubot benin dikhrin" is one of the "conditions of ketubah." Its definition is not that the sons inherit literally the money that the mother left over (and only if she still has it), but rather it's an extra enactment and right for the sons that they should receive a sum of money from the father's assets *corresponding to* the sum of the mother's ketubah. Because the mother only sold her main ketubah but not the conditions of ketubah, the condition of benin dikhrin remains in force.

* **Why with mechilah she loses all conditions of ketubah (even sustenance) if she only said the word "ketubah":** R' Yoel Asher asks: We're speaking that she didn't explicitly discuss that she forgives sustenance, she only said "I forgive the ketubah." If she comes afterwards and claims: "I didn't know! I thought that the word 'ketubah' means only the two hundred zuz!", why should she lose her sustenance and dwelling for her entire life just because she used the wrong word? And can't one retract from a mechilah?

R' Yitzchak answers sharply: In halakha, not knowing is not an excuse ("you don't know what you're doing, you're occupied"), and one cannot retract from a mechilah. He explains the distinction in halakha: When a wife *sells* her ketubah ("mokheret"), one sells a specific debt (the two hundred zuz). But when a wife *forgives* her ketubah to the husband ("mochelet"), the meaning is that she removes from the husband the entire ketubah encumbrance completely, and therefore all conditions of ketubah that depend on it fall away.

* **The meaning of "devarim shehada'at somekhet aleihen" and "divrei teimah" with a mechilah (dispute between the chavruta):**

* **R' Yoel Asher's approach (umdana in her circumstances):** He learns from the Rambam's language that the beit din has an obligation to control and have a "veto right" whether the mechilah makes sense, and it depends on the circumstances: If there is a logical reason why she should truly forgive the husband – for example, she herself is a great millionaire and doesn't need his money – then it's called "devarim shehada'at somekhet aleihen" and "beda'at nekhonah." But in a practical example from life, where a husband is a "bully" and a crude oppressor (a bad person / an "abuser") who wants to give nothing to his wife, and conducts himself to frighten and coerce the wife until she says "I want nothing from you, I forgive!" – in such a case it's called "divrei teimah" (a case where it's a wondrous and unbelievable thing that she should truly want to forgive because a logical reason is lacking, or that she said it only "nachat ruach asiti leba'ali"), and

the Sages in beit din don't accept such a mechilah and say that it's worth nothing.

* **[Digression: Mercy in beit din]:** R' Yitzchak criticizes and rejects the approach of bringing mercy into beit din, saying that R' Yoel Asher builds his explanation on mercy (to protect the wife from a bad husband). R' Yitzchak brings out the Mishnah: "Ein merachamim badin" – in beit din there is no place for mercy. If one wants to have mercy, he must go outside of beit din, but inside beit din we only rule according to the strict law. (R' Yoel Asher maintains his position that mercy on a coerced wife is a good thing and that this indeed appears in the Rambam).

* **R' Yitzchak's approach to "divrei teimah":** R' Yitzchak notes that the Rambam himself doesn't bring any examples of which ways she can claim "nachat ruach asiti leba'ali." He mentions, however, a commentator who quotes a responsum of the Rambam where there was a strange incident (even when they wrote a document), and they claimed that the mechilah was foolishness. Therefore, R' Yitzchak thinks that "divrei teimah" doesn't mean a wonder why she forgives (whether there is a reason or not), but rather it means that the incident itself of how the mechilah occurred was strange – for example, she threw it out in the middle of anger or a quarrel, or just spoke without any seriousness (not with a full heart), or it was only a pretense (a "show"), which proves that she didn't mean it seriously.

* **[Digression: General moral lesson from the chapter about human speech]:**

* At the close of the chapter ("ad kan haperek"), R' Yoel Asher makes a general observation on the foundation that runs through the entire chapter (both with asmakhta and with divrei teimah / nachat ruach): People can sometimes utter their fiery and sharp words – such as calling out that something is a "holy debt" or "yehareg ve'al ya'avor" – and in truth they mean nothing by it.

* R' Yitzchak agrees and broadens the thought with a well-known saying in the name of Rabbi Velvel Soloveitchik (the Brisker Rav) regarding the elections in Eretz Yisrael: The Brisker Rav said that he doesn't hold that going to the elections is as great a mitzvah as Rabbi Elchanan Wasserman says, and also not as great a sin as the Satmar Rebbe says. R' Yitzchak adds in a humorous way that all such sharp expressions are in the category of "nachat ruach asiti leba'ali."

* R' Yoel Asher sums it up: People speak big words only to make an impression and bring out a point, but they don't truly and literally mean the words they say. With this they close the shiur.

Full Transcript

Rambam Laws of Marriage Chapter 17: Laws of Collecting the Ketubah and Priority in Liens

Introduction to Chapter 17

R' Yitzchak: ⟦#1⟧ Today we're learning Laws of Marriage Chapter 17.

R' Yoel Asher: Right, the seventeenth chapter. The chapter will...

R' Yitzchak: Continue speaking about the...

R' Yoel Asher: The topic of collecting the ketubah, how the woman takes the ketubah, but more in a complicated way: what happens when there are the husband's assets that are encumbered for more than one ketubah, or such things, or when one must extract the ketubah from the purchasers.

R' Yitzchak: Right, so in other words, in the previous chapter we learned about what she collects, how much she collects from him – that is, how much he owes her – and all the majority, very many details, most details, complications that have to do with the concern that she has already received something and she must swear, and make us assured that the entire ketubah is coming to her. And this chapter is also Laws of Collecting the Ketubah one can call it, but not the topic of how much is coming to the woman. It's not a question now. Now the question isn't...

R' Yoel Asher: When the husband fights with the wife, but two other people fight over the ketubah.

R' Yitzchak: Very good. So, a lien that we've already learned, it's "all his assets are responsible for the ketubah," and fundamentally one can take from purchasers. But sometimes there are questions of who comes first – you can call it laws of priority, which lien comes first: or if there are two wives we need to know which of them comes first, if there's a wife with the purchasers that he previously sold to, all such side-questions where the money that she wants to collect isn't entirely free to take. Yes, very good.

Law 1: Priority Between Multiple Wives and a Creditor

R' Yoel Asher: So, the Rambam says thus: **"One who was married..."** Interesting, our Hebrew, our pronunciation here is "nasuy," this word nasuy. One should say "nasuy," but it's not there in our Hasidic pronunciation.

R' Yitzchak: The Hasidic pronunciation is made for people who don't learn, it's not made for people who need their words to actually mean what's written.

R' Yoel Asher: "One who was", yes **"nasuy"**, but one must know that it doesn't mean the word "nasi" like a nasi among Israel. "Nasuy." One who had a wedding with **"many wives, and died"**, and he died. So he now has a ketubah for all of the wives. So, who receives first? The law is: **"Whoever was married first takes precedence to receive her ketubah"**. Every man when he has a wedding with a woman, he makes a ketubah for her. So the woman who comes second already came after he was already encumbered to the first. So if he only left a little money, it will go to the first – or we'll soon see if a little money. But in any case, who comes first? The one who had the wedding first. Very good.

But the Rambam says further: **"Whoever was married first takes precedence to receive her ketubah"**. Yesterday in the previous chapter 16 we learned about an oath, that not always must one swear, but against orphans one must swear and the like. But in such a case, when there is more than one woman collecting a ketubah, there will always need to be an oath, because each one's taking is against other people.

That means, when a person dies and he didn't leave, let's say, heirs – he has no heirs, or I don't know – in such a case she wouldn't have had to swear. But if there's... or for example, he only left the... okay, I don't know. Seemingly one must always swear when a person dies, because it's always against the heirs. But let's say a case when there are no heirs. But here all of them can only take with an oath, because each one's taking is against the others. And they must swear that the husband paid them nothing. This is simply to protect the other wife, because if one of them has already been paid...

R' Yitzchak: She takes away...

R' Yoel Asher: From the other wife.

Discussion: The Nature of the Oath with Multiple Wives

R' Yitzchak: One should understand what you're saying: one can only seize from purchasers for a ketubah with an oath.

R' Yoel Asher: It could be... no, but here we're speaking even without seizing. The point here is, because when you take, you're taking it at the expense of the other wife. If for example, the husband already paid her, you're now stealing from the other wife. Okay. The Rambam says: **"And the last one has only what the one before her left"**. The first wife went and took her ketubah...

R' Yitzchak: Wait, the law might not only be a deceased, it could be he divorced several wives. No, it says **"and died"**.

R' Yoel Asher: I know it says,

R' Yitzchak: But it's not a...

R' Yoel Asher: Reason that...

R' Yitzchak: The...

R' Yoel Asher: Law must be specifically deceased. Because he says **"and none of them takes except with an oath"**, meaning that

even in a case when normally one wouldn't swear, like a divorce. Ahh. But it could be that there's a case when one dies and...

R' Yitzchak: Every Jew has heirs, that can't be. Perhaps she is the heir somehow. It's no difference if she is the heir.

R' Yoel Asher: Aren't there certain heirs that she comes before?

R' Yitzchak: There's no such thing as an heir, every Jew has heirs. There's no such thing as a Jew without heirs. Yes,

R' Yoel Asher: At which level of kinship? If there's only a distant relative won't there be a case when the wife will come before?

R' Yitzchak: A wife doesn't inherit the husband. A wife is not an heir. A wife receives the ketubah. Ah, she's not an heir at all. I mean, it could be that she's an heir, if then it's not relevant to the question, she takes from herself. Yes. Okay. Now, the novelty is further. **"And the last one has"**, comes to the last one, yes? For some reason he decides that it goes here. **"And the last one has"**, yes? Yes. Just learn further. The last one, don't look to the side.

R' Yoel Asher: No, I wanted to see, he has an explanation on the **"none of them takes except with an oath"**.

R' Yitzchak: Yes, but that's the explanation. Yes, he says approximately what you're saying, or something else that I can still think.

R' Yoel Asher: The point is also to whom does she swear. Meaning, when it's against orphans, the orphans will bring her to court. Here the other wives will bring her to court and make an oath. Perhaps that's what he means, that it's already more than one oath.

R' Yitzchak: Forget it, but the oath is the same oath. One doesn't swear four,

R' Yoel Asher: That she never received.

R' Yitzchak: I just need to know, when one swears, does one swear to someone, or does one swear to the Almighty? The point is that because the other is the claimant.

R' Yoel Asher: Right, but in this case we learned that one swears not in the presence of the court. So it's simple that one swears in front of the one who is the claimant. No, there is that you swear for the other. The person who is the claimant, I swear in your presence. Perhaps there's the point that she must swear more in front of the other wives.

R' Yitzchak: I would have said, there's another reason... here there's another reason, that's clear. There's another reason why she needs an oath: because not only about the heirs or about the purchasers, but about the other wives. Yes.

The Oath of the Last Wife

R' Yoel Asher: Very good. **"And the last one has"**, the last wife who had the wedding last, will only have how much assets remain after paying the previous ones. **"And she also swears"**, even the last one must swear. Meaning it's simple that the last one no longer has any competition, all the others have already received theirs, but she also needs an oath – the usual oath, the oath for the heirs – but she also must swear, because in practice she is one of several. Yes. She also swears, **"and takes the remainder"**. No, I would have said that her swearing is simply for the regular oaths of a woman who receives.

R' Yitzchak: No, no, "she also must swear" we don't need to have. **"And she also swears"** means that she also must swear.

R' Yoel Asher: She must swear for the other wives?

R' Yitzchak: Yes, that's how it comes out. Why? I don't know. Why, because she was the last is she exempt?

R' Yoel Asher: Yes, what is it? You don't begrudge a Jew being exempt from an oath?

R' Yitzchak: Okay. It could be that if it were, I don't know. ⟦#2⟧ Perhaps he's saying that it makes no difference. He's saying that the law will actually only be when – not as we say, not the novelty that here there's a new oath – but actually only with the heirs.

R' Yoel Asher: It's good, not clear,

R' Yitzchak: It's not clear to me. **"And similarly if there was upon him a promissory note"**.

Priority Between a Ketubah and a Promissory Note

R' Yoel Asher: So the first law was when the wife's taking the ketubah will go at the expense of other wives who have a ketubah. Now we'll see when her taking the ketubah will go at the expense of another person who claims that the deceased, the departed, owed him money and he wants to take from the inheritance.

"And similarly if there was upon him a promissory note", the departed, the husband who died had a promissory note, that he owes money. So now the question is for whom: and he left let's say, the ketubah is two hundred, he left two hundred, but there's also a debt for two hundred. And who comes first? The law says that it goes by who was first, because when one borrows money, or when one writes a ketubah for a wife which is also like becoming a debt, then the assets become encumbered. A ketubah is basically like...

R' Yitzchak: A promissory note that they set a time for him.

R' Yoel Asher: Right, so now the question is: the assets, to whom are they encumbered? If it became encumbered first to the creditor – when he borrowed it became encumbered – then the creditor should be able to collect. If he first took a ketubah it's simple, when he took the debt he no longer truly had any assets against that, he didn't have on which assets the debt should become encumbered. So **"if the debt preceded"** then **"the creditor collects first"**, the creditor takes first, **"and if the ketubah preceded"**, ahh, if the ketubah is earlier,

R' Yitzchak: "the woman collects first", the wife can take first, and only **"the remainder"** that's left over goes **"to the creditor"**. ⟦#3⟧ In short, the first law gives us basically just a principle, it's no novelty at all,

R' Yoel Asher: That a ketubah and a promissory note are exactly the same thing, and that in both cases, when there are two creditors it will be the same law: whoever is first, he receives first. Very simple.

Law 2: When the Land Was Purchased After the Liens

R' Yoel Asher: But now we learn that it's not always so. The Rambam: **"In what case are these words said"**, the law that I just said that one always goes by which debt happened first, only speaks in a case that **"when the land from which they come to collect was purchased by him at the time of marriage and at the time he borrowed"**, that the departed, the husband who had a debt and he had a ketubah had land – the land from which one now comes to collect, the land from which the wife and the creditor both want to take money from the land – was his land, he already had it purchased at the time when he had a wedding with the wife, and at the time when he borrowed money from the creditor.

Because then it's simple to whom the land became encumbered first, to the earlier creditor. Then it's **"that the law gives"**, then the law says, then the logic, the law is correct then, **"that whoever's document preceded"**, the one who received a document earlier – which the document makes that the land should become encumbered to the promissory note – so the one who has the earlier document, whether it's the creditor or whether it's the ketubah, **"acquired first"**. This is specifically in such a case that the law is so.

But in a second case, when **"he married wives one after another"**, he took multiple wives and wrote multiple ketubot, or he borrowed money **"whether before marriage or after marriage"**. But when it comes to his assets, **"and after he married and borrowed he purchased this land"**, it's not simple that he already had land and afterwards he took a debt or he took a wife, but he took a wife or he took a loan, and only afterwards did he purchase land.

So it's simple that immediately after he purchased the land, the liens, his debts went up onto the land. So when did the lien go up?

There's now a lien from a debt and from a ketubah, which went up first onto the land? One can't say, it was all at once, all his debts went up onto the land that he had. Therefore there isn't then the law of priority.

In such a case it will be **"all divide equally"**, all have the same strong claim, the creditor and the wife, or all the wives who have all ketubot. Why? **"Because the lien of all came at once"**. The lien that happened that his debt goes up onto the land, that the land becomes encumbered for the debt, happened at once. Why? **"Because at the time he purchased"**, because when he purchased the land, **"he was encumbered to all"**, he was already encumbered, he already had a lien for all debts, both for the loan and both for the debt, **"and there is no law of priority here"**, there is no law of priority here.

The simple point here is, it's not simple as if the debt goes up onto the person and afterwards it goes down from the person to the land, and it must go down according to the order that it came up onto him. The lien goes directly onto the land.

Discussion: Lien on Assets Versus Personal Obligation

R' Yitzchak: A person must carry his debts incidentally, a bit... good.

R' Yoel Asher: But the land is the place from where one takes it. Certainly, the lien is the obligation of the mitzvah of paying a debt is on the person.

R' Yitzchak: The point is, the law of priority that we're learning here is not a priority, not simple that think in a straightforward logic, because I borrowed from one before the other doesn't yet mean that I owe him more than the other, that has nothing to do with it.

R' Yoel Asher: If one only goes by mitzvah or by obligation, your obligation happened earlier, you already had an obligation earlier, perhaps you have such a law... according to which... let's say a person stands up he has a few mitzvot, which comes first? First comes the mitzvah of washing hands afterwards comes reciting Shema. What can he say it's a mitzvah? He should do the mitzvah that—

R' Yitzchak: Came upon him first.

R' Yoel Asher: It goes with lien.

R' Yitzchak: It actually doesn't go that way. The whole reason why there's a difference of priority is because he already has a lien, that means when you came there was already no land for him. Here when you came there was no land at all. Come after us. So, it became encumbered actually for my debts, you see there is indeed a lien on the people, because it was never encumbered. It became encumbered, but the lien became at the same time, so therefore one will have to divide, there won't be any priority.

Documents from One Day or One Hour

R' Yoel Asher: The same thing, the same thing, **"if the time of the ketubot and shtarot were all one day"**. The ketubot and the shtarot are all the same day. That means, in one day he... he was a successful society man. In one day he had weddings with several women and made several loans. It makes sense, when you make a wedding you have to take loans, right? And everything is one day.

Or even more, in a place where... there are places where the custom was that they would write in the hour, such and such o'clock in the morning. **"In a place where they write hours"**. That means, if it's a place where they write hours, even one day won't help, you'll have to look at what time the thing was. If in the morning he made a ketubah, and in the afternoon he borrowed, then it already became obligated at the time of the ketubah. So, if it's in a place where they write the hour, all these ketubot and shtarot are also at the same hour.

R' Yitzchak: And then also will they... if they don't write hours—

R' Yoel Asher: They only look at the one time that is there, they only look at the day.

R' Yitzchak: All days are the same. If they write hours, then they start to calculate who is earlier, whether he sold before or after. It must be the same hour. Right.

R' Yoel Asher: In such a case when there is no priority in time, it is **"they divide equally**

since there is no priority there", there isn't one there who is earlier than the other.

Discussion: Why is there no law of priority with movable property?

R' Yoel Asher: Okay, good. Until now we've been talking when this is all for land. The payments must come from land. But what happens when there is movable property? He left over movable property. **"And always"**, and the law is always that **"whoever came first and acquired the movable property according to his debt or according to the ketubah"**. When there's a question of land, with land there's no grabbing. Land is such... you come to beit din and you transfer the land to someone's possession. But movable property, there is such a thing as grabbed money, as we already learned yesterday.

R' Yitzchak: It doesn't say here about grabbing. **"Came first and acquired"** means he didn't grab, he was a claimant to...

R' Yoel Asher: Good, but he acquired the movable property, that's what makes movable property different from land, because it's relevant to acquire movable property. No?

R' Yitzchak: It's relevant with land also. He can come to beit din first, and later when the others come they'll say sorry, a mistake was made, we'll take it back from him. With movable property there's no law of priority, not because there's no seizing...

R' Yoel Asher: You can grab land also. Yes, because movable property doesn't become obligated. Just keep in mind... because movable property doesn't become obligated.

R' Yitzchak: ⟦#2⟧ Exactly, because movable property means there's no obligation. So the whole priority that we learned, the priority is not a law in the shtar, in the debt, the priority is a law in the obligation. Or movable property even for example after the enactment of the Geonim, or if someone explicitly wrote in his shtar that he obligates movable property, still, priority is not relevant.

R' Yoel Asher: Yes, but when movable property? Because movable property doesn't become obligated, so whoever came and took...

R' Yitzchak: Even if it did become obligated here, but there's no law of priority.

R' Yoel Asher: Why? If there's obligation there's priority. It's the same thing, it's a very clear ruling...

R' Yitzchak: No, there's a reason for the whole obligation.

R' Yoel Asher: Okay, what's the reason? No, because until now I understood very simply that when a person makes a loan and he has land, the land becomes obligated. But if he has movable property and he obligated the movable property, what does that mean? He wrote: go take from the movable property, so he obligated it. **"We don't take it from his possession"** means not necessarily when he will sell it later, **"we don't take it from his possession"** even if it was still lying in the house of the deceased, the movable property. **"We don't take it from his possession because there's no law of priority with movable property"**. Why shouldn't we say that there was a ketubah before? With the first ketubah the movable property became obligated.

R' Yitzchak: Became obligated, but there's no priority.

R' Yoel Asher: Again, but if it already became obligated to him, couldn't it then become obligated afterward to a second one?

R' Yitzchak: No, obligation isn't a real thing. Obligation is just a thing that you go collect from it.

R' Yoel Asher: So what's the explanation? Why is there no law of priority with movable property?

R' Yitzchak: It's actually, because that's how it is! Movable property... can I want to know why? Yes.

R' Yoel Asher: Because that's how it is! Good.

R' Yitzchak: Because that's how you know. ⟦#3⟧ Ahh, very good. I think it's simple. Because we learned that the reason why you can obligate

land at all is because it has publicity. There are different... land is a real thing.

R' Yoel Asher: Publicity is a reason why we take it from purchasers.

R' Yitzchak: We're not talking about there being purchasers. Very good, also, it's the same thing. Movable property simply means you collected. When you take movable property you don't go with some whole calculation that this became obligated before, this goes to before. You took, he owes, you have a right. I'm saying even if you have a right to take movable property, meaning it's obligated, you do have a right, not that you grabbed. You know, we're talking about simply grabbing, but there's no law of priority. What's the problem?

R' Yoel Asher: Okay, everyone moves on.

Priority between a creditor and a wife when there is no priority in time

R' Yitzchak: So this is generally speaking, yes? We've now learned rules of priority, it's very logical. Whatever is earlier, with land there is priority, and then whoever was earlier, he received.

Now you need to know what happens when there isn't a law of priority basically. That is, I wrote "priority with a wife and creditor", but really that means when there isn't a time before, we need to change the heading a bit. ⟦#4⟧ That is, until now we learned time, the law of priority in time, now we're going to learn priority not in time, but rather which type of debt is more important. You can call it priority, but it's a different type of priority.

When there is money and land for both

R' Yoel Asher: "One who divorced his wife", someone who divorced his wife, **"and upon him is a promissory note"**, but he also has a promissory note. And both now come to him to collect their money. **"And the creditor and the wife came to collect"**, both are collecting, **"and he had money and land sufficient for the debt and the ketubah"**. He has enough for both. He has both cash, money, movable property, and also land. So, the law is that **"the creditor takes the money"**, the creditor takes the money, **"and the wife collects her ketubah from the land"**, the wife will be the one who will take the ketubah from the land.

R' Yitzchak: The reason is simple, because a wife doesn't have any right to take money or less.

R' Yoel Asher: Right, a wife... a creditor can take from medium quality and down, a wife only takes from inferior quality, and in such a case, the money is more, it's easier, it's liquid, it's money that can be used immediately.

R' Yitzchak: No, I'm still here. **"And upon him is a promissory note"**...

R' Yoel Asher: In short, that's what it says in the Gemara.

R' Yitzchak: So because from the law of the Gemara—

R' Yoel Asher: Movable property doesn't become obligated—

R' Yitzchak: Only land?

R' Yoel Asher: I can also see it as the law of inferior quality, when it happens in such a case that the money will look better.

R' Yitzchak: Money doesn't become superior quality either, money is money. I don't know. In short, there's a long Gemara and a Rif about this. Not clear to me. In any case, that's what the Rambam says. I thought it was simple, it seems it's not so simple.

When there is only land for one of them

R' Yitzchak: ⟦#5⟧ What if he only has land and there isn't enough in the land for both? Yes. We see here in the law that the creditor is more important, it seems backwards. The creditor is more important.

R' Yoel Asher: The creditor is more important, yes.

R' Yitzchak: That's what the law here says.

R' Yoel Asher: "And if he only has land", if he only has one piece of land, **"that doesn't have enough to collect for both"**, the land isn't worth enough for both, not both can collect,

only one of them. **"And there was no law of priority"**, there's no law of priority, meaning it doesn't say in the shtar who was earlier.

R' Yitzchak: Neither is earlier.

R' Yoel Asher: The shtar and ketubah are both the same day, or we don't know any time. So the question is now, to whom does it belong, who is more important, the creditor, right? So in such a case the question is who is more important? **"We give it to the creditor. And if anything remains for the wife"**, if anything remains for the wife afterward, **"she should take"**, she should take. **"And if not"**, we should give the whole thing to the creditor.

R' Yitzchak: "She is pushed aside because of the creditor".

The reason why the creditor comes before the wife

R' Yoel Asher: She is pushed aside for the creditor. Why? The Rambam says the reason is this: **"For the creditor lost and put out his money"**. Someone when you borrow money from someone, the lender actually lost money, he took money and gave it—

R' Yitzchak: And he needs to get it back.

R' Yoel Asher: As opposed to the ketubah which is also like we calculate like a debt, he is obligated to give back to her, it's a debt that he has to her, but the debt is not the same strength. Why? **"And the wife didn't lose anything"**. The wife didn't put out money, spend money for the husband.

R' Yitzchak: She spent something that she, poor thing, she poor thing, had a wedding with him.

R' Yoel Asher: But the answer is, meaning although you could say, what do you mean, I didn't lose? A whole life I gave him! Okay, but we know that you yourself wanted to have a wedding. **"More than the man wants to marry"**. There's a rule that women want to have a wedding, more than the man wants to have a wedding—

R' Yitzchak: The woman wants to be married.

R' Yoel Asher: "A woman wants to be married".

R' Yitzchak: As opposed to a creditor who is never—

R' Yoel Asher: Never, no person simply wants to give someone else money, he wants to give it because he has a...

R' Yoel Asher: He spent something, that she gave him something.

R' Yitzchak: The answer is, it's true,

R' Yoel Asher: "A whole life I gave her". Okay, but we know that you yourself wanted to have a wedding. **"More than the man wants to marry, the woman wants to be married"**. There's a rule that women want to have a wedding more than the man wants to have a wedding, the woman wants a wedding more.

R' Yitzchak: That's important,

R' Yoel Asher: Because then it would be backwards, the man would be the one losing.

R' Yitzchak: Always, with a promissory note, that means in other words, who receives and who loses in this transaction. With a loan always the lender loses, certainly presumably he has some reason, a mitzvah, I don't know, but in practice he loses.

When you have a wedding with a woman, certainly in a certain sense both lose and give something, I don't know, but regarding the law of ketubah we say that the wife is not the one who loses, on the contrary, the wife gains. We also give her a ketubah because **"a beautiful and gracious bride"** whatever, it's not the simple meaning that she loses something we need to compensate her back, as if to pay with the ketubah. No, on the contrary, he is the one who loses something, because he wants a wedding less than her. Something like that.

Therefore we need to explain the **"more"**. We can simply say she had a wedding, but it seems that this comes to say that in the balance, as Trump says, the "trade balance" in the relationship is actually in favor of the wife. And therefore she already has the benefit, we don't need to worry so much,

R' Yoel Asher: We need to give her, but if there's a creditor she is weaker.

Law 8: One who died and left a wife and a creditor

R' Yoel Asher: "And similarly one who died" – such a case a person died – **"and left a wife and a creditor and land where there is no law of priority"**, land on which there is no priority, for example the land he bought after both, **"the wife is pushed aside because of the creditor"**. This he said earlier by divorce, now he says by death.

R' Yitzchak: Ah ah ah.

The reason why the Rambam repeats this law by "death"

R' Yoel Asher: "The wife is pushed aside because of the creditor and he collects all his debt first". It could be that he wants to say that the law is not only then when the person is still alive and he has some obligation to pay for the creditor, but even simply with the law of ownership.

R' Yitzchak: Interesting why he needs to repeat it twice. Not clear to me. Don't know. He doesn't explain why it should be the same law. If the conclusion is so, that both must be the same, that the creditor is first, the Rambam says: earlier he spoke generally, not here, in short, I don't know, it's the same law, same exact law.

R' Yoel Asher: What does he need to say? He could have said: "One who divorced his wife or died",

R' Yitzchak: Yes. No sense saving a law. Don't know. We need, presumably the answer for such questions is usually, that in the Gemara it appears twice, and for some reason, don't know. I don't know. The Rambam says: **"And since"**,

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The enactment of the Geonim to collect from movable property

R' Yoel Asher: The Rambam says, we have followed that there is an enactment of the Geonim that the wife can also take the ketubah from movable property. So, the Rambam says: **"And since the Geonim enacted"**, once it became the custom that the Geonim instituted, **"that the wife and creditor collect from movable property"**, that both can also take from movable property.

R' Yitzchak: That means that for both of them there is an enactment of the Geonim.

R' Yoel Asher: That the enactment of the Geonim is for both, that both wife and creditor, that once there is less land or whatever, a new enactment, you can also take from movable property, and with movable property it's very different from land.

The Rambam says: **"And the matter is known"**, we already discussed earlier, **"that there is no law of priority with movable property"**. That with movable property the Sages didn't make the law that it becomes obligated to whoever is first, so: **"if he didn't leave movable property sufficient to give to both"**, if he didn't leave over enough movable property for both – if he left for both it's fine, but if he didn't leave for both – then further also the same question, who receives first?

The Rambam says the same law that a creditor comes first will also be with movable property. **"We give to the creditor all his debt first and if anything remains for the wife that she should take from her ketubah"**, if there's still left for her, she should take, **"or she is pushed aside"**, if not she is pushed aside,

Discussion: What is the novelty with movable property after the enactment of the Geonim?

R' Yitzchak: She doesn't receive any ketubah. That means, in total he's saying that, what's the novelty that he's saying here? Nothing, that the same law,

R' Yoel Asher: Only what the Geonim accomplished the law for movable property.

R' Yitzchak: Again, what was until now with movable property? Couldn't you collect from movable property at all.

R' Yoel Asher: No, you would have thought that once they made the law movable property it becomes like land, and you check according to how early it was. Yes, but he already said this earlier, that there isn't any. Right, and he said this earlier.

R' Yitzchak: That even after, therefore what he says earlier, even after the enactment of the Geonim is

R' Yoel Asher: Movable property didn't become a new type of land. That there's no priority, therefore no, it's so.

R' Yitzchak: He said this, with land there is a thing of priority, if one is before he is further. But now that we also collect from movable property, and perhaps primarily from movable property, as this is the reason for the enactment of the Geonim, but the whole law of priority has been nullified, because with movable property there is no priority, even after the enactment of the Geonim. Therefore always the creditor will be first.

R' Yoel Asher: Yes.

The law of iron sheep property

R' Yitzchak: There is such a case, an interesting case, a Jew died, what did he leave over? Three things: a wife, a creditor and land.

R' Yoel Asher: Mm. Yes, not exactly over at Reb Shmuel's. The Rambam says: **"Were written in her ketubah"**, what happens such a thing? Yes. Not the ketubah, the basic ketubah the maneh matayim, but she brought in **"iron sheep property"**, and it was written in the ketubah that the husband takes responsibility for the property. He must pay. He must pay it, when he dies she takes it back. Mm. And she takes it back according to how much it was worth when she brought it in. Right. **"And she claims that they were lost"**, that they were lost, **"or that the husband took them"**, the husband took them. In both these cases she must be able to take it from the husband's property. Mm.

So now the question is, what is the law of the iron sheep property? What you could have thought that it's entirely hers, as it never really became the husband's,

R' Yitzchak: And she could have taken it back right away, because it's hers the whole time. It can be like a kesubah. A kesubah has its own halachos that it comes before this,

R' Yoel Asher: Or if there are other wives, there can be many halachos. But the din is, the din is that **"harei hi b'nichsei tzon barzel shelah k'she'ar ba'alei chovos"**. The nichsei tzon barzel is considered like a creditor, that the husband owes her her nichsei tzon barzel. Consequently, what must she do? She must do as every creditor does. She must make an oath like a creditor... but does a creditor need to swear?

The Oath Regarding Nichsei Tzon Barzel

R' Yitzchak: No, she needs to swear.

R' Yoel Asher: She needs to swear **"shelo lakchah oson v'lo nasnah v'lo machalah"**. She needs to swear an oath of a... mm. We're speaking here in a case where the husband died,

R' Yitzchak: Right? Could be.

R' Yoel Asher: By a get I don't know if she needs to swear,

R' Yitzchak: Only if the husband claims something else. Okay,

R' Yoel Asher: But the same oath from here. Okay, but not because...

R' Yitzchak: Could be every creditor

R' Yoel Asher: A creditor who collects from purchasers must swear. Ah, it could be that when there are other creditors, that's when she needs to swear. When she takes it at the expense of others. And if not, we'll look when this was. If it was before other debts, she'll take it. **"Shelo lakchah v'lo nasnah v'lo machalah v'choleket im ba'alei chovos"**. That she'll need to divide with the other creditors.

R' Yitzchak: So the other chiddush is, that not that she is, we don't say here, let's say the main thing that the Rambam speaks about here is halachos kedimah not halachos shevuah, right, halachos shevuah. It could be that there is an

oath like everyone, even though this is not included in kesubah, for this there is indeed the shevuas almanah it seems.

But in any case the main point here is, that she is not – we learned earlier that a wife is weaker than a creditor, a creditor comes first, that's regarding her kesubah, because this way she doesn't lose anything. But nichsei tzon barzel regarding this you can also say she loses yes, she doesn't lose, I don't know. Regarding this she's called a proper creditor and she's exactly like all other creditors, she has to fight with them, I mean fight with them.

R' Yoel Asher: But what happens between the other creditors? If there's a din kedimah they'll go according to din kedimah, and if not they'll divide the money among all the creditors and each one will

R' Yitzchak: Take an equal portion. The same thing as all creditors.

Halachah 9: Division of Kesubos Among Multiple Wives When There Is No Din Kedimah

R' Yoel Asher: Okay, until now we learned, earlier when we learned when he has multiple kesubos, we look which kesubah comes first. Now we'll learn that there is no din kedimah between the kesubos.

"Mi shemes o geiresh v'yesh lo nashim rabos v'ein sham din kedimah". Meaning because he took, for example, a few wives at once, or he wrote the kesubah for a few wives at once. **"V'ein lo"**, and meanwhile there isn't enough money **"k'dei kol hakesubos"**, to cover all the kesubos. **"Keitzad cholkos?"** How does one divide in such a case the kesubos? There is the halachah like this: **"Ro'in"**, we look at the assets,

R' Yitzchak: We check like this. It becomes a bit of a complicated calculation.

R' Yoel Asher: No, it becomes an interesting way how one divides the money. **"Im k'sheyechalek ha'mamon al minyan ha'nashim"**, if there's enough money that when one divides it for all the wives, **"yagi'a l'fechusah shebahen"**, will reach the wife who has the smallest kesubah, she'll receive her entire kesubah,

Explanation of the Basis of Division: According to Percentages or According to Kesubos?

R' Yitzchak: "Cholkos b'shaveh". One good. First the first thing that comes in is an interesting obligation, you should let me say something. The basic point, he makes it more, the Rambam's language I mean makes it more complicated than it needs to be. I'll say a very simple thing.

There are four wives, not each one has the same kesubah, right? One has two hundred, one has one hundred, one has ten hundred, whatever, it doesn't matter. Now and how much money is there? There's only less money left. So the point is very simple.

One could have thought two ways to divide it:

1. One could have divided according to the amount of money. In other words, if one has a kesubah of one hundred – rubles, zuz, whatever – another has nine hundred, and there's five hundred left, let's say, yes, only five hundred shekel left, zuz left, we give her fifty, her four hundred and fifty, because she has nine tenths and she has one tenth. That would be called cholkin l'fi ha'mamon, yes? Is what I'm saying correct? Do you understand what I'm saying? Percent. One can divide according to how much... as if we make it, we make it even, but even, not everyone has the same debt. One must think regarding each creditor what would be the halachah, right? When one owes one hundred shekel, and to that one a thousand shekel, and he only has five hundred. So that would be one sevara. There were poskim who said this way, one divides according to percent, according to how much each one, you get fifteen percent of his debt, you take fifteen percent of what there is, it's less. But it's according to the proportion that comes.

2. The Rambam says that one does differently. What does one do? First of all, one divides for each one one kesubah, basically. That means l'fi

kesubos. One first makes sure that each one receives one kesubah. That's what one does. Because for some reason you say like he has a debt for each one, like the main, like the smallest kesubah, so first we give each one the smallest kesubah. And afterwards one divides further for each one. How does one divide further for each one?

R' Yoel Asher: The remaining money one begins to divide, give more according to how much...

R' Yitzchak: Also not, also one tries to fill kesubos, as if. I don't know what the logic is of doing this way,

R' Yoel Asher: But this way... I can understand a bit of the logic, that the cheapest kesubah is the... is the, the

The Dispute of the Rishonim Regarding Cholek B'shaveh or L'fi Mamon

R' Yitzchak: How does one divide further for each one?

R' Yoel Asher: The remaining money one begins to divide, give more according to how much...

R' Yitzchak: Also not, also one tries to fill kesubos as if. Right. I don't know what the logic is of doing this way, but this way...

R' Yoel Asher: *I can understand a bit of the logic, that the cheapest kesubah is the kesubah of the Chachamim, yes? It's the maneh or ma'asayim, afterwards there's the other, there's the tosefes. So it could be like first each one should receive the kesubah d'oraysa.* It doesn't say first of all, it doesn't say that way.

R' Yitzchak: Secondly, the dispute is actually by all loan documents, it's not only by kesubah. And the Rambam in halachos, as it says in the Maggid Mishneh, the Rambam in Hilchos Malveh U'loveh brings the dispute regarding every loan document. He says there are those who say one divides l'fi mamon, there are those who say that one divides b'shaveh as he says here. And there he brings both opinions and he doesn't decide. Here he decides this way.

The Ra'avad disagrees, the Ra'avad says that this is the **shitah serucha**, it's not correct. So it's not about kesubos, it's a question how it's fair, I don't know. It's not clear, one can think which makes more sense. But anyway that's the Rambam's shitah. Let's try to say quickly the whole thing.

The Order of Division According to the Rambam

So if, yes? Yes. So like this. Yes, **"im k'sheyechalek"**, I need to leave try actually around now. So if one divides the money according to the wives, the smallest receives,

R' Yoel Asher: The smallest receives her kesubah. If there is, the smallest kesubah will receive her kesubah or less than that.

R' Yitzchak: Takes **"cholkos b'shaveh"**.

R' Yoel Asher: We give each one the small amount. Right.

R' Yitzchak: So yes. If **"yeser mizeh"**, there's more money than this, one does the same thing twice. **"Cholkin mimenu k'dei sheyagi'a l'fechusah shebahen k'shi'ur kesubosah"**, the smallest receives her entire kesubah, and there's a kal v'chomer for each one the small amount b'shaveh, **"v'chozros v'cholkos es ha'mosar bein ha'nosros al ha'derech ha'rishonah"**, that means one does the same thing among all of them, one divides what remains.

That means, consequently it comes out that the smaller one receives more than she would have received if one had divided entirely l'fi mamon, but the next one, as if with what remains, one divides further in the same way, that the smallest receives, and so on. **"Keitzad?"** Yes,

The Illustration of Four Wives

R' Yoel Asher: For example, yes, one has four wives: the first wife received **arba me'os**, the second three hundred, and the third two hundred, and the fourth one hundred, and it says that all the debts together is a thousand dollars, **"nimtza ha'kol elef"**. And he divorced them all or died. And he didn't leave enough money. If he left enough money, it's good. He didn't leave, he

left **"arba me'os o pachos"**. If he left **arba me'os o pachos**, then anyway the first also won't receive her entire four hundred.

R' Yitzchak: But even if it comes out exactly four,

R' Yoel Asher: One hundred each.

R' Yitzchak: Each one receives one hundred. Each one receives one hundred. No, the smallest, the smallest will receive one hundred, now it starts from the smallest, right?

R' Yoel Asher: The smallest will receive one hundred. Right. But all receive one hundred.

R' Yitzchak: Yes, but that's the meaning, if there is b'shaveh. Because it means that the smallest should receive b'shaveh,

R' Yoel Asher: Right, there's enough that the smallest should receive her entire, so one divides it in this manner, that each one receives as much as the smallest.

R' Yitzchak: Right, but if **"hiniyach

R' Yoel Asher: shemoneh me'os", so **"im sechalek bein kulan b'shaveh"**, if one will divide among all b'shaveh, **"nimtze'es ha'revi'is noteles ma'asayim"**, it will come out that one will give the fourth two hundred, **"v'harei ein bikesubosah ela me'ah"**. One can't divide it b'shaveh.

"Ela keitzad osin? Lokachin arba me'os v'cholkin osan beineihen b'shaveh me'ah me'ah". **"V'nimtze'es"**, it comes out the fourth receives hers, meaning, one divides it first on the hundreds, because the hundred is the smallest kesubah, **"v'nimtze'es ha'revi'is"**, the one who has the smallest kesubah, takes her kesubah, her hundred,

R' Yitzchak: "V'halchah lah", she goes away. Each one received one hundred,

R' Yoel Asher: And there remains actually four hundred. Right, each one has one hundred. And there remain three wives, that each one of them already has one hundred, and all of them still have coming. So if one will divide it now b'shaveh, it still won't work, because it will come out that the third will receive **"ma'asayim u'shloshim v'shalosh u'shelish"**, she'll receive two hundred and thirty-three and a third. Right. Three and a third hundred, right? Yes, **"v'harei ein bikesubosah ela ma'asayim"**, but she only has coming ma'asayim.

"L'fichach lokachin me'arba ha'me'os shalosh me'os v'cholkin bein sheloshtan b'shaveh shenimtze'es ha'shelishis natlah ma'asayim shelah v'halchah". And what remains now? There remains one hundred, and another two wives who aren't yet paid. **"Cholkin es ha'me'ah b'shaveh bein rishonah u'sheniyah nimtza b'yad ha'rishonah ma'asayim va'chamishim v'chen b'yad ha'sheniyah v'nimtza b'yad ha'shelishis ma'asayim u'v'yad ha'revi'is me'ah v'al derech zo cholkos l'olam afilu hen me'ah"**.

This way one goes in this order. Why is this the best order? One must think, what would have been other options?

The Reasoning in the Dispute Between the Rambam and the Ra'avad

R' Yitzchak: It's a certain logical order. The question is fair, what is just? One must understand, he explains a bit. The Rambam's division is one shitah. There's a dispute that we learned, the Ra'avad says that one goes l'fi erech ha'mamon.

And I think the basic sevara of the two things is like this: It's not so simple. That is, when a few people have money by a third person, yes? Two people, let's make a simple case. Two people. And Reuven is obligated, he has a debt of one hundred shekel, and Shimon has two hundred, okay? Now, when he has three hundred, the whole thing isn't a problem. The problem is, he only has one hundred and fifty shekel, okay?

So now, it's not clear how one should think about this. That is, what is fair? What is right? There are two things that are fair, I'll try to explain. There's one thing that one knows, it's certain that the one with the larger debt, or with the larger kesubah – kesubah is just a type of debt – should receive more percent. So why should he receive? One says just like that?

R' Yoel Asher: *Because we need to look at the total of the debt. Why must one look at the total

of the debt? One can't look at it like we have here a matter to two people, or can one look at it like we have here a matter to pay off the amount of money. So to pay off the amount of money, the person comes and says he has a larger portion of the slice, of the obligation.*

R' Yitzchak: *Why should it become slices? Where does the concept of becoming slices begin? I'm trying to explain the Rambam's sevara. The thing that one says, let's go percent-wise, because it's a very funny thing in a certain sense. That is, halachically it's not so easy to justify. It's in a certain sense fair, as if I have on you two thirds, you have one third, so let's make it one third, whatever the number is. But it's not true, the debt wasn't thirds at all, the debt has nothing to do with thirds, the debt has to do with one hundred shekel.*

So essentially, each one has an equal, there's a sevara that says that each one has exactly equally a relationship to the money. When there isn't enough, when there isn't enough. There won't remain enough. He has a larger debt, so he as if loses, because there isn't enough for him. Do you understand? And for me there is indeed enough. Do you understand the sevara?

That's as if the Rambam. In other words, there are two ways to divide:

1. *One will be that each one will lose. Why? Because there's someone who has a larger debt than me. I have one hundred, there's one hundred for me. Yes? And because there's someone who has seven hundred, and there isn't enough, if one will divide everything, I lose from my debt.*

2. *The other sevara says: He has seven hundred, he has a problem, he needs more than what there is. One owes him, but there isn't, what will one do? Why should the smaller one lose because there's that one? Do you understand?*

The idea to say that let's make even, there are two reasons

R' Yoel Asher: Why to say even.

R' Yitzchak: Even means what the Rambam does. Yes. L'fi erech. Right.

Do We Look at the Entire Debt or at Each Obligation Separately

R' Yoel Asher: *There are two reasons one should go l'fi percent. Because when the husband wrote for her a large kesubah and for her a small kesubah, the simple meaning is that the husband wanted her more. She's more important to him. So he gave away more of his assets for her, no? At least he certainly didn't give less of his assets for her. If anything he wanted to give this person more.*

R' Yitzchak: Say loan document, a kesubah is confusing, I'm already starting to think of people. It's the same, that's not any dispute, everything the same thing, kesubah and a loan document. *There isn't a debt, an obligation that I have for my money, and not a percent for my money, it's the actual money.*

R' Yoel Asher: *And why shouldn't one say we put this against that, this is the debt and this is the money. Yes, that is, so one takes the total of the debt, the person died, yes? And he has like income with expenses you can look at it, yes? He has all the money that there is, and all the debt that he has, and one puts them one against the other. That's the sevara how the people would otherwise think.*

You say that no, but the person has a full obligation. Essentially the creditor must pay out each one the whole. So with each one he has a complete obligation. So he does first the person with whom he can do the mitzvah completely, I don't know the word mitzvah completely, the one whom he can completely pay out,

R' Yitzchak: He's first obligated. All the theories are like mitzvos. I'm speaking now of money. *Money, there's an obligation of money, each one has an equal obligation, it's also true that the one who has a larger one has more obligation. How can both be maintained?*

R' Yoel Asher: That is, how to think with this? *So when it's earlier in time, there there's the din kedimah. Here there isn't the din kedimah, you say a new din kedimah. It becomes now for the smaller amount.*

R' Yitzchak: No, not any kedimah.

R' Yoel Asher: Or the amount that one can...

R' Yitzchak: I'm saying the Rambam, not me. *The Rambam says: everyone has exactly the same shi'abud (lien), precisely the one who wants more remains stuck, he doesn't have. But there's no way to explain that the one who is owed five hundred, because of that it means he's owed half of all the money. Yes, let's say there are four ketubot, one has five hundred, the other two have two hundred and two hundred, sorry three, and one hundred, yes? Why is the one who has four hundred half of the whole thing? There's no such obligation of half. He's one of the three creditors, he's not special.*

That means one understands that I'm trying to explain why it makes sense in a certain way of learning, to think that everyone is equal, therefore one divides it equally. Basically the Rambam does it with complicated steps. So the first basic step that the Rambam says, one divides it equally, finished, and whoever doesn't have doesn't have.

This equal division can't mean – therefore the Rambam puts it this way – equal division means, let's say there are four people and there's a thousand shekel but one only has a debt of one hundred, you can't give him two hundred fifty because one divides it equally, therefore the Rambam does it this way. But the Rambam's basic logic is, that there's no such thing that because I have a larger debt I have a larger shi'abud. You have more money, one will give as much money as one can to fill the debt, but he doesn't have a larger percentage. Why should the one who is one hundred – for him there is – why should he lose because that one is there?

R' Yoel Asher: *What do you have with him? Here when one says "for him there is," here is where I want to stop. Because when he comes in and he grabs you're right. But here is a different case, here is the case that the beit din looks at the whole pile of the debts and the whole pile of the assets. So what does it mean for me there is? No, there's nothing there. There is, you're sitting here opposite each other at the beit din, between both of you there is this, but it's not mine.*

Debate Over the Rambam's System of Equal Division

R' Yitzchak: Why should the one who is one hundred, for him there is...

R' Yoel Asher: Why should he lose because you're here? What do you have with him? Here when you say for him there is, here is where one wants to stop. Because when he comes in and he grabs, you're right. But here is a different case. Here is the case that the beit din looks at the whole pile of the debts and the whole pile of the assets.

So what does it mean for me there is? No, there's nothing there! There is, you're sitting here opposite each other at the beit din, and between both of you there is this. But it's not there for you, only with a din kedimah (law of precedence), without a din kedimah. What does it mean there is for me my amount? Not at all! Because the beit din is dividing it now! Again, it's divided equal, what remains for me...

R' Yitzchak: Here even more than I need. It's divided equal. I and you are all equal, there's no kedimah. Because he has more, he doesn't have kedimah. He has more, but no kedimah. He has no right to take away from me anything.

So there is for me one hundred, not only is there for me, there's even more for me than one hundred. So you know what, I'm happy to take what I need, and go on.

R' Yoel Asher: No, no, one doesn't see why you say there is for me. It's only there for you if you don't take into account that there are other creditors. But if you take into account that there are other creditors, there isn't one hundred for you. Everything is in question now. Until the judges decide, there's nothing for anyone.

R' Yitzchak: There are two people.

R' Yoel Asher: A little bit only! He also doesn't have everything, why do you get your full worth?

R' Yitzchak: He gets a bit of his whole! Because every shekel, every shekel is exactly as important as every other shekel. You understand? Because you have more shekels, doesn't make it more important than mine. This is the logic at least of the Rambam's approach, which Rashi and other tzaddikim who had this approach.

That you have more, that's a very nice world when there is to divide, but it doesn't make it stronger, you understand? There's no kedimah, you understand what I'm saying? There's no din kedimah for the one who has more. And I agree, for this the other approach says differently, but I can understand the approach very well.

R' Yoel Asher: But you're saying that when there's no din kedimah, it remains as you say that one gives to the one who has the smaller. No, one doesn't give! You keep on making a mistake...

R' Yitzchak: There's no...

R' Yoel Asher: That he gets his whole case.

R' Yitzchak: No, equally, you get what there is...

R' Yoel Asher: That means dividing equally, whatever!

R' Yitzchak: No, one divides equally. The Rambam's approach means equal division. It doesn't just mean that way. The Rambam puts it down this way, but that's what it means. It's not simple because you have, because there's enough for you, one fulfills, not so, that's not the simple meaning.

R' Yoel Asher: It's like a division when two people fight over a division.

The Example of Seven Hundred and Six Hundred and the Ra'avad's Approach

R' Yitzchak: Equally, one gives equally, finished! In other words, imagine there isn't enough in another sort of case, yes? Let's say there isn't enough for any one of them, yes? I just want to make it clearer.

Tell me there are two people. One is owed seven hundred dollars, and one is owed six hundred dollars. Meanwhile there's only a thousand dollars. What should one do? Says the Rambam, you should give each one five hundred, and good day, everyone gets equal. Here you understand that it makes a certain sense? Here it's not different, here it's only different, because there's one who is even less, therefore more than what's coming to him...

R' Yoel Asher: More than he should get, it doesn't work out so much...

R' Yitzchak: But that's what the Rambam says.

R' Yoel Asher: Because he agrees about the complication...

R' Yitzchak: That there are people where it doesn't work out so much. But that's not the logic, the reason for this is, he says that everyone has equal.

I agree, the Ra'avad and so he brings the language **lokeh midat hadin** (it lacks the measure of justice). Because the Ra'avad argues that it's not true, it's not true that everyone has an equal debt. There's certainly a sekhel hayashar (common sense) that says that the one who is owed more money, something he should get more. It's very funny that he loses completely... I don't know if he loses, he loses as if percentage-wise more, that's the logic of the other approach, but the Rambam's approach has a certain fairness to it. It's hard to say that there's something a clear decision in the intellect who should be right. At least I don't see.

Okay, fine, until here is laws of kedimah. Now we're going to learn, we'll learn later another thing with kedimah, but now we're going to learn about a guarantor, and afterwards one will learn how one divides.

Laws of a Guarantor in Ketubah

The Concept of a Guarantor and the Law by a Ketubah

R' Yoel Asher: There's such a thing called a guarantor, a halakhic Choshen Mishpat concept of a guarantor. It means, a person who takes responsibility for another person's debt. Not his debt, but one borrows money from someone, and a third person is a guarantor. What does this word guarantor mean?

R' Yitzchak: Avdekha arav et hana'ar (Your servant guaranteed the lad).

R' Yoel Asher: He stands giving arevut (guarantee). What's it called in English? A guarantee.

R' Yitzchak: A guarantee doesn't say enough, a guarantor is something more. A guarantor is like this, by a debt there are laws when one can go collect the debt from the guarantor. What happens by a ketubah? Says the Rambam like this: **Ha'arev le'ishah bikhtuvatah** (One who guarantees a woman for her ketubah). If someone is a guarantor on a woman's ketubah, what does it mean that he writes in?

R' Yoel Asher: He guarantees a woman's ketubah. It means that in the ketubah it says that such and such person will pay, the husband obligates himself this money, the husband is obligated from the Torah for ketubah, and that one will be the one who pays.

R' Yitzchak: If there isn't, that means a guarantor, yes? Not a kablan (primary obligor).

R' Yoel Asher: That's the novelty. A guarantor means that if that one doesn't provide it, he's a guarantor on that person that he'll provide, and if not he'll take over the debt.

So even if there was such a guarantor where one made a kinyan, **kanu miyado** (they acquired from him), he already obligated himself, seemingly his property would become encumbered with this. I don't know, first of all not just, he made a kinyan, which is a stronger obligation. But in practice the halakhah says: **eino chayav leshalem** (he's not obligated to pay). Why? He doesn't have to actually pay when it comes to it, she comes asking from him, he doesn't have to pay.

Why? **Shemitzvah asah** (because he did a mitzvah), he did a mitzvah by strengthening the ketubah, and adding his name, it's a nice thing, it's showing closeness, it's showing a part of the joy. **Veharei lo chisrah kelum** (and behold he didn't diminish anything from her), he didn't take anything from her. She wants to have a wedding like the previous rule, the woman wants to have a wedding, and the husband is anyway obligated with ketubah. Only he made it so the wedding would come easier, with...

R' Yitzchak: What is it? Easier with sense, with the fact that he convinced them for the bride that he's a guarantor. So, as if she was concerned, what is it? He doesn't have money. He says, I'm ready to give.

R' Yoel Asher: You know what kind of helper he was? He was like the helper of the people who give encouragement. I tell you it's going to be great. What do they give? They give nothing. They make, like this. They make...

The Ra'avad's Objection and the Definition of Kinyan by a Ketubah Guarantor

R' Yitzchak: That's an interesting thing. It relies on the Gemara. The Ra'avad argues, the Ra'avad says here if **kanu miyado** it will be an actual obligation. The halakhah is only without kanu miyado.

R' Yoel Asher: So wait a minute before that, the Rambam says that what was, even **kanu miyado**, what does kanu miyado do? Kanu miyado does nothing. A kinyan is only on something that one is actually obligated because of a reason, but here there's really no reason for this.

R' Yitzchak: There is a reason.

R' Yoel Asher: You can, that's a halakhah, when a person says something he becomes obligated to follow.

R' Yitzchak: And if he makes on this a kinyan it becomes a monetary obligation. Yes? Whatever, a kinyan doesn't really make anything.

R' Yoel Asher: Here for what one says the obligation there is no...

R' Yitzchak: There's no one...

R' Yoel Asher: He does become but the point here is...

R' Yitzchak: The Chachamim envisioned that in this situation, one stands at a wedding and one seeks who can be a guarantor on the ketubah, a Jew goes and he says I'm the guarantor, he didn't mean it seriously, it's a presumption of the

Chachamim that one doesn't mean seriously enough to encumber, therefore good day he doesn't have to pay.

It's very interesting, because it's as if preventing harm, on this one says the second thing, preventing isn't harm.

R' Yoel Asher: She would have also wanted to have a wedding. One sees that there's something a matter like it's very similar to **omanah hayetah iti** (it was an estimate with me), that he'll say a thousand because it sounds better. It looks like it also sounds better when the wealthy man of the city says I'm a guarantor on this, but he doesn't mean it truly.

R' Yitzchak: Could be. We learned that there are various halakhot in Choshen Mishpat, that there are things that in the social norms is that one makes a guarantor, could be that there was such a practice, one called the bride's grandfather to be a guarantor.

R' Yoel Asher: One does do so.

R' Yitzchak: On the ketubah one doesn't make a guarantor.

R' Yoel Asher: No, on the tena'im (engagement conditions) there are guarantor kablans. And the custom is, one takes actually the wealthy man, you know in the Rebbe's court one goes to take the millionaire to be a guarantor. But it's also, it's such an honor thing, it's such participating with the joy. Yes, sure, I take responsibility.

The Law of a Guarantor for His Son's Ketubah and the Explanation of "Shemitzvah Asah"

R' Yoel Asher: Ve'im arev shel ketubot beno hu... (And if he's a guarantor for his son's ketubah...)

R' Yitzchak: In any case, but the father that's...

R' Yoel Asher: When a second person came into the picture, be well...

R' Yitzchak: The mechutan (in-law), not the mechutan.

R' Yoel Asher: A second, not the mechutan, another person, it doesn't say, as if a relative can also still be. One who doesn't have the full obligation. But **ve'im arev shel ketubot beno hu** (and if he's a guarantor for his son's ketubah), if the father himself is written in the ketubah as the guarantor on the obligation of his son, meaning the father-in-law, the mechutan, **vekanu miyado** (and they acquired from him) and one made a kinyan, **chayav leshalem** (he's obligated to pay). **She'ha'av biglal beno meshaabed atzmo** (because the father because of his son encumbers himself), a normal person doesn't truly encumber himself and he only means the encouragement, the father does encumber himself.

R' Yitzchak: Vegomer umakne (and he completes and acquires), when he...

R' Yoel Asher: Made the kinyan he meant it seriously and became obligated in money.

R' Yitzchak: I think this is further a social situation, when the father, it means what you say by the tena'im, by us there are tena'im, the mechutan must pay.

R' Yoel Asher: Yes? One is talking here even in the case when the mechutan says I didn't encumber myself.

R' Yitzchak: Yes? The father certainly he doesn't want.

R' Yoel Asher: He doesn't want, he says I was also only a mitzvah, by the previous joy came that one you said he was only a mitzvah, I was also only a mitzvah. No, you're a father.

Interesting, because I thought like **shemitzvah asah** means to say that the husband has his own obligation of ketubah, yes? The Chachamim placed on you the debt, therefore I was only here like... No, I meant that **shemitzvah asah** goes on the husband like. **Shemitzvah asah** goes on the husband or on the guarantor? I meant like **shemitzvah asah** the person who was mekadesh (betrothed) he did a mitzvah of ketubah, no? Not the simple meaning so? No, the guarantor is the simple meaning. What's the mitzvah? Simchat chatan vekallah (joy of groom and bride).

R' Yitzchak: What's the mitzvah? No, not simchat chatan vekallah, he helped that this

should happen, but it's not serious enough that one should take money from him.

R' Yoel Asher: No, the simple meaning is it happened actually because of him, he helped it should happen.

R' Yitzchak: He said a lie.

R' Yoel Asher: That's what guarantor means, one relied on him.

R' Yitzchak: There are guarantors who are truly, like when...

R' Yoel Asher: Hello, there was a kind of ona'ah (deception) because they thought that he means it seriously and...

Digression: Comparison to Promises and the Custom of Guarantor Kablan by Tena'im

R' Yitzchak: He fooled them. These are delicate things, I tell you let's say when the Rebbe promises that whoever will do such and such he promises them children, life and sustenance, can you take him to a din Torah? It's not true? It's both.

R' Yoel Asher: Because children, life and sustenance is very different than when one says fifteen thousand dollars. Children, life and sustenance is...

R' Yitzchak: But however if one says five hundred thousand dollars...

R' Yoel Asher: Give it another few years, children come, life comes, sustenance comes. Put in twenty thousand dollars at the end...

R' Yitzchak: On the day you have to remember, at a wedding one doesn't think that one will divorce or die.

R' Yoel Asher: Only on condition that he should do the work. What, people die here? Young people die? God forbid.

R' Yitzchak: Certainly, a billion dollar ketubah. This is also fine, that means, there are such topics that one does it, here such things that people make kinyanim and they don't mean it one hundred percent seriously. It means a certain seriousness, that means it could be one can socially pressure the person he should help for the couple, something it's probably worth. But could be that it's not...

R' Yoel Asher: No serious thing that one fools people. One isn't talking here as good character traits, one is talking here whether a kinyan was made.

R' Yitzchak: Against, it seems, I think that according to what we're discussing now, as you say very well, about our conditions that people go around saying "arev kablan" and it doesn't mean anything, but certainly it does mean something. That is, even with these conditions, presumably when one goes to that rich uncle and needs money, it helps somewhat that one gave him the honor of being an arev kablan, understand? But it's not enough that one could go to a din Torah.

R' Yoel Asher: So, the Rambam says further: **vekablan shel...** This is everything that...

R' Yitzchak: We spoke about an arev. Ah, he did do something, but a mitzvah. It's not a sin, it's not a lie.

R' Yoel Asher: It's not a sin, a mitzvah it's not like...

R' Yitzchak: And certainly it does mean something. That is, even with these conditions, presumably when one goes to that rich uncle and needs money, it helps somewhat that one gave him the honor of being an arev kablan, understand? But it's not enough that one could go to a din Torah.

R' Yoel Asher: So, the Rambam says further: **vekablan shel**... This is...

R' Yitzchak: Everything we spoke about was regarding an arev, he did do something, but a mitzvah. Not a sin, not a lie.

R' Yoel Asher: A mitzvah. It's not the way the Rambam counts a mitzvah, like we say he grabbed himself a mitzvah. The young man grabbed himself a mitzvah.

R' Yitzchak: Yes, by God it's a mitzvah, it's not a lie.

R' Yoel Asher: Not a sin, it's no lie, no sin, it's a mitzvah. He grabbed a ride with a mitzvah. It's the mitzvah of the man.

R' Yitzchak: He... no, he did a mitzvah, he helped two Jews have a wedding. Okay, good.

Chiddush: A Source for the Mitzvah of Speaking About Shidduchim

R' Yoel Asher: They asked him: Do you want to help? Do you want to be the arev? So, I'm the arev. So here we see that being a shadchan is a mitzvah.

R' Yitzchak: Yes?

R' Yoel Asher: It's said that being a shadchan is a mitzvah of peru u'revu, but here we see actually that the Rambam calls such a case when someone just helps so that two people should make a shidduch. Simply, interesting, one can say here, one can make a halacha whoever wants, shadchanim can use it. There are many campaigns that one should speak about shidduchim – see here in the Rambam that someone who just helped even just a little, even just like that not so much, he didn't mean it so seriously, but he helped a chasan and kallah have a wedding, he did a mitzvah, **mitzvas aseh**.

Laws of Kablan of a Kesubah

The Difference Between an Arev and a Kablan

R' Yoel Asher: So, this is an arev, but there is an arev...

R' Yitzchak: An arev means that...

R' Yoel Asher: I'll then become obligated, I'll then give if the other doesn't give. If the other won't give, excuse me yes, I'll come in his place. Basically one can say that an arev...

R' Yitzchak: Is on the person.

R' Yoel Asher: An arev is a back-up. No, no, an arev is a back-up, a back-up but for the person. Usually the arev means to say: I trust the person so strongly, I know he'll pay, I even take responsibility. Kablan means someone who is really, he becomes a partner in this, he says I'm going...

R' Yitzchak: To pay instead of the man. What does a kablan of a kesubah have to do with it?

Discussion: How Does a Kablan Fit with "Shelo Tehei Kalah B'einav L'hotzi'ah"?

R' Yoel Asher: A kablan of a kesubah, but one must understand that the obligation of the Chachamim is not necessarily that...

R' Yitzchak: The man should be the one who gives it.

R' Yoel Asher: What's the difference? It's not a matter of an obligation from the man to the woman. Kablan means I, but it's still such a concept of standing in place of the father. Like he pays out his debt.

R' Yitzchak: It's not an arev. It's just a question how he can be a kablan. We learned about "shelo tehei kalah b'einav l'hotzi'ah," why one should be allowed to make a kablan.

R' Yoel Asher: It's still difficult in his eyes, because this will obligate the kablan who is his close brother, who is his family. One won't take an enemy. An enemy doesn't become a kablan, it's his father, it's one of his close people.

So someone who is mekabel a kesubah, a kablan is like from the language mekabel, someone who is now accepting upon himself the obligation that he's going to pay it. Meaning, an arev is when the arev thinks, the person himself has the money to pay it out.

R' Yitzchak: An arev is someone who is a second chance, and a kablan is from the outset. By an arev one must first make a claim against the...

R' Yoel Asher: A kablan is the one who knows, the other one isn't going to pay.

R' Yitzchak: I'm going to pay it. So by an arev it means one must first make a claim from the real one, but if that one doesn't have, and not only that, the arev will later claim from the debtor back his money. A kablan says: I'm in his place, I'm taking over for him.

The Language of a Kablan and an Arev in the Rambam

R' Yoel Asher: So **he is obligated to pay even though they didn't make a kinyan from him**, even if they didn't make a kinyan, if he said, he took responsibility in the manner of a

kablan. The Rambam says: **And who is a kablan? This is one who says to the woman: Marry this one**, have a wedding with so-and-so,

R' Yitzchak: And I will give this kesubah.

R' Yoel Asher: Hmm. I give, meaning I'm giving from now.

R' Yitzchak: I'm truly obligated.

R' Yoel Asher: Apparently if he understands this also as if he only means it as a mitzvah. **But if he said to her I am an arev for this kesubah**, he told her a language of arev which we learned earlier that one doesn't mean truly, or **I will pay off this kesubah**, I'll pay it off – pay off means instead of the other one or what, yes – or **I am obligated in it**, I'm obligating myself, I'm taking upon myself the debt, **and the like he is exempt**, because this still means arev, so he's exempt, that is not a kablan. **Unless it was his father**, if that one is his father,

R' Yitzchak: Or as we learned,

R' Yoel Asher: That he does have a bit of responsibility, the father does take,

R' Yitzchak: He accepts and means it truly, good. Okay, now we can learn when one takes from the arev.

Laws of One Who Divorces His Wife: Concern for Conspiracy by a Kablan, Hekdesh and Purchasers

The Law of "Yadirena Hana'ah" by a Kablan and a Father

R' Yoel Asher: That there's a bit of concern. There's a law in this, another chiddush in this. **One who divorces his wife**,

R' Yitzchak: Someone gives a get to his wife,

R' Yoel Asher: Hmm. And he wants to take away the money, he wants the kablan or the arev to pay the kesubah.

R' Yitzchak: Hmm.

R' Yoel Asher: But there's a law like this: **yadirena hana'ah**, he should make a vow of benefit on his wife, that his wife will no longer have benefit... that he won't be able to have benefit anymore from her...

Discussion: What Is the Precise Meaning of "Yadirena Hana'ah"?

R' Yitzchak: Yes, she shouldn't from him. **Yadirena** means that she... I don't know.

R' Yoel Asher: ...that he won't be able to have benefit from her, we'll soon see why. **And afterwards it will be paid**...

R' Yitzchak: Yes, **yadirena hana'ah** means that she can't have benefit from him, but... **yadirena hana'ah**, right? Not... so he himself makes a vow, but...

R' Yoel Asher: I don't know. He should make a vow on her, his benefit...

R' Yitzchak: His benefit should be forbidden to her by vow.

R' Yoel Asher: And afterwards... So benefit means his benefit from her, her benefit from him should be forbidden.

R' Yitzchak: She can't have benefit from him.

R' Yoel Asher: No, no, we'll soon see that he won't be able to have benefit from her.

R' Yitzchak: But it's the meaning of **yadirena**, because it's not the meaning of **yadirena**,

R' Yoel Asher: Because it should make forbidden by vow his benefit from her. He makes her benefit that she...

R' Yitzchak: Can't have benefit from him.

R' Yoel Asher: Not him himself. No, no, he is forbidding by vow his benefit from her.

R' Yitzchak: So we see that it's not the meaning of **yadirena**, because it should say "yadir es atzmo."

R' Yoel Asher: No, he makes...

R' Yitzchak: He gives her a benefit that he makes her a deal.

R' Yoel Asher: Again, she's now going to be able to find a way... He found here a way to get back money from her. That she's going to collect the kesubah money, and afterwards they're going to together make a good life with it.

R' Yitzchak: But what's the difference? Which way one makes the vow I don't know.

R' Yoel Asher: Both ways is good. Okay, **yadirena hana'ah**, one should make a vow that he shouldn't be allowed to have benefit from the money that...

R' Yitzchak: She's going to receive from the kesubah. **And afterwards**... that she shouldn't be allowed to have benefit from him. The **yadirena hana'ah**...

R' Yoel Asher: Where does it go between them? Not from the money. If the matter has benefit that he will never again be able to be with her.

R' Yitzchak: Basically, that's what it means.

R' Yoel Asher: Like a divorcee may remarry his divorcee, he makes a vow that he won't remarry his divorcee, because they are forbidden by vow one to the other. Exactly, basically. I thought there's a simpler way of doing it.

Okay, let's see: **And afterwards it will be paid from the kablan or from his father if he was an arev**. Afterwards she can receive payment from the kablan who must pay, or from an arev in a case when an arev must pay, which is when it's the father. Why must one do this? Because one is afraid of such a case. One is afraid that this is a game. He gives her a get, and afterwards he has a wedding with her again. **Lest he remarry her** – he's going to have a wedding with her again. **It turns out they are making a conspiracy on the property of this one** – they're making a conspiracy, they're making a conspiracy how to trick out that one's money and use it together.

Discussion: Why Isn't a Vow Only on the Money Enough?

R' Yitzchak: But if he makes a vow of benefit it's enough that he says that...

R' Yoel Asher: That he's not allowed to have benefit from her, automatically he won't be able to use the money, her money. Yes, but so when she receives the money from the kesubah, he shouldn't be able to be a part of it, he shouldn't be able to be any partner in it.

R' Yitzchak: Because,

R' Yoel Asher: Because why should one say that... There is here, one demands here very much, that he will never be able to remarry his divorcee.

R' Yitzchak: So.

R' Yoel Asher: But it's enough that he makes apparently a vow, a vow that he won't have benefit any money matter from her.

R' Yitzchak: One may have a wedding with her,

R' Yoel Asher: But he will never have any benefit from the money that she will receive from the...

R' Yitzchak: From the kablan. One can't make a vow.

R' Yoel Asher: Usually the man acquires her money, he shouldn't acquire it. Okay.

R' Yitzchak: That's not enough. I don't know, so it says in the Gemara that one should do.

R' Yoel Asher: A vow of benefit, but that's the matter, yes, that he shouldn't...

R' Yitzchak: Be able to remarry his divorcee. Yes, okay, that's it. Again, he can divorce her and take the kesubah money, hello?

The Law by Hekdesh: "From the One Who Redeems from Hekdesh"

R' Yoel Asher: Right, okay. **And similarly one who**...

R' Yitzchak: Same thing, similar, from the same concern is **one who consecrates his property and divorced**...

R' Yoel Asher: One who consecrates his property and divorced his wife. Someone has a kesubah on his wife, and he goes and he consecrates his property to Heaven. **And divorced his wife**, and he divorces his wife, so now his wife wants to receive her kesubah, yes? She'll go to hekdesh and say: Hey, hekdesh wasn't allowed to take it because it was already obligated to me. In such a case, **yadirena hana'ah**, the man must also make the same vow that he won't have benefit from her, meaning that he won't be able to...

R' Yitzchak: Have a wedding with her.

R' Yoel Asher: And afterwards it will be paid, afterwards she can receive payment **from the one who redeems from hekdesh**. What does **from the one who redeems from hekdesh** mean? Meaning she can go to hekdesh and there's someone there who is the redeemer what?

R' Yitzchak: There's something a... No, no, whoever took it from hekdesh, she'll take it from him.

R' Yoel Asher: Hekdesh doesn't hold any... Ah, hekdesh sells these various things. Ah, it's not simply something that can be used. He gave away a sheep, perhaps it's used for...

R' Yitzchak: No, in hekdesh I mean a...

R' Yoel Asher: It went into the hekdesh system. Ah, very good, and only when it's sold from hekdesh, one can now take it from the person who bought it. But before that must be the vow. Why must the vow be before? For the same reason: **Lest they make a conspiracy on the hekdesh**, perhaps they make between themselves a way how to get back from hekdesh, after they consecrated it.

The Law by Purchasers and the Logical Difference Between Purchasers and Kablan/Hekdesh

R' Yitzchak: So we learn that,

R' Yoel Asher: Usually there's this thing only by an arev, I mean an arev or kablan, or just like that, but by hekdesh there's the... **But one who divorces his wife and she comes to collect from the purchasers**, one would apparently also be able to make the same calculation that this is a conspiracy to trick out from the customers, from the purchasers – **we don't obligate him to make her vow**. But what then? **But she swears**, she can make an oath that she hasn't yet received her kesubah, **and collects. And if she wants she may return to her husband**, if afterwards she wants to have a wedding again with her husband, she may.

Why may she return to her husband? Apparently why? Why shouldn't we say here that there's a conspiracy? The Rambam says: **For the purchasers already knew that there is a kesubah obligation on him**. The purchasers must know, once there's something that is in a document, that has publicity, the purchasers should have heard that the person does have a field, but it's obligated to his wife's kesubah. And **they caused themselves loss that they bought property that is under obligation**, they themselves caused the loss.

Which is not so by a kablan or by hekdesh, there isn't the argument that they caused themselves loss, because hekdesh is hekdesh, hekdesh takes everything that Jews want to give charity to hekdesh. Hekdesh doesn't have the obligation to inquire, and the same thing by a kablan we don't have the thought.

R' Yitzchak: The difference is that he didn't buy it, that I mean is the difference. You buy something, you buy property, it has a lien, right? Obligation means a lien in English. You buy a house with a lien, that's what you're buying. Did you hope that the risk would pay off? It didn't pay off. When a kablan, I mean, that's the risk that he takes on for the other one's kesubah, but not the risk that the other one is going to steal from him. The same thing hekdesh, he didn't do anything. A purchaser, presumably the land is cheaper, because it comes with a risk.

R' Yoel Asher: The risk already paid off. This is also a type of debt, that's how the industry works.

R' Yitzchak: You buy something, and you buy property under a lien, right, obligation means a lien in English. You buy a house with a lien, that's yours what you're buying. You hoped that the risk would pay off, it didn't pay off. When a kablan, I mean that's the risk that he takes on for the other one's kesubah, but not the risk that the other one is going to steal from him. The same thing hekdesh, he didn't do anything. A purchaser, presumably the land is cheaper, because it comes with a risk. Right.

R' Yoel Asher: The risk already paid off. This is also a type of debt, that's how the industry works. He's the one who's going to buy from foreclosure and he catches some deal.

R' Yitzchak: Exactly, you can't have any complaints, that's your deal, that's what you did. The hekdesh doesn't make any deals, the hekdesh took, or the same thing the kablan, he didn't make any deal, he didn't earn anything from this. Okay.

A Woman Who Writes "I Have No Claim Against You" for the Purchaser

R' Yitzchak: Now we're going to learn more things that people don't mean seriously. It's very important to know what people mean seriously and what not.

R' Yoel Asher: Yes? It's very difficult to figure this out. People think that one looks how wrinkled the forehead is, but usually it doesn't work that way. So, **A husband who sold his property**, what?

R' Yitzchak: There are rules in the Gemara.

R' Yoel Asher: Yes, a husband who sold his property, and afterwards the wife comes to the purchaser.

R' Yitzchak: That is, the purchaser is afraid as if, there's a problem. Every property of a husband is obligated to the kesubah. So the purchaser doesn't want, it seems he doesn't want the deal.

R' Yoel Asher: So comes the, so a husband...

R' Yitzchak: He sold property,

R' Yoel Asher: And it was presumably part of the deal, that's what we have to say. Right, he sold property, and he received a document from the wife of the seller, **v'achar kach katvah ishto, the wife of the seller sent **l'lokei'ach**, to the purchaser of the property, she sent and said: **din u'dvarim ein li imach**. I have no din u'dvarim with you, I have no claims against you. That means,**

R' Yitzchak: It's a hint, it means in English a... it's a,

R' Yoel Asher: We can understand that this means a hint, so at least that's what the purchaser claims. This is a hint that,

R' Yitzchak: That the **din u'dvarim ein li imach** means indemnification in English.

R' Yoel Asher: Din u'dvarim ein li imach, it's like a kind of waiver. That usually people know that when they buy land, that the land is perhaps encumbered to the kesubah. She wrote:

R' Yitzchak: Certainly encumbered, not perhaps.

R' Yoel Asher: Everything is in order, we don't have any problem.

R' Yitzchak: In English it's called a waiver, or something like that.

R' Yoel Asher: I'm exempt. A disclosure that we're good,

R' Yitzchak: We're fine.

R' Yoel Asher: So then **v'hiskimah l'ma'asav**, she agreed to the actions of the husband that yes, it can be sold. Yes, we learned earlier, that many times the wife can prevent it. We learned a lot. No, no, don't say that she can prevent it. He can't theoretically sell it completely, because her name always remains, and she can be toref,

R' Yitzchak: And here she says: "No, I can agree." And she agreed. ⟦#2⟧ And here she agreed.

The Claim of "Nachas Ruach Asisi L'Ba'ali"

R' Yoel Asher: Af al pi she'kanu mimenah, even if a kinyan was made on this, **harei zo torefes**, she can indeed later come and be toref the land for her kesubah. Why? Even if she wrote all these nice words, why? Because we say, there's such an umdena that Chazal say: **shelo kasvah lo**, she didn't write to him, **ela kedei shelo yehei beinah u'vein ba'alah ketata**. Usually when a wife writes such a thing, it's not necessarily that she meant it seriously, just as we learned earlier that there are things when people write, they don't mean it genuinely. Aha. So when a wife writes such a thing we think that it was pressure from the husband.

R' Yitzchak: It's not pressure, it's normal. She is now, later she got divorced, or died is a different story.

R' Yoel Asher: But when you don't want to

R' Yitzchak: Fight with the husband.

R' Yoel Asher: The husband asks, so no problem, I'll do it.

R' Yitzchak: No, we're not saying that she did it honestly, she sent it out of

R' Yoel Asher: Her free will she sent the words, she did it for the sake of the husband, **v'yesh lah lomar nachas ruach asisi l'ba'ali**. Yes, free will, but the free will is for the sake of the husband, so she shouldn't fight with him. And therefore she didn't mean it genuinely, she didn't genuinely accept,

R' Yitzchak: So she wasn't genuinely waiving. ⟦#3⟧ No.

Discussion: Why Isn't This "Dvarim Shebalev Einam Dvarim"?

R' Yoel Asher: Interesting, because usually we say that dvarim shebalev einam dvarim,

R' Yitzchak: Yes? No, that's only things that aren't clear.

R' Yoel Asher: Things that are clear... so? When there's an umdena hamuchach,

R' Yitzchak: Raglayim l'davar? Raglayim l'davar. There are halachos in Shulchan Aruch, entire simanim of things that people don't mean seriously, and this is one of them.

One must always know, when a person got married, you can't expect a wife, if she wants her basic, you have to understand, there is a basic right of a wife, she can collect a kesubah, there's a shibud. You can't expect that this means that now she has to fight with her husband even when they're living well b'chaim u'vshalom and say: "No, I won't let you sell." He's a businessman, he sells real estate, she's going to interfere now? She won't interfere. Later, when they're already divorced or dead, certainly she doesn't mean it, it's not a genuine waiver or something like that. Right. ⟦#4⟧

Two Ways Where the Wife's Waiver Is Indeed Valid

Method A: When the Purchaser First Makes a Kinyan with the Wife Before the Sale

R' Yitzchak: But what? If you go in reverse. There's an eitzah for this. If one wants indeed,

R' Yoel Asher: First one does it in a different order.

R' Yitzchak: First one goes to the wife. Not one goes to the husband, the husband already sold, afterwards they say: "Ah, I have a problem, you know what? I already agree." No, first one goes to the wife.

R' Yoel Asher: Aval actually what was done, actually in arranging the kinyan **im kanu min ha'ishah** that the seller, that the purchaser wanted to make sure beforehand that the wife relinquishes the land. And he made a kinyan on this **techilah she'ein lah shibud al makom zeh**,

R' Yitzchak: V'achar kach machar oso haba'al,

R' Yoel Asher: So it's clear that he bought it al daas zeh that the wife indeed waived.

R' Yitzchak: She didn't waive it because of his sale, she just waived it beforehand,

R' Yoel Asher: And then, she can also say here nachas ruach for l'ba'ali so he should be able to do what he did.

R' Yitzchak: No, beforehand, he went and spoke

R' Yoel Asher: With her before the sale. No, I don't know about that, because in one case one can't say nachas ruach asisi l'ba'ali according to what I think.

R' Yitzchak: Look in the Mishnah, the lashon haMishnah is: **lakach min ha'ish v'chazar v'lakach min ha'ishah mikcho batel, lakach min ha'ishah v'chazar v'lakach min ha'ish mikcho kayam**. That means first he goes to the wife. Not that the husband comes, I sold, and they went to her afterwards,

R' Yoel Asher: He goes to the wife first.

R' Yitzchak: He makes a deal. Women can make deals, yes? Let's understand. Presumably she received something for this, she has the shibud, he paid her ten shekel, says throw away your shibud. She didn't think she was going to get divorced, it was, it was worthwhile, just as she can sell the kesubah. He made a deal with her first, and she agreed, not for her husband, not after the husband already sold. He first made a deal with her, you can understand me to step away from your shibud on what I have on... why? Perhaps for... he paid her. There's no difference why.

R' Yoel Asher: Okay, in such a case **einah torefes** oso

R' Yitzchak: Because she genuinely waived.

Method B: When the Wife Already Refused Her Husband in a Previous Sale

R' Yoel Asher: Very good. **V'chein im machar haba'al**, the husband sold, **v'amar l'ishto lichtov l'lokei'ach din u'dvarim ein li imach**. In a case where the husband asked the wife, write for the purchaser the **din u'dvarim ein li imach** that you're waiving. **V'lo kasvah v'lo hiskimah l'ma'asav, v'nifsad hamikach**, and indeed he couldn't make the deal. **V'chazar haba'al u'machar l'ish acher**, afterwards he went and he sold to a second person, **bein oso hasadeh bein sadeh acheres**. And here, **achar shemachar haba'al**, after he sold, she agreed afterwards **l'ma'asav, v'kanu miyadah**, they even made a kinyan **she'ein lah shibud al sadeh zo**.

R' Yitzchak: One had to make a kinyan, but if one made a kinyan. Yes.

R' Yoel Asher: So such a wife **einah yecholah litroef**. Why? Because the wife doesn't have the argument to say that she didn't mean it genuinely. **She'einah yecholah lomar** I only did it because of **nachas ruach asisi l'ba'ali**, because my husband made pressure, it was already after the sale.

R' Yitzchak: Why? **Sheharei b'rishonah**,

R' Yoel Asher: Sheharei b'rishonah, the wife already demonstrated earlier when there was a similar incident, that **k'shelo ratzas**, that when she didn't want, **lo halchah k'ratzon ba'alah**. She already showed that she's not such a weak wife who always makes nachas ruach l'ba'alah, as we learned: mhalech b'ta'avos libo, b'rucho. Yes, both, at home, business, I don't know how here. But the wife shows that she's not that type of person.

Discussion: Individual Assessment in Beis Din

R' Yoel Asher: Very interesting. It's not such a... usually Chazal don't do it. Usually Chazal say that this and that is the rule. Here one makes, one looks at the wife, her... is your individual relationship.

R' Yitzchak: Okay, and I believe that the halachah is ad hayom hazeh that they come to beis din if it's relevant, and one investigates the situation whether it's reasonable this way or that way. This is only general definitions,

R' Yoel Asher: And such a case... if in general the wife is always the manager, she's the boss at home, one can always say even if she hasn't demonstrated once yet.

R' Yitzchak: Okay. There's such a concept generally in this... whatever.

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

R' Yitzchak: In any case, it's very interesting this halachah. You're right that practically to pasken one presumably needs to know reality, but the Chachamim gave the various methods. Yes? Yes.

A Man with Two Wives Where the First Waives for the Purchaser (A "Mavoi Sasum")

R' Yoel Asher: Now there's an interesting halachah. Another halachah in such an incident of a... when the wife waives.

R' Yitzchak: There's, one is going to get stuck.

R' Yoel Asher: Okay? And they'll meet at a crossroads that has no way out. A mavoi sasum.

Mi she'hayu lo shtei nashim u'machar es sadehu,

R' Yitzchak: A person has two wives,

R' Yoel Asher: And on both he has a kesubah, and he went and

R' Yitzchak: He sold his field. And one of them...

R' Yoel Asher: One of the purchasers went and he made a kinyan, **v'kanah halokei'ach miyad harishonah**, he spoke with the first wife, the wife who has the first kesubah, who has the din of priority, and she accepted a kinyan **she'ein lah shibud al sadeh zo**, that she doesn't hold a shibud on this field, she waives her shibud, on the fact that this field is encumbered for her kesubah, she waives this, **v'einah torefes osah min halokei'ach**, she won't seize the land from the person who buys it, she waives this.

Says the Rambam, we're speaking **v'hayah kinyan hamo'il**, in a manner when it's good, **she'einah yecholah lit'on bo nachas ruach asisi l'ba'ali**, not in a manner one made when she can say nachas ruach asisi l'ba'ali, but in a manner that is indeed good. For example one made it beforehand, one went first to the wife,

R' Yitzchak: Even before the husband.

R' Yoel Asher: Or she's such a wife that one can, whatever. Yes. **V'achar kach meis**, afterwards the husband died, **o geiresh**, the husband died, and both now automatically become widows and request their kesubah, or he divorced them both, so thus:

Hasheniyah, the second wife, never waived the field, she is **motzi'ah miyad halokei'ach**, she can go, the field is also encumbered for her kesubah, she can go and extract the kesubah from the hands of the purchaser who bought the field. Why? **Sheharei lo kanu miyadah l'lokei'ach**, she never made a kinyan that she waives the field.

But here trouble begins. After she goes and she is motzi from the purchaser, the rishonah can come, the first wife, the one who waived for the purchaser, now however the field is no longer with the purchaser, it's with the second wife, the second kesubah, the first can go and be motzi the field **miyad hasheniyah, mipnei she'hi kadmah**. She can say I have the right of priority that when there's a field that isn't sold, that when there's a field I come first, **v'lo hesirah**... hey, you removed your shibud, you waived? I didn't waive for you, I only waived for the purchaser. That means one can say she lost the connection to the field. No, I didn't lose my connection to the field.

R' Yitzchak: No, she did indeed lose the connection to the field when it's with the purchaser, but when it's with her, now there is with her.

R' Yoel Asher: If it would have gone from the purchaser directly to her,

R' Yitzchak: It would be hers... it goes to her, it goes to her!

Chozros Chalilah

R' Yoel Asher: Mipnei she'hi kadmah. She can say: I have the right of priority, that when there's a field – it's not sold – when there's a field, I come first. **V'lo hesirah shibuda ela mipnei halokei'ach.** Hey, you waived your shibud, you waived? I didn't waive for you, I only waived for the purchaser. That means, one can say she lost connection to the field. No, I didn't lose my connection to the field.

R' Yitzchak: No, she did indeed. The connection is lacking when it's with the purchaser, but when it's with you, now there is with you.

R' Yoel Asher: If it would have gone from the purchaser directly to her, it wouldn't be hers.

R' Yitzchak: It goes to her. The first can't take anything from the purchaser.

R' Yoel Asher: But you still have to say, that when it comes to her it's still like the husband's property.

R' Yitzchak: Yes, yes, certainly, she received a chazakah. Okay.

R' Yoel Asher: It could be it's not the husband's property, because now when she collected it she

was the only one who gets the husband's property. We don't say so.

R' Yitzchak: What does it say here? What happens?

R' Yoel Asher: It's anyway, one remains stuck. **U'chshetachzor hasadeh l'rishonah**, the purchaser can come and seize from her. Does it happen automatically? **Motzi'ah halokei'ach miyadah**, it's made clear that there's no way out here. **Motzi'ah miyadah, sheharei kanu miyadah lo.** Just as the first purchaser can say: you waived the field to me. Aha. But then the second can come again and seize from the purchasers. So there's no way out, so what must one do?

R' Yitzchak: V'chozros chalilah, it spins like a dreidel.

R' Yoel Asher: Yes, and one can generate electricity from this. **Ad she'ya'asu pesharah beineihem.**

R' Yitzchak: In short, they, the two wives, will have to give themselves an eitzah.

Discussion: Whether the Revolving Wheel Works Automatically and the Principle of Muskalos U'mefursamos

R' Yoel Asher: They'll have to give themselves an eitzah. But it's really very interesting: if we say that everything works automatically as it appears here, I would also have to say that it works automatically that once it leaves the purchaser it goes to the second wife, because she's the one who claimed it, and because the first wife already waived it.

R' Yitzchak: It goes to the kesubah. Yes, the second wife has nothing with the purchaser.

R' Yoel Asher: Why do you say there's an authority called kesubah? There's no more kesubah. The kesubah is already paskened, because the first wife waived. The second wife can indeed receive it.

R' Yitzchak: And she receives it. She didn't waive her kesubah, she waived the land, and the land is the only land he has. No, no, she made a deal with the purchaser, she didn't waive any land. She made a deal with the purchaser that she won't take from him. I hear, I hear. I'm just bringing out a point.

In any case both wives... I want to say a principle, I already said, we've been going for a few weeks and haven't mentioned this principle. The Rambam says in several places, that kol haTorah kulah chutz from anochi v'lo yihiyeh lecha is from the mefursamos and mekubalos, not the muskalos.

What does this mean? Muskalos means absolute truth, which one can't say otherwise – that there's one God and not two. Whoever says otherwise is completely mistaken; one must argue with him, but he's a mistake. All the other halachos besides this, says the Rav, are called mefursamos. What does mefursamos mean? That it could have been otherwise.

Therefore to find a halachah and say that I could have thought otherwise is not at all a chochmah. The chochmah is if one can't think otherwise, that is, if one can't think that way at all – there's something like parah adumah, such a metaher temei'im u'metamei tehorim, is a contradiction – that's a question that must be answered. If you can explain the halachos, it's enough to explain that it can indeed be so, that one should be happy, because almost every single halachah could have been otherwise. Not dangerous.

R' Yoel Asher: And one only sharpens the point. It's only a way of sharpening the point.

R' Yitzchak: Yes, yes. No, I'm saying... I want to bring up an important principle: especially what's interesting to me is,

R' Yoel Asher: Because when you say...

R' Yitzchak: You said that it works in seconds, meaning it works automatically. No, it only means to say that here there's an interesting situation of how a claim, where the one who has the right doesn't have the right, and the one who doesn't have the right does have the right. It's something like, the whole roundabout way of saying it is a paradox, by the way... a paradox in halacha... It has a certain learned terminology, yes? The scholars have, there's a "shnei hafachim b'noseh echad" (two opposites in one subject), a "galgal hachozer" (revolving wheel), but it's not

truly a galgal hachozer, you understand what I mean? I can think of others... I don't have it right now at this moment, but I remember that there are other such sorts of cases that are similar problems.

R' Yoel Asher: And the question here is, when it says "**motzi'ah halokei'ach miyadah**" (the purchaser takes it from her hand), does it really mean that it happens automatically,

R' Yitzchak: Or does he mean to say, it can happen that the purchaser can come... he doesn't do anything, and if the purchaser walks away from this,

R' Yoel Asher: Then it's fine, it has the first one now.

R' Yitzchak: In short, no problem, they don't need to...

R' Yoel Asher: It's not the simple meaning that it happens automatically. It's not the simple meaning that beis din...

R' Yitzchak: The paradox explanation is here, that you have a right to take from the field, but you don't have any right to take for the kesuvah. That's the basic problem.

You're right. R' Yoel Dovid Shaul says that I can say that the way it took, I had it backwards... because it doesn't take any time, all these things don't take any time, you can't say that. That's like the reasoning. If the kesuvah is divided, it should go to the first one and not to the second one, specifically the first one has... You're right. In short, one could think differently. I agree.

The Laws of a Widow and a Divorcee Who Sell Property for Their Kesuvah

R' Yitzchak: Okay, now. Let's learn how it works when one sells the field. And there are details that we've already learned a bit, there's such a thing as a hachrazah (public announcement), there's about what one can make more money, there's less money, one needs to know the laws of this.

A Widow Sells Not Through Expert Beis Din

R' Yoel Asher: Already. **An almanah** (widow), a woman is a widow, **whether from erusin or from nisuin** (betrothal or marriage), whether a widow who already had a wedding, or a widow who only had kiddushin,

R' Yitzchak: Ahh.

R' Yoel Asher: And now the husband died and she wants to take the kesuvah. **She takes an oath**, she must swear, just as they learned that a widow must always swear to the orphans, the oath of the orphans, **and she sells**, and afterwards she can go sell **from her husband's property and collect her kesuvah**, she gets paid the kesuvah. Ahh.

How can she do this selling? So **whether through beis din**, there are places where one can require that the expert beis din must accompany the sale, to make sure that you're not being careless with someone else's money and the like. Ahh. But here she can

R' Yitzchak: Do **whether through expert beis din**,

R' Yoel Asher: There are properties, real estate experts, right? Right, whether a beis din that are experts in this matter of a beis din that are experts in properties, **or not through expert beis din**, but this is then, **as long as there are three trustworthy men who know about property appraisal.** Ahh. Not exactly experts, but at least they should know a bit, and be trustworthy men.

R' Yitzchak: Perhaps they don't need to know the laws, one just needs to be honest people who... I mean, ah actually I made a mistake, experts means they know Choshen Mishpat, but they perhaps know experts,

R' Yoel Asher: Experts are the beis din that is complete, that knows everything. I'm saying that it doesn't have to be that the experts must know everything, but at least they should know very well.

R' Yitzchak: But beis din, eh, I think he brings that there's a distinction, he brings that in the Gemara it says that there's a distinction between beis din and experts. That means, there's such a

thing: **a person doesn't want his wife to be embarrassed in beis din.** Going to beis din, to court, I don't know if there's such a thing as beis din, is like a disgrace; she has to go to court to take the husband's money, that's embarrassing. To go to the appraisers...

R' Yoel Asher: We saw earlier by the oath that this is also embarrassing, yes?

R' Yitzchak: Right, right, also saw such a thing. It became embarrassing.

R' Yoel Asher: Also saw such a thing.

R' Yitzchak: Yes. In short, it didn't say, you said, I don't know, perhaps somewhere you saw that it says. In any case, beis din is not a way. But simply to go to a committee of three appraisers, yes, who understand and it's not a problem. So automatically that's the law of a widow, that she must make an oath exactly as they learned earlier, but they don't need an expert beis din.

R' Yoel Asher: Yes? Right? But the three men must however be trustworthy, certainly. **And know about property appraisal**, they know how to appraise property.

R' Yitzchak: The main thing is that they're not a beis din, a beis din is a problem.

Responsibility of the Sale on the Orphans' Property

R' Yoel Asher: The Rambam says: "**And the responsibility of the sale is on the orphans' property**".

R' Yitzchak: What does responsibility of the sale mean? Responsibility of the sale means, in Yiddish, the insurance, yes? Every time one buys real estate, one must buy real estate insurance. Why? Because if someone comes and says he has a lien on the property, one must go to him. So always there's someone who takes on the responsibility of the sale. So, the responsibility of the sale is not on the wife, but on the orphans.

R' Yoel Asher: Because the wife must get paid. If the wife won't be able to keep the money, because it will be taken back from her, because the property belongs...

R' Yitzchak: It's truly already mortgaged for a debt,

R' Yoel Asher: She will be able to come back to the orphans and take from other properties that the husband left for the kesuvah. Because they have the responsibility, the orphans' property, that if it doesn't work out they should have to give from other properties that they inherited. That's a widow.

A Divorcee Sells Through Expert Beis Din and With Announcement

R' Yoel Asher: "**But the divorcee**", who doesn't swear, "**may only sell through expert beis din**". She should however sell through expert beis din,

R' Yitzchak: Because a divorcee doesn't care that she should have to go to beis din.

R' Yoel Asher: We don't spare her so much.

R' Yitzchak: The husband doesn't spare her, we're talking about his money.

R' Yoel Asher: It means more that the husband isn't forgiving but

R' Yitzchak: In a way that the

R' Yoel Asher: Husband can demand the strict, highest level, highest standard.

And with this comes another law, that when one sells through an expert beis din that has a law of beis din: "**And anyone who sells through beis din may only sell with an announcement**". She can require that the beis din must first announce that this is going to be sold, and thus make sure that she gets the best for her money and the like. What is the hachrazah? The hachrazah is another way to ensure the best acquisition.

R' Yitzchak: The Rambam says, if you don't know what that is,

R' Yoel Asher: "**And in the Laws of Loans it will be explained the law of beis din sale, how it is**", how the laws of selling through beis din work. Actually the Rambam could have already said it earlier by the words "beis din goes down to his property",

R' Yitzchak: It's also sold then. Yes,

R' Yoel Asher: A few times we had beis din goes down to his property, yes.

A Precision in the Rambam's Language by Selling Not Through Beis Din

R' Yoel Asher: "**But one who sells not through beis din**", when she sells not through beis din, like in the first case by the widow, "**doesn't need an announcement even though they are three trustworthy men who know the appraisal**". That means, even this we do require yes – yes what does he mean? – even when we do require yes that there should be three trustworthy men who know the appraisal, but an announcement we don't need.

R' Yitzchak: Ahh, no, he's arguing that one could think we do need yes three men, which is actually a beis din. No, beis din, the law of announcement of beis din is specifically when one goes to the official beis din. I think it's like a...

R' Yoel Asher: His language is interesting. Even if you were yes stringent that there must at least be three trustworthy men, you'll think that means a beis din, but an announcement it doesn't need.

R' Yitzchak: I think the logic is simple. Beis din is like you said earlier, what's it called? A foreclosure. One goes to the foreclosure, so obviously it's like a sale, people think it's not a proper sale. It's like more a... how do you say? It's like a... one grabs out. People grab for cheap, so therefore against this comes the topic of an announcement. Simply a person sells, presumably the person himself will already ensure that there should be a good price.

R' Yoel Asher: But his language is very weird, yes? He says: **One who sells not through beis din doesn't need an announcement.** He says: ah, even though it is yes a beis din? His language is that it's not a beis din. That's what he means to say. Yes, fine. He already gives his answer in the framing of the question,

R' Yitzchak: Yes? Yes, no, you could have said that this has a law of beis din sale, he teaches us that it doesn't.

A Widow Who Sells Herself – Between Her and Herself

R' Yitzchak: Okay, now we're going to learn what happens if she sold, did she actually get the right money – she got too much money, too little money – what happens?

R' Yoel Asher: He says: **A widow who sold property for her kesuvah between her and herself**, she went herself and sold, so **if she sold for fair value**, if what she sold was for the right price – she didn't go with beis din at all, she sold herself – so if she sold for the right price, fair value, then **the sale is valid, and she takes the widow's oath after she sold.** After selling she must make a widow's oath that the money is truly hers and the husband never forgave her, and so on.

The Rambam says: **And this is when she sold to another**, this is only if she took property and she sold it to a third person. To a third person and used the money, but

R' Yoel Asher: If she sold for fair value, if what she sold was for the right price, she didn't go to beis din, she sold herself. If she sold for the right price **fair value**, then the **sale is valid. And she takes the widow's oath after she sold**, after selling she must make a widow's oath that the money is truly hers, that the husband never forgave her, and so on.

What does the Rambam say? **And this is when she sold to another**, this is only she took property and she

R' Yitzchak: Sold it to

R' Yoel Asher: A third person and used the money. **But if she appraised it for herself**, she appraised the value and takes it for herself, **she has done nothing, even if she announced**, she hasn't done anything. She can't just grab by making an appraisal, an announcement. Even if she made an announcement.

It's very similar to what the Rambam said, that a partner can't grab out saying "this and that is coming to me" without properly dividing, remember? In Kiddushin there was such a law.

The woman thinks she's making an appraisal, even if her appraisal is correct, you're dealing here against the other heirs, one must calculate it. One can't grab, there's no grabbing here. Yes.

She Sold Worth One Hundred for Two Hundred or Worth Two Hundred for One Hundred

R' Yoel Asher: If her kesuvah was two hundred, and she sold worth one hundred for two hundred, what happens in such a case? A woman has a kesuvah of two hundred, and she has something from the husband, a property that we know normally is worth one hundred, and she managed to get two hundred for it. She had a good deal, a good sales lady, she grabbed two hundred for it.

Or worth two hundred for one hundred, or conversely, she took something worth two hundred, and she didn't make a good deal, she sold it for one hundred. So in both cases we say: **she has received her kesuvah**, she has already received her kesuvah.

In both cases she could have argued that she's still owed another hundred, for two opposite reasons:

* When she grabbed two hundred from something worth one hundred, she can say: the husband only gave me one hundred. What I managed to sell it well is my own, it's already like her find, which now since I'm already a widow is my own.

* And the same thing conversely she can argue: I only received one hundred, because I didn't receive half, I couldn't sell for more than one hundred.

In practice you took out from your husband one hundred, you took out two hundred. It's a bit of a one-sided ruling, but in both cases we say she received it. She loses. No, but by she sold worth two hundred for one hundred she could have said I only

R' Yitzchak: Received from my husband one hundred.

R' Yoel Asher: You see that by

R' Yitzchak: Worth two hundred for one hundred

R' Yoel Asher: We say: in practice you took from me two hundred. She didn't have to sell, she should have gone to beis din.

R' Yitzchak: Okay yes, I'm just saying one can yes explain it well. Both ways you received. **And she has nothing. As long as she takes the widow's oath**,

R' Yoel Asher: She must however swear a widow's oath,

R' Yitzchak: That what? Yes, why does she need an oath? Every widow must get an oath. She must anyway make an oath.

R' Yoel Asher: It has nothing to do with anything.

R' Yitzchak: What about the sale? The widow's oath she must always make, like after selling yes.

She Sold Worth One Hundred and a Dinar for One Hundred

R' Yoel Asher: If her kesuvah was one hundred, and she sold worth one hundred and a dinar for one hundred, then **the sale is void**.

R' Yitzchak: Then the sale is void. Because she sold for less than it's worth, understand?

R' Yoel Asher: If she sold,

R' Yitzchak: If again if she sold, the sale is void because the

R' Yoel Asher: Last dinar she took over her kesuvah,

R' Yitzchak: Her loss, she sold for one hundred. But she earned one hundred. The

R' Yoel Asher: Dinar isn't hers at all,

R' Yitzchak: The entire sale is void. Where did she get the extra dinar from?

R' Yoel Asher: Why can't she say: "I'll return a dinar to my husband's inheritance"? Perhaps she can.

R' Yitzchak: A sale, she has no right to make the entire sale.

R' Yoel Asher: Yes but okay, I'm now returning the dinar, why do you now need to void it?

R' Yitzchak: Even if she said,

R' Yoel Asher: Even if she said I will return the dinar to the heirs, **the sale is void**.

R' Yitzchak: No, because she didn't have the right, she has no right at all to do such a thing. She barely has a right at all to sell herself,

R' Yoel Asher: Generally one must go

R' Yitzchak: To beis din, she must get permission in beis din from three experts,

R' Yoel Asher: She should have gotten permission for this, she did it improperly so she loses it.

R' Yitzchak: If she received

R' Yoel Asher: No, the sale is void means she'll now freshly receive. Yes, the sale is void, now she goes to the heirs and requests the kesuvah.

If her kesuvah was four hundred zuz and she sold to this one for a hundred and to this one for a hundred and to this one for a hundred for fair value, and to the last one – she sold in four other places the properties, and only for the last person did she do the swindle, the thing that she squeezed out one dinar from the heirs, she sold a bit more than a hundred (**worth a hundred and a dinar for a hundred**). We don't say that all her sales became void, because we don't make it one total. One could have said that in total everything she swindled the husband's heirs – it doesn't work that way. We say **the last one is void**, because in that transaction, in that transaction she took out money without permission, that transaction is void, but all the others (**and all of them are valid**)

R' Yitzchak: Previous transactions are valid.

R' Yoel Asher: That's how it is. Good.

A Woman Who Sells or Gives Away Her Kesuvah (Laws 16, 17, 18)

R' Yoel Asher: The Rambam says a new

R' Yitzchak: Law. Until now we learned about how one can sell the property for the kesuvah, now we're going to learn how she herself can sell, what happens. We already learned about this certain laws, now we're going to learn when she herself sells her kesuvah, that means when the husband is still alive and she sells the right, what happens, yes? Yes. We learned that he must make another kesuvah.

R' Yoel Asher: Yes, that one isn't from the law of Choshen Mishpat, that one is from the law of the Sages' enactment of a kesuvah, yes.

The Rambam says: **A woman has**, a woman has a right **to sell her kesuvah**, to sell her kesuvah always – what does that mean, that is still when the husband is alive or what? – **or to give it as a gift**.

R' Yitzchak: If the husband died or divorced her,

R' Yoel Asher: So **yavo halaze, the person who bought it or who received the gift should come, **veyitol**, he should take. **V'im meisa hi b'chayei ba'alah**, if she died during her husband's lifetime, there is no kesubah. **O kodem shenishb'ah**, or if she died before swearing, as we learned that before swearing she hasn't yet inherited anything, she hasn't yet received the kesubah - not inherited, received, yes. Yes, hasn't yet received anything - then **ein lo klum**, the person doesn't receive. The person can't come and say: "Ah, she died, but I'm still alive!" You're not a man d'amar here,**

R' Yitzchak: You only receive after she receives.

Selling Part of the Kesubah, or Collecting It in Installments

R' Yoel Asher: Right, very good. **Harei shemachrah**, what happens in such a case? A woman sold part of the kesubah, or she pledged it (**o mishkanah**), she took a loan against part of the kesubah and made the kesubah collateral, or she (**o nasnah**)

R' Yitzchak: Gave away **l'acher** to other people **miktzasah**,

R' Yoel Asher: And now she received a field from her husband's kesubah, so **mocheres**, can she sell, she should sell **mikarka ba'alah** for the kesubah (**lichsubasah**),

R' Yitzchak: V'sigbeh hasha'ar. The rest, she doesn't lose the rest, basically. Right. **Bin** - it's not a chiddush apparently.

R' Yoel Asher: Meaning she must give away to the one she sold to, but the remainder goes to her, we don't say that...

R' Yitzchak: Yes, okay. Yes, I'm not clear what the chiddush is.

R' Yoel Asher: Okay, **bein b'veis din mumchin bein bishloshah ne'emanin**, the manner of sale can go as we learned earlier, it can go with experts or with trusted people.

R' Yitzchak: Ah, meaning there are those who say that if she sold a part then yes a beis din must sell it. The Rambam says no, even if she already sold to a second party she only needs the law of three trusted people.

R' Yoel Asher: Right. The Rambam says: **u'mocheres lichsubasah afilu p'amim rabos**, she may sell her kesubah, she doesn't have to sell all at once - not her kesubah, for her kesubah now.

R' Yitzchak: For her kesubah, she may sell from her husband, another piece of her husband's land, another piece, **afilu p'amim rabos bein b'veis**

R' Yoel Asher: din bein bishloshah ne'emanim v'yod'in shumas karka. Meaning there's no

R' Yitzchak: law that she can only take all at once or something, yes? That's what it says here? Yes. What could be the reason?

R' Yoel Asher: There's a whole sugya in the Gemara about this, so, that it can be done little by little. There are those who say it's not permitted in a Mishnah, that's the opinion of the Chachamim. Okay. **Hamocheres kesubasah**.

R' Yitzchak: The chiddush of all these laws is, there's a side, there's even an opinion of Tannaim, that if one sells a kesubah she loses certain rights. Here we say no, everything remains the same on the part that remains. Very good. Now we continue with more things. Yes.

The Difference Between Selling One's Kesubah and Forgiving One's Kesubah (Law 19)

R' Yoel Asher: Yes? **Hamocheres**... Yes, the Rambam says: **Hamocheres kesubasah**, one who sells the kesubah, yes. **Bein la'acherim**, whether she sells it to other people, or she sells it to the husband himself (**bein l'va'alah**), it's not obvious that she sold everything the husband owes her, all matters of kesubah. No, she only sold the principal kesubah, the maneh masayim, or whatever the kesubah promised her, **v'lo ibdah she'ar tena'ei kesubah**, she didn't lose her other rights that come to her with the law of kesubah, with what the Chachamim instituted various things, which we learned earlier that the husband is obligated to the wife.

So the Rambam explains: **V'im hayah lah ben zachar**, one of the conditions of kesubah is,

R' Yitzchak: That the... It's interesting,

R' Yoel Asher: Because apparently the kesubah itself... that the male child who

R' Yitzchak: She has from him,

R' Yoel Asher: Inherits her kesubah. **V'im hayah lah ben zachar, yoresh k'neged kesubasah hazos shenimkrah minichasei aviv yeser al chelko k'din tenai zeh**.

R' Yitzchak: Very strange. Because he inherits her kesubah, the kesubah she sold, but it doesn't mean she sold the right that if she dies,

R' Yoel Asher: Yes? The male child should inherit.

R' Yitzchak: It's but...

R' Yoel Asher: Why?

R' Yitzchak: The kesubah isn't there. Very good, but she didn't sell the conditions of kesubah.

R' Yoel Asher: Ah. That he should inherit from her, is not only after she has the kesubah, but it's an extra law, that the male child should inherit a sum.

R' Yitzchak: Right. Understood. Right. Interesting. So automatically kesuvos benin dichrin she didn't sell, he still gets it. But, **Hamocheles kesubasah l'va'alah**...

One Who Forgives Her Kesubah to Her Husband

R' Yoel Asher: But one who forgives the kesubah to her husband, then yes **ibdah kol tena'ei kesubah v'afilu mezonos ein lah alav**.

Hmmm. And when are we talking about here? We're talking about a case where she didn't explicitly mention the word mezonos? She only used the word kesubah? And she says afterwards: "I didn't know, I thought kesubah only means the masayim",

R' Yitzchak: She loses all things that

R' Yoel Asher: Is it relevant to still live? No,

R' Yitzchak: We know yes. Not knowing is not an excuse. A person must know.

R' Yoel Asher: She once said the wrong word, did she lose for her life her connection to living?

R' Yitzchak: You don't know what you're doing, you're busy. There's something called selling one's kesubah. Selling one's kesubah means she sells the masayim. She forgives her kesubah, meaning she forgives everything. That's the meaning. And then she loses everything. Okay, what's the problem here?

R' Yoel Asher: There's no way to retract from a forgiveness?

R' Yitzchak: No, one can't retract... forgives her kesubah, look at the Rambam, the Rambam says further:

R' Yoel Asher: V'hamocheles kesubasah einah tzrichah kinyan v'lo edim, k'she'ar hamochlim she'einan tzrichin edim v'lo kinyan ela bidvarim bilvad.

R' Yitzchak: There's something called forgiving,

R' Yoel Asher: And this is with words alone. Ahh.

Discussion: The Definition of "Matters the Mind Relies Upon" and "Strange Matters" in Forgiveness

R' Yoel Asher: The Rambam says: **V'hu**, that a woman, if she says "I forgive my husband" she loses her rights, is only: **sheyihyu devarim shehada'as somaches aleihen**, things where it's reasonable that she truly forgave. So the beis din must see a reason why she would have forgiven, **v'lo yihyu divrei sechok v'heyisul o divrei seimah**, not that she said it laughingly, like "nachas ruach asisi l'va'ali", I said things casually, or strange things.

Because every bully who doesn't want to give anything to his wife, will make his wife first say "I don't want, I don't want to receive", that's the way of the world of bullies. You understand? In such a case it will be called perhaps strange matters, the Chachamim won't accept it. Strange matters means,

R' Yitzchak: That she's just talking, just talking for nothing.

R' Yoel Asher: It could also be that the Chachamim look at it as she

R' Yitzchak: Isn't truly forgiving with her heart.

R' Yoel Asher: Once the Rambam puts in this condition, it's obvious that one must check if it's truly a forgiveness. Let's say if she's a great millionaire one can think there's a reason she's forgiving, she doesn't need his money,

R' Yitzchak: And the like.

R' Yoel Asher: If he's a gross abuser...

R' Yitzchak: Ela b'da'as nechonah,

R' Yoel Asher: It must be... and the Chachamim have a veto right in this, you see what the Rambam tells us here?

R' Yitzchak: We don't know. That's what you're saying.

R' Yoel Asher: Yes. That's what the Rambam says.

R' Yitzchak: You always have so much mercy on people. We don't have any... No,

R' Yoel Asher: You're saying it's a bad thing?

R' Yitzchak: Yes,

R' Yoel Asher: I'm saying it's a bad thing?!

R' Yitzchak: Well, well. In beis din there's no mercy. It says in the Mishnah: **Ein**

merachamim badin. And forgives...

The Reasons for a Woman's Forgiveness and the Power of the Chachamim

R' Yoel Asher: Let's say if she's a great millionaire, one can think there's a reason she's forgiving, she doesn't need his money. If he's a gross abuser, the Chachamim have a veto right in this. So that's what the Rambam tells us here.

R' Yitzchak: I don't know. That's what you're saying. You're always very merciful on people. We're not forgiving.

R' Yoel Asher: You're saying it like it's a bad thing.

R' Yitzchak: Yes.

R' Yoel Asher: I'm saying it like a bad thing.

R' Yitzchak: In beis din there's no mercy. It says in the Mishnah: **Ein merachamim badin**. If you want to have mercy, you should go outside. If now it's in the beis din. Very good, one must indeed go outside and have mercy.

The Meaning of "Strange Matters"

Anyways, the Rambam means to say, he doesn't bring examples. There are certain ways she says: **Nachas ruach asisi**, whatever, he doesn't bring an example of what it says. Let's see if he brings an example of what are **divrei seimah**, some strange incident. He does bring a responsum.

R' Yoel Asher: Divrei seimah can mean when it's a wondrous thing that she should forgive.

R' Yitzchak: Why should she forgive? He brings some responsum of the Rambam, where there was even a written document, and he said, "Ah, it was some strange..." The Rambam didn't agree, the Rambam said that it was... In short, there's such a thing that we say it was foolishness. But already. **Divrei seimah** doesn't mean that I wonder, as you say, could be a giant.

R' Yoel Asher: It only means that it was said,

R' Yitzchak: It was a show, I don't know, it was in the middle of a fight, I don't know, some giant reason why she doesn't mean it seriously. Okay, until here the chapter.

Summary of the Chapter: Sharp Speech That People Don't Really Mean

R' Yoel Asher: It's interesting, in this chapter we learned a lot that people can sometimes say fiery things. You know, sacred obligation, die rather than transgress, and they don't mean it,

R' Yitzchak: They don't mean it. And all those chassidim of that Rabbi Velvel Soloveitchik, the Brisker Rav, said that he doesn't hold that the elections are such a great mitzvah as Rabbi Elchanan says, and it's not such a great sin as the Satmar Rebbe says. Come on, it's all **nachas ruach asisi l'va'ali**.

R' Yoel Asher: It's not meant. People talk, one means to make points and one doesn't really mean the points.

R' Yitzchak: Yes, true, simple. Already, wonderful. Yasher.