

הלכות חזפה וקידושין

Siman 26

1



Effecting *kidushin* by means of a. *kesef* (money)
b. *shtar* (betrothal contract) or c. *bi'ah* (relations),
and *chachomim's* limitations on these

Mechaber: We rely on a non-Jew's tasting

להו כאב"י ורבא ההוא גברא דאקדיש
בשוטיתא דאסא בשוקא שלחה רב אחא בר
הונא לקמיה דרב יוסף כה"ג מאי שלח ליה
נגדיה כרב "ואצטרך גיטא כשמואל" דרב
מנגיד על המקדש בשוקא ועל המקדש
בביאה ועל המקדש בלא שידוכי ועל
דמכטיל גיטא ועל דמסר מודעא אגיטא
ו"י ועל דמצער שלוהא דרבנן ועל דחלה
שמתא עילויה תלתין יומין "ועל חתנא דדייר
בי חמוה דדייר אין חליף לא והא ההוא חתנא
דחליף אבבא דבי חמוה ונגדיה רב ששת
ההוא מידם הות דיימא חמתיה מיניה
נהרדעי אמרי בכולהו לא מנגיד רב אלא על
דמקדש בביאה בלא שידוכי ואיכא דאמרי
ואפילו בשידוכי נמי משום פריצותא ההוא

קידושין
יב, ב

Kidushin
12b

Rav would flog a man for betrothing a woman in the marketplace, and for betrothing a woman through relations. And he would also flog a man for betrothing a woman without an arrangement [shiddukhei].

And likewise, Rav would flog a man for nullifying a bill of divorce he has already sent to his wife, and for issuing a declaration preemptively invalidating a bill of divorce.

And similarly, Rav would flog anyone for tormenting a messenger of the Sages, as this indicates a lack of regard for the Sages. And Rav would flog one who had an excommunication take effect on him for thirty days and yet does not repent or appeal to the Sages to annul his censure.

And Rav would flog a son-in-law who lives in his father-in-law's house...

[...]

The Sages of Neharde'a say: Rav would not flog a violator in all of the cases listed, but he would in fact flog a man for betrothing a woman through relations without a prior arrangement.

And there are those who say: Even if there was an arrangement beforehand, he would also flog a man for betrothing a woman with intercourse, due to licentiousness.

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Rambam

Follow Rav Yosef, lashes given
for all three cases

Rosh

Follow Neharda'i; lashes given
for *biah* without *kidushin*

Shulchan Aruch

Follows Rambam; *kidushin* does take effect, but
lashes given
Pischei Teshuva notes that only the husband
receives lashes

Rama

Follows Rosh
"I have never seen lashes given for absence of
shiduch discussion before *kidushin*"

Effecting *kidushin* by means of a. *kesef* (money)
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“*Zenus*” relations (not for marriage purposes)

Rambam

Tur

Shulchan Aruch

casual *biah* accomplishes nothing

Beis Shmuel

“casual” means specifically if done
secretively. If it is known (public
knowledge), betrothal is effected

Effecting kidushin by means of a. *kesef* (money) b. *Shtar* (betrothal contract) or c. *bi'ah* (relations), and *chachomim's* limitations on these

Zenus relations

אלו ותקיים מלות יצוס: כשמה.
לשון טועה שטועה מתחת בעלה
לאחרים דלרצי אליעזר אין זונה אלא
אשת איש: מופקרת. ואפי' פנויה
מאחר שהפקירה עצמה לכל קרויה
זונה אבל משום בעילה אחת לא הויא
זונה הפנויה: הלך בעלה. לצ"ד
הגדול והולכה להשקותה מי המרים
שקינח לה ונסתרה ואסורה לו עד
שתטה עשה זונה הויא ונבעלה
לפסול לה ואם מת אסורה לכהן:
אלא גיורת. דנבעלה צנכריותה לעובדי
כוכבים וכן משוחררת דעובד כוכבים
ועבד הויא ולא צני קדושין נינהו
פסלי: ושנבעלה. לפסול לה כגון

יבמות סא, א

והתניא זונה זונה כשמה דברי רבי אליעזר
°רבי עקיבא אומר זונה זו מופקרת רבי מתיא
בן חרש אומר אפי' °הלך בעלה להשקותה
זבא עליה בדרך עשאה זונה רבי יהודה
אומר זונה זו אילונית וחכמים אומרים אין
זונה אלא גיורת ומשוחררת ושנבעלה בעילת
זנות ר' °אליעזר אומר °פנוי הבא על הפנויה
שלא לשם אישות עשאה זונה אלא אמר

Yevamos
61a

it is taught in a *baraita*: The ***zona*** forbidden to a priest is as **the name *zona*** implies, i.e., a married woman who committed adultery; this is **the statement of Rabbi Eliezer. Rabbi Akiva says: A *zona* is a woman, even unmarried, who is available to all, Rabbi Masya ben Charash says: Even a suspected *sota* whose husband went to make her drink the bitter waters, and he had relations with her on the way, he has thereby caused her to become a *zona*.**

Rabbi Yehuda says: A *zona* is an *aylonis* ('underdeveloped'). **And the *chachomim* say:** The term ***zona*** applies **only to a (female) convert, a freed maidservant, and one who engaged in *zenus* (forbidden) relations. Rabbi Elazar says:** Even in the case of **an unmarried man who had relations with an unmarried woman not for the purpose of marriage, he has thereby caused her to become a *zona*.**

Chupah as replacement for *kidushin* (by money or other methods)

Rav Huna disagrees

קידושין ג, א

אתרוג שוה לאילן לכל דבר ש"מ: מניינא
דרישא למעוטי מאי מניינא דסיפא למעוטי
מאי מניינא דרישא למעוטי חופה וולרב
הונא דאמר חופה קונה מק"ו למעוטי מאי
למעוטי הליפין ס"ד אמינא הואיל ו"גמר

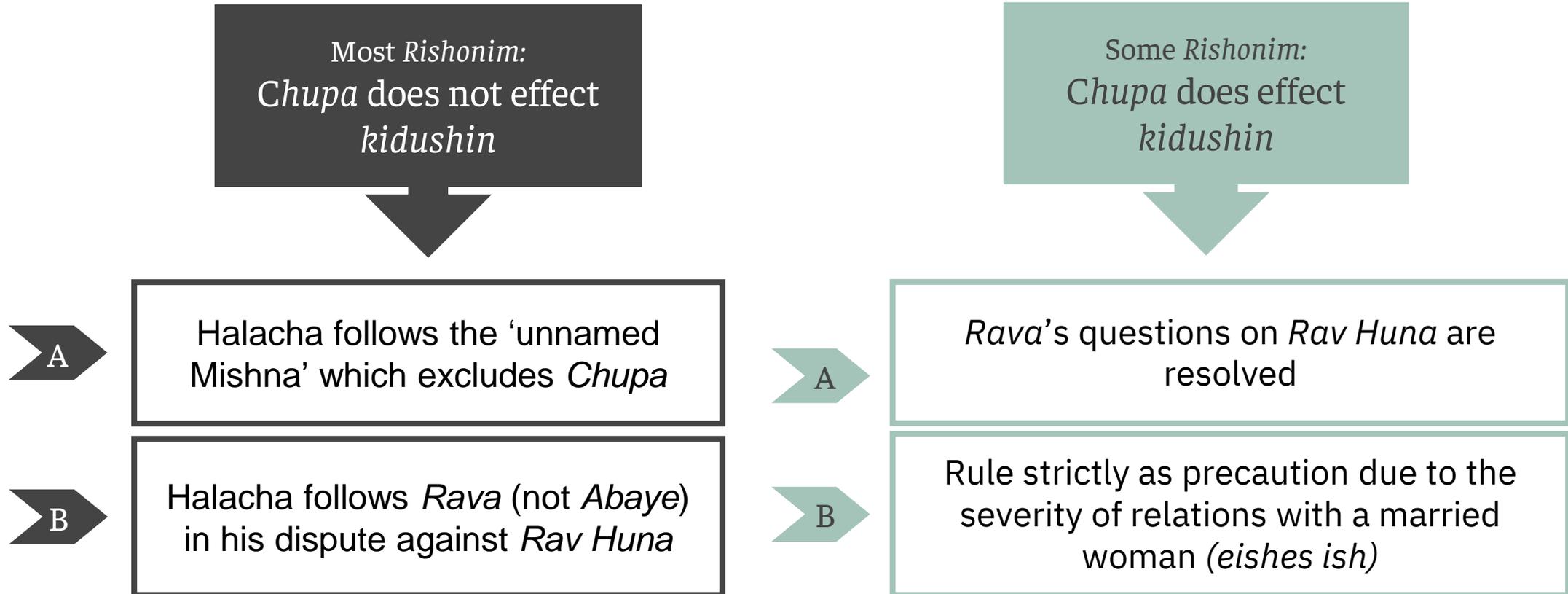
Kiddushin 3a

The number in the first clause serves **to exclude** a *chupa*, which does not effect betrothal.
The Gemara asks: **And according to** the opinion of **Rav Huna, who said:** A *chupa* alone **effects kiddushin**, as derived **by an *kal vachomer*** inference, this number serves **to exclude what?**
The Gemara answers: The number serves **to exclude** acquisition through *chalipin* (-symbolic exchange).

Gemoro did not resolve whether
chupah effects *kidushin* or not

Chupa as replacement for *kidushin* (by money or other methods)

Rishonim's dispute regarding Gemoro's resolution



Chupa as replacement for *kidushin* (by money or other methods)

Achronim's Rulings

Shulchan Aruch

*Shaar
Hamelech*

Ideally should
rule she is
betrothed

Chupa (alone) does not effect *kidushin*,
as stringency he should divorce

Betrothed a widow by <i>Chupa</i>	<i>Dogul Mervava</i>	No <i>get</i> required
	<i>Sha'ar Hamelech</i>	<i>Get</i> is required
Betrothed a <i>nida</i> by <i>Chupa</i>	<i>Pischei Teshuvah</i>	No concern of <i>kidushin</i> being effected

Pilegesh - Concubine

Definition and permissibility

סנהדרין כא, א

מעשה היה לה מכאן ואילך לא היה לה והכתיב ¹⁰וויקה דוד עוד פלגשים ונשים בירושלים למלויי שמונה עשר מאי נשים ומאי פלגשים אמר רב יהודה אמר רב ינשים בכתובה ובקידושין פלגשים בלא כתובה ובלא קידושין

Sanhedrin 21a

It is written: “And David took more concubines and wives in Yerushalayim after he came from Chevron”...

...What is the meaning of “wives” and what is the meaning of “concubines” in that verse? **Rav Yehuda** says that **Rav** says: **Wives** receive a **kesubah** (marriage contract) and betrothal; **concubines** are taken **without a kesubah** and **without betrothal**.

Opinion A

 *kidushin*
 *Kesubah*

 Prohibited to all except King
(Rambam, according to *kesef mishne*)

Opinion B

 *kidushin*
 *Kesubah*

 Permitted for all
(Rambam, according to *magid mishne*)

Opinion C

 *kidushin*
 *Kesubah*

 Permitted for all
(Ra'avad, Ramban)

Pilegesh - Concubine

Poskim

Rishonim - Tur

Opinion C

In practice prohibited, she may be ashamed to use *mikva*

Rama

Quotes opinions C and A

Shulchan Aruch

Even according to opinion C

In practice prohibited, and we force him to divorce

Civil Marriage / Anusim (Marranos/Conversos)

Gemoro

גיטין פא, ב-א

מתני' ^(א)המגרש את אשתו ולנה עמו
בפונדקי ב"ש אומרים אינה צריכה הימנו גט
שני ובה"א יצריכה הימנו גט שני אימתי
בזמן שנתגרשה מן הנשואין ומודים בנתגרשה
מן האירוסין שאינה צריכה הימנו גט שני מפני
שאין לבו גם בה: ^(ב)גמ' ^(א)אמר רבה בר בר
חנה א"ר יוחנן מחלוקת בשראזה שנבעלה
דב"ש סברי אדם עושה בעילתו בעילת זנות
וב"ה סברי ^(ב)אין אדם עושה בעילתו בעילת
זנות אבל לא ראזה שנבעלה דברי הכל אינה
צריכה הימנו גט שני תנן ומודים בנתגרשה

MISHNA: With regard to **one who divorces his wife, and afterward she spent the night with him at an inn [*befundaki*], Beis Shammai say: She does not require a second bill of divorce from him, and Beis Hillel say: She requires a second bill of divorce from him,** since they may have engaged in relations at the inn and thereby betrothed her once again.

When did they say this *halacha*? When she was divorced following the state of marriage. Beis Hillel concede that **when she was divorced following the state of betrothal, she does not require a second bill of divorce from him, due to the fact that he is not accustomed to her.**

GEMARA: Rabba bar bar Chana says that Rabbi Yochanan says: Their **dispute** is specifically **in** a case where they saw that she engaged in relations, **as Beis Shammai hold: A person does engage in *zenus* relations,** and one cannot assume that he intended to betroth her.

And Beis Hillel hold: A person does not engage in *zenus* relations (given a choice). Therefore, he had the intention to betroth her, and he must give her another bill of divorce.

But if they did not see that they engaged in relations, even though they spent the night together at an inn, **everyone agrees that she does not require a second bill of divorce from him,** as there is no concern that perhaps they engaged in relations.

Shulchan Aruch rules:
this “*Chazoko*(-Assumption)” applies only to his wife/ex-wife

Civil Marriage / Marranos

Anusim

A

Married as,
and living
as gentiles –
No get needed

*Rama, according
to Shu"t Rivash*

B

Married as gentiles,
then returned
to living as Jews –
seemingly would
need a *get*

Pischei Teshuvah

C

Keeping Mitzvos
secretly – need
a *get*, especially if
keeping *Mikva*

Chelkas Mechokek

Civil Marriage / Marranos

Later *Achronim*

<i>Get</i> Required	Not to create perception of a married woman being 'released' without a <i>get</i>
<i>Get</i> Required	Perhaps during relations he thought of <i>Teshuvah</i>
<i>Get</i> Required	In "coupled" living, the relations are (by definition) "Marital"
No <i>get</i> required	Like Rama's ruling by Marranos

Rogachover Gaon

Most Achronim
Yabia Omer, Igros
Moshe, Tzitz Eliezer

In Summary

Most rule that *get* is not required, some require a *get* as precaution, by *agunah* we rule this *din* leniently (*Kol Mevasser*)