

## 32.6.2

23a (משנה א) → 24a (סיום הפרק)

1. ואם מקד הוא מערקד והעמידו לפני הפהו והעריך אתו הפהו על פי אשר תשיג יד הנדר יעריכנו הפהו. ויקרא כז:ח.  
 2. וחשב לו הפהו את מקסת הערקד עד שנת היבל ונתן את הערקד ביום ההוא קדש לה'. ויקרא כז:כג.

- I 2א משנה: If someone was מקדיש his property but it was obligated to a כתובה
- a א"ל. he must make a נדר to divorce her and from gettint הנאה from him
- b ל"י. unnecessary
- i Parallel: רשב"ג – if someone is an ערב for a כתובה, if the man divorces her, he should be מדיר הנאה
- ii Reason: to prevent husband and wife from colluding to cheat the ערב of the כתובה and then remarry
- II Analysis of disagreement – whether or not someone will collude to cheat הקדש
- a א"ל. someone may do so → must take נדר
- b ל"י. no one would do so → no need for a נדר
- c Challenge: ר"ה - if a שכ"מ was מקדיש all his property, then announced that פ' is owed some money – we believe him
- i Reason: no one would collude to cheat הקדש
- ii Explanation of challenge: was ר"ה ruling in accord with one opinion in this dispute?
- iii Answer: dispute is only in re: בריא; but no one would sin without anticipated benefit → all agree אין עושה שכ"מ
- d Version: all agree that a בריא would (גרסא) make a קנוניא on הקדש;
- i Dispute: is regarding a נדר taken publicly
- 1 א"ל. may not be refuted (→ his vow is meaningful)
- 2 ל"י. may be refuted (→ no point to the vow)
- ii Or: all agree that a נדר taken publicly can be refuted; dispute is about a דעת רבים
- iii Challenge: ruling that a publicly taken נדר can be refuted, but ע"ד רבים cannot – is this "taking sides"?
- iv Furthermore: יהושע 'ר's wording in the משנה ought to be מועיל (doesn't help), rather than צריך אינו
- e Rather: dispute is whether or not הקדש can be recanted (שאלה בהקדש); parallel to ב"ש/ב"ה (נזיר ה:א);
- i Per: ברייתא, wherein ראב"ש aligns א"ר/א"ר:ה:ב"ש/ב"ה
- 1 הקדש is הקדש טעות. ז"ש
- 2 הקדש טעות אינו הקדש. ז"ה
- III Discussion of רשב"ג's ruling
- a Story: ר"ה (a poor student) had a כתובה for which his father was an ערב
- i אב"י advise him to divorce his wife, collect כתובה from his father and remarry
- 1 Challenge (רבא): in our משנה – must make divorce irrevocable via נדר!
- (a) Response (אב"י): not everyone divorces in ב"ד (let him do so privately)
- (b) Story: it turned out that ר"ה was a כהן (wouldn't have been able to take her back in any case)
- 2 Challenge: אב"י himself described similar advice (selling in an אחריק –sequence) as "clever רשעות"
- (a) Answer: since it was his son and a scholar – not considered רשעות
- 3 Challenge: an ערב isn't really משועבד to כתובה
- (a) Answer: he was a קבלן (fully accepted responsibility to pay)
- (b) Note: this is only valid according to מ"ד that a קבלן become obligated even if לויה has no assets
- (i) But: according to מ"ד that he is only משועבד if לויה has assets – still wouldn't work
- (c) Answer: either ר"ה had property at time of כתובה (lost them) or in the case of a father, he is משתעבד
- 4 Background: ערב of כתובה isn't משתעבד; קבלן of חוב is משתעבד; קבלן of כתובה and ערב of חוב – two opinions:
- (a) Some say: only if לויה (or husband) has assets does the ערב/קבלן take שעבוד;
- (b) Others: in any case, the לויה/בעל becomes משועבד
- (c) Final ruling: in all cases, with or without assets, the ערב/קבלן is משתעבד
- (i) Exception: ערב of כתובה – even if he has assets, no שעבוד (he is simply helping out; she lost nothing)
- b Case: man sold all of his property and then divorced his wife –
- i Question: posed to ר"פ – we learned about ערב and הקדש – how do we treat a לוקא vis-à-vis collection of כתובה?
- 1 Answer: תנא didn't need to list all circumstances → can't be collected from לוקא
- 2 גהרדעי: if it wasn't listed, doesn't apply (is seized from לוקא)
- (a) משרשיא 'ד. משרשיא's reason - in case of הקדש, we want to benefit הקדש; in case of ערב, he helped out and didn't lose – but here, the לוקא should've checked for liens on property – he lost it himself

- IV **משנה ב** הקדש Procedure for paying off debts from property which has been declared
- a *If*: someone makes his property הקדש but there is a debt to כתובה or בע"ח, they can't collect
    - i *Solution*: the one redeeming from הקדש does so in order to pay off the debt
  - b *If*: his property was worth 90 but his debt was 100, the lender lends 1 extra דינר (token) and the לווה redeems the property in order to pay off the debt to the אשה or בע"ח
  - c *Note (גמרא)*: reason the משנה uses the phrase ...הפודה, פודה (i.e. if debt is greater, הקדש never really took hold) in order that no one should think that הקדש can be "saved" without פדיון
  - d *Note*: our משנה doesn't follow רשב"ג – who ruled that if the חוב is equal to the הקדש, he may redeem; if not – may not
    - i *רבנן* (who allow redemption in this case): would allow up to a differential of 50%
- V **משנה ג** ערכין allowance for impoverished person who committed to
- a *Even though*: we rule that we take a משכון from ערכין,
    - i *Nonetheless*: we give him money for 30 days of food, 1 year of clothes, a made bed, his shoes and תפילין
      - 1 *But not*: for his wife and children
        - (a) *Reason*: per v. 1 – give him sustenance from the ערך itself; only applies to him, not his family members
      - ii *If*: he was an artisan, he is given two of each type of tool;
        - 1 *For instance*: if he were a carpenter, he is given two axes and two saws
        - 2 *ל"א*: if he was a farmer, we give him his team of oxen; if he was a donkey-driver, we give him his donkey
          - (a) *רבנן*: these are not אומונות כלי, but possessions
- VI **משנה ד** מחוייב ערכין Continuation of procedure of collecting from
- a *If*: he had a lot of one type (of tool) and only 1 of another, we don't allow him to sell one of the "many" and buy another to make a pair – rather he gets two of each of the "many" and whatever he has of the "few".
    - 1 *Challenge*: this is obvious; 'til now, he survived with one of these tools
    - 2 *Defense*: it could be argued that he could have borrowed another until now; but now that he has no means, no one will lend to him – קמ"ל
    - ii *If*: he sanctifies all of his property, we take his תפילין as well, as that is part of his property
      - 1 *Story*: a man sold all of his property; ר' יימר ordered that his תפילין be given as well
        - (a) *Challenge*: this is already stated (in our משנה)
        - (b) *Answer*: perhaps in case of הקדש, he knows he is doing a מצוה and intends to include תפילין
          - (i) *But*: no one would sell their תפילין – קמ"ל
- VII **משנה ה** הקדש Claims of
- a *Whether*: one is מקדיש his property or מעריך someone, he cannot use his wife's or children's clothes for payment
    - i *Nor*: the color used to dye their clothes, nor new shoes he bought for them
    - ii *Even though*: we rule that slaves are sold in nice clothes to increase their value – (even a few דינר can increase value by much more) and a cow would be worth more if sold on market/slaughter day; and, similarly, a jewel would fetch more in the big city
      - 1 *Nonetheless*: הקדש can only claim as per the location and current conditions
      - 2 *Source*: v. 2 – ביום ההוא – not to hold the jewel for the local poor to bring to the big city
        - (a) *And*: קדש לה → the default application of הקדש is בדק הבית