

The Israel Koschitzky Virtual Beit Midrash

WOMEN AND HALAKHA Rav Chaim Navon

SHIUR 16: THE *KETUBA* AND ITS OBLIGATIONS

The *ketuba*, or marriage contract, is a document that includes the various obligations incumbent on the husband and wife. In this *shiur* we shall deal with these obligations, including those that are not explicitly mentioned in the *ketuba*, but only alluded to therein.

I. THE MAIN VALUE OF THE *KETUBA*

The most basic obligation in the *ketuba* is called *ikar ha-ketuba*, the main value of the *ketuba*. This refers to the sum of money that the husband must pay his wife in the event that he dies or divorces her. The amount awarded to a woman who was a virgin at the time of marriage is 200 *zuz*, while the amount given to a woman who was a widow or divorcee is 100 *zuz*. There is a major controversy as to whether this obligation is mandated by Torah law or by Rabbinic decree. This dispute finds expression in two different versions of the marriage contract, both of which are in use to this day; one includes the words "from the Torah," while the other omits them.

The entire discussion revolves around the Torah passage dealing with the law governing a man who seduces a young unmarried girl:

And if a man seduces a virgin that is not betrothed, and lie with her, he shall pay the bride price for her to be his wife. If her father utterly refuses to give her to him, he shall pay money according to the marriage price of virgins. (*Shemot* 22:15-16)

Chazal disagree whether or not these verses teach us that *ikar ha-ketuba* is a Torah obligation (*Ketubot* 10a). The verses establish that if the seducer does not take the girl as his wife, he must pay her "according to the marriage price of virgins." The case of a seducer is exceptional, but some infer from the very mention of "the marriage price of virgins" that the Torah obligates a man who takes a wife to commit himself to pay her a certain amount of money upon termination of the marriage. A man who seduced a young girl, and then marries her, must obligate himself to a *ketuba* that is customary for a virgin (and if he does not marry her, he must compensate her with the same amount of money). This implies that the Torah assumes that there exists a standard "marriage price of virgins" even in a regular case of marriage. *Chazal* understand that we are not dealing here with a sum of money that is given to the bride or to her family at the time of marriage, but to the husband's obligation to pay the woman a certain sum of money, should he die or divorce her.

There is, however, also another opinion among the *Tannaim*, according to

which even *ikar ha-ketuba* is not mandated by Torah law.^[1] The Ramban in his commentary to the Torah accepts this position, explaining that “the marriage price of virgins” does not refer to the *ketuba*, but rather to gifts that the groom would ordinarily give to his bride. The seducer must compensate the young girl he seduced with a sum that corresponds to the gifts that she will presumably forfeit in the future, as potential grooms will no longer be willing to give her expensive gifts. As stated, the Ramban himself maintains that the *ketuba* is mandated only by Rabbinic decree; in his novellae to *Ketubot* (110b), he explains that even according to those who maintain that the *ketuba* is from the Torah, it is not derived from these verses, but rather it is a *halakha* that was taught to Moshe at Sinai.

The Rambam’s position on the matter is unclear. On the one hand, he writes: “It was our Sages who ordained the requirement of [writing] a *ketuba* for a woman. [They instituted this obligation] so that it would not be a casual matter for [her husband] to divorce her” (*Hilkhhot Ishut* 10:7). However, in the headings preceding *Hilkhhot Ishut*, the Rambam seems to contradict himself, mentioning *ketuba* prominently in his count of the Torah commandments found in those *halakhot*:

The Laws of Marriage include four commandments, two positive commandments and two negative commandments, and they are as follows:

- 1) To marry a woman with a *ketuba* and with *kiddushin*.
- 2) Not to have intercourse with a woman without a *ketuba* and *kiddushin*.
- 3) Not to withhold food, clothing and conjugal relations.
- 4) To be fruitful and multiply with her.

In each of the first two *mitzvot*, the Rambam mentions the *ketuba*, even though the *ketuba*, according to him, is only mandated by Rabbinic decree. In his *Sefer Ha-mitzvot* as well, in his discussion of the prohibition against harlotry, the Rambam mentions the *ketuba*. He writes there that there is a prohibition “to have intercourse with a woman without a *ketuba* and without *kiddushin*” (*Sefer Ha-mitzvot*, negative commandment 355).

There is also another place in the Rambam that implies that the *ketuba* is mandated by Torah law. Regarding the law of a *pilegesh* (concubine), the Rambam writes:

Similarly, [the king] may take wives and concubines from the entire territory of Eretz Yisrael. The term “wives” implies women who were married with a *ketuba* and *kiddushin*; “concubines” implies women who were not given a *ketuba* and *kiddushin*. With the act of seclusion alone, the king acquires her and relations with her are permitted him. But a commoner is forbidden to have a concubine. (*Hilkhhot Melakhim* 4:4)

The Rambam's position concerning concubines is not accepted by all. He maintains that only a king is permitted to take a concubine, but many disagree with him on this point. In any event, we are more interested in the Rambam's definition of a *pilegesh*: a woman who was married without a *ketuba* and *kiddushin*. From here as well, the implication is that the obligation of *ketuba* is from the Torah, and it is only the *pilegesh* who is the exception.

It might be possible to explain the Rambam's position in light of Rabban Shimon ben Gamliel's position, cited in a *midrash*: "A woman's *ketuba* has no fixed amount by Torah law" (*Mekhilta De-Rashbi, Shemot 22:16*). According to this source, Rabban Shimon ben Gamliel maintains that the law of *ketuba* is from the Torah, but the value of the *ketuba* is not. According to the Torah, the husband must obligate himself to pay a certain amount of money to his wife should their marriage terminate. But it does not establish what that sum is. It was the Sages who came and fixed the obligatory sum.

It might also be possible to explain the Rambam's position in this manner. The law of *ketuba* is from the Torah, but it was the Sages who fixed a not insubstantial sum, "so that it would not be a casual matter for [her husband] to divorce her."^[2]

To the sum that constitutes *ikar ha-ketuba*, one may add *tosefet ketuba*, an addition to the *ketuba*, thereby increasing the amount that the woman will receive in the case of divorce or her husband's death. Since the amount constituting *ikar ha-ketuba* has eroded over the generations, it is a very common modern practice to add *tosefet ketuba*.

It should further be noted that in our time, when the husband dies, we in Israel generally follow the laws of inheritance as they have been set down in Israeli law (and likewise, those elsewhere follow the law of their land). Hence, the *ketuba* is irrelevant in such a situation, and pertains primarily in a case of divorce. With regard to divorce as well, the sum recorded in the *ketuba* relates to a case where the husband divorces his wife against her will. But ever since the ban instituted by Rabbeinu Gershom requiring the consent of both parties to a divorce, a man is forbidden to divorce his wife against her will, and thus in the course of the negotiations regarding consent to the divorce, the parties generally come to an agreement regarding the division of communal property as well. Hence, even in the case of divorce, the sum recorded in the *ketuba* is not necessarily the sum that the woman will receive.^[3] At times, however, that sum is used as the starting point from which the negotiations between the two parties begin.

II. OBLIGATIONS DURING THE COURSE OF MARRIAGE

Ikar ha-ketuba and *tosefet ketuba* are monetary obligations undertaken by the husband, should he die or divorce his wife. These obligations relate essentially to a case where the marriage undergoes dissolution. But the *ketuba* also lists other obligations between husband and wife that shape their joint lives.

1. FOOD, CLOTHING AND CONJUGAL RELATIONS

The fundamental obligations of the husband toward his wife are derived from the verses dealing with a Hebrew maidservant:

And if a man sell his daughter to be a maidservant, she shall not go out as the menservants do. If she please not her master, who has designated her for himself, then shall he let her be redeemed; to sell her to a strange nation he

shall have no power, seeing that he has dealt deceitfully with her. And if he designated her for his son, he shall deal with her after the manner of daughters. If he take another wife for himself; her food (*she'erah*), her clothing (*kesutah*) and her duty of marriage (*onatah*), shall he not diminish. (*Shemot* 21:7-10)

There are many exegetical disagreements about how to understand these verses. We will focus on the final verse, which speaks of “her food, her clothing and her duty of marriage.”

First, while the Torah lists the obligations of *she'er*, *kesut* and *ona* in the context of a Hebrew maidservant, *Chazal* extended them to all Jewish women (*Mekhilta De-Rashbi*, *Mishpatim*, *massekhta de-nizakin*, *parasha* 3). What are these three obligations? The *Gemara* cites several opinions:

She'erah refers to food... *kesutah* [is to be understood] according to its ordinary meaning [i.e., clothing]; *onatah* refers to the time for conjugal duty prescribed in the Torah...

Rabbi Elazar said: “*She'erah* refers to the prescribed time for conjugal duty... *kesutah* [is to be understood] according to its literal meaning; *onatah* refers to food”...

Rabbi Eliezer ben Yaakov said: “[The expression] *she'erah kesutah* [implies]: Provide her with clothing according to her age, that is, that a man shall not provide his old wife [with the clothing] of a young one nor his young wife with that of an old one. [The expression] *kesutah ve- onatah* [implies]: Provide her with clothing according to the season of the year, that is, that he shall not give her new clothing in the summer nor worn out clothing in the winter.”

Rabbi Yosef taught: “*She'erah* implies close bodily contact, that is, that he must not treat her in the manner of the Persians, who perform their conjugal duties in their clothes.” (*Ketubot* 47b-48a)

The *beraita* cites four opinions, but the first two *Tannaim* agree about the scope of *she'er*, *kesut* and *ona* – they refer to the provision of food, clothing and conjugal relations – and merely disagree about the meaning of each term. In contrast, according to Rabbi Eliezer ben Yaakov there is only an obligation to provide one's wife with clothing. According to Rav Yosef, both *she'erah* and *onatah* refer to conjugal relations, and it is not clear what is meant by *kesutah*.

The Ramban adopts the view of Rav Yosef, adding that *kesutah* refers to a bed covering in the context of sexual relations. According to him, the husband's obligation to provide his wife with food and clothing is only mandated by Rabbinic decree, as it is not included in “*she'erah kesutah ve-onatah*.” However, the Ramban's position is not universally accepted.

II. CONDITIONS OF THE *KETUBA* (*TENA'EI KETUBA*)

Let us examine the Rambam's summary of the husband's obligations toward his wife:

When a man marries a woman, whether she is a virgin or a non-virgin, whether she is above the age of majority or a minor, and whether she was born Jewish,

is a convert or a freed slave, he incurs ten responsibilities toward her and receives four privileges. With regard to [the husband's] ten responsibilities [toward his wife], three stem from the Torah. They include *she'erah*, *kesutah ve-onatah*. *She'erah* means providing her with food; *kesutah* means supplying her with clothing; and *onatah* refers to conjugal rights. (*Hilkhos Ishut* 12:1)

Unlike the Ramban, the Rambam clearly maintains that “*she'erah*, *kesutah ve-onatah*” refers to food, clothing and conjugal relations.

The Rambam continues with the obligations devolving upon the husband by Rabbinic decree:

The seven responsibilities ordained by the Rabbis are all conditions [of the marriage contract] established by the court. The first is the fundamental requirement of the marriage contract. The others are referred to as *tena'ei ketuba*, the conditions of the *ketuba*. They are: a) to provide medical treatment if she becomes sick; b) to redeem her if she is held captive; c) to bury her if she dies; d) the right for her to continue living in his home after his death as long as she remains a widow; e) the right for her daughters to receive their subsistence from his estate after his death until they become betrothed; f) the right for her sons to inherit her *ketuba* in addition to their share in her husband's estate together with their brothers [borne by other wives, if she dies before her husband does]. (12:2)

Corresponding to these obligations, the Rambam lists the four obligations that the Sages imposed upon the woman towards her husband:

The four privileges that the husband is granted are all Rabbinic in origin. They are: a) the right to the fruits of her labor; b) the right to any ownerless object she discovers; c) the right to benefit from the profits of her property during her lifetime; d) the right to inherit her [property] if she dies during his lifetime. His rights to her property supersede [the rights of] all others. (12:3)

It is evident from these obligations that the *ketuba* presumes that the husband is the primary breadwinner, and that the wife is in charge of the household. If the woman earns money, she must hand it over to her husband. In exchange, the husband must provide her with all her needs, during his lifetime and after he has passed away.

It is clear that even in the days of *Chazal*, these *tena'ei ketuba* would not have been necessary in a healthy and normative family, and that the husband and wife would have conducted themselves in an open and natural manner. However, in families that included more than one wife, it is reasonable to assume that the relationships were more tense and formal. It should be remembered, however, that even before the ban prohibiting polygamy instituted by Rabbeinu Gershom, we do not know of a single *Tanna* or *Amora* who was married to more than one wife. Thus, it may be presumed that even long ago, as in our day, the precise obligations of the *ketuba* only had to be clarified in situations of unhealthy tension between husband and wife. ^[4]

All of these obligations are binding upon the husband and wife even if they were not explicitly spelled out in the *ketuba*, as these obligations were established by

Chazal. Indeed, not all of these obligations are explicitly mentioned in the *ketuba*.

III. MONETARY OBLIGATIONS OR MARITAL OBLIGATIONS?

There are two ways to relate to the mutual obligations of the husband and wife. If we consider the *ikar ha-ketuba*, it is clear that we are dealing with a monetary obligation that is not an inherent part of the relationship between husband and wife. On the other hand, if we understand *ona* as referring to conjugal relations, it is clear that we are not dealing with an external legal obligation, but rather with something that is part of the fundamental definition of married life.

A question arises when we try to apply this criterion to the other obligations between the husband and wife. Let us consider, for example, the obligation to provide one's wife with food. This obligation can be seen as an external monetary obligation: *Chazal* established that the husband must provide his wife with food, for if not, how will she sustain herself? When a man takes a wife, he takes this monetary obligation into consideration. But the obligation to feed one's wife can also be understood in an entirely different way. It may be suggested that in a normal case of marriage, the husband, who was traditionally the principal breadwinner of the family, provides his wife with food as part of the healthy relationship between the two.

The *Yerushalmi* implies in several places that the obligations incumbent upon the husband and wife are not external monetary obligations, but rather part of the definition of the marital relationship. It may be possible to draw an even more far-reaching inference from the *Yerushalmi*. The *Mishna* in *Nedarim* states:

[In the case of] a grown woman who tarried twelve months... Rabbi Eliezer said: "Since her [betrothed] husband is obligated in her maintenance, he may annul [her vows]." But the Sages say: "The husband cannot annul until she enters into his domain." (*Nedarim* 73b)

After twelve months of betrothal, even if the betrothed husband tarries and does not take his bride as his wife, he is obligated to support her. The *Tannaim* disagree about whether during this period, when the woman is still not married to her husband, but he is obligated to provide her with food, the husband can annul his wife's vows, in accordance with the Torah law regarding a married couple.

The *Yerushalmi* comments about this *Mishna*:

Rabbi Eliezer maintains that the matter depends on maintenance: If he betrothed the woman on condition that he would provide her maintenance, the husband annuls. If he married the woman on condition that he would not provide her maintenance, the father annuls. (*Nedarim* 10:4)

The *Mishna* speaks of a case where the husband is obligated to support his wife, even though the two are not yet married. The *Yerushalmi* addresses the opposite case: marriage without an obligation of maintenance. According to the *Yerushalmi*, Rabbi Eliezer maintains that if a man marries a woman on condition that he should not be obligated to support her, it is not he, but rather her father, who can annul her vows. This implies a very novel idea: According to the *Yerushalmi*, it is not only that the

obligation of maintenance is one of the basic marital obligations, but it even defines the marital relationship. That is to say, the obligation to support one's wife is not only a consequence of the marital bond, but rather its cause and definition. When there is no such obligation, the woman's marital status is impaired – the bond between her and her husband is stronger than when she was merely betrothed, but without this obligation she cannot truly be considered married to him.

There is still room to expand upon each of the obligations of the *ketuba*, and to examine where precisely each obligation lies on this axis between monetary obligation and part of the marital relationship.

(Translated by David Strauss)

[1] This is the plain meaning of the *Gemara* in *Ketubot*. The *Tosafot* there argue that all agree that the *ketuba* is only mandated by Rabbinic decree.

[2] *Chazal* also established that a woman is forbidden to her husband until he writes her a *ketuba*. Rav Nachum Rabinovitch suggests that when the Rambam speaks of the *ketuba* being by Torah law, he is referring to the obligations regarding food, clothing and maintenance (*Hilkhot Ishut* 12:1; see *Yad Peshuta*, introduction to *Hilkhot Ishut*).

[3] See Rema, *Even Ha-ezer* 66:3; *Responsa Iggerot Moshe, Even Ha-ezer*, IV, nos. 91, 92.

[4] It is also clear that great caution is required when translating these obligations to modern reality (see Rav Yaakov Ariel, "The Structure of the Modern Family – Halakhic Ramifications" [Hebrew], *Techumin* 22).

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