

אישות קודם מתן תורה הרב שמחה קוק

In this week's *parsha*, we have the narrative of Yaakov marrying Rochel and Leah. At first, Lavan tricks him into marrying Leah. When Yaakov confronts Lavan and insists on marrying Rochel, Lavan tells him to wait out the first week of his marriage to Leah. Pirkei d'Rebbe Eliezer learns the *inyan* of *sheva brachos* for a *chosson* and *kallah* from this *posuk*. Acharonim deal with the question of how to learn out *dinim* from sources pre-*Matan Torah*. Really, there are a few things which we learn from sources before *Matan Torah*.

The Gemara in *Kesubos* states that *birchas chassanim* requires a *minyan*, and sources the *din* from Boaz who gathered a *minyan* when he married Rus. Tosafos asks the following *kasha*: *Maseches Kallah* brings a *posuk* from Rivka (when Lavan gave her a *bracha* before sending her to Yitzchok) to learn out the *din* of *birchas nesuin*. Why doesn't our Gemara bring this as the source instead of from Boaz? Tosafos answers the *bracha* in *Maseches Kallah* is *birchas eirusin* whereas the *bracha* our Gemara refers to is *birchas nesuin*.

Tosafos adds that we see from the story of Rivka and Eliezer that even a *kiddushin* which is carried out through a *shaliach* requires *Birchas Eirusin*. This line of Tosafos is fraught with difficulties and we shall address some of the issues.

The first question is from the Har Tzvi [R. Tzvi Pesach Frank] and, as he cites, the Sefer Hamikneh in *Maseches Kiddushin*. One of the qualifications to carry out a *shlichus* is that the *shaliach* must be able to affect the same action for himself as he is being sent to carry out on behalf of someone else. Therefore, an *eved* cannot be a *shaliach* because there is no *din* of *kiddushin/nesuin* by an *eved*. How could Eliezer be the *shaliach* to be *mekadesh* Rivka to Yitzchok? Before we answer this question, we will explore another point.

Hafla'a points out that Eliezer gave Rivka the *kiddushin* when he presented her with gifts after she gave him and his camels water upon his arrival in Charan. Hafla'a asks that how could the *birchas eirusin* be made much later, when Lavan *bentches* her before her departure, if the *kiddushin* had already been given at the beginning of Eliezer's arrival? He answers that the *kiddushin* was given *al t'nai*, conditionally. The condition for the *chalos kiddushin* was that Rivka must agree to leave her family and home to go with Eliezer return to Yitzchok. So, while Eliezer gave the physical *kiddushin* earlier, it did not take effect until the time that Lavan actually gave the *bracha* and there was in fact no time discrepancy in that regard.

There are other ways to understand this. R. Akiva Eiger (found by our Gemara in *Kesubos*) brings a Mishna l'Melech [who cites a Teshuvah Rivash] that one can postpone making a *birchas eirusin* just the same as one is able to postpone *bentching*. So long as one's meal has not been digested and he is not hungry again, one can wait to *bentch*. The same idea applies to *birchas eirusin*, even though the *kiddushin* has already been made. This, too, would answer the question of the Hafla'a. However, R. Akiva Eiger rejects this comparison of the Mishna l'Melech. *Birchas hamazon* is specifically made after eating a meal, whereas *birchas eirusin* should be made just before performing the *kiddushin*. Just as one cannot make a forgotten *bracha* on food after he has finished it, so too by *kiddushin* the *birchas eirusin* must be made before and is not recited if the *kiddushin* is already performed.

Lichora, it hinges upon what the *birchas eirusin* is considered. We know the famous *machlokes* about this between the Rambam and Rosh. Rambam holds it to be a *birchas hamitzvah*, and just as such a *bracha* is made immediately prior to performing its *mitzvah*, so too is *birchas eirusin* recited just before making *kiddushin*. Rosh, and others, hold that it is a *birchas hoda'a* and may therefore be recited even after the *kiddushin* is affected. As well, being a *birchas hoda'a* allows for other people, not only the *chosson*, may recite the *bracha*.

Another question is exactly for whom was Eliezer a *shaliach*, Yitzchok or Avraham? He was marrying a woman to Yitzchok but Avraham was the one who sent him on the mission? Either we can say that Yitzchok did in fact appoint him to be his *shaliach*, or Avraham had already given Eliezer, along with rest of his fortune and possessions, to Yitzchok.

Now, let us return to our question on the *shlichus* affecting *kiddushin* through Eliezer, an *eved*. There is a famous Brisker Rov in *Parshas Lech-Licha* who asks the following *kasha*: We know the *Avos* kept the Torah and *mitzvos*, so why didn't Avraham Avinu give himself a *bris mila* before being commanded to do so? He answers with a *yesod* that the concept of being an *arel* did not exist before *Matan Torah*. The *Kedushas Yisroel* which was implanted into Klal Yisroel at *Matan Torah* created the status of being an *arel* if one was devoid of a *bris mila*. This is why Avraham Avinu could not give himself *bris mila* on his own. The Brisker Rov adds that this is the same reason why Yaakov Avinu was able to marry two sisters. The *din* of *arayos* comes with *Kedushas Yisroel* so there was no *din erva* before *Matan Torah*.

With this *yesod* of *Kedushas Yisroel*, the Rov also answers the *kasha* of the Rosh on the actual language of *birchas eirusin*. The Rosh asks why we mention, "...ועצונו על העריות..."? When we are performing *kiddushin* and *nesuin*, why bring *arayos* into the *bracha* at all? The Rov answers that *arayos* is only borne from *Kedushas Yisroel* and this *bracha* is all about *Kedushas Yisroel*, so it is quite apropos to mention *arayos* in this *bracha*.

I think this Brisker Rov can answer another *kasha*. The Ran brings a *kasha* from R. Hai Gaon, why do we end the *bracha* with, "וקידושך על ידי חופה וקידושך..."? How are those two items *mekadesh Yisroel*? Therefore, he changes the *nusach*. Yet, maybe we can say with the Rov's *yesod* that the *nusach* is very good. Through *chuppah* and *kiddushin* we see the *Kedushas Yisroel* which necessitates them to exist for us. Rambam says that before *Matan Torah* a person would just meet a woman and they would agree to live together and that created a marriage. Once the Torah was given, a person has to have *eidim* witness a real *kinyan kiddushin* in order to become married. Once that has taken place, he may bring her into his house. This is what *Kedushas Yisroel* created.

However, we do see that there was *kiddushin* even before *Matan Torah*. Besides the *Maseches Kallah* we mentioned above, the Gemara in *Sotah* relates the story of Yehuda and Tamar and says that Yehuda asked her if she was married and how she knows her father hadn't been *mekadesh* her to someone already. Obviously, *kiddushin* existed in the world at that time.

[Many years ago, when I taught *Maseches Sotah* in *bekius shiur*, I would bring my *talmidim* to the first Rosh Yeshiva *zt"l*, for an informal *farher* after we completed the *mesechta*. One of the questions he would ask them was to bring a *rayuh* from the *mesechta* that there was *kiddushin* prior to *Matan Torah*. And he would cite this Gemara.]

What is the *pshat* of this *kiddushin* prior to *Matan Torah*? I think that there is another *kedusha* at hand. There was a *kedusha* to abstain from *arayos* which was kept even without *Kedushas Yisroel*. Like the Ramban explains, "קדשים תהיו" means to be *poresh* from that which is *muttar*. There were those who, even though they could have simply brought a woman into their house for marriage, wanted to elevate it by making a *kinyan*. They made *kiddushin* as a symbol of *perishus* and *tznius* even before *Matan Torah*. *L'maaseh*, we see by the *goyim* that they have marriage ceremonies in their places of worship. [Now, of course, this *musag* has become *batul* because it doesn't mean much to them. That is why legal marriages can be between whomever and however. The institution of marriage in the secular world has lost nearly all its sanctimony.]

That may be *pshat* over here. By Eliezer, there was no *Kedushas Yisroel-kiddushin* but there was still the *musag* of *kedusha* type of *kiddushin*. In that type of *kiddushin*, there is no difference between an *eved* and a Yisroel. Therefore, Eliezer was able to function as the *shaliach* for Yitzchok's *kiddushin* to Rivka.