The Chicago Center
Digest
Mishna Berura
THE DAILY RESOURCE FOR MISHNA BERURA YOMI
Shabbos, Jul 6 2024 ■ ל' סיון תשפ"ד
סימן של"ט סעיף ד'

Overview

Siman 339 Seif 4:

We do not adjudicate therefore, it is prohibited to seize and imprison someone who is liable for some punishment to prevent him from fleeing. It is certainly prohibited to flog him since that is categorized as judgment. If he flees we are not blameworthy. **We do not betroth.** Some authorities permit betrothing if he does not have a wife and children. It is possible that entering the *chupah* is also permitted and although we do not subscribe to this view, we rely on it in a difficult circumstance also taking into account the value of human dignity. For example, it is common that those involved do not settle on the נדוניא on Friday until after nightfall and we would perform the *chupah* and *kiddushin* at night since they already prepared the meal and the wedding and it would be humiliating for the *kallah* and *chosson* if they do not marry at that time. However, *l'chatchila* one should take steps so that this should not occur. **We do not perform *chalitzah*, *yibum*, marriage, sanctify property, pledge someone's *erech* value or pledge something as חרם. We do not separate *terumos* or *ma'asros*, redeem a first born son or divorce unless it was the *get* of someone on his deathbed** (who is about to die)**. In all of these cases if the activity was performed, whether inadvertently, intentionally or mistakenly, the action is effective.**

- This includes monetary cases out of concern that it will lead to writing. Arranging the claims of the litigants is also prohibited out of concern that the judges will write down their claims. (M.B. 11)
- Sefer HaChinuch writes that Hashem wanted even sinners to rest on Shabbos. (M.B. 13)
- Someone who wishes to flee and leave his wife an *agunah* is not included and may be imprisoned. It is also permitted to accept testimony from someone who is dying regarding a woman whose husband died where there is a concern that we will not be able to obtain the testimony from another source. (M.B. 14)
- The concern is that it may lead to writing but not because of the *kinyan* involved. (M.B. 15)
- According to this opinion it would also be permitted for one who has children but does not have a wife. (M.B. 16)
- Chaye Adam writes that this should not be followed unless he has not fulfilled the *mitzvah* of *pru u'rvu*, there would be a significant loss and the couple would be humiliated. During *bein hashemashos* there is no reason to be stringent, *b'dieved*, although *l'chatchila* one should be very cautious to avoid this circumstance since it could involve many transgressions. Therefore, if possible, one should not schedule a *chupah* on *erev* Shabbos and certainly not close to dark. (M.B. 19)
- The concern is that they will write a *shtar chalitzah* and even choosing a place for *chalitzah* is prohibited. (M.B. 20)
- It resembles a *kinyan* taking place on Shabbos and there is also a concern they will write a *kesubah*. (M.B. 21)
- *Chupah* affects a *kinyan*. (M.B. 22)
- This resembles business as opposed to a pledge to *tzedaka*. (M.B. 23)

Halacha Highlight

Hefker

Shulchan Aruch Siman 339 Seif 4

ולא מקדישין

We do not sanctify

Amongst the activities prohibited by Shulchan Aruch in our *seif* is sanctifying (מקדישין) property. The rationale behind the restriction is that upon one's declaration that the object is sanctified, he removes the object from his possession and conveys ownership to *hekdesh* and thus resembles a standard business transaction. This explanation leads *Poskim* to debate whether it is permitted to declare an object *hefker* – ownerless on Shabbos. Some maintain that declaring an object *hefker* is no different than sanctifying it and one may not declare objects ownerless on Shabbos. Rav Shlomo Zalman Auerbach (שו"ת מנחת שלמה ח"ב סי' פ"א) explains that the rationale for the stringent opinion is not that a declaration of *hefker* conveys ownership of the object to the *tzibbur* and thus it resembles a business transaction. Rather their position is based on the assertion that Chazal not only prohibited conveying ownership of an object to someone else but they also prohibited one to relinquish his ownership of an object. Others contend that when sanctifying an object it is immediately conveyed to the possession of *hekdash* whereas one who declares an object *hefker* merely relinquishes his ownership of the object but it does not involve conveying ownership to anyone else and Chazal only prohibited transactions that involve conveying ownership to another but not merely relinquishing one's ownership of an object (פסקי תשובות אות ד').

Rav Yosef Shalom Elyashiv (ספר זכרון דרור יקרא עמ' שמ"ה) ruled that when there is a need one may rely upon the lenient opinion. Thus, one who has a utensil that was not immersed before Shabbos may declare the utensil *hefker* so that it should no longer require immersion. Whether one may acquire *hefker* objects on Shabbos is also subject to debate. Some maintain that since you don't have someone conveying ownership it is permitted but others are hesitant. Rav Shlomo Zalman Auerbach (שמירת שבת כהלכתה פכ"ט הע' פ"ג) wrote that even if, for example, one wants to take possession of a lost object on Shabbos, he should not perform הגבהה in a manner that indicates his intent to make a *kinyan*.

- It appears as though one is sanctifying the fruit and it involves repairing something that was not repaired. If he separated it intentionally, it should not be consumed by anyone until after Shabbos but if it was done unintentionally, it may be consumed immediately, even by the person himself. (M.B. 25)
- The same is true concerning challah. (M.B. 26)
- It is also not proper to give the *kohen* money before Shabbos and have it take effect on Shabbos so that the *beracha* could be recited since at that time he is not doing anything. Instead it is delayed until after Shabbos. (M.B. 27)
- This is true even if the *get* was written before Shabbos. (M.B. 28)
- Meaning, he wants to divorce her so that she should not fall to *yibum* and it is permitted so that he should not become disturbed that they are not following his wishes. (M.B. 29)