YESHIVAT HAR ETZION

ISRAEL KOSCHITZKY VIRTUAL BEIT MIDRASH PROJECT(VBM)

\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*

GEMARA KETUBOT

**Shiur #01: The Biblical or Rabbinic Origins of Ketuba**

**Based on a Shiur by Harav Aharon Lichtenstein**

Translated by David Silverberg

 At the time of marriage, a husband commits himself to pay an amount of money to his wife in the event of his death or divorce. This commitment is written in the document called a "ketuba." There are different opinions as to the origin of this obligation - whether it originates from Torah law (de-orayta) or from rabbinic ordinance (de-rabbanan). This debate expresses itself in two different versions of the text in the ketuba. Some versions read, "And I will give you … two hundred coins of money as granted to you from the Torah," while others omit the word "mi-de-orayta" ("from the Torah").

 The Rambam expresses his view as follows (Hilkhot Ishut 10:7): "The Sages were the ones who instituted [the writing of] the ketuba for a woman in order that she would not be easy in his eyes to divorce." Later in that same chapter (10:10) he adds, "… for they instituted the ketuba only so that she would not be easy in his eyes to divorce." At first glance, the Rambam's comments leave no room for doubt as to his view of ketuba as a rabbinic enactment. However, in his introduction to Hilkhot Ishut, the Rambam mentions two mitzvot: "To marry a woman with a ketuba and kiddushin; not to engage in relations with a woman without [having written] a ketuba and without [having performed] kiddushin." The Rambam mentions this in his Sefer ha-Mitzvot (lo ta'aseh 355), as well: "It is forbidden for us to engage in relations with a woman without a ketuba and without kiddushin. This is what He said, 'There shall not be a harlot among the daughters of Israel'." These passages imply that the Rambam considered the obligation of ketuba a Torah requirement. This can be inferred as well from his comments in Hilkhot Melakhim (4:4), where he defines a "pilegesh" as a woman married without the writing of a ketuba, implying that in standard marriages a ketuba is ordained by Torah law. Thus, though in some places the Rambam writes explicitly that the ketuba was instituted by Chazal, his ruling regarding the pilegesh, and his comments in Sefer ha-Mitzvot and the introduction to Hilkhot Ishut, strongly imply that it constitutes a Biblical requirement. In order to resolve this apparent contradiction, we must delve into the sugya of the origins of ketuba, beginning with the verses in Parashat Mishpatim which are seen as the Biblical source of ketuba according to the view that considers it de-orayta:

"If a man seduces a virgin who has not been betrothed and lies with her, he must make her his wife by payment of a bride-price. If her father refuses to give her to him, he must weigh out money in accordance with the bride-price for virgins." (Shemot 22:15-16)

Rashi, in his commentary to these verses, explains, "He must designate for her a price as a man does for his wife, that he writes for her a ketuba and marries her." In other words, according to Rashi, the word "mohar" (translated in our citation as "bride-price") literally means a ketuba. We thus derive from here that every man must marry his wife with a ketuba, since the laws of payment in the situation of mefateh (seduction, which these verses address) are derived from the standard obligation of ketuba in normal marriages. Accordingly, then, the obligation of ketuba is mentioned explicitly in the Chumash and thus clearly constitutes a Torah requirement. The Ramban, however, in his commentary on this verse, disagrees with Rashi. He argues that ketuba originated from Chazal, and he therefore interprets "mohar" to mean "the gifts that a person sends to his bride, the silver and gold jewelry and clothing needed for the chupa and marriage, which are referred to as 'sovlanot' in rabbinic literature." Rashi also expresses his view earlier in his commentary to the Torah, in Bereishit 25:6, where he writes, "Wives are with a ketuba; pilagshim are without a ketuba." This, too, implies that Torah law requires writing a ketuba, and a woman married without one is considered a pilegesh. The Ramban argues there, as well, and writes, "This is not so… for the ketuba originates from the words of the Sages." He therefore defines a pilegesh as a wife whose children are not included among the inheritors.

 These variant commentaries correspond to a debate among the tanna'im that appears in a berayta (see Ketubot 10a): "'… he must weigh out money in accordance with the bride-price for virgins' - this [payment] shall equal the bride-price for virgins and the bride-price for virgins shall equal this [payment]; from here the Sages found a basis for the Torah origin of a wife's ketuba. Rabban Shimon Ben Gamliel said, a wife's ketuba does not originate from the Torah, but rather from the Sages." The Gemara proceeds to reverse the two views in light of a different source (Ketubot 110b) where Rabban Shimon Ben Gamliel rules stringently with regard to the ketuba payment. Thus, the Talmud Bavli concludes that Rabban Shimon Ben Gamliel considers ketuba a Biblical requirement. In the Talmud Yerushalmi (Ketubot 13:11), by contrast, it is Rabban Shimon Ben Gamliel who maintains that ketuba has its origins in rabbinic enactment.

 In any event, both the Bavli and Yerushalmi agree that one view among the tanna'im affords ketuba the status of a Torah obligation, derived from the verses regarding the mefateh, as stated in the aforementioned berayta. However, the precise syntax of that berayta calls to our attention. The berayta says, "… mi-kan SAMKHU CHAKHAMIM… " - "from here the Sages found a basis." Generally, this term, "samkhu," is used when dealing with a rabbinic enactment for which Chazal find a subtle allusion, or "asmakhta," in a verse. Accordingly, Tosefot in Masekhet Sota (27a) write, "The Torah origin of a wife's ketuba - not exactly a Torah origin, but rather than it has an allusion in the Torah, as we say, 'mi-kan samkhu Chakhamim…'" In other words, this clause indicates that at most ketuba has an 'asmakhta' in the Torah; but according to all views, the obligation originates from rabbinic enactment. Most Rishonim, however, maintain that this view in the berayta indeed derives the obligation of ketuba from this verse of "mohar ha-betulot" in the context of the payment of a mefateh.

 In light of what we have seen, we might examine the scope of this comparison between the payment of a mefateh and that of ketuba. Seemingly, according to the view that derives the ketuba obligation from the mefateh payment, the two are identical in every way. Just as a mefateh must pay the girl the value of two hundred "zuz" from high-quality property, so must a husband commit himself similarly when writing a ketuba. In Masekhet Gittin (48b), however, the tanna'im debate the issue of whether a ketuba must be paid from beinonit (average-quality lands) or ziborit (low-quality lands), despite the fact that a mefateh must pay from idit (high-quality lands).

 The Ramban (to Gittin 48b, s.v. "matenitin") addresses this question: "Some ask, according to the view that ketuba is de-orayta, as derived from the verse, 'mohar ha-betulot,' she [an ordinary woman] should collect [upon divorce or her husband's death] from idit, just as in cases of oness [rape] and mefateh! This is no question, for we do not claim that ketuba should be equivalent to oness; there [in the cases of oness and mefateh, the required payment is] fifty coins in Tyrian currency ['kessef tzuri,' which consists entirely of silver coins], whereas here [in a case of a ketuba payment, the required amount is calculated in] provincial currency ['kessef medina,' which consists of a silver-copper alloy]. And there [the payment] is also in idit, while here in beinonit. Rather, since the Torah employed the term 'mohar,' the Sages found a basis for the mohar of unmarried brides - the ketuba." The Ramban in Ketubot (110b, s.v. "nasa isha be-Eretz Yisrael") adds, "This implies that even according to Rabban Shimon Ben Gamliel, this [derivation of the ketuba obligation from the verse] constitutes a rabbinic asmakhta [rather than an outright Biblical origin], for the berayta states, 'samkhu.' Although he says that a woman's ketuba originates from the Torah, he meant a halakha le-Moshe mi-Sinai [oral tradition conveyed to Moshe at Sinai], like the rest of the Oral Law." According to this, even the one who considers ketuba a Torah obligation does not view "mohar ha-betulot" as its source. We have indeed seen that the Ramban himself (in his commentary to the Torah) explained this phrase much differently. He therefore concludes that according to this view, that, the Biblical term "mohar habetulot" is enlisted as the source for Ketuba, in actuality a halakha le-Moshe mi-Sinai imposes the ketuba obligation on the husband, and the extrapolation from "mohar ha-betulot" is but a Scriptural allusion to this halakha. Clearly, then, we can in no way equate the ketuba payment and that of the mefateh.

 (We should note that according to the Ramban, we derive neither the amount (Tyrian or provincial currency) nor the nature (idit, beinonit, etc.) of the ketuba payment from the law of the mefateh. Accordingly, if indeed ketuba constitutes a Torah obligation originating from a halakha le-Moshe mi-Sinai, then presumably halakha would require payment in "kessef tzuri" as all Biblically-ordained payments do. If the ketuba obligation is de-rabbanan, then we would perhaps require only "kessef medina." In any event, the Shita Mekubetzet cites Talmidei Rabbenu Yona as commenting that although ketuba constitutes a rabbinic requirement, Chazal nevertheless demanded a higher-level payment, "kessef tzuri," since they arrived at the required amount based on the comparison to the payment of a mefateh, which is in "kessef tzuri.")

 The Ramban's solution works only according to the position that does not view "mohar ha-betulot" as the actual source for the Biblical obligation of ketuba. According to the other views, by which the berayta indeed derives the obligation from the halakha of mefateh, our question remains. Tosefot (10a, s.v. "ho'il") explain that strictly speaking, the husband must indeed pay the ketuba from his highest-quality property. However, Chazal revoked this particular provision out of concern that it would inhibit men from marrying. One could, however, suggest that even if we extract the amount of payment from the halakha of mefateh, we need not require a payment from idit. To understand this point, we must elaborate a bit on the source for the requirement of idit payments. In the aforementioned passage, the Ramban writes that if ketuba constitutes a Torah obligation, then its payment requires idit just as the mefateh payment does. But this provision requiring payment in idit is not a general rule concerning all payments, but rather specific to damage payments. We learn from a berayta that the payments of oness and mefateh also classify as damage payments. According to this perspective, we cannot compare the cases of mefateh and ketuba with respect to idit: the former falls under the category of damage compensation, which requires idit, whereas a situation of ketuba payment involves no damages. Therefore, when we derive the ketuba obligation from oness and mefateh, this applies only to the amount of payment, not to the requirement of idit.

 We may advance a different explanation as to why we should not compare ketuba and mefateh with respect to payment in idit. A question arises from a number of sugyot as to whether the idit requirement constitutes a technical detail, external to the basic payment obligation, or an essential part of the obligation: just as one must pay two hundred coins, so must he pay from high-quality assets. To the extent to which we view the level of payment as an intrinsic component of the payment obligation, we can more easily claim that the level of payment must be applied to ketuba once we derive the payment itself from mefateh. By contrast, to the extent to which we consider the level of payment as a subsidiary element, we can restrict the comparison between ketuba and mefateh to the essential components of the obligation, such that it would not encompass the technical details. Hence, the requirement of idit would not apply to ketuba, even though we derive its basic obligation from mefateh, which requires idit.

 An additional answer emerges from the Mekhilta de-Rashbi in Shemot 22:15, where the extrapolation from mefateh appears, with the following conclusion: "Rabban Shimon Ben Gamliel says: a woman's ketuba has no fixed amount from the Torah." Rabban Shimon Ben Gamilel denies the Biblical origins not of ketuba itself, but rather of its specific amount. This Midrash appears to introduce a middle position, that the concept of ketuba has its origins in the Torah, in the verse, "mohar ha-betulot," while the details were instituted by the Sages. According to this view, we may resolve the mishna in Gittin with the view that ketuba constitutes a Torah obligation. Even if we indeed extract the concept of ketuba from the mefateh payment, we need not apply any details of the payment to ketuba; only the very concept itself do we derive from the clause, "mohar ha-betulot," and the mefateh payment is built on this concept. But the two concepts are in no way identical to one another, and we should therefore expect to find differences with regard to their halakhic details.

 Based on this distinction, we can resolve the Rambam's position, as well. When dealing with a given phenomenon and discussing whether its origins are Biblical, we can address two issues. First, we can inquire as to the phenomenon itself, whether a given concept exists according to Torah law. Secondly, even if we concede that the concept is rooted in Torah law, we can debate whether the specific laws relating to that concept are Biblical.

 Correspondingly, we may understand the debate surrounding the origins of ketuba as questioning whether or not this concept, this type of commitment on the husband's part, exists in the Torah. Alternatively, this debate may work on the assumption that indeed such a concept of ketuba exists, only it questions the origins of its details. The Rambam perhaps maintains that the concept of ketuba originates from the Torah, and in fact the ketuba constitutes an integral part of the institution of marriage. After all, in the absence of a ketuba, the marriage lacks a sense of commitment, and the resultant relationship is nothing more than that of "pilagshut." Marriage requires a husband's commitment to his wife, a commitment that expresses itself through the obligations he assumes in the ketuba. There is therefore a mitzva to marry with a ketuba, and one may not divorce his wife without paying the ketuba. However, the provision forbidding marital relations if a ketuba has not been written is rabbinic in origin, as is the required amount of payment. The same would thus naturally apply to the halakha that establishes, "Whoever commits less than the fixed amount - his relations are considered extramarital." Therefore, in his introduction to Hilkhot Ishut, the Rambam writes only the mitzva to marry with a ketuba. However, the prohibition against marital relations when a ketuba has not been written was instituted by Chazal, in order to ensure that "she is not easy in his eyes to divorce."

Sources and questions for shiur #02.

Sources:

1. 2a Betula niseit ... hacha lo," Mishna 57a gemara 57b higiya zman ... meyached lah."

2. Nedarim 73b "Bogeret ... nami lo achla."

3. Ritva 57b s.v. ochelet mishelo, 63a "moredet mimai ... mimlacha" Ritva s.v. maitivei.

4. Even Hezer 56:3, Beit Shmuel 4, Pitchi Teshuva 2.

Questions:

1. What obligations begin twelve months after the betrothal even though the marriage has yet to take place?

2. Are certain obligations imposed on the bride?

3. What is the relationship (suggested in Nedarim) between the permissibility of a Kohen's fiancée to eat teruma and the possibility of annulling her vows?

4. How can we explain the debate as to whether obligations are incurred if the marriage is postponed due to extenuating circumstances?