



Kesubos Daf Chaf Tes

THE OBLIGATION OF K'NAS WITH A NON-JEWESS.

בכתובות דף כ"ט. במשנה, אלו נערות שיש להן קנס הבא על הממזרת ועל הנתינה ועל הכותית.

- א -

Boi'el Aramis and how it affects the chiyuv k'nas

רש"י, תוספות, רעק"א, הפלאה, דברי יחזקאל, אור שמח, קובץ שיעורים, הר צבי

Why is there no k'nas with a non-jewess / Does a Boi'el Aramis have the halcha of kom lei bideraba minei / What about the halcha of rodef / uncertainty in kom lei bideraba minei

א. The Mishna tells us that there is no k'nas in the case of a *kuttis*. *Rashi*¹ explains that our *Tanna* is of the opinion that *Kuttim* did not undergo a complete geirus – גירי אריות – and as such are forbidden. The prohibition stems from the passuk² לא תחתן בהם – thou shalt not marry into them.

*Tosafos*³ however questions this. They point out that the gemoro on י"א. discusses the option of a גר קטן retroactively denouncing their geirus, and emphatically asks יהיב לה קנס ואולי ואכלה בגויותה – Is it possible we give her k'nas for her to enjoy as a non-jewess. As such they assert that the *Tanna* cannot hold that *kuttim geriri aroyois*, since they obviously will not receive k'nas. *Tosafos* concludes that the *Tanna* undoubtedly holds that *kuttim* are *gerei emes*, - true converts – and nonetheless do not receive k'nas. This is because שמא יטמע בהם – Chazal wished to discourage intermarriage with *kuttim*.

HaGa'on R' Akiva Eiger asks a simple question on *Tosafos*. Why is it that *Tosafos* had to quote a gemoro in י"א. to establish that a non-jewess does not receive k'nas. Surely *Tosafos* could have proved their assumption from our Mishna itself. Why does our Mishna limit the halacha to that of a *kuttis*, the Mishna should have said all non jews receive k'nas. If the mishna specified a *kuttis*,

evidently the *kuttis* is the exception, while a typical non-jewess will not receive k'nas.

R' Akiva Eiger answers that one might have considered *kuttim* an exception for a different reason. Perhaps one would have said that indeed a non-jewess does not receive k'nas, not because of the *s'vara* that she will enjoy it as a gentile, but rather because of the halacha of בא על – ארמית קנאים פוגעים בו – a zealot may slay someone who has marital relationships with a non jew. Since he may be slain, he is included in חייבי מיתות בית דין – one who receives capital punishment. As such he will be exempt from payment, due to the halacha of קם ליה ברבה מיניה – we will not carry out monetary penalties on one who is receiving capital punishment.

Following this reasoning, we would have assumed that in fact there is no k'nas for a non-jewess, however a *kuttis* would still be the exception. Since there are a minority of *kuttim* who in fact are *gerei emes*, a zealot would not be allowed to slay בא על הכותית. Therefore, specifically *kuttim* would receive k'nas unlike other gentiles. Therefore, explains R' Akiva Eiger, *Tosafos* was forced to bring a proof from י"א..

The *acharonim* deliberate many details of R' Akiva Eiger's answer.

The *hafla'a*⁴ discusses the concept of קם ליה בדרכה applying as an outcome of קנאים פוגעים בו. In this case the *chiyuv misa* is only short term – once he is no

longer involved with the non-jewess one is no longer allowed to kill him. Perhaps *kom lei* applies only with an absolute *chiyuv misa*.

He proves from a *sugya* in *Sanhedrin* that *kom lei* applies even with a short term *chiyuv*. The *gemoro* there is discussing the *halcha* of a *rodeif*, one who is intending to kill another. In such a case the *halacha* is, *הבא להורגך, השכם להורגו* – one who is intending to kill you, you may precede him and kill him. This *halacha* is limited to such time as he actually intending to kill, once he has changed his mind one is obviously no longer allowed to kill him. Yet, the *gemoro* is clear that *kom lei* applies, on a practical level the *gemoro* says, *הבא במחתרת ושבר כלים פטור* – one who is coming in a tunnel, intending to kill, and breaks items along the way, is not obligated to pay. Evidently *kom lei* applies even with a short term *chiyuv misa*.

The *Divrei Yechezkel*⁵ further points out an inherent difference between a classic *chiyuv misa* and *kana'im poigim boi*. A classic *chiyuv misa* is incumbent on *beis din* to carry out, however *kana'im poigim* is not only not incumbent, in fact it is discouraged⁶. As such perhaps there shouldn't be *kom lei*. Nonetheless R' Akiva Eiger obviously understands that it the same to a classic *chiyuv misa*, and that there is *kom lei*. [1] However, the *Ohr Same'ach*⁷ actually makes the above distinction, and *paskens* that one does not say *kom lei* in a situation of *kana'im poigim boi*. [2]

R' Elchonon Wasserman⁸ discusses another *halacha*.

What happens, ponders R' Elchonon, if one is unsure whether *kom lei* applies. Would one say that it is an uncertainty in monetary matters, and as such we say *המוציא מחבירו עליו הראיה* – one cannot force another to pay without proof. Or perhaps one can suggest that we need a definite *chiyuv misa* to exempt one from payment, and without a definite *chiyuv* he remains obligated to pay. Points out R' Elchonon, that R' Akiva Eiger held that in such a case one is obligated to pay. We see this from his *sevara* to differentiate between a *kuttis* and every other non-jewess. As he explains that by every non-jewess there is a *halacha* of *kana'im poigim boi*, however a *kuttis* there is a minority who are Jewish, and as such there is no *kana'im poigim boi*. Surely, says R' Elchonon there remains a possibility of *kana'im poigim boi*, because after all, perhaps this particular person is not part of the minority. Seemingly an uncertain *kom lei* is obligated to pay.

R' Tzvi Pesach Frank⁹ however disagrees. It is possible that even an uncertain *chiyuv misa* is adequate to exempt one from monetary obligations. Nonetheless, this is only because he may truly be *chayav*, therefore we say *hamoitzi meichavero alav haraya*.

However, this will only apply with a classic *chiyuv misa*. But in our case, the entire concept of the *chiyuv* is the ability of a zealot actually slaying him. Since technically a zealot may not, in fact, do so, therefore we cannot consider him *chayav*. Therefore, in this particular case a *sofeik chiyuv misa* will not exempt him from payment.

NOTES

[1] The *Divrei Yechezkel*¹³ raises an additional point. R' Akiva Eiger explains that we do not say *kana'im poigim boi* in this case, as a minority of *kuttim* are *gerei emes*. Asks the *Divrei Yechezkel* surely we should follow the tenet of *rov*, - majority, and assume that she is indeed a gentile, and as such a zealot may in fact slay him.

He suggests that one can consider *kuttim* as *kavu'a* – a fixed situation, where one does not follow *rov*.

A second suggestion he raises is that *kana'im poigim boi* cannot be ruled by *rov*. The depth of this is that in truth *kana'im poigim boi*

is not a classic *chiyuv misa*, in fact we discourage the zealot. As such one can only say *kana'im poigim boi* in a situation where there is no room for doubt.

[2] The *Hagahos Boruch Ta'am* on the *hafla'a* is *metzaten a Rambam*¹⁴. His intention is that the *Rambam* explains the limitations of *kana'im poigim boi* and limits it to the actual duration of the act, and explains that the *boi'el* may in fact slay the zealot, as the zealot is considered a *roideif*. As such it would seem that one cannot compare *kana'im poigim boi* to a classic *chiyuv misa*.

Shitas Rashi in the sugya

חתם סופר, מגיני שלמה, ים של שלמה

Possibly even a non-jewess is entitled to k'nas / Geirei Aroyois are not fully gentiles / Perhaps there is rabbinic ordinance of k'nas

ב. The Chasam Sofer is *meyashev shitas Rashi*. Rashi explains that *kuttim* are *geirei aroyois*, - insincere converts, who are not actually considered Jewish. Tosafos however asks that if so, surely there should not be *k'nas*. Tosafos proves this from the gemoro earlier in יא. The gemoro there discusses the option of a גר קטן retroactively denouncing their *geirus*, and emphatically asks יהיב – Is it possible we give her *k'nas* for her to enjoy as a non-jewess. As such they assert that the *tanna* cannot hold that *kuttim geriri aroyois*, as a gentile obviously will not receive *k'nas*.

Explains the *Chasam Sofer*, Rashi holds that even a non-jewess is entitled to *k'nas*. Why then is the gemoro earlier so emphatic that we would not give a ger koton *k'nas*? The Chasam sofer quotes a Rosh in Kiddushin¹⁰ that a ger koton is penalized for idolatry, however a non-jewess who does not engage in idolatry will actually receive *k'nas*. As such a *kuttis* will receive *k'nas*.

He adds, that although the *Yerushalmi* tells us that a *shifcha* does not receive *k'nas*, as she is אינה בת הוייה - unable to marry, nonetheless a non-jewess has the option of becoming Jewish, therefore she is considered a בת הוייה.

The *Maginei Shlomo* offers a different *mehalech* in *Rashi*. He disagrees with the *Chasam Sofer* and says that a typical non-jewess will not receive *k'nas*. Nonetheless, he suggests that a *kuttis* is different. This is since גירי אריות does not mean that that are considered fully as gentiles. He suggests that *kuttim* have some halachos of Jews, and actually receive *k'nas*¹¹. Nonetheless we may not marry them, since their *geirus* was a result of fear.

A third approach is offered by the *Yam shel Shlomo*. He assumes that *kuttim* are indeed full gentiles, and that a gentile is not entitled to *k'nas*. Nonetheless, as *kuttim* behave in many ways like Jews. *Chazal* instituted *k'nas* in this case.¹² [3]

NOTES

[3] The *Divrei Yechezkel*¹⁵ suggests a further approach. He explains that in fact the majority of *kuutim* are true converts, and as such they are receive *k'nas* and all other benefits of Judaism. [Even

though we do not necessarily follow *rov* in monetary matters, nonetheless once *rov* has established that they are to be treated as Jews, we follow this precept in monetary matters too.]

מראי מקומות

1. ד"ה כותית 2. דברים ז'. 3. ד"ה ועל 4. בסוגיין 5. סי' כ"ג (אות ב') 6. עי' בחי' הרמ"ה בסנהדרין דף פ"ב 7. פ"א' מהלכות רוצח הלכה י"ג (ד"ה והנראה 8. בקובץ שיעורים (אות פ"ד) 9. הר צבי 10. בפ"ק דקידושין (סי' כ"ב כ"ג) 11. יל"ע מבבא קמא לה: דמבואר דאם כותים גירי אריות יש להם דיני עכו"ם לגבי נזק. 12. כן מבואר בתוס' עירובין סא: דלמ"ד כותים גירי אריות הם גוים גמורים. 13. סימן כ"ג (אות ד') 14. וז"ל יעויין ברמב"ם בפרק י"ב מהלכות איסורי ביאה הלכה ה', ע"כ. 15. סי' כ"ג (אות ה' ד"ה אלא)