**The Components of a Halakhic Marriage**

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.

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

After *kiddushin*, the couple is considered to be “married,” and therefore a woman 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 after the *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 for providing 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.

***Kiddushei Kesef***

The *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*; see also *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 understanding of the *gemara* implies that *kiddushei kesef* is of Biblical origin, but some *Rishonim* imply that this 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 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* does not reflect the “value” of the woman (see *Avnei Milu’im* above), but rather signifies 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, legally, 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*.

**Nature of *Nisu’in***

We already described *nisu’in* as initiating the more intimate aspect of marriage. What kind of process creates this new layer of relationship? Technically, what act constitutes the beginning of *nisu’in*? We can identify two broad approaches in the *Rishonim*.

Some *Rishonim* appear to maintain that an act or situation that reflects the most intimate aspect of marriage – sexual relations – initiates the beginning of *nisu’in*. Indeed, the verse “when a man takes a wife and is intimate with her” (*Devarim* 24:1), which describes these two stages of marriage, identifies *nisu’in* with *be’ila*, intimacy or sexual relations.

For example, the Rambam (*Hilkhot Ishut* 10:1) writes:

Even when [the husband] consecrated [his *arusa*] by having sexual relations with her, he is forbidden to engage in sexual relations with her again until he brings her to his home, enters into privacy with her, and thus singles her out as his [wife]. [Their entry into] privacy is referred to as entry into the *chuppa*, and it is universally referred to as *nisu'in*. When a man has relations with his *arusa* for the sake of [establishing] *nisu'in* after he has consecrated her, the relationship is established at the beginning of sexual relations. This causes her to be considered his wife with regard to all matters.

The Rambam appears to believe that one can achieve *nisu’in* either through marital relations, or even after *yichud* (seclusion), known as the *chuppa*. It is not surprising, therefore, that the Rambam maintains that this seclusion must be “*reuy le-bi’a*.” Therefore, if the bride is currently in a state of ritual impurity (after menstruation), and they are thus prohibited from having marital relations, the *nisi’un* is not achieved:

Once an *arusa* has entered the *chuppa*, her husband is allowed to have relations with her at any time he desires, and she is considered to be his wife with regard to all matters. Once she enters the *chuppa*, she is called a *nesu'a*, although [the couple] has not engaged in sexual relations.

[The above applies when] it is fitting to engage in relations with the woman. If, however, the woman is in the *nidda* state [when relations are forbidden], the marriage bond is not completed and she is still considered to be an *arusa*,although she entered the *chuppa* and remained in seclusion [with her husband].

This issue is subject to debate (see Shulchan Arukh, EH 61:1); we will discuss this specific issue on another occasion.

Others suggest that *nisu’in* is initiated in a more formal manner which reflects their marital relationship. For example, the Ran (*Ketubot* 1a, s.v. *oh*) cites a view that describes *nisu’in* as the bride entering the husbands “domain” (see also Hagahot Ha-Gra, Shulchan Arukh, EH 55:9). Interestingly, some *Rishonim* (see Tosafot, *Yoma* 3b, s.v. *le-chada*) maintain that the bride going out with her special head covering (*hinuma*) marks the beginning of *nisu’in*. This view is somewhat curious, as according to our custom, the *nisu’in* would thus be performed at the “*badeken*” (when the *chatan* lowers the veil over the bride’s face), which occurs before the *kiddushin*.

These approaches lead us to ask a number of important and relevant questions. First, must the *kiddushin*, by definition, precede the *nisu’in*? In other words, does the *nisu’in* add another layer to, and thus complete, the marriage process, or do both the *kiddushin* and *nisu’in* reflect (and initiate) different aspects of the marriage, so that theoretically, the *nisu’in* may be performed before the *kiddushin*? The Mishneh La-Melekh (*Hilkhot Ishut* 10:2) discusses this question (see also Hagahot Mordekhai, *Kiddushin* 2:546). Similarly, *Acharonim* (see Ohr Sameach, *Hilkhot Ishut* 10; Avnei Nezer 38:17) discuss whether the *nisu’in* requires witnesses (*edim*). Some explain that if the *nisu’in* is simply an expression of their marital relations, then there would be no need for witnesses, while if it is initiated by another formal act, it may require witnesses.

The Shulchan Arukh (EH 55:1) cites a number of views regarding the definition of *nisu’in*/*chuppa*. R. Yosef Karo writes:

This seclusion (*yichud*) is known as entering into the *chuppa,* and it is called marriage in all places.

R. Moshe Isserles (Rema) adds:

There are those who say that the *chuppa* is not considered seclusion. Rather, the groom must bring her into his house for the purposes of marriage (*Ran* at the beginning of *Ketubot*).

And there are those who say that the *chuppa* is when they spread a cloth over her head at the time of the blessing, and there are those who say that a virgin's *chuppa* is when she goes out in a headdress, and for a widow when they become secluded.

The Rema concludes:

The simple custom nowadays is to call the *chuppa* a place where they place a cloth on poles and bring the groom and bride underneath in public, and he betroths her there and they say the blessings of betrothal and marriage, and then they walk them to their house and they eat together in a secluded place. This is how the *chuppa* is done now.

Incidentally, there are different customs regarding whether to arrange *yichud* after the wedding ceremony. Traditional Ashkenazic custom, as mentioned above, is that the *chatan* and *kalla* are secluded after the *chuppa*, in the presence of *edim*. Some Sephardim do not follow this practice.

***KETUBA***

The third central component of a halakhic marriage is the *ketuba*. What is the role of the *ketuba* in a Jewish wedding? What is its content, and what are the obligations of the husband?

**Origin and Nature of the *Ketuba***

What is the source and nature of the obligation to write a *ketuba*? The Talmud (*Ketubot* 10a) cites a debate between Rabban Shimon ben Gamliel and R. Nachman regarding the origin of the obligation of *ketuba*:

It was stated: R. Nachman said that Shmuel said in the name of R. Shimon ben Elazar: The Sages instituted the marriage contract for Jewish women: For a virgin two hundred dinars and for a widow one hundred dinars… Since [it the obligation of *ketuba*] is a rabbinic ordinance, she may collect only from the husband’s land of the most inferior quality.

Rabban Shimon ben Gamliel says: The marriage contract of a woman is an obligation by Torah law. And did Rabban Shimon ben Gamliel say that? Is it not taught [in a *baraita*, citing the versewith regard to a seducer]: “He shall pay money according to the dowry of virgins” (Ex. 22:16) – The Torah establishes that this fine will be like “the dowry of a virgin,” and that “the dowry of a virgin” will be like this fine, i.e., fifty silver *sela*, or two hundred dinars. From here the Sages based their determination that a woman’s marriage contract is an obligation by Torah law. Rabban Shimon ben Gamliel says: The marriage contract of a woman is not an obligation by Torah law, but is by rabbinic law. [The *gemara* resolves the contradiction between the statements of Rabban Shimon ben Gamliel:] Reverse [the attribution of opinions in this *baraita*, such that it is actually Rabban Shimon ben Gamliel who maintains that the *ketuba* is a Torah obligation].

Rabban Shimon ben Gamliel apparently maintains that the basic obligation of the *ketuba*, at least regarding a *betula*, is *mi-deoraita*. Just as the man who seduces a young woman (*na’ara*) and marries her must per a certain dowry of 200 *zuzim*, so whenever marrying a *betula* one must commit to a dowry of 200 *zuzim*. R. Nachman maintains that the obligation of *ketuba* is rabbinic, as the *gemara* (*Yevamot* 89a) says, “What is the reason that the Sages instituted a marriage contract in general, for an ordinary woman? So that she will not be demeaned in his eyes such that he will easily divorce her.”

Before Rabbeinu Gershom (11th century) prohibited polygamy and divorce without consent, the institution of *ketuba* indeed served to discourage men from hastily divorcing their wives, as they would have to pay the amount written in the *ketuba*. This led the Rema (EH 66:3) to suggest that “Nowadays, in our lands, in which men do not divorce their wives without consent due to the ruling of Rabbeinu Gershon ... one may be lenient regarding the writing of the *ketuba*, although the custom is not so, and one should not change [the custom].”

The *gemara* and *Rishonim* note that this debate may have numerous practical ramifications regarding the credibility of the husband to determine whether his wife has violated the terms of the *ketuba* (*Ketubot* 9a), the quality of land from which the *ketuba* is collected (ibid.), as well as whether the sum is determined by the currency’s value at the time of the signing or at the collection of the *ketuba* (ibid.). In addition, the *Rishonim* note that the required language of the *ketuba*, as well as the ultimate value of the coins referred to in the *ketuba*, may also be a function of this question.

Rabbeinu Tam (Tosafot, *Ketubot* 10a, *s.v. amar*) rules in accordance with Rabban Shimon ben Gamliel, noting that it is customary to write in the *ketuba* “which rightfully yours from the Torah” (*de-chazi likhi mi-deoraita*). Most *Rishonim* disagree with this view. The Rosh (*Ketubot* 1:19), for example, maintains that the obligation is only rabbinic. However, he maintains that the text of the *ketuba* should still refer to the money as being “*mi-deoraita*,” which may impact upon the manner in which the payment is performed (as if it is a Biblically created debt). Others argue that the entire obligation and its rules are *mi-derabbanan* (Rabbeinu Chananel, cited by the Rosh), and that the phrase “*mi-deoraita*” should not appear in the *ketuba* (Maharam, cited by Hagahot Maimoniot, *Hilkhot Ishut* 10:6).

Some *Rishonim* adopt a middle opinion, claiming that the general obligation to provide financial security in case of divorce or death of the wife is a Biblical obligation, but the details, including the amounts, are rabbinically prescribed.

**The Rambam’s Opinion**

The Rambam appears to advance a very important position. On the one hand, in a number of places he rules in accordance with the opinion that maintains that the *ketuba* obligation is rabbinic. For example, he writes (*Hilkhot* *Ishut* 10:7):

[A man] must write a marriage contract (a *ketuba*) [for his wife] before their entry into the *chuppa*; only afterward is he permitted to live with his wife… It was our Sages who ordained the requirement of [writing] a *ketuba* for a woman. [They instituted this obligation] so that it would not be a casual matter for [her husband] to divorce her

Similarly, he writes (*Hilkhot Ishut* 11:14):

Our Sages were those who instituted the fundamental requirement of a marriage contract for a woman, and they also instituted [the following consideration]: Whenever [a man] makes a claim that his wife was not a virgin, and the woman disputes his claim, [the husband's claim] is accepted. It is the woman's responsibility to bring support for her claim, not the man's.

This view is in accordance with R. Nachman, who rules that the *ketuba* obligation is *mi-derabbanan*.

However, elsewhere he implies that the *ketuba* has a different, Biblical origin. For example, in his introduction to *Hilkhot Ishut*, he writes the there is a positive commandment to “marry a woman, granting her the rights of the formal marriage contract *(ketuba)* and sanctifying the relationship through the rites of *kiddushin,*” and there is a prohibition to “have relations with a woman unless she has been granted a *ketuba* and the relationship is sanctified through the rites of *kiddushin*” (see also *Sefer Ha-Mitzvot*, neg. commandment 355 with Ramban).

The Rambam seems to maintain that while the formal obligation of *ketuba* is Biblical, its form and details are rabbinic. What is the nature and purpose of this idea? The Rambam appears to believe that the *ketuba* is not just a monetary obligation; it is a defining factor of the marriage.

The role of the ketuba may reflect the difference between the mitzva of marriage and the prohibition of “*panuy haba al ha-penuya,*” according to the Rambam. The Rambam does not only prohibit prostitution (*kedeisha*); all relationships that are not first formalized by *kiddushin* and *ketuba* are by definition inappropriate and therefore prohibited. In other words, *kiddushin*, and the *ketuba*, in its Biblical sense, are meant to transform a fleeting sexual relationship into a relationship based on obligation and responsibility. That is also why, according to the Rambam, *pilagshot* are prohibited.

This insight contributes much to our understanding of marriage and its relationship to the *ketuba*.

**Content of the *Ketuba***

The *ketuba* is made of up numerous sections. There are four financial obligations mentioned in the *ketuba*: the basic *ketuba* obligation (*ikar ketuba*), the *tosefet ketuba* (the additional obligation), the *nedunia* (dowry) that the woman brings into the marriage, and the husband’s acceptance of financially responsible for the *nedunia* (*tosefet nedunia*). In addition, the *ketuba* testifies to the marriage and the husband’s commitment to bear responsibility for the *ketuba*. Finally, the *ketuba*, like other legal documents (*shetarot*), includes the names of the bride and groom, the date, and the signatures of those who witnessed the groom’s acceptance of the *ketuba* obligations.

1. **Testimony to the Marriage**:

The *ketuba* begins with an account of the marriage and the marital obligations that the husband accepts upon himself:

…The bridegroom [...] son of [...] said to this [...] daughter of [...], “Be my wife according to the law of Moses and Israel. I will work honor, feed and support you in the custom of Jewish men, who work, honor, feed, and support their wives faithfully.”

The *ketuba* relates how the husband betroths his wife, and commits to “honor, feed, and support [her] in the custom of Jewish men.”

This part of the *ketuba* appears to testify to the marriage of the couple. Some *Acharonim* suggest that the *ketuba* may therefore not be written and signed the day before the wedding, as it would appear to be dishonest. Others insist that we should not relate to this section as if it were testimony. Indeed, at most weddings, the *ketuba* is signed and the husband accepts these obligations upon himself before the wedding.

2. **The Basic sum of the *Ketuba***

The *ketuba* describes the basic obligation of the *ketuba*. The *mishna* (*Ketubot* 1:2) teaches that the *ketuba* of a *betula* (virgin) is 200 *zuz*. It is customary to write the *ketuba* for 200 *zuz* for almost all women who are married for the first time, although in certain circumstances some are accustomed to write “*iteta*” (woman) instead of “*betulta*” (virgin) to avoid blatant dishonesty. The *ketuba* for an *almana*, *gerusha,* or *giyoret* (widow, divorcee or convert) is 100 *zuz*.

I will give you the settlement of 200/100 silver *zuzim*, which is due you according to [Biblical] law, as well as your food, clothing, necessities of life, and conjugal needs, according to the universal custom.

The value of 100 or 200 *zuz* in modern currency is the subject of great debate. The *Shulchan Arukh* (EH 66:6) rules that 200 *zuz* is approximately 120 grams of silver, while the Rema rules that is equals 960 grams.

3. **Dowry (*Nedunia*) and** ***Tosefet Nedunia***

The Rambam (*Hilkhot Ishut* 16:1) describes two types of dowry, the property that the woman brings into the marriage. One type, known *as nikhsei tzon barzel*, is recorded in the *ketuba*. The husband has full use of this property, but also takes full responsibility for it in the case of loss. Another type, *nikhsei melug*, is not recorded in the *ketuba*. Although the husband benefits from the profits of *nikhsei melug*, it belongs to the wife and remains her sole responsibility.

In the Middle Ages, Ashkenazic communities began writing a uniform amount as the *nedunia*, so as not to embarrass those who did not have a lot of property to bring into a marriage (Raavan, *Hilkhot Ketubot*,s.v. *af al pi*; Maharam of Rothenburg 4:673):

Ms. [...] agreed, and became his wife. This dowry that she brought from her father’s house, whether in silver, gold, jewelry, clothing, home furnishings, or bedding, Mr. [...], our bridegroom, accepts as being worth [...] silver pieces (*zekukim*).

The groom commits to an additional sum of money, which covers his responsibility for the dowry.

4. ***Tosefet Ketuba***

It is customary for the groom to commit to an additional sum, known as the “*tosefet ketuba*.” In diaspora communities, the *tosefet* usually appears as “100 *zekukin kesef*.” In many communities in Israel, it is customary to write a specific *shekel* amount, often corresponding to a year’s salary. Many authorities caution against writing an exorbitant sum, which may be viewed as an *asmakhta* and not an honest commitment.

Our bridegroom, Mr. [...] agreed, and of his own accord, added an additional [...] silver pieces (*zekukim*) paralleling the above. The entire amount is then [...] silver pieces (*zekukim*).

The groom then summarizes the total amount that the groom accepts upon himself.

5. At the end of the *ketuba*, the groom backs up his commitment with financial insurances.

Mr. [...] our bridegroom made this declaration: “The obligation of this marriage contract (*ketuba*), this dowry, and this additional amount, I accept upon myself and upon my heirs after me. It can be paid from the entire best part of the property and possessions that I own under all the heavens, whether I own [this property] already, or will own it in the future. [It includes] both mortgageable property and non-mortgageable property. All of it shall be mortgaged and bound as security to pay this marriage contract, this dowry, and this additional amount. [It can be taken] from me, even from the shirt on my back, during my lifetime, and after my lifetime, from this day and forever.”

If necessary, the *ketuba* may be collected from the groom’s property, and even from property that he will acquire in the future.

6. Finally, the witnesses testify that the groom performed a *kinyan*, through which he commits to the obligations that appear in the *ketuba*.

This *kinyan*, known as a *kinyan sudar*, is a form of a *kinyan chlipin*. In a traditional *kinyan chalipin*, the *mokher* and *loke’ach* (seller and buyer) perform a trade; the *loke’ach* gives a *keli* (vessel/object) to the *mokher*, and the *mokher* transfers ownership of the object/property. The Rema (see Shulchan Arukh, CM, *Hilkhot Mekach U-Memkar* 195:3) writes that in the case of *matanot* (gifts), it is common for the witnesses to give the *keli* to the *mokher*, and for the *mokher* to then give the gift, legally, to the recipient.

In the case of the *ketuba*, the rabbi, serving as the agent of the bride, gives the *keli* (often a cloth, or pen) to the groom, who thereby legally commits to that which is written in the *ketuba*. The witnesses observe this *kinyan* and then sign the *ketuba*.

The witnesses sign their names, testifying that they witnessed the proper execution of the *ketuba*.

And we have completed the act of acquisition from Mr.[...] son of [...] our bridegroom, to Ms. [...] daughter of [...], regarding everything written and stated above, with an article that is fit for such a *kinyan*. And everything is valid and confirmed.