**YESHIVAT HAR ETZION**

**ISRAEL KOSCHITZKY VIRTUAL BEIT MIDRASH (VBM)**

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

**LIFECYCLES – HILKHOT ISHUT**

**Rav David Brofsky**

**Shiur #06: *Kiddushin* (1)**

**Introduction**

There are two parts, or two stages, to a halakhic marriage: *kiddushin* (*eirusin*) and *nisu’in*. Although these two parts are currently performed on the same day, at the wedding ceremony, in Talmudic times they were separated by a significant period of time, up to twelve months (*Ketubot* 48b). As we shall see, the first part, *kiddushin*, is achieved in one of three ways: *kesef* (giving something worth at least a *peruta* to the woman), *shetar* (a marriage document), or *bi’ah* (sexual relations performed with the intention of marriage). The act of *kiddushin* must also include a statement of intent, as well as two witnesses. We will discuss these requirements in greater depth in a future shiur.

What is the halakhic significance of *kiddushin*, as opposed to *nisu’in*?

After *kiddushin*, the couple is considered to be “married,” and the woman therefore cannot marry another man (*tefisat kiddushin*). Sexual relations with the woman are punishable by *mitat beit din* and the offspring of such relations would be considered *mamzerim*. After *kiddushin*, the relationship can only be terminated through a *get*.

However, the nature of the relationship between the man and woman changes still further upon *nesu’in*. The punishment for adultery is different if a woman is an *arusa* (*sekila*) or *nesu’a* (*chenek*). *Mi-de’oraita*, after *nesu’in*,a husband may annul his wife’s vows, and if he is a *kohen*, he must become impure for his wife’s burial (*Kiddushin* 10a). *Mi-derabbanan*, a husband acquires the rights to his wife’s “*ma’aseh yadeha*” (handiwork) after *nisu’in*. In addition, only after *nisu’in* does a husband become responsible to provide clothing for his wife and to fulfill his marital duties, and he inherits his wife’s belongings in case of death (*Kiddushin* ibid.); the *Rishonim* disagree regarding whether these laws are Biblical or Rabbinic. A man and woman may only engage in sexual relations after *nisu’in* (see Rambam, *Hilkhot Ishut* 10:1).

*Kiddushin* appears to initiate a formal, legal relationship between a man and woman, while *nisu’in* and its halakhic ramifications reflect the more intimate relationship between husband and wife.

This week, we will begin our discussion of *kiddushin*. We will study the nature of *kiddushin* and the different methods described by the *mishna* (*Kiddushin* 2a). In future *shiurim*, we will further discuss these methods of *kiddushin*, the definition of *nisu’in*, and how these two parts are performed nowadays.

***Kiddushei Kesef***

The well known *mishna* (*Kiddushin* 2a) teaches:

A woman is acquired [i.e., becomes betrothed to a man to be his wife] in three ways, and she acquires herself [i.e., she terminates her marriage] in two ways. She is acquired through money, through a document, and through sexual relations.

The term “*nikneit*” (is acquired), as well as the manner in which *kiddushei kesef* is performed, has led to the misimpression that *kiddushin* is truly a form of acquisition, in which a man “purchases” a woman. Although there are a handful of sources that appear to support this claim (see, for example, Tosafot Ha-Rosh *Ketubot* 2a, s.v. *nistachfa*, and *Kiddushin* 5a, s.v. *ve-hai*; *Avnei Milu’im* 29b), there is no halakhic evidence that *kiddushin* affects a *kinyan* or ownership of any sorts. Furthermore, the Talmud generally chooses a different verb to describe the forming this relationship: *le-kadesh*, which does not reflect *kinyan*, but rather, designation, or even consecration (*le-kadesh*).

If so, how are we to understand the process and nature of *kiddushin*? We will begin by briefly analyzing the first of the three means of betrothing: *kiddushei kesef*.

As mentioned above, the *mishna* lists *kiddushei kesef* as one of the three methods of *kiddushin*. The *gemara* (*Kiddushin* 2b) searches for a source for *kiddushei kesef*:

And from where do we [derive that betrothal is accomplished by means of giving] money? It is derived [by means of a verbal analogy between the term expressing] taking [stated with regard to betrothal and] from [the term expressing] taking with regard to the field of Ephron. How so? It is written here, with regard to marriage: “When a man takes (*yikach*) a woman” (*Devarim* 24:1), and it is written there [concerning Avraham’s purchase of the field of the Cave of Makhpela from Ephron the Hittite]: “I will give money for the field; take (*kach*) it from me” (*Bereishit* 23:13). [This verbal analogy teaches that just as Ephron’s field was acquired with money, so too, a woman can be “acquired” with money.] And the taking [of Ephron’s field] is called an acquisition in the Torah, as it is written with regard to the same issue: “The field which Abraham acquired” (*Bereishit* 25:10). Alternatively, it can be proven that purchasing a field with money is called an acquisition from the verse: “They shall acquire fields with money” (*Yirmiyahu* 32:44) … And what is the reason that betrothal is called *kiddushin* [literally, consecration] in the language of the Sages? The reason is that through betrothal the husband renders her forbidden to everyone like consecrated property. Therefore, this act is referred to as consecration.

The simple understand of the *gemara* implies that *kiddushei kesef* is of Biblical origin, but some *Rishonim* imply that his form of *kiddushin* may be of Rabbinic origin (see, for example, Rashi, *Ketubot* 3a, s.v. *shavya*). The Rambam appears to believe that *kiddushei kesef* are of Rabbinic origin as well, describing it as “*mi-divrei sofrim*” (*Hilkhot Ishut* 1:2). However, in a responsum (Blau 355), the Rambam insists that laws that are derived from verses are called *divrei sofrim*, but their status is Biblical.

What is the nature of this form of *kiddushin*? There appear to be two possibilities.

On the one hand, just as an act of *kinyan* entails the buyer giving the seller money in order to create a legal relationship with the object, a man similarly becomes legally connected to a woman, and her ability to remarry may even be “acquired” (*kinyan issur*), through the act of *kiddushin*. Interestingly, the Talmud did not derive this method of *kiddushin* from the acquisition of an object, but rather from the acquisition of a field. As far as the laws of acquisitions are concerns, acquiring land is unique. A field is not physically brought into the procession of a person. Rather, an act that symbolizes the relationship between the buyer and seller creates a new identity. Similarly, the *kesef kiddushin* do not reflect the “value” of the woman (see *Avnei Milu’im* above), but rather signify the man’s desire to become formally and legally bound to the woman. Of course, if one focuses on the term “*kiddushin*,” which implies a form of consecration, then the transfer of money is certainly viewed as an expression of the man’s desire to begin a relationship that completely changes the status of the woman from a single woman to a married one.

Alternatively, we might suggest that the transfer of money itself does not affect the change of status. Rather, the benefit that the woman receives convinces her to devote herself to her husband. This approach is especially compelling in light of the numerous passages that imply that benefit (*hana’ah*) alone can create *kiddushin* (see *Ketubot* 102b; see also *Kiddushin* 3a-3b).

These two approaches appear to be the subject of debate in the *gemara*, as well as among the *Rishonim*.

Next week, we will continue our discussion of the nature and method of *kiddushin*.