

Laws of Marriage Chapter 1 (Auto Translated)

English

Auto Translated

Shiur Overview

Summary of the Shiur on Sefer Nashim, Hilchot Ishut, Chapters 1-2

Introduction to Sefer Nashim

The Verse for Sefer Nashim

The Rambam begins Sefer Nashim with the verse (Mishlei 14:27): "Torat chacham mekor chayim lasur mimokshei mavet."

Peshat: The Rambam begins each sefer with "B'shem Hashem El Olam" (based on "Vayikra Avraham b'shem Hashem El Olam"), and then a verse that serves as a title for the sefer.

Chiddushim and Biurim:

- The style is similar to midrashim that begin with "patach lah mehai kra" — a verse (often from Tehillim) that brings out the subject of the parsha.

- The verse is connected to Kohelet (7:26): "Motzeh ani mar mimavet et ha'isha asher hi metzudim." The subject of nashim is a "dangerous" thing — if one gets involved in matters of nashim without order, the head becomes filled with improper thoughts. The advice against this is Torah — "torat chacham mekor chayim" — because when the head is full of wisdom, the yetzer hara cannot enter.

- **Chiluk:** Kohelet doesn't mean that every woman is "mavet" — rather the one who involves himself with nashim **shelo b'ofen mesuddar**. Kohelet himself says **both** sides: "motzeh ani mar mimavet et ha'isha" **and** "re'eh chayim im isha asher ahavta." If one conducts himself with love al pi Torah — it is "re'eh chayim" (= torat chacham mekor chayim). If not — it is "mar mimavet" (= mokshei mavet).

- The word "makor" has a connection to a woman herself — "vayehi mekorech baruch."

- **Comparison with Sefer Zemanim:** Sefer Zemanim was mostly mitzvot asech (positive — ahava, Shabbat, Yom Tov). Sefer Nashim is more focused on **being saved from obstacles** — "lasur mimokshei mavet." Although there is also a positive side — mitzvot chatunah, periyah u'reviyah — the **essence** of Sefer Nashim is more "geder" — definitions and boundaries. (The actual arayot are in Sefer Kedushah, not here.)

Structure of Sefer Nashim — Five Halachot

The Rambam divides Sefer Nashim into five halachot: Hilchot Ishut, Hilchot Gerushin, Hilchot Yibum VaChalitzah, Hilchot Na'arah Betulah, Hilchot Sotah.

Chiddushim:

- **Hilchot Ishut** is the normal case — kiddushin, ketubot, periyah u'reviyah, shalom bayit. All other halachot are **heichi timtzi** — when problems arise (gerushin, yibum, motzi shem ra, ones u'mefateh, sotah).

- The Rambam's order is **different from the Mishnah**: in Seder Nashim in the Mishnah, Gittin comes **before** Kiddushin (the Ribbono Shel Olam makes refuah l'makah kodem). The Rambam, however, goes **first Ishut** (Kiddushin) and **then** Gerushin — a more logical order.

- In Seder Nashim of the Mishnah there are also Nedarim and Nazir, which the Rambam placed in Sefer Hafla'ah. But a bit of nedarim appears in Hilchot Ishut — not heter nedarim, but dinim of "ish mekadash et isha she'yesh lo nedarim" and hafarat nedarim of the husband for the wife.

- The name "Nashim": in all other halachot the Rambam speaks to **men**. Here he speaks to men **about** women — about their connection with women. "Ishut" means more the **concept** of the connection between ish and isha.

- [Digression: connection between Sefer Zemanim and Sefer Nashim] — Sefer Zemanim ends with shalom bein ish l'ishito (end of Hilchot Chanukah), which is a good introduction to Sefer Nashim. Also, mitzvot onah connects "zemanim" with "nashim" — the word "onah" means a **time**, and the chiddush is that a person cannot be with his wife whenever he feels like it, but there must be **keviyut**.

Structure of Hilchot Ishut (25 Chapters)

Peshat: Hilchot Ishut includes: definitions (gadol, na'ar, bogeret, ayilonit), hilchot kiddushin, hilchot ketubah (including obligations of husband and wife, mitzvot periyah u'reviyah, shalom bayit), and a bit of nedarim and mumin.

Chiddush: The Rambam's category "Ishut" is a chiddush — in the Mishnah there is no such concept. In the Mishnah there are two separate masekhtot: Kiddushin and Ketubot. Periyah u'reviyah is in Yevamot. The Rambam created a new logical category that unifies all aspects of the normal ishut-connection.

Introduction of the Rambam — The Four Mitzvot of Hilchot Ishut

The Rambam says: "Yesh bichlalah arba mitzvot — shtei mitzvot asech u'shtei mitzvot lo ta'aseh: (1) lissa isha b'ketubah u'vekiddushin, (2) shelo tavo al isha b'lo ketubah v'kiddushin, (3) shelo yimna she'er kesut v'onah, (4) lifrot u'lervot mimenu."

Peshat: Hilchot Ishut contains four mitzvot — two asech and two lo ta'aseh — which deal with having a wedding with ketubah and kiddushin, the prohibition of bi'ah without ketubah/kiddushin, the prohibition of withholding she'erah kesutah v'onatah, and periyah u'reviyah.

Chiddushim and Hesbarot:

1. **What does "ketubah" mean in "lissa isha b'ketubah u'vekiddushin"?** The Rambam internally (Chapter 12) holds that the essence of ketubah is mid'orayta, and he says "asarah devarim, sheloshah hem min haTorah" — meaning she'erah

kesutah v'onatah. But "ketubah" here does **not** mean she'erah kesutah v'onatah. The sevara: she'erah kesutah v'onatah is a natural obligation that comes automatically when one has a wedding — that is not the chiddush of kiddushin. Instead, "ketubah" here means the concept of a **formal commitment** — that one has a wedding with order, with a kinyan, not just a random relationship. The proof: in the Gemara it says that a pilegash is "b'lo ketubah," and the Rambam holds that pilegash is forbidden from "lo tihyeh kedeshah" (see the dispute between Rambam and Ra'avad). "B'ketubah" thus means the opposite of pilegash — with commitments, with order, not in a casual manner. It is also noted that in other places in the introduction it only says "liv'ol b'kiddushin" without the word ketubah, which makes it even more unclear.

2. The order of the four mitzvot: The Rambam orders the mitzvot not according to Sefer HaMitzvot (where aseah and lo ta'aseh are separate), but according to a logical "story" — first having a wedding (aseh), then the prohibition of without a wedding (lo ta'aseh), then once one has a wedding — the obligation of she'er kesut v'onah (lo ta'aseh), and finally periyah u'reviyah. The precision "lifrot u'lervot **mimenu**" — from the wife whom one was mekadesh — shows that the Rambam lays down the normal order, although periyah u'reviyah is technically not dependent on kiddushin (one can fulfill it without kiddushin). For comparison: Sefer HaChinuch, which goes according to the order of the verses, has periyah u'reviyah as the first mitzvah in the Torah.

Chapter 1 — The Introduction: Twenty Names

Peshat: The Rambam explains at the end of Chapter 2 that the first two chapters explain "esrim shemot" — twenty concepts/terms (shem davar / nouns) — through which one will understand all of Hilchot Ishut.

Chiddushim:

1. **"Shem" = shem davar, not a name:** "Esrim shemot" means twenty concepts/terms, not names of people. These are the fundamental concepts that one must understand for Hilchot Ishut.

2. **Why the Rambam gives a historical introduction:** The first "shem" is "kiddushin," which is also a mitzvah. The first halachot serve a double function: (a) explaining the mitzvah aseah of kiddushin, (b) defining the concept "kiddushin" itself. Because kiddushin is not a natural concept — it is a chiddush of the Torah — the Rambam must explain through history where the concept comes from, what it changed.

3. **Why the Rambam doesn't make a separate glossary:** In other halachot (for example Hilchot Shabbat — choresh, zorea, kotzer) the Rambam makes a separate list. Here, however, the concepts are explained internally within the halachot themselves. Perhaps because here begins "lomdut" — chalut-related concepts like "mekudeshet," "zocheh" — which are different from practical/mishpat-related halachot that have been learned until now in the Rambam.

Chapter 1, Halacha 1 — Before Matan Torah

The Rambam says: "Kodem matan Torah, hayah adam poge'a isha bashuk, im ratzah hu v'hi lissa otah, machnishah l'veito u'vo'elah beino l'vein atzmo, v'tihyeh lo l'isha."

Peshat: Before matan Torah, if a man met a woman in the street, and both wanted — he took her home, was bo'el her privately, and she became his wife.

Chiddushim:

1. **"Ratzah hu v'hi" — both must agree:** The language "im ratzah hu v'hi" shows that before matan Torah there is no such thing that the man is mekadesh the woman (without her consent in a formal sense). Both must equally agree. "Lissa otah" doesn't mean that he does something to her, but "lehiyot nesu'im" — they want to live together. Both have the right to leave.

2. **"Beino l'vein atzmo" — a deficiency, not a virtue:** "Beino l'vein atzmo" means **not** tzeniut as a virtue, but that it is a **deficiency** — it means "shelo lifnei edim," "shelo yichadah lifnei edim." No one needs to know about it. Two people met, even without witnesses, he goes home, and she becomes his wife. This is the difference from after matan Torah where kiddushin must be with witnesses.

3. **Eshet ish by Bnei Noach:** The prohibition of eshet ish is already from the seven mitzvot of Bnei Noach — once a man has been meyached a woman and taken her home, there is already an issur eshet ish. The Maggid Mishneh also says that a Ben Noach doesn't have kiddushin — it becomes eshet ish "b'yichud b'alma." But the Rambam here didn't come to explain hilchot Bnei Noach, but to give the historical background for the chiddush of kiddushin.

Halacha 1 (continued) — "Nitztavu Yisrael she'im yirtzeh ha'ish lissa isha yikneh otah techilah bifnei edim v'achar kach tihyeh lo l'isha"

The Rambam says: "Nitztavu Yisrael she'im yirtzeh ha'ish lissa isha, yikneh otah techilah bifnei edim, v'achar kach tihyeh lo l'isha."

Peshat: After the Torah was given, a mitzvah was added for Jews: if a man wants to take a woman, he must first make an act of kinyan before witnesses, and only then does she become his wife.

Chiddushim:

1. **The chiddush of kiddushin is the "ma'amad kinyan":** The main chiddush of kiddushin is not just that one must say "I want to have a wedding" — because such a desire always existed (ratzah hu v'hi). The chiddush is that it becomes a formal **ma'amad kinyan**: one calls two witnesses, one says "hareini mekadesh otach" or "harei at mekudeshet," and through this it becomes an official kinyan.

2. **"Bifnei edim" is a basic definition of kiddushin, not just a matter of proof:** What the Rambam writes "bifnei edim" is not just so that people should know what happened, but it is a **fundamental definition** of the kinyan itself. From here perhaps comes out the lomdut that **edut in kiddushin is "l'kiyum"** (not just l'birur). Because acquiring beino l'vein atzmo is "lo ho'il chacham b'takanato" — it is exactly like just saying that one wants to have a wedding, without any formal act.

3. **"V'achar kach tihyeh lo l'isha" — the kinyan itself makes her his wife:** In the stage of kiddushin it no longer says "bo'el" — the kinyan itself, without bi'ah, makes her his wife. This is a chiddush relative to the previous reality where "bo'elah" was the entire act.

4. **"Nitztavu Yisrael" — excluding Ben Noach:** The language "nitztavu Yisrael" means that Bnei Noach remained with the previous order (from Halacha 1 — "bo'elah beino l'vein atzmo"). All of the Torah is for Yisrael, and hilchot Ben Noach are in Hilchot Melachim.

Halacha 1 (continued) — The Verse "Ki yikach ish isha u'va aleha"

The Rambam says: "Shene'emar ki yikach ish isha u'va aleha."

Peshat: The source for the din of kiddushin before nisu'in.

Chiddushim:

1. **Why does the Rambam bring the verse from motzi shem ra, not the verse from get?** The Gemara in Kiddushin usually brings the verse "ki yikach ish isha u'v'alah" (from parshat get), but the Rambam brings the verse "ki yikach ish isha u'va aleha" (from motzi shem ra). The Rambam often brings a different verse than the Gemara, because he seeks a verse where the peshat of the verse is a better proof. But it remains in doubt how the verse is a better proof. Both verses are in parshat Ki Teitzei, and the verse that the Rambam brings is not the earlier one in order.

Halacha 1 (continued) — Three Languages: Kinyan, Lekichah, Kiddushin/Eirusin

The Rambam brings three languages for the act: "yikneh otah" (kinyan), "ki yikach" (lekichah from the verse), and "hen hanikra'in kiddushin o eirusin b'chol makom" (leshon chachamim).

Peshat: The Rambam builds a dictionary of concepts — kinyan, lekichah, kiddushin, eirusin — which all designate the same act.

Chiddushim:

- **Kiddushin = leshon chachamim:** As the Gemara explains, kiddushin means "asurah l'chol ha'olam k'hekdes" — she becomes forbidden to everyone else like hekdes. Eirusin is simply leshon haTorah. Both languages express a concept of exclusivity — the woman is exclusive to the man.

- **Lekichah in peshuto shel mikra vs. leshon chachamim:** In peshuto shel mikra, "lekichah" means the hachnasah l'veito to be bo'el, as we see from "ki yikach ish isha u'va aleha" and "arash isha v'lo lekachah" (he didn't take her to be bo'el). But chachamim learned that "lekichah" in "ki yikach" means a kinyan — some formal lekichah, not just the technical entering into the home.

Halacha 1 (continued) — "V'isha shenikneit b'echad misheloshah devarim elu hi hanikre'et mekudeshet o me'oreset"

Chiddush — kiddushei bi'ah and a question on the Rambam's explanation: If the main point of kiddushin is that it should be a formal kinyan (not just two people who decide), kiddushei bi'ah is somewhat of a question — because one can do bi'ah without a formal kinyan. The answer: by kiddushei bi'ah witnesses are involved — one is meyached bifnei edim (not bo'el bifnei edim literally). This shows that there are already other people involved, which makes it a formal act.

Halacha 2 — "V'likuchin elu mitzvot asech shel Torah hem, u'v'echad misheloshah devarim ha'elu ha'isha nikneit: b'kesef o b'shtar o b'vi'ah, u'sheloshtan din Torah"

The Rambam says: "V'likuchin elu mitzvot asech shel Torah hem. U'v'echad misheloshah devarim ha'elu ha'isha nikneit: b'kesef, o b'shtar, o b'vi'ah. U'sheloshtan din Torah."

Peshat: The kiddushin are a mitzvot asech min haTorah. A woman is acquired through one of three ways: kesef, shtar, or bi'ah. All three are din Torah.

Chiddushim:

1. **The girsa dispute — kesef midivrei sofrim or din Torah:** There are two versions in this Rambam. In the **earlier edition** it said that kesef is **midivrei sofrim**, and shtar and bi'ah are **mid'orayta**. On this the **Ra'avad** strongly objected ("amar Avraham, zeh shibush"). In the **later edition** the Rambam rewrote "**u'sheloshtan din Torah**".

2. **The Rambam's approach to d'orayta/d'rabanen:** The Rambam's unique approach: "**D'orayta**" means by the Rambam what the Ribbono Shel Olam said to Moshe Rabbeinu — halacha l'Moshe miSinai, or what is stated explicitly in the Torah. "**Divrei sofrim**" means what the chachamim learned through derashot. Even if a derashah learns out a din, if it is a **chiddush** of the sofrim (not a kabbalah from Moshe), the Rambam calls it "divrei sofrim." But this does **not** mean that it is not obligatory min haTorah — it only means that it is not written out clearly.

3. **The Rambam's rule:** If he finds in the Gemara that it says about a din "min haTorah," he assumes it is halacha l'Moshe miSinai (even if it is only a derashah — the derashah is only an asmachta). If he does **not** find in the Gemara that it says "min haTorah," he calls it divrei sofrim.

4. **Why did the Rambam in the first edition write that kesef is midivrei sofrim:** The Rambam understood a Gemara in Kiddushin that there is a distinction between kesef relative to shtar and bi'ah — on shtar and bi'ah it says in the Gemara "mid'orayta," but on kesef not. According to his rule he said kesef is divrei sofrim.

5. **The Lechem Mishneh and Maggid Mishneh's explanation even according to the first edition:** Even when the Rambam wrote that kesef is midivrei sofrim, he does **not** mean that kiddushei kesef are not effective min haTorah. He only means that it is not written out clearly in the Torah — the sofrim learned it out from a kal vachomer or gezeirah shavah. But it is certain that one becomes **eshet ish min haTorah** through kiddushei kesef.

6. **Why did the Rambam change to "sheloshtan din Torah" — two approaches:**

- **Approach A:** The Rambam continues to hold by his approach that kesef is divrei sofrim, but because people didn't understand his intention, he changed the language.

- **Approach B:** The Rambam himself **relearned** the Gemara and saw that his earlier understanding of the Gemara was not correct — as the Ra'avad argued. Therefore he actually changed his opinion.

The Rambam wrote a **teshuvah** where he justified the first version, but later he did change — which can support the

second approach.

Halacha 2 (continued) — Arusah is an Eshet Ish without Hachnasah L'veito

The Rambam says: "U'cheivan shenikneit ha'isha v'na'aseit mekudeshet, af al pi shelo niv'elah v'lo nichnasah l'veit ba'alalah, harei hi eshet ish. V'haba aleha chutz miba'alalah chayav mitat beit din. V'im ratzah l'garesh tzrichah get."

Peshat: After kiddushin have been made, even without bi'ah and without hachnasah l'veito, she is already a complete eshet ish — a second person is chayav mitah, and one needs a get to divorce.

Chiddushim:

1. **Kiddushin takes away, not just adds:** In Halacha 1 it looked like kiddushin adds something (a formal kinyan). Here we see that kiddushin also takes away — one no longer needs the "hachnasah l'veito" that used to be before matan Torah. Once there is kiddushin, that alone is enough instead of all other things.

2. **"Lo nichnasah l'veit ba'alalah" — simple meaning:** A woman when she is single lives at her father's; the man brings her into his home. Usually this would have been the essence of ishut. Kiddushin innovates that she can still live at her father's, but she already belongs to him.

3. **Arusah vs. nesu'ah — distinctions:** Regarding the things that the Rambam lists (obligation of mitah, needs a get) an arusah is exactly like a nesu'ah. But there are distinctions — for example, if she married a kohen, whether she may already eat terumah.

4. **The man himself with his arusah:** The man himself also may not be bo'el his arusah — it is at least an issur d'rabanah ("asur lo lavo al arusato"). But a second person is chayav mitah. [Note: if he is bo'el in a house that can be called "beito," that itself can be chuppah.]

5. **Today:** According to halacha one also needs sheva berachot — "kallah b'lo berachah asurah l'ba'alalah" — this is an additional condition for nisu'in.

6. **Why didn't the Rambam bring the verse "ki yikach ish isha u'v'alalah"?** Once he says "tzrichah get," the verse from "ki yikach ish isha u'v'alalah... v'chatav lah sefer keritut" would have been very fitting. The answer: in Hilchot Gerushin the Rambam writes this practically — there is also an introduction/hakdamah there.

Halacha 3 — Before Matan Torah: Kedeshah

The Rambam says: "Kodem matan Torah hayah adam poge'a isha bashuk, im ratzah hu v'hi notein lah secharah u'vo'el otah al am haderech v'holech lo, v'zo hi hanikre'et kedeshah."

Peshat: Before matan Torah, if a man and a woman both wanted, he paid her, had a one-time bi'ah, and left. Such a woman is called "kedeshah."

Chiddushim:

1. **Yehudah and Tamar as a model example:** The example for this is Yehudah with Tamar — he paid, and it is implied in the verse that it was legitimate. If one pays it is fine; if one doesn't pay, it is a violation (= illegal). The Rambam's

language "al am haderech" is a hint to the story of Yehudah and Tamar.

2. **Before matan Torah — what was forbidden?** Ones (= rape) was apparently always a sin, even before matan Torah. In the generation of the flood the Ribbono Shel Olam was angry — perhaps about ones, perhaps about eshet ish. But once there is ratzon (both agree), it is called "kedeshah" — which before matan Torah was permitted.

3. [Digression: **"Vayir'u bnei ha'Elokim et bnot ha'adam" (Bereishit 6):** The Targum translates "bnei ha'Elokim" = bnei hashoftim/bnei hachashuvim, and "vayikchu lahem nashim mikol asher bacharu" — they grabbed women. The flood came because of rape (ones). Eshet ish is also a branch of rape, because by eshet ish there is always an opposition of two wills — the husband doesn't want. Rape is a type of theft: simple rape is theft from the woman, and eshet ish is theft from the husband — even if the woman agrees, the husband has ownership.]

4. **Etymology of "kedeshah" and "kiddushin":** Kedeshah is very similar to kiddushin. Kiddushin means meyuchad l'oto ish, and kedeshah means meyuchad lihiyot liznot — for rent. The distinction is between renting women and buying women — it's all kinyan, just a rent-kinyan.

5. [Digression: **Was there a concept of yichud/ishut before matan Torah without bi'ah?**] By Ben Noach, if two are meyached, there is "ratzah hu v'hi," but still without bi'ah and without living together — it may be that there is already something of a concept of ishut. But the Torah said that there must be a kinyan. The halacha presumably assumes that there must actually be a be'ilah (by Ben Noach), but in the Rambam this is not entirely clear.

Halacha 3 (continued) — "Mishnitnah Torah ne'esrah hakedeshah"

The Rambam says: "Mishnitnah Torah ne'esrah hakedeshah, shene'emar lo tihyeh kedeshah mibnot Yisrael. Lefikach kol habo'el isha l'shem zenut b'lo kiddushin — lokeh min haTorah, mipnei sheba'al kedeshah."

Peshat: After matan Torah, kedeshah (bi'ah without kiddushin) is forbidden min haTorah, and one receives malkot for it.

Chiddushim:

1. **Great dispute — what does "kedeshah" mean?** The Rambam means: **every** bi'ah without kiddushin — even meyuchedet l'ish echad — is "be'ilat zenut" and transgresses "lo tihyeh kedeshah." This means that **pilegish is forbidden** according to the Rambam. "Be'ilato be'ilat zenut" (language of the Gemara) means not only derech akrai, but every bi'ah without kiddushin.

2. **The Ra'avad's position:** The Ra'avad strongly disagrees. He says: kedeshah means only a **mufkeret l'chol adam**. But a woman who is meyuchedet l'ish echad (pilegish) — "ein bah lo malkot v'lo issur lav, v'hi hapilegish haketuvah bapasuk." **Pilegish is permitted** according to the Ra'avad. The Ra'avad explains pilegish — "pi shegal" (an explanation of the word).

3. **Three levels of bi'ah:**

- (a) **B'lo ratzon** (ones/rape) — always forbidden, even before matan Torah.

- (b) **Kedeshah** — with ratzon and payment, but without keviyut (bashuk, al am haderech) — before matan Torah permitted, after matan Torah forbidden mid'orayta.

- (c) **Meyuchedet l'ish echad without kiddushin** (pilegsh) — here is the dispute between Rambam/Ra'avad.

4. **Rambam's reasoning — against "fake kiddushin"**: The Rambam knew the Muslim custom of "wedding for two hours" (mut'ah in Iran), where one has a wedding for an hour and immediately a get — which is essentially "man dehav l'yoma" (kiddushin l'zman). The Rambam held that this is "zenut with a hechsher" — fake kiddushin. Therefore the Rambam learned that the Torah requires true kiddushin with witnesses, a whole order, not any fictitious arrangement. "Notein lah secharah" is such fictitious kiddushin.

5. **Practical difference regarding eshet ish**: An important practical difference: by a **Ben Noach**, if he brings a woman to his home (hachnasah l'veito), she becomes an eshet ish, and another Ben Noach is chayav mitah for her. But by a **Jew** — as long as he hasn't made kiddushin, she is **not** eshet ish, and a second person doesn't transgress eshet ish (although it's not proper). The distinction: by Ben Noach, "hachnasah l'veito" already made a kinyan; by a Jew one needs kiddushin.

6. ****Halacha l'ma'aseh**

Halacha l'ma'aseh: Most commentators learn that the Rambam holds that even yichud l'atzmo (meyuchedet l'ish echad) transgresses "lo tiyeh kedeshah" — pilegsh is forbidden. The dispute is brought in Shulchan Aruch, where they also bring the position of the Ra'avad that it is permitted. In practice, one should ask the local rabbis.

Halacha 4 (approximately) — Definition of "Ervah"

The Rambam says: "Kol she'asar bi'ato baTorah v'chayav al bi'ato karet, v'hen ha'amurot b'parshat Acharei Mot, hen hanikra'in arayot, v'chol achat mehen [nikre'et] ervah, k'gon em, achot, bat, v'chayotza bahen."

Peshat: The Rambam defines the concept "ervah" — every woman whose bi'ah the Torah forbade and one is chayav karet, as it says in parshat Acharei Mot (which we read at minchah Yom Kippur), is called "ervah" (plural: arayot).

Chiddushim:

- The Rambam brings here definitions of words that he will later use. The main relevant point: in Hilchot Kiddushin the Rambam will rule that **"b'ervah ein tofsin kiddushin"** — kiddushin doesn't work on arayot. Therefore one must first know what "ervah" means. Although Hilchot Arayot itself is in Hilchot Issurei Bi'ah, the definition is needed here for Hilchot Ishut/Kiddushin.

- The Rambam writes for people who already know the entire Chumash, therefore a brief reference to parshat Acharei Mot suffices.

Halacha 5 (approximately) — Definition of "Sheniyot L'Arayot"

The Rambam says: "V'yesh nashim acherot she'asurot mipnei hakabbalah v'isuran midivrei sofrim, v'hen

hanikra'ot sheniyot, v'chol achat mehen [nikre'et] sheniyah. V'esrim isha hen."

Peshat: There are other women who are forbidden "mipnei hakabbalah" — this is a prohibition d'rabanah. They are called "sheniyot" (singular: sheniyah), and there are twenty such women.

Chiddushim:

1. **"Mipnei hakabbalah" — a strange language**: "Kabbalah" usually means something that is received from Moshe Rabbeinu (Torah she'be'al peh), but here we're talking about a prohibition d'rabanah! If "mipi hakabbalah" would mean like "mipi hashemuah" — a halacha l'Moshe miSinai — it would be d'orayta. Therefore the Rambam means "mikabbalat hachachamim" — one should accept from the chachamim, not that the chachamim received from Moshe.

2. **Two versions — "mipnei hakabbalah" vs. "mipi hakabbalah"**: "Mipnei hakabbalah" (with a nun) is specifically better than "mipi hakabbalah," because "mipi hakabbalah" would be exactly like "mipi hashemuah" which means halacha l'Moshe miSinai — and that is not the case. The text is according to Rav Shilat's version.

3. **Sheniyot l'arayot as "geder"**: Sheniyot l'arayot is the classic example of a rabbinic decree as "mishmeret l'mishmarti" — a protection for a protection, as it says in the thirteen principles of Torah.

List of Sheniyot L'Arayot (Halachot 2-3)

The Rambam lists the twenty sheniyot, with distinctions between "ein lah hefsek" (goes forever) and "bilvad" (only that generation).

The Twenty Sheniyot:

1. **Em imo — "ein lah hefsek"**: Em em imo ad ma'alah ma'alalah asurah.

- [Digression:] It is said humorously that according to the Rambam who brings halachot l'Mashiach, it will be relevant at techiyat hameitim.

2. **Em avi imo — "bilvad"**: Only one generation added.

3. **Em aviv — "ein lah hefsek"**: Em em aviv ad ma'alah ma'alalah asurah.

4. **Em avi aviv — "bilvad"**.

5. **Eshet avi aviv — "ein lah hefsek"**: Even eshet Yaakov Avinu is forbidden upon one of us — Bilhah and Zilpah would have been forbidden to all Jews.

- [Digression:] Reuven encountered Bilhah, and "yechi Reuven v'al yamut" — it was already glossed over in Birkat Moshe.

6. **Eshet avi imo — "bilvad"**.

General rule in the distinctions: In the **father-line**, when the prohibition goes through aviv, it goes forever ("ein lah hefsek"). When it goes through **imo**, it is only one generation ("bilvad").

7. **Eshet achi ha'av min ha'em**: In the Torah it only says eshet achi ha'av (from the father), the chachamim added eshet achi ha'av min ha'em.

8. **Eshet achi ha'em (bein min ha'em bein min ha'av)**: In the Torah it only says eshet achi ha'av, the chachamim added eshet achi ha'em — both types.

9. **Kalat beno — "ein lah hefsek"**: In the Torah it only says kalato, the chachamim added kalat beno, and ad sof ha'olam — "ad shetihyeh eshet echad mimenu sheniyah al Yaakov Avinu." - It is asked why we always say "Yaakov Avinu" and not "Avraham Avinu" — perhaps because Avraham Avinu didn't yet have the din of Yisrael.

10. **Kalat bito — "bilvad"**.

11. **Bat bat beno — "bilvad"**.

12. **Bat ben beno — "bilvad"**.

13. **Bat bito — "bilvad"**.

14. **Bat ben bito — "bilvad"**.

- **Dispute between Rambam and Ramban**: The Rambam holds that with grandchildren it only goes until great-grandchildren (four generations). The **Ramban** holds that bat bat bat beno is also forbidden — it goes further. The **Shulchan Aruch** rules like the Ramban that it is forbidden. This is **relevant in practice**.

- [Digression:] It is said humorously that a Jew who reaches one hundred years old should rejoice — "a few more prohibitions have come along." In earlier times people married younger, therefore it wasn't so far-fetched.

15. **Bat ben ben ishto — "bilvad"**: A step-grandchild through males.

16. **Bat bat ben ishto — "bilvad"**: Through females.

17. **Em avi avi ishto**.

18. **Em em em ishto**.

19. **Em av em ishto**.

20. **Em av ishto**.

These are ascents through the wife's family.

Sheniyot She'ein Lahen Hefsek — The Rule

The Rambam says that four types of sheniyot have no hefsek: Em ha'em ad l'ma'alah (mother's mother without end), em ha'av ad l'ma'alah, eshet avi ha'av ad l'ma'alah (grandfather's wife without end), and eshet ben beno ad l'matah. **All other sixteen sheniyot only go until four generations.**

Chiddushim:

- Sheniyot are from the same category as arayot — a matter of prohibition of family closeness — just without karet. The **Moreh Nevuchim** is quoted, where the Rambam explains that the reason for issurei kirvah is that a person should not live with someone who is around him in the house and it is easy to come to sin. But there is another type of prohibition — **issurei kedushah** — which is forbidden for other reasons, not because she is a close relative.

- It is noted that we went quickly through the sheniyot, and practically no one will remember which grandmothers are forbidden. The Rambam brings this here because he uses the concept "sheniyah" later in Hilchot Kiddushin; the main explanation will be in Hilchot Issurei Bi'ah.

Halacha 4-5 (approximately) — Issurei Lavin / Issurei Kedushah

The Rambam says: "Kol she'asar bi'ato baTorah v'lo chayav alav bi'ato karet" — every bi'ah that the Torah forbade but without karet, is forbidden with a lav,

and is called "issurei lavin" or "issurei kedushah". "V'tish'ah hem."

Peshat: This is a new category — not arayot (karet), not d'rabanah, but lavin d'orayta. The name "issurei kedushah" shows that the reason is because of levels of kedushah (not closeness).

The Nine Prohibitions:

1. **Almanah l'kohen gadol** — a kohen gadol may only marry a betulah ("v'hu isha bivtuleha yikach").

2-4. **Gerushah, zonah, chalalah l'kohen hedyot** — chalalah means one born from issurei kedushah (both kohen gadol and kohen hedyot). Gerushah is forbidden to all kohanim. Almanah is permitted to a kohen hedyot.

5. **Mamzeret l'ben Yisrael** — born from issurei arayot.

6. **Bat Yisrael l'mamzer**.

7. **Bat Yisrael l'Amoni u'Moavi** — even the basic kedushah of a bat Yisrael forbids this.

8. **Bat Yisrael l'petzu'a daka u'chrut shafchah** — a defect in the reproductive organs.

9. **Machzir gerusato achar sheniseit** — one can only take back a divorcee before she received kiddushin from another.

(+) **Yevamah l'zar** — a yevamah who still has a zikah to the yavam and went to marry a stranger.

Chiddush About Counting Nine:

The **Lechem Mishneh** already asks the question that we don't know how to count nine — either it comes out seven or eleven. The answer: one must look in the **Minyan HaMitzvot** of the Rambam, where he counts almanah l'kohen gadol as one lav, but gerushah, zonah, chalalah are counted as three separate lavin, although the verse says them in one language: "gerushah v'zonah v'chalalah lo yikach." Through this it comes out nine.

Halacha 5-6 (approximately) — Issurei D'Rabanan: Chalutzah and Netinim

The Rambam says: Chalutzah — "harei hi k'gerushah v'hi asurah l'kohen midivrei sofrim." Netinim — "harei hen k'mamzerim echad zecharim v'echad nekevot v'isuran midivrei sofrim." "U'v'Hilchot Issurei Bi'ah yitba'er lecha mah hem hanetinim."

Peshat: A chalutzah is like a gerushah — she had a zikah to the yavam, almost like a husband, and was freed from it. Netinim are doubtful mamzerim.

Chiddushim:

- The Rambam keeps the learner in suspense — he doesn't say what netinim are, but refers to Hilchot Issurei Bi'ah in Sefer Kedushah.

- **Question**: Why doesn't the Rambam place the d'rabanah prohibitions (chalutzah, netinim) together with the lavin, since a lav d'rabanah is also a prohibition? It is suggested that perhaps it is relevant to the distinction later whether kiddushin takes effect or not.

Halacha 6-7 (approximately) — Issurei Aseh

The Rambam says: "V'yesh she'issur bi'atan b'aseh v'einan mechayavei lavin. U'sheloshah hen: Mitzri

v'Edomi dor rishon v'dor sheni echad zecharim v'echad nekevot, u've'ulah l'kohen gadol."

Peshat: Mitzri and Edomi — first and second generation are forbidden, third generation already "yavo b'kehal Hashem." Be'ulah l'kohen gadol — not an almanah (which is a lav), but a woman who has already been be'ulat, although she is not an almanah.

The Rambam's words (continued): "L'fi shelo ne'emar b'elu lo yavo o lo yikach, ela miklal shene'emar dor shelishi yavo lahem, atah lamed shedor rishon v'sheni lo yavo. U'miklal shene'emar v'hu isha bivtuleha yikach, atah lamed she'einah betulah lo yikach, v'lav haba miklal asech harei hu k'aseh."

Peshat: The Rambam explains why Mitzri v'Edomi rishon v'sheni, and a be'ulah l'kohen gadol, only receive malkot d'rabanen (makat mardut) and not malkot d'orayta: because for them there is no explicit lav written in the Torah. For Mitzri v'Edomi it only says "dor shelishi yavo lahem" — from this we learn that first and second generation may not, but this is a "lav haba miklal asech" which has the status of an asech. For be'ulah l'kohen gadol it only says "v'hu isha bivtuleha yikach" — from this we learn that "eina betulah lo yikach," but this too is a lav haba miklal asech.

Chiddushim:

1. What does "be'ulah" mean here: "Be'ulah" means **not** an almanah and **not** a gerushah — but a woman who is not a betulah (for example an anusah), such a woman who doesn't fall under any specific lav in the Torah. The prohibition only comes from the asech "bivtuleha yikach" — she is not a betulah, but no separate lav is written on her.

2. The question — why is almanah l'kohen gadol different: If for a be'ulah l'kohen gadol there is only an asech (lav haba miklal asech), why is for an **almanah** l'kohen gadol there malkot d'orayta — what is the distinction? The answer is simple: for almanah l'kohen gadol **there is explicitly a lav written in the Torah** — in parshat Emor it says explicitly "almanah u'gerushah v'chalalah zonah et eleh lo yikach" (Vayikra 21:14). This is an **explicit lav**, not a lav haba miklal asech. Therefore one receives malkot d'orayta for almanah l'kohen gadol, but for a simple be'ulah (who is not almanah/gerushah) there is only an asech.

3. A lesson in learning: Often when one has a difficult Rambam, one can look in the Chumash and the Chumash explains the Rambam. It was an embarrassing moment that we didn't remember that the lav on almanah is stated explicitly in parshat Emor.

This concludes the shiur on Chapter 1 (and beginning of Chapter 2) of Hilchot Ishut.

Full Transcript

Introduction to Sefer Nashim — Structure, Verse, and the Concept of Ishus

Opening

R' Yitzchak: Dear brothers, we are here. Good.

R' Yoel Asher: Good. We are beginning, im yirtzeh Hashem, with the help of Hashem, we are beginning Sunday, Isru Chag Sukkos 5787, and we are beginning a new sefer of the Rambam, Sefer Nashim. We are going to learn halachos that are relevant to matters between a man and his wife, from kiddushin, gittin, and so forth. And already, in this merit may all Jews who need to have wives be helped with wives, and we will learn deeply, we will throw ourselves into the sugyas. And before we begin, we want to thank the sponsor of our shiur, our friend who makes it possible for the shiur to continue, Harav Rabbi Yoel Eliezer Wetzberger. May the merit of Torah accompany him.

The Verse of Sefer Nashim: "Toras Chacham Mekor Chaim Lasur Mimokshei Maves"

R' Yoel Asher: In Sefer Nashim there are the following types of halachos. Ah, the Rambam says it himself.

R' Yitzchak: You'll make an introduction to the sefer. They didn't bring here the introduction to the sefer.

R' Yoel Asher: Ah,

R' Yitzchak: The Rambam begins the sefer like this.

R' Yoel Asher: Sefer Nashim. Sefer Nashim the Rambam begins like this: His first chapter is always "**B'shem Hashem Kel Olam**". This is based on the verse "**Vayikra Avraham b'shem Hashem Kel Olam**". Avraham Avinu, before there was a Torah he spoke b'shem Hashem Kel Olam, and now

there is a Torah, the way of calling b'shem Hashem Kel Olam is through learning Mishneh Torah or through learning Torah.

And after that, the Rambam has on each sefer a verse that is a heading for the sefer. I said earlier to R' Yitzchak that it's like the midrash, almost every midrash, "Bereishis bara Elokim", "Pasach lah mehai kra", he begins with some verse in Tehillim that explains. Also here, a verse that brings out the matter of nashim, or the matter of, for example, by zemanim it was "Tik'u bachodesh shofar" or something like that.

But in any case, here he brings the verse in Mishlei that says like this: "**Toras chacham mekor chaim lasur mimokshei maves**". Apparently the matter is like this: the Torah of the Almighty which is a toras chacham, a wise Torah, or the Torah of Moshe Rabbeinu which is a wise Torah, is a mekor chaim. And this helps to separate oneself, to save oneself from motza ani mar mimaves.

Discussion: The Verse and "Motza Ani Mar Mimaves Es Ha'isha"

R' Yoel Asher: He apparently means that the matter of nashim is a dangerous thing, because if one lets oneself into the business of nashim, the head becomes full all day with thinking improper thoughts and so forth, as the Rambam says. And what is the advice against this? Learning the Torah, as the Rambam says that one whose head is full of wisdom, the yetzer hara will not enter.

But also how to deal with the sugya of nashim, with whom may one have a wedding, with whom may one not, how does one deal with a wife, how does one treat a wife. All these things the Torah tells us, which the Torah is the mekor chaim. And this helps us lasur mera, from motza ani mar mimaves. Also a wife herself has something the word mekor, yes? Vihi mekorcha baruch. But there is good Torah,

R' Yitzchak: It's not the mekor of nashim. Motza ani mar mimaves is because of, as it says in Koheles we learned this week, "**Motza ani mar mimaves es ha'isha asher hi metzudim**". I think that the simple peshat of Koheles means that one who involves himself with nashim shelo b'ofen mesudor, it is mar mimaves. I don't think, I think that Koheles doesn't mean to say that every woman, that the aspect of nashim is maves. He only means to say that it becomes mar mimaves for whoever involves himself.

R' Yoel Asher: And Koheles says both things. He says, umotzah ani mar mimaves es ha'isha, and he says, "**Re'eh chaim im isha asher ahavta**". If it is an isha asher ahavta, that you conduct yourself with her with love according to Torah, it is re'eh chaim, it will bring life. This is the toras chacham mekor chaim. And if it is motza ani es ha'isha,

R' Yitzchak: It is mar mimaves.

Comparison with Sefer Zemanim: Mitzvos Aseh versus Gedarim

R' Yitzchak: So in a certain sense, the opposite of Sefer Zemanim. We learned Sefer Zemanim where mostly we learned mitzvos aseh, for example, all things that yes to do, matters of love and so forth. And here in Sefer Nashim

R' Yoel Asher: It's to save oneself from michsholos,

R' Yitzchak: You say. Yes, it's entirely to remove from the michsholos that come from nashim, apparently. Right?

R' Yoel Asher: Yes, but there is also the positive. It's important that a person should be married,

R' Yitzchak: It's a mitzvah to get married, and the like, pru urvu. Yes, yes, true, there are mitzvos aseh, but maybe the main thing, always there is the majority. The main thing is the mitzvos lo sa'aseh, the hagdaros. It's more, it will be geder min ha'arayos, and geder from... True, although mamash arayos doesn't appear in this sefer. Yes, one needs to think a bit about this.

R' Yoel Asher: Because it's in Sefer Kedusha,

R' Yitzchak: Yes. So, nashim is yes a bit more the positive. But let's see, they said that there is... Let's put up the text also, just the introduction, not the lists, but so we can see.

The Five Halachos in Sefer Nashim

R' Yitzchak: So in this sefer there are five halachos.

R' Yoel Asher: Five types of halachos, five ah... masekhtos. And this is their order:

Hilchos Ishus

Hilchos Ishus. Hilchos Ishus is... the normal case of a man with a woman, ish v'isha shezachu, there is in this hilchos kiddushin, hilchos kesubos, hilchos pru urvu, how a man must deal with the wife, hilchos shalom bayis.

Hilchos Gerushin, Yibum V'Chalitzah, Na'arah Besulah, Sotah

And after that there is if problems arise. Sometimes problems arise that one must leave the wife, the Rambam says that one cannot simply leave, there must be a gerushin, there must be a get. And sometimes there is the wife dies, the man dies without children, there is yibum v'chalitzah.

And after that in **Hilchos Na'arah Besulah** are other troubles of motzi shem ra, ones umefateh. And **Hilchos Sotah** is again other troubles of one who is mekane l'ishto.

So Hilchos Ishus is the only one that is always relevant, all others are hachi timtzi.

Discussion: The Order of the Rambam versus the Mishnah

R' Yitzchak: It comes out that the Rambam, as is known everyone asks on the Mishnah, that the Mishnah goes first Gittin and after that Kiddushin, yes? The Almighty makes for him refuah l'makah, one says. So the Rambam didn't do this thing, the Rambam goes yes first ishush,

R' Yoel Asher: After that he goes already. It could be toras chacham mekor chaim is Hilchos Ishus, lasur mera ushmor tov is all the others. Okay.

R' Yitzchak: Anyway, this is Sefer Nashim. It's interesting, because also in the Mishnah there is a seder that is called Seder Nashim, and it also more or less takes in all these things that the Rambam speaks about. Perhaps a few more things, in Seder Nashim there is also Nedarim, Nazir, which come in a bit less, but more or less, Yevamos, Kesubos, Gittin, Kiddushin, ah... Sotah. Sotah, yes. These are all things that the Rambam has included in the sefer.

So one sees, many times the Rambam went with the Mishnah, for example Zemanim is a translation of Moed.

R' Yoel Asher: It's interesting, here he left the name Nashim, and for example Moed he changed to Zemanim. Moed isn't a bad name either for zemanim. Okay.

R' Yitzchak: No, perhaps Moed is yes a bad name, because it's like a lashon yachid, it should be zemanim.

R' Yoel Asher: Mo'adim. Okay. Because actually mo'adim doesn't say times, mo'adim means times when one comes together or what. So mah she'ein kein zemanim is more simply speaking about all times. Okay,

R' Yitzchak: Not clear. Okay. Anyway, this is the introduction that Sefer Nashim speaks about.

Digression: Connection between Sefer Zemanim and Sefer Nashim

R' Yoel Asher: He says very well, Sefer Zemanim ends with shalom bein ish l'ishto, and Sefer Nashim. It's a good introduction to Sefer Nashim.

R' Yitzchak: I think that you already said this yourself at the end of Hilchos Chanukah. I already know. This is mamash a midrash. I don't know if the Rambam thought of such sorts of connections.

R' Yoel Asher: I said another thing, that zemanim with nashim have a close connection, because we're going to learn about mitzvas onah. Mitzvas onah is very interesting. Mitzvas onah means to be with the wife, but the translation of onah means a time. And the chiddush here is that a person cannot be with the wife when it strikes him, like a person should just follow after his moods, rather it must be established, there must be a kevi'us. It's zemanim with nashim have some connection. Okay, whatever, it's not so important to make hadranim with little hints, let's go learn gufa d'Torah.

Structure of Hilchos Ishus (25 Chapters)

R' Yitzchak: So Hilchos Ishus, well, Hilchos Ishus is a category that the Rambam made. This is yes a bit interesting, because as we spoke, in the Mishnah, more or less, Hilchos Ishus includes Masekhes Kiddushin and Masekhes Kesubos. Certain halachos from each one of them appears in other places, as always, but more or less Hilchos Kiddushin and Hilchos Kesubos.

It looks like something in the Mishnah they didn't think that there is some such concept of ishus that needs to be explained. As you say, a person gets married. How does he get married? Hilchos pru urvu in general, in the Gemara it appears I think in Yevamos, if I remember, there is also a basic thing. I understand here, it's an interesting, it's very logical the Rambam's order, but it's not the order of the...

R' Yoel Asher: What does the word ishus mean if one wants to translate it into Yiddish? Ishus means what? Humanity? But here ishus means between man and wife.

Just because nashim is also a bit an interesting thing, because nashim is anashim v'nashim. It's the connection between anashim and nashim. What does hilchos nashim mean? Because all other halachos one speaks to men. The men are the targets to whom the Rambam speaks. Here he speaks to men about women, about their connection with women. Ishus means already more the connection between... the kesher ha'ishus.

R' Yitzchak: Yes. Yes, ishus means... not the kesher ha'ishus. I would say like the concept. Ishus doesn't mean humanity, but... I don't know how one says it in Yiddish.

R' Yoel Asher: Yes. The first... In Sefer Nashim, especially in Hilchos Ishus, the Rambam is very nicely organized. Very nicely organized. So he begins with all the definitions, of what means a... which kind... when is one a gadol, when is one a na'ar, when is one a bogeres. How does one know that someone is an ayilonis, meaning one who cannot have children, and the like.

Later is the last... the first four are all Hilchos Kiddushin, and after that from Hilchos Kiddushin one goes to... Hilchos Kesuvah with all the details of Hilchos Kesuvah. And in Hilchos Kesuvah there is both what we know as the kesuvah that one reads at the wedding, what one will pay for the wife if one will need to give a get. But in Hilchos Kesuvah there are also all the obligations of husband and wife. And at the end, in Hilchos Kesuvah there is also the mitzvah of pru urvu and shalom bayis that the husband is obligated to the wife.

And already, at the end there is nedarim, actually as you said that nedarim, a bit of nedarim, nedarim, because a part of nedarim is something relevant between the husband and wife, that the husband can

R' Yitzchak: Be mefer and so on.

R' Yoel Asher: And in the last there is nedarim and mumin, yes.

R' Yitzchak: No, this doesn't mean heter nedarim, this means more that ish mekadash es isha she'yesh lo nedarim, it speaks about something that is more like...

R' Yoel Asher: Yes,

R' Yitzchak: If I remember. Because nedarim, the Rambam has Hilchos Nedarim in Sefer Hafla'ah.

Hilchos Ishus Chapter 1 — Concept of Kiddushin: Before Matan Torah and After Matan Torah

The Rambam's Introduction: The Four Mitzvos of Hilchos Ishus

R' Yoel Asher: Manhood? Being a man.

R' Yitzchak: Manhood. Perhaps a woman also. Ishus includes the wife. Man and woman-hood.

R' Yoel Asher: As if. Yes, okay. Okay, the Rambam says like this. The Rambam always begins, the Rambam made a sefer Mishneh Torah based on the 613 mitzvos. He says like this, in Hilchos Ishus **yesh bichlahlah, within all of Hilchos Ishus there are four mitzvos: two mitzvos aseh, two mitzvos lo sa'aseh, v'zehu peratan.** The first thing is a mitzvas aseh, **liso isha bikhesuvah uvkiddushin**, to marry a wife with kesuvah and kiddushin. The Rambam says, he puts in here kesuvah is also d'oraissa.

R' Yitzchak: Yes, it's very...

Discussion: What Does "Kesuvah" Mean in the Mitzvah "Liso Isha Bikhesuvah Uvkiddushin"?

R' Yoel Asher: The Rambam is going to say that in kesuvah there is derabbanan and there is d'oraissa.

R' Yitzchak: If I remember, the Rambam inside says that kesuvah is derabbanan, no? There isn't any mitzvah of kesuvah.

R' Yoel Asher: Yesh meihem midivrei sofrim, no? Because she'erah kesusah v'onasah the Rambam has such a...

R' Yitzchak: The Rambam means that? Kesuvah means she'erah kesusah v'onasah?

R' Yoel Asher: She'erah kesusah v'onasah also. And the Rambam, how he begins...

R' Yitzchak: If I remember, in halachah in chapter...

R' Yoel Asher: Chapter 12 I think...

R' Yitzchak: In chapter 12...

R' Yoel Asher: Ha'isha chayav, he says, with kesuvah, ikar kesuvah in any case.

R' Yitzchak: Usually kesuvah means ikar kesuvah, and the Rambam clearly holds that

R' Yoel Asher: Ikar kesuvah is d'oraissa. But he says "asarah devarim, sheloshim hem min haTorah". So in any case, there is a part of kesuvah min haTorah. Meaning, the obligation of she'erah kesusah v'onasah, we don't usually call it kesuvah, but the Rambam puts it into the word kesuvah, and that is d'oraissa.

R' Yitzchak: No, no, it can't be. Because when the Rambam says here "liso isha bikhesuvah uvkiddushin", he means that which the Rambam understood, it's also a chiddush of the Rambam, one can speak about this inside in chapter 1. There is a mitzvah that when a person wants to get married, he must give kiddushin, and also here it says in the introduction also a kesuvah. Inside it never says kesuvah. And this has to do with what the Rambam understood that the main mitzvas kiddushin, against this there is a mitzvas lo sa'aseh of "lo sihyeh kedeshah", that the mitzvas lo sa'aseh is that one should not conduct oneself in the way of zenus and get married in a random way,

R' Yoel Asher: Rather get married with an order,

R' Yitzchak: With a ma'amad kiddushin, with a kinyan. And the Rambam here when he writes kesuvah doesn't mean one should be obligated in she'erah kesusah v'onasah. Because she'erah kesusah v'onasah he is obligated, if one got married he is obligated. It could be that she'erah kesusah v'onasah is as if part of kesuvah which is d'oraissa, but when he says here kesuvah the Rambam means more the idea that one gets married not just randomly in the world, rather as in the Gemara it says many times that pilegesh is belo kesuvah. And the Rambam holds that pilegesh is an issur, "lo sihyeh

kedeshah", as one can see the dispute between Rambam and Ra'avad about this. So when he says here "liso isha bikhesuvah", he means with the sort of like a commitment

R' Yoel Asher: That is not random. Belo kesuvah will mean a random be'ilah, and bikhesuvah will mean with obligations, with commitments,

R' Yitzchak: Like this. But although apparently it's clear that the Rambam holds at least ikar kesuvah is midrabbanan, and it's very difficult to learn that this means she'erah kesusah v'onasah, because that's not the chiddush of kiddushin that one must be obligated in she'erah kesusah v'onasah. She'erah kesusah v'onasah is just a human thing. If you got married, you are obligated in these things. I think one speaks about this here, it's not clear. It's very not...

R' Yoel Asher: Because if one will say that kesuvah must mean she'erah kesusah v'onasah, it looks here like... that there is an obligation that when one gets married one should accept, one should like enter into this on the understanding that there will be she'erah kesusah v'onasah. Yes,

R' Yitzchak: "Liso isha bikhesuvah", not... very not that. One speaks, he brings here that actually in other places in the introduction it always says only "liv'ol b'kiddushin". And here it says a bit differently. It's very not clear what the word kesuvah means here. According to what I said, it means approximately such a sort of thing. That is, the kesuvah here means more like a part of the... that let's have an order, like with a kinyan, with a wedding, not randomly.

R' Yoel Asher: Mutual obligations, yes.

R' Yitzchak: Yes. So this is the first mitzvas ase.

The Second, Third and Fourth Mitzvot

Rabbi Yoel Asher: The second prohibition is the opposite, **that a woman should not come without a ketubah and kiddushin**, that one should not be with a woman without ketubah and kiddushin. The third mitzvah is **that he should not withhold she'er kesut ve'onah**, it's a prohibition, **she'arah kesutah ve'onatah lo yigra**. Where it mentions a bit about arayot, ketubah doesn't mean that. Okay? Okay. And the fourth mitzvah is **to be fruitful and multiply from it**. The mitzvah of peru u'revu.

Discussion: The Order of the Four Mitzvot

Rabbi Yitzchak: The fact that the Rambam has placed here the four mitzvot, just as many times like in order, that is in the order in the Sefer HaMitzvot, or even here in the beginning of the Rambam, when there is a seder hamitzvot, he doesn't go exactly in order, because first he divided positive commandments from negative commandments, and in general it goes in a different order. When the Rambam places the mitzvot, when he writes halachot in order to explain the explanation of these mitzvot, usually he tries to arrange the mitzvot into a story so that it makes sense.

Rabbi Yoel Asher: First one takes a wife, and afterwards one can later have children with her. For example, the Sefer HaChinuch which goes according to the order of the verses, peru u'revu is the first mitzvah in the Torah.

Rabbi Yitzchak: Yes, that's certainly not. Even after the Rambam made a certain order, the order in the halachot is even more so. That is, first have a wedding, okay, and don't not have a wedding. If you had a wedding, you have a prohibition not to withhold she'er kesut ve'onah. You also have, if you think about the precision, to be fruitful and multiply from it,

from the woman with whom you had kiddushin. Although peru u'revu is not technically dependent on the mitzvah of kiddushin, it's possible to fulfill peru u'revu without kiddushin also, we'll see inside the halachot. But the Rambam lays down the action of how it should work the normal way.

Rabbi Yoel Asher: And the explanation of these mitzvot in these chapters. The explanation of the mitzvot, just as the Torah she'be'al peh which explains the mitzvot, is in the coming mitzvot,

Rabbi Yitzchak: The Rambam says so. In the coming chapters. In the coming chapters.

The First Two Chapters: Twenty Terms

Rabbi Yitzchak: And as we've already said, but we need to preface here a bit, the first two chapters of the Rambam, as it explicitly states at the end of chapter 2, right? At the end of chapter 2 it states that we'll come there in halachah 27 of chapter 2 it states. **It turns out that in these two chapters the Rambam explains twenty terms.** Twenty terms means by the Rambam not just words. A shem means a word, a noun, in English a noun. Shem means to say a shem davar. Twenty shemot davar, which through the shemot davar one will be able to know all the laws of ishut, and perhaps even other halachot that are built on the shemot davar. But the first thing he says, the first shem that he says here is kiddushin. And kiddushin is a mitzvah. It begins with the mitzvah of kiddushin, but the Rambam is explaining, what is this relevant to? This is also relevant that you should know that this is what the word kiddushin means. But essentially, it serves two purposes, the first two or three halachot here, perhaps more than two or three halachot. It serves first of all the purpose, just as the Rambam's order always states the positive commandments, but more than that it serves the purpose of explaining the concept. What is kiddushin? You're going to learn that one must make kiddushin, yes? "To take in kiddushin," that's a mitzvah? Okay, what is kiddushin? Later one will learn for a long time mekudeshes, not mekudeshes. You need to know what the thing kiddushin is. And with this one understands very well a bit why the Rambam gives us now the whole history to explain where the concept of kiddushin came from, because it's not something a natural concept, it's something that the Torah innovated. The Rambam needs to explain what exactly is the innovation of the thing called kiddushin.

Discussion: Why the Rambam Doesn't Make a Separate Glossary

Rabbi Yoel Asher: And he didn't make a glossary like in the laws in Sefer Zemanim, saying what choresh means, zorea, kotzer. He writes that in the halachot themselves.

Rabbi Yitzchak: It's not so important anymore. I don't know why. Sometimes, there are other places where he does it, right? It's not so important perhaps, perhaps actually because of this, because it's more like lomdish, here begins lomdut. Until now, everything that we've learned until now is what one doesn't learn in yeshivot, because it's not lomdut. Lomdut I mean to say...

Rabbi Yoel Asher: Not any chalut,

Rabbi Yitzchak: Not any... right, like more law, like laws,

Rabbi Yoel Asher: For example the word zocheh, the word mekudeshes.

Rabbi Yitzchak: Right, it's more lomdish things. Yes.

Rabbi Yoel Asher: Yes.

Chapter 1 Halachah 1: Before Matan Torah

Rabbi Yitzchak: Okay,

Rabbi Yoel Asher: The Rambam says so. Chapter 1 — Halachah 1. The Rambam says so, it's very interesting, the Rambam begins very nicely, he begins with like what was before matan Torah and what the Torah innovated. The Rambam says so, **"Before matan Torah"**, before matan Torah, it was so, **"a man would meet a woman in the marketplace"**, a person would meet a woman in the street, **"if he and she wanted to marry her"** — if he wanted to marry her and she agreed. The language is a bit interesting, "he wanted to marry her and she" agreed.

Discussion: "He Wanted and She" — Both Need to Agree

Rabbi Yitzchak: But he says that "he and she wanted to marry her." Okay, because the Rambam understands that before matan Torah there's no such thing that the man is mekadesh the woman. They both need to agree. "To marry her" is indeed a language as if he does it, but it means to say "to be married," they want to live together. Both of them have the right to leave,

Rabbi Yoel Asher: So you'll see. How does one do it? **"He brings her into his house"** — he takes her home to himself, **"and is with her privately"** — he is with her privately, in a modest way, **"and she becomes his wife"**.

Discussion: "Privately" — A Deficiency, Not a Virtue

Rabbi Yitzchak: No, privately here means "not before witnesses," it means "he didn't designate her before witnesses."

Rabbi Yoel Asher: It doesn't need to be any matter of relations, that it should be kiddushin.

Rabbi Yitzchak: One doesn't need, no one needs to know about it. This "privately" doesn't mean a virtue, it means a deficiency. It means, they both, two people met, even without witnesses, even no one knows about it, he goes home, and "she becomes his wife,"

Eshet Ish by Bnei Noach

Rabbi Yoel Asher: She's called his wife. For example, the prohibition of eshet ish is already from the seven mitzvot of bnei Noach. And once a person has designated a woman and taken her home and been with her, she's called his wife, and there will already be the prohibition of eshet ish.

Rabbi Yitzchak: I think that's what the Maggid Mishneh says, he says right here, so it comes out in the Gemara that a ben Noach doesn't have kiddushin, it becomes eshet ish through yichud alone. But I think the Rambam here didn't come to explain halachot.

Halachah 1 (Continued) — "The Jewish People Were Commanded That If a Man Wants to Marry a Woman He Should Acquire Her First Before Witnesses and Then She Will Be His Wife"

Rabbi Yitzchak: She becomes his wife means practically, she's his wife, that's it.

Rabbi Yoel Asher: But he also throws in here, I mean incidentally he also says how it was the normal way. It means, before the Torah there was also a custom, and this is a normal way, because as opposed to later what he's going to say kedeishah.

Rabbi Yitzchak: No, according to the Rambam, that's exactly what kedeishah means in the Torah.

Rabbi Yoel Asher: One can see later, okay.

The Rambam's Intent — To Describe the Default Situation, Not the Historical Reality

Rabbi Yitzchak: No, the Rambam doesn't come to explain what was, he only wants to present the default situation. You're right that in this, as you and the Maggid Mishneh say, in this already lies a certain order, it's not completely a hefker world, that's true. But the Rambam wants to think that this is as if too hefker for the Torah, and the Torah is going to add something more.

That is, this is the... in other words, the Rambam's definition of kiddushin is going to be if he wants to marry a woman or if he wants to be with, one needs to know which of the two, does he need to do kiddushin. One needs to explain what is the wanting, what does he want to do. What he wants to do is this. Now, how does one do it? The Rambam says.

The Innovation of Kiddushin — An Act of Acquisition Before Witnesses

Rabbi Yoel Asher: Now comes the Torah, the Torah was given, the Jewish people were commanded, there's a mitzvah added for Jews, **that if a man wants to marry a woman**, if a man wants to marry, he wants to take a woman, **he should acquire her first before witnesses**, there must first be some act of acquisition, he should acquire her. **And then she becomes his wife**, it's not automatic that bringing into the home and being with her is enough, rather there must first be a certain acquisition, and then she becomes his wife.

Rabbi Yitzchak: And it's very important,

Rabbi Yoel Asher: The acquisition itself must make her his wife without being with her, yes, here it no longer says being with her. The acquisition itself, that makes her his wife. His wife wife.

Rabbi Yitzchak: Let's understand so, first of all, there must be two things that the Rambam says here that there must be. And it stands one between two.

First of all, before the marriage he must acquire. Obviously he's going to be with her, before that he wants, that means to marry a woman, that she should be his wife. But you can't just take a wife, you must first make an acquisition.

Now, the acquisition must be before witnesses. That's because the Rambam sees a basic definition of it. It's not just that you need an acquisition, so that people should know one needs witnesses. From here perhaps comes out the lomdut that says edut lekiyum. But the point is that this makes it official, this makes it the acquisition is first, because acquiring privately is indeed lo ho'il chacham betakanato, is indeed exactly like saying privately that I want to marry.

Rabbi Yoel Asher: There was always some step of he and she wanted.

Rabbi Yitzchak: And I say that this is necessary so that it should be at all an acquisition for the sake of kiddushin, because if not, he and she wanted, there's always some he and she wanted. The innovation of kiddushin is not that one needs to say, I don't know, perhaps people always used to say, I don't know, it's more that it becomes a formal acquisition. How does it become a formal acquisition? One calls two other people, not them, one says behold I am mekadesh you, or behold you are mekudeshes, and then it becomes...

Rabbi Yoel Asher: And then, there's still another step before that, and then she becomes his wife.

Rabbi Yitzchak: And through this you're right that the Rambam is going to explain that then she becomes, and you already say in section 3 that this is already enough. But first one says that... you need to understand, that it's enough, that's already as if the innovation afterwards. But step 1 is, if you want to marry, add a step before that.

The Verse "When a Man Takes a Woman and Comes to Her"

Rabbi Yoel Asher: Yes, he says, **it is stated**, what's the verse on this? **"When a man takes a woman and comes to her"**. "When he takes," this the Gemara already needs, means kiddushin, that first there must be kiddushin, and then "and comes to her," then he can take her home and he can be with her. But one must make kiddushin before that.

Discussion: Why Does the Rambam Bring the Verse from Motzi Shem Ra, Not the Verse from Get?

Rabbi Yitzchak: This is the verse from motzi shem ra, I know why the Rambam brought this verse. Usually, the Gemara brings the verse from get, "when a man takes a woman and marries her," which appears later in the portion. The Rambam, for some reason, brings the verse "when a man takes a woman and comes to her." It appears more than once, yes? In the Gemara in Kiddushin that one learns, the Gemara always brings a different verse. I don't know why the Rambam brings this verse. I don't know why.

Rabbi Yoel Asher: The Rambam brings many times a different verse than what the Gemara brings.

Rabbi Yitzchak: Yes, but for nothing, one gives a verse for nothing. I don't know. Perhaps he holds that the verse is a better proof? Yes, that's what you're saying. Usually the Rambam brings a verse because he has a simple interpretation in the verse that he brings, which is more a proof. I don't know how the verse is a better proof.

Rabbi Yoel Asher: It's also not earlier in the Torah, it's not that the Rambam found the first place where it appears.

Rabbi Yitzchak: This is later?

Rabbi Yoel Asher: This is later, I think yes,

Rabbi Yitzchak: This is in the...

Rabbi Yoel Asher: Both are in Parashat Ki Teitzei.

Rabbi Yitzchak: I don't know which is first. He doesn't talk about that, I don't know. Okay, the Rambam says section 2, so this is the mitzvah.

"The Jewish People Were Commanded" — To Exclude Ben Noach

Rabbi Yoel Asher: But here also it states like "the Jewish people were commanded," that this is a mitzvah on Israel. It means the one who is not Israel remained with the previous one. So here it states, including, that the ben Noach remained with the first section, that if he wants to do it properly he should do it the "is with her privately."

Rabbi Yitzchak: All the Torah is for Israel. What are the laws of ben Noach? That's in the laws of kings. I think it's not specifically the emphasis, you're right.

Rabbi Yoel Asher: No, no, I think it's also the language here different from how he describes the kedeishah. Kedeishah is not recommended for anyone. Let's see later when we'll learn kedeishah.

Halachah 2 — "And This Acquisition Is a Positive Commandment of the Torah, and Through One of These Three Things the Woman Is Acquired: With Money or With a Document or With Relations"

Rabbi Yoel Asher: The Rambam says, **"And this acquisition"** — the "when he takes," the acquisition, the taking — **"is a positive commandment of the Torah"**. This is a positive commandment from the Torah. "Hem" means plural language, he's already going to say that there are several types of ways how to make the acquisition, this is a positive commandment of the Torah.

The Rambam says, **"and through one of these three things the woman is acquired"**. One of the three types of ways one can acquire a woman: **"with money"**, **"or with a document"**, **"or with relations"**. It means one doesn't need all three, one of three. Money — with money, or with a document — or with a document, or with relations. **"And all three are Torah law"**.

Rabbi Yitzchak: Yes, as is known this was changed.

The Versions in the Rambam — Money Rabbinically or Torah Law

Rabbi Yoel Asher: There are several versions, yes? "And all three are Torah law." In another version of the Rambam it stated that money is rabbinical, document and relations are Torah law, and on this comes the... the Ra'avad argues. But in a later version of the Rambam, the Rambam said, he doesn't leave Torah law.

But actually, even according to the opinion that in the edition, on which comes the Lechem Mishneh and the Maggid Mishneh and all of them it stated that money is rabbinical, but they immediately explain divrei sofrim, that when the Rambam says, even when the Rambam says with money is from divrei sofrim, he doesn't mean to say that it's not eshet ish from the Torah, one certainly becomes eshet ish from the Torah. That the Torah gave two options, and the divrei sofrim derived through kal vachomer or through gezeirah shavah a third way, but it's also from the Torah. Only with divrei sofrim, it means that it's not written out clearly in the Torah.

But in any case, anyway, we're going with the edition. Which Rabbi Yitzchak confirmed there, on all three it doesn't leave Torah law. Yes, later edition,

Discussion: The Rambam's Approach to Torah Law/Rabbinical, and Why He Changed the Version

Rabbi Yitzchak: The Rambam crossed out and rewrote... yes, yes, there's a responsum about this explicitly, and the Rambam wrote a responsum, first of all he wrote a responsum where he justified what he wrote with divrei sofrim, and he said that it states in the Gemara so, that document...

The Rambam explains that according to his principle that he holds that everything that appears is not explicit in the Torah, rather it comes from a derasha, even so divrei sofrim. Means divrei sofrim. That is, in other words, it's not given to Moses at Sinai.

You remember, by the Rambam Torah law, rabbinical, the Rambam has a bit of a different meaning than we're accustomed to. You just said, Torah law means that it's certain for all. No, Torah law means what the Almighty said to Moses our teacher, given to Moses at Sinai. The divrei sofrim means what the sofrim explained. If they explained a new interpretation, it's Torah law, because they say it's an

interpretation in the Torah. It's not written in the Torah, it's not with Torah law to with divrei sofrim. When one can argue or change the enactment, one can. That's actually the main difference, one can change it.

R' Yoel Asher: In other words, essentially the Rambam continues to hold his position that kesef is in the category of divrei sofrim, but because he saw that people were arguing, and people didn't understand what he was saying, he changed to say din Torah.

R' Yitzchak: No, no, no, that's not what happened. You're still holding at a step before the story. First the Rambam wrote that kesef is divrei sofrim. And he said that this is what it says in the Gemara. That is, the Rambam asked for the Rambam why? Because if you say it's a derasha, then shtar and biah are also a derasha. The Rambam says true, but in the Gemara it says that shtar and biah are d'oraita.

That is, the Rambam has a rule, how do you know? You remember according to the Rambam's approach that something that's written in the Torah explicitly, the Almighty taught it to Moshe Rabbeinu, or not explicitly, or halacha l'Moshe miSinai. What's clear is that very many things that are derashot, that is d'oraita. Something that the derasha was mechadesh, that is derabbanan, or divrei sofrim. Let's call it, I think it's the same thing as derabbanan.

If so, the Rambam will always have difficulty, how does the Rambam know when to say something is d'oraita, when is it derabbanan? Very many things the Rambam says are d'oraita, even though they're a derasha. The answer is, that if the Rambam found in the Gemara that it says about something "min haTorah," he assumes this is halacha l'Moshe miSinai, even though it's not written explicitly, it's only a derasha, but the derasha is just a remez. If he doesn't find it in the Gemara, he says, if it doesn't say it, it's divrei sofrim.

Therefore, the Gemara, he understood in a Gemara somewhere in Kiddushin that says that kesef is miderabbanan, he understood that kesef, even though both, all three are the same derasha, kesef is midivrei sofrim, and shtar and biah are d'oraita. And this is what the holy Ramban wrote first of all.

Later the Ramban changed his mind, and wrote over that "shlashtan din Torah," as we have the printed edition of the Rambam. There's a dispute, what's the meaning? There are those who say exactly like you, that the Rambam still holds the same way, but he saw that people didn't understand so he changed it.

It could also be that the Rambam looked better into the Gemara, and he saw that the Gemara doesn't work out, as the Raavad says. The Raavad says, "amar Avraham zeh shavash, hu peirush meshavesh hu tehiyeh." The Rambam had some wrong explanation in the Gemara, which came out to him that the Gemara makes a distinction between shtar and kesef and biah, but it's not the correct pshat in the Gemara. It could be that the Rambam himself learned over the Gemara and saw that it doesn't say what he thought it says. One can learn it both ways.

Halacha 1 (continued) – The Three Terms: Kinyan, Lekicha, Kiddushin/Eirusin

R' Yoel Asher: Yes,

R' Yitzchak: In any case, the Rambam said three different terms here: first of all, "yikneh otah" - this is what the Gemara

usually calls it, "isha niknet" in the first perek. Then he brings the pasuk "ki yikach," it comes out that it's lekichin. Then he says, the lekichin, how are they usually called in halacha? They're called "hen hanikra'in,"

R' Yoel Asher: This is called kiddushin.

R' Yitzchak: One term?

R' Yoel Asher: Or eirusin in every place.

R' Yitzchak: Kiddushin is the language of the Sages. As is known, the Gemara explains here "asurah l'chol ha'olam k'hekadesh,"

R' Yoel Asher: Whatever the reason you understand. "Asurah l'chol ha'olam k'hekadesh." "Asurah l'chol ha'olam k'hekadesh." And "asurah l'chol ha'olam k'hekadesh." What does eirusin mean, it's a term from...

R' Yitzchak: I don't know. Asurah means bound. Eirusin means eirusin. I don't know. Kiddushin and eirusin are the same thing. Eirusin is simply the language of the Torah.

R' Yoel Asher: Both mean some concept of exclusivity, that the woman is exclusive to him.

R' Yitzchak: The kinyan, that's what the kinyan does. But it's interesting, because in the pasuk it says "asher eras isha v'lo lekachah," it's implied that the lekichin are the nisu'in, are the nesuin. Anyway, this is in the Gemara the language of the Sages, kiddushin, eirusin, or kinyan, the kinyan that makes a woman today, kiddushin, or eirusin. Now you already know the first entry in the Rambam's dictionary. And another entry? Yes.

Lekicha in Peshuto Shel Mikra vs. Leshon Chachamim

R' Yoel Asher: Yes. No, there is that it says "eras isha v'lo lekachah." If one looks at peshuto shel mikra, without the chiddush of the Sages that lekicha means kiddushin, they said lekicha means the hachnasa l'veito to be bo'el. "Ki yikach ish isha u'va aleha," or "eras isha v'lo lekachah," means he didn't take her to be bo'el. But the Sages learned that the lekicha doesn't mean simply the technical entering into the home to be bo'el, rather it means some lekicha, some kinyan.

R' Yitzchak: In the pasuk "ki yikach ish isha" they learned it this way, in the other pesukim perhaps the simple pshat remains,

Kiddushei Biah and the Role of Witnesses

R' Yoel Asher: I don't know. So, the Rambam says further: "**v'isha shenikteit b'echad mishelosha devarim elu**" - a woman who becomes acquired through one of the three ways, the kesef, shtar, biah, the three matters of kiddushin - "**hi hanikret mekudeshes o me'oreses**". One needs to understand a bit more what biah means, because everywhere there is biah, yes, "u'vo'alah beino l'vein atzmo."

R' Yitzchak: But biah here means a biah l'shem kiddushin, or a biah bifnei edim, you know. About this the witnesses are the most important. That's why I emphasized, this is one of the proofs that the witnesses are the point. Although, it's true it's very difficult. The concept of kiddushei biah is somewhat of a question on the Rambam's explanation, that the main point of kiddushin is that there should be some kinyan beforehand, because one can do biah. The answer is though, the witnesses make a difference. Although, we'll soon see, kiddushei biah doesn't mean one is bo'el bifnei edim literally, one is meyached bifnei edim, whatever it is, but it shows that there are already other people involved, and not just two people who decided.

R' Yoel Asher: Does the Rambam say so,

R' Yitzchak: And what happens? Now that there's this chiddush, and one makes kiddushin, it's already sufficient.

Halacha 2 – An Arusah is an Eshes Ish Without Hachnasa L'veito

R' Yoel Asher: The Rambam says: "**u'cheiwan shenikiteit ha'isha v'na'aseis mekudeshes**", after one has done the act of lekicha, the kinyan, and one has acquired the woman, and she has become mekudeshes, she has become sanctified to the man, then, "**af al pi shelo nivalta v'lo nichnesa l'veis ba'alalah, harei hi eshes ish**". Even before there was biah, or even before there was,

R' Yitzchak: The hachnasa l'veito. "L'veito" means literally that she doesn't live together with him, right? We, when it comes to the topic of chuppah and nisuin, will see that there's a dispute about this, but the simple meaning, in the village everyone knows what it means. But usually, a woman when she's single lives with her father, let's say, or alone, usually with her father, the man brings her into his home. So usually that would be the main thing like ishus. Kiddushin says, no, she can still live with her father, but she already belongs to him.

Kiddushin Adds and Takes Away

R' Yoel Asher: But what he's saying here is also, according to his framing, just as the first halacha looked like kiddushin adds something more, here he says that kiddushin can also take away. That is, one doesn't need now the "hachnasa l'veisah" that was before kiddushin. Once there's kiddushin, that's the thing instead of all other things that used to be.

R' Yitzchak: It's not clear to me that before, for example, there wouldn't have been such a concept as yichud. That is, it could be by bnei Noach, one needs to look clearly, for example, if they were meyached, if there's "ratza hu v'hi," but they haven't yet done beilah or they don't yet live together, it could be that there is some concept of ishus, you understand? But that the Torah said that there needs to be a kinyan.

R' Yoel Asher: Without "hachnasa l'veisah" she already becomes an eshes ish.

R' Yitzchak: One needs to ask. I think the halacha assumes not, that there needs to be actually a beilah. By the Rambam it wasn't clear,

R' Yoel Asher: It said "im ratza."

R' Yitzchak: But anyway, yes, this is an interesting thing. It's not just,

The Laws of an Arusah

R' Yoel Asher: As you say, not only does it add a stringency, it's not stringency and leniency, but kiddushin is also instead of some other action. It's not just adding. The proof "**eshes ish**", that is once one has made kinyan, the kinyan itself is already enough, one doesn't need the other things. Regarding what does an eshes ish mean? Regarding everything, even such a harsh thing as death. "**v'haba aleha chutz miba'alalah**", if another was bo'el her besides the husband, then "**chayav misas beis din**". The bo'el will be liable to death by beis din.

R' Yitzchak: The husband himself perhaps also may not, it could be it's an issur derabbanan. Asur lo lavo al arusaso. Ah,

R' Yoel Asher: Before "nichnesa l'veis ba'alalah."

R' Yitzchak: Okay. Arusah is forbidden, at least midrabbanan. But in any case, another is liable to death.

R' Yoel Asher: In a certain case, because the beilah itself, that is if it's in a house that can be called his house, that itself will be chuppah. Okay. "**v'haba aleha chutz miba'alalah chayav**", he will be liable if she was forced,

R' Yitzchak: Or if not then she is also liable to death by beis din. Today, when one speaks of a... One needs, according to halacha one needs to also have sheva brachos. That is, nisuin, "kalah belo bracha asurah l'ba'alalah."

R' Yoel Asher: "**v'haba aleha chutz miba'alalah chayav misas beis din, v'im ratza l'garesh**" – here there's another thing, that if he will decide after acquiring her that he doesn't want her, it's not that he can't send her away, one should say that we haven't yet been bo'el anyway or what, rather she's already an eshes ish, "**v'im ratza l'garesh tzricha get**". There's already,

R' Yitzchak: A get is already relevant. That is, then she's already completely one hundred percent an eshes ish. There are things where there's a difference, but regarding the halacha concerning arusah and nesuah, right? Correct? What? All things means an arusah is an eshes ish

R' Yoel Asher: Exactly like a nesuah? There are already fewer, if she married a kohen, can she already eat terumah. But regarding the things that the Rambam enumerated at least, that one already needs a get, and liable to death. Actually interesting, once he said the thing that "v'im ratza l'garesh tzricha get," it becomes more difficult why the Rambam didn't bring the pasuk "ki yikach ish isha u'velah," where it says very clearly that after "ki yikach" one already needs a get.

R' Yitzchak: In hilchos get he'll already write that practically. There's the same introduction, in that section introduction, there's the beginning of hilchos gerushin, if I remember.

R' Yoel Asher: Yes. So, the Rambam says further. So the Rambam explains this way.

R' Yitzchak: So, and this is until here hilchos kiddushin, that's all.

Halacha 3 – Before Matan Torah: Kedesha

R' Yoel Asher: Now the Rambam is going to explain the mitzvos lo sa'aseh.

R' Yitzchak: No, he explained the mitzvas aseh, mitzvas aseh to marry a woman with kiddushin. Now you'll understand the flip side of this, which is the mitzvas lo sa'aseh. And one needs to understand what the Rambam means here. We already had a big argument about this last time. You'll say your pshat, and I'll say my pshat.

R' Yoel Asher: I'll say my pshat, let's start with this. Or you say your pshat. Okay. The Rambam says this: **Kodem matan Torah**, what happens in such a case? **Kodem matan Torah haya adam poge'a isha bashuk**, a person would meet a woman in the marketplace, **im ratza hu v'hi**, if both agree to beilah, **nosein lah secharah**, he pays her for the beilah, **u'vo'el osah al am haderech**, he takes her to the side and is bo'el her. He doesn't even say to the side, al am haderech, on the way, **v'holech lo**, and he goes away. He paid a one-time, it was paid for a one-time situation, and he goes away. **V'zo hi hanikret kedesha**, such a woman is called a kedesha, a woman who had a one-time biah with a man.

Yehuda and Tamar as the Model Example

R' Yitzchak: Of course, the example of this is Yehuda with Tamar, that he did this way, and it's implied in the pasuk that it was legitimate. If one pays. If one doesn't pay, it's a chayah, but if one pays,

R' Yoel Asher: It's fine. This was an order, v'zo hi hanikret kedeshah. That is, before matan Torah there was one thing that if one didn't have this thing, it was perhaps a sin, if it wasn't ratza hu v'hi. That is, rape was apparently always a sin. I know, by the generation of the flood, the Almighty was very angry, perhaps it was about rape. It could also be about eshes ish, but about rape. Once it's not rape, but it's consent, it's called kedeshah, which before matan Torah was okay.

Digression: "Vayir'u Bnei HaElokim Es Bnos Ha'adam" (Bereishis 6)

R' Yitzchak: Since we're speaking today is parshas Bereishis, I think that what you're saying about rape... what's the pshat of the pasuk, as the Targum and others translate, "vayir'u bnei haElokim es bnos ha'adam vayikchu lahem nashim mikol asher bacharu," the Targum translates "bnei haElokim" - the sons of the judges, the sons of the important people, and they saw, they grabbed women. This is translated. The simple pshat says in the Torah,

Halacha 1 (continued): The Story of the Generation of the Flood – Rape, Eshes Ish, and Theft

R' Yoel Asher: Perhaps it was about rape, one can also translate eshes ish, but about rape. Once it's not rape, but it's consent, it's called kedeshah, which before matan Torah was okay.

R' Yitzchak: Since we're speaking today parshas Bereishis, I think that what you're saying about rape, this is the simple pshat of the pasuk, as the Targum and others translate, "vayir'u bnei haElokim es bnos ha'adam... vayikchu lahem nashim mikol asher bacharu", the Targum translates "bnei haElokim" - the sons of the judges, the sons of the important people, and they saw and they grabbed women. These are the words. The simple pshat says in the Torah that the flood came because of rape. That's what it says in the Chumash.

But it's discussed, it could also be eshes ish, in such things. But you can understand that eshes ish, if you want, I'm just saying a derasha that I think, eshes ish is also a branch of rape, because first of all eshes ish, even not, the husband doesn't want. There's always an opposition of two wills when there's an ervah.

R' Yoel Asher: You can say that rape is a type of theft. Simple rape is theft from the woman, and from an eshes ish it's theft from the husband.

R' Yitzchak: It could be from the woman also actually.

R' Yoel Asher: I think that even if the woman agrees, it's still theft from the husband, because the husband has some ownership over this.

Etymology: Kedesha and Kiddushin

R' Yoel Asher: It's very interesting, where does the word kedeshah come from? But kedeshah is very similar to the word kiddushin, it's very interesting.

R' Yitzchak: Yes, the meaning is that the simple pshat, as they learn, kiddushin means meyuchad l'oso ish, and kedeshah is meyuchad lihiyos liznos, for rent, whatever. Yes, basically the difference between renting women and buying women. It's all kinyan, it's just a rental kinyan.

R' Yoel Asher: What's actually the matter if he's not nosein lah secharah? Just ratza hu v'hi without nosein lah secharah?

R' Yitzchak: She's a chayah ra'ah, the Torah calls her.

R' Yoel Asher: If she wants, you say ratza hu v'hi. If ratza, I'm not asking about

R' Yitzchak: The nosein lah secharah. Very good.

Halacha 2: Mishenisna Torah Ne'esra HaKedesha

The Language of the Rambam

R' Yitzchak: So let's finish the section, and with what we're saying, we have an old dispute how this section was translated. We didn't innovate the dispute, of course, it's already an old dispute among commentators. But the Rambam says, this is kedeshah. Now the Rambam says,

R' Yoel Asher: "Mishenisna Torah ne'esra hakedesha", the Torah forbade that there's no longer such a legitimate story of a kedeshah, **"shene'emar lo sihyeh kedeshah mibenos Yisrael"**. A Jew may not be a kedeshah. This is the rule, a Jew may not be a kedeshah. By a Jew it's not enough consent and giving money,

R' Yitzchak: There needs to be a kinyan.

R' Yoel Asher: "Lfikach kol habo'el isha l'shem zenus belo kiddushin", that one is bo'el isha l'shem zenus. Once the Torah has already forbidden it, it's already gotten a name zenus also. Yes, before there wasn't yet the word zenus. Zenus means l'shem ta'avah, not l'shem kevi'us, l'shem... because now one got involved. So lokeh min haTorah, gets malkus, mipnei sheba'al kedeshah, he was bo'el a kedeshah.

Hint to the Story of Yehuda and Tamar

R' Yoel Asher: We need to mention here once again, as you said, that the Rambam is alluding here to the story of Yehuda, because the language "al em haderech" is a language that appears by Yehuda and so forth. I want to say, lekhaora, it can't be that Yehuda committed an aveira. He says that if there is ratzon (consent) and there is payment, then it's no longer an aveira. For the Torah it was no longer an aveira. What Yehuda did was okay.

R' Yitzchak: It was perhaps a different aveira later, whatever, but that wasn't an aveira.

The Dispute Between Rambam and Raavad: What is a Kedesha?

The Rambam's Position: Any Relations Without Kiddushin is Forbidden

R' Yitzchak: So here we have a great dispute. There are people, as R' Yoel said, who hold that here stands a new prohibition. There is before Matan Torah, as you say, there are truly three levels:

There is without the consent of both him and her, which was always zenut, let's say. Just in the world, you don't know about payment, you don't know about any certain order, that's not a chiddush in the Torah.

A kedeshah where you pay, it's legitimate, you pay, it's a business, there's a card showing how much it costs, you can swipe the credit card, and you get a half hour, whatever, and you go on. This is before Matan Torah permissible, the Torah comes with a new prohibition, you're not allowed to do it, you don't buy a woman with credit cards, but with rings. That's the second.

A third thing is, what if someone just, he does as they used to do before Matan Torah, he is besacham meyached to her, there is ratzon of both him and her, they live together, but they don't make kiddushin. What is the law of that? Here we have a mitzvat asech of kiddushin, it's certainly a mitzvat asech, but there's nothing more than that.

Is there something that should emphasize that what the Rambam says here about the prohibition of kedeshah means specifically in the manner where you pay her, something like that. You pay her, in the marketplace,

R' Yoel Asher: In the marketplace plus you pay her,

R' Yitzchak: For the purpose of zenut. But it doesn't say in the Rambam. The problem with the reading is, it doesn't say clearly in the Rambam what is the prohibition? The marketplace? The payment? Does the payment make it worse? What is the kedeshah?

R' Yoel Asher: But we do see it, right at the beginning of the chapter, how the Rambam gave an example of a number. A more modest situation, machnis leveto uvo'el, and there we spoke about becoming ishut.

R' Yitzchak: That's for ishut.

R' Yoel Asher: There used to be two things,

R' Yitzchak: Ishut and not ishut. Now there's only one thing. But I think that the Rambam, what the Rambam means to say is, I think that the Rambam means to say that anyone who has a wedding without kiddushin, his relations are relations of zenut, that's the language of the Gemara always. Relations of zenut is not said about someone who goes specifically in a casual way, or any kind of casualness. Relations of zenut is, without any kiddushin, any relations without kiddushin is called zenut according to the Torah, and that's a mitzvat lo ta'aseh of "lo tiyeh kedeshah." That's how I understand the Rambam, and I think that's how the Raavad understood him,

The Raavad's Position: Pilegish is Permitted

R' Yoel Asher: Because the Raavad comes immediately... The Raavad on the Rambam's position,

R' Yitzchak: Let's say. But the Raavad says immediately, yes, the Raavad says he doesn't understand what the Rambam is saying. A kedeshah is not someone who is mekadesh, he lives with a woman without kiddushin. Yes, on that piece the Raavad says, **a kedeshah is one who is mufkeret lekhol adam (available to everyone). But one who is dedicated to one man, says the Raavad, there is neither malkut nor a prohibition of a lav, and she is the pilegish written in the verse.** No malkut, not even any prohibition at all, it's a pilegish. It says in the Torah pilegish, and the Raavad says pilegish is okay.

And the Raavad says, what does pilegish mean? Pilegish is a language of pi shegal, I don't know, in short. In any case, pilegish is a woman who is dedicated to one man without kiddushin. And the Raavad says that there are places that say yes, pilegish is with kiddushin without a ketubah. But in any case, the Raavad holds that it's permitted to have a pilegish. In other words, there isn't even a mitzvat asech according to the Raavad, right? The Rambam said that there's an asech and a lo ta'aseh to come without kiddushin. The Raavad says, no. There is such a thing as an isha with kiddushin and ketubah, that's the isha, it's perhaps a mitzvah, I don't know. But a pilegish who is dedicated to one person, just as the Rambam describes before Matan Torah, is not any prohibition, not only is it not a

lav, it's completely permitted. That's the position of the holy Raavad.

A Nuance in the Rambam's Language: "Al Em Haderech"

R' Yoel Asher: One can actually learn into the words of the Rambam, that he's speaking about the Raavad, the em haderech, the woman in the marketplace, that there's a woman who stands in the marketplace and she has a place by em haderech, that's what the Raavad is speaking about.

R' Yitzchak: It's certain that the Rambam lays down the main chiddush of Matan Torah that one shouldn't do that, right?

Theory: The Rambam Against "Fake Kiddushin"

R' Yitzchak: I'm thinking now just a theory be'alma, that it could be that the Rambam thought that the moment that... as I think you said that one should look in the Moreh Nevuchim, and regarding another matter the Rambam is in the Moreh Nevuchim. But the Rambam thought, I know that in Muslim countries there's such a concept that there you certainly can't commit zenut, but they have a solution, you can have a wedding for two hours.

So there's a proper institution in Iran and in such places, if someone really wants something, you have a wedding. It's "man hab leyoma," exactly, you have a wedding for two hours, even for an hour. Afterwards comes a get, and the Muslims conduct themselves exactly this way. That means, in Islam according to halacha, I don't know what the fact is, perhaps the custom is different, but according to the basic law, it's enough to say "harei at ishti," whatever, and it's enough to say "go in peace," it becomes divorced. It's not very easy to have a wedding.

And the Rambam knew this calculation, and he said, look, this isn't enough, this is a hefker world. This is basically zenut with a hechsher. Not with a hechsher is a kedeshah, it's not allowed. So the Rambam learned that the essential Torah is not to be like that, there should be kiddushin with witnesses, it's not a joke,

R' Yoel Asher: You need a get, it's a whole order. The noten lah sechara is such fictitious kiddushin, it's fake kiddushin.

R' Yitzchak: That's how the Rambam perhaps looked at it. It's fake, it's real, it costs money, it's a zonah, it's a livelihood, I mean it needs money. But think about it, it doesn't help. So perhaps, I'm standing with a reasoning be'alma.

Halacha Lema'aseh

R' Yitzchak: But one needs to know that the dispute is a great dispute, halacha lema'aseh, and both positions are brought. Whoever wants to know...

Summary: Two Positions on the Prohibition of Kedeshah

R' Yoel Asher: Let's say once again the Rambam's position. The Rambam's position is that before Matan Torah there are two things before Matan Torah and there are two things after Matan Torah. Before Matan Torah... let's forget about Matan Torah. There are two types of ways that are not legitimated.

There is that he takes a woman, he takes one dedicated woman, and he brings her to his home, and she is dedicated to him, then one is only mevatel the mitzvat asech of kiddushin.

R' Yitzchak: According to your position, according to your position. How the Rambam also transgresses.

R' Yoel Asher: The second case is, when one also transgresses a lav is when it's more random, when it's al em

haderech. He doesn't take her to his home, then she doesn't become an eshet ish. But it's also very strongly relevant lema'aseh, then the woman won't be called an eshet ish. Eshet ish is forbidden to Bnei Noach. The second woman won't be an eshet ish. If someone is bo'el the kedeshah, he will only transgress the language of kedeshah, he won't transgress eshet ish. The first woman, the machnis leveto, still, becomes the isha of that man.

R' Yitzchak: Only Ben Noach. A Yisrael, regarding Ben Noach. What we spoke about earlier that kiddushin also makes a kehilla, there's also another kehilla. That means, a Ben Noach's girlfriend is forbidden to another Ben Noach with the prohibition of death with eshet ish. A Jew's girlfriend as long as he hasn't made kiddushin, is not forbidden to a second person with eshet ish. It's not human, but it's not eshet ish, because there's no kiddushin.

R' Yoel Asher: But the thing itself we understand, because by a Ben Noach you've already done it, the woman is already an eshet ish. Therefore, by a Jew she's not yet a wife.

R' Yitzchak: And that's the halacha. That's how most commentators learn yes that the Rambam holds that even yichud to himself transgresses lo tiyeh kedeshah, that means that pilegesh is forbidden. And the dispute is brought in Shulchan Aruch, and the Rambam brings the Raavad's position that there are those who say that it's permitted, and lekhaora lema'aseh one should ask the local rabbis what they say.

Until here we've learned the basics of the two things, kedeshin and kedeshat, the two mitzvot and the two negative commandments. Now we're going to learn another bunch of words.

Halacha 3: The Definition of Zonah

R' Yoel Asher: Now we're going to learn definitions of words. The Rambam says, **"Anyone whose relations are forbidden in the Torah and one is liable for his relations with karet."** We haven't yet said about this, but there's a section of arayot, which will stand in Hilchot Issurei Biah,

R' Yitzchak: The laws of this will stand there.

Halacha 1 (Continued) – The Definition of "Ervah"

R' Yitzchak: Now we're going to learn another bunch of words.

R' Yoel Asher: Now we're going to learn definitions of words. The Rambam says, **"Anyone whose relations are forbidden in the Torah and one is liable for his relations with karet"** - it hasn't been said about this yet, but there's a section of arayot, which will stand in Hilchot Issurei Biah,

R' Yitzchak: The laws of this will stand.

R' Yoel Asher: But look what the Rambam says. The Rambam says, **"Anyone whose relations the Torah has forbidden,"** everything that the Torah has forbidden relations with these women, **"and one is liable for his relations with karet, and they are those mentioned in Parashat Acharei Mot"** - all those arayot that we read at Mincha on Yom Kippur.

R' Yitzchak: The Rambam wrote for people who know the entire Chumash, so obviously you already know this.

R' Yoel Asher: **"They are called arayot,"** they are called arayot.

R' Yitzchak: That means, generally, a group of them are called arayot.

R' Yoel Asher: **"And each one of them"** - and the singular form of this is ervah. **"Such as em,"** a person should be with his mother, or with his sister, or with his daughter, is called an ervah, **"and the like."**

And here won't stand the laws of arayot, but it will stand in the laws of kiddushin. Therefore it's relevant on which woman kiddushin works. On arayot kiddushin doesn't take effect.

R' Yitzchak: That's the reason why the Rambam says this. He's going to give a statement later, "on an ervah kiddushin doesn't take effect," so you should know what is an ervah.

R' Yoel Asher: And in the next few halachot the Rambam is going to tell us definitions of words, so that later in the halacha... I mean he's already told us once, I always remember when I'm going to say this and that word, I mean this and that.

R' Yitzchak: I don't remember where. I think that at the end of Chapter 2 he says so.

Halacha 2 – The Definition of "Sheniyot Le'arayot"

R' Yoel Asher: He says further, **"And there are other women who are forbidden mipnei hakabala,"** they are forbidden as the Sages received. That means, because it's a rabbinic prohibition.

Discussion: The Language "Mipnei Hakabala"

R' Yitzchak: This "mipnei hakabala" is a strange language. I didn't write here a note from last time, because usually kabala means received, but this isn't received, this is a rabbinic prohibition.

R' Yoel Asher: It's a fence, it's a fence for... sheniyot le'arayot is always an example of a fence.

R' Yitzchak: So I don't know why the

R' Yoel Asher: Rambam calls it mipnei hakabala. The thirteen principles of Torah interpretation, it says such as sheniyot le'arayot, if I remember the language correctly. Mishmeret lemishmarti.

R' Yitzchak: Yes, it could be that... I mean it also says "vekidashta atzmecha bemutar lach," such things. It could be that the Rambam means to say mipnei hakabala, from receiving from the Sages. Do you remember that they had a long dispute whether one can say "mipi hakabala," whether there is such a thing that Torah she'be'al peh is also like a kabala. So here is one of the places where it does appear from the Rambam perhaps, that kabala he means to say that one should receive from the Sages, not that the Sages received from Moshe, because then it would be de'oraita, right? It can't be. He says that there's a hint, but it doesn't fit, because a hint doesn't raise or lower.

R' Yoel Asher: I think you should take out the nun, not "mipnei hakabala" but "mipi hakabala."

R' Yitzchak: No, first of all, I'm not taking out. Our text is the text of Rav Shilat, which is trusted. But "mipi hakabala" would be worse, on the contrary, "mipnei hakabala" is better.

R' Yoel Asher: No, regarding kabala,

R' Yitzchak: What we received from those who received, what we received. "Mipi hakabala" would be exactly like "mipi hashemu'a," which is not mipi hashemu'a. Therefore perhaps

he holds that this is the correct version. There are actually two versions here, I'm not saying.

Continuation of Halacha 2 – List of Sheniyot Le'arayot

R' Yoel Asher: Okay. "And their prohibition is from the words of the Scribes, and they are called sheniyot." The prohibition is from the words of the Scribes, and they are called sheniyot. From now on sheniyot le'arayot, next to the arayot. That means, to each ervah they added another. For example, his mother, they added another one. Ah, the Rambam is going to enumerate. "And each one of them," the plural is sheniyot, and the singular is sheniya. "And they are twenty women," there are twenty such women who are sheniyot le'arayot, "and these are they."

Sheniya #1: Em Imo – Ein Lah Hefsek

Just as there is his mother, the Sages added em imo. "And this one has no limit." On the law of his mother, which the Sages added em imo, they didn't only add em imo, but also em em imo. A person cannot marry his great-grandmother all the way to Chava. Because even em em em imo ad ma'ala ma'ala is forbidden.

R' Yitzchak: No, the Rambam says "em em

R' Yoel Asher: imo ad ma'ala ma'ala is forbidden." I think, in the Gemara it's a bit strange, because where is it relevant? But one can think that in the Rambam... According to the Rambam, the Rambam also brings laws for Mashiach, it will be relevant by techiyat hameitim. No,

R' Yitzchak: But it could be that he lives long, a strange creature, he wants to be with his great-great-grandmother, we're talking about a halacha.

Sheniya #2: Em Avi Imo – Bilvad

R' Yoel Asher: And em, and then there is like this, avi imo. On this they added, it means avi imo, the mother's father is forbidden to the daughter, they added em avi imo. So avi imo isn't there, the Sages added one sheniya, not forever. Ve'em aviv.

R' Yitzchak: That means, em avi imo means, your mother's father's mother. That means, your great-grandmother from the mother's side, basically. Yes? Your mother, your grandfather, your great-grandmother.

R' Yoel Asher: Yes? Em avi imo is a sheniya of what? Of em imo,

R' Yitzchak: Right?

R' Yoel Asher: Em imo is also rabbinic.

R' Yitzchak: I don't know what it is exactly. It's a decree. Sheniya doesn't mean being second, I don't know, it could be that it's a decree.

Sheniya #3: Em Aviv – Ein Lah Hefsek

R' Yoel Asher: Okay, ve'em aviv, the father's mother,

R' Yitzchak: Vezo ein lah hefsek. He says that it's similar to em imo, so it says in... Yes. Oy,

R' Yoel Asher: It's another sheniya.

R' Yitzchak: I understand with common sense, a great-grandmother, may one or may one not? Come listen. So the answer is, as you say, the great-great-grandmother who goes through a father is already too far. Anyway, it's also not relevant lema'aseh, it's also already far enough. People understand a distinction, but a plain great-grandmother is forbidden.

Sheniya #4: Em Avi Aviv – Bilvad

R' Yoel Asher: Ve'em aviv, the father's mother, the Sages also added, it means just as the father is forbidden, and the father's mother is forbidden, they also made no limit, but em em aviv ad lema'ala is forbidden. Ve'em avi aviv bilvad, the grandfather's mother,

R' Yitzchak: His father's father's mother, yes,

Sheniya #5: Eshet Avi Aviv – Ein Lah Hefsek

R' Yoel Asher: The grandfather's mother, also only that generation, ve'eshet avi aviv. The wife of the grandfather is also ein lah hefsek, even eshet Yaakov Avinu is forbidden to any one of us. Yes, Bilhah and Zilpah will be forbidden to all of us.

Sheniya #6: Eshet Avi Imo – Bilvad

R' Yitzchak: Ve'eshet avi imo bilvad. Yes, it's what Reuven encountered.

R' Yoel Asher: Yes, yes. Okay, we've already... Yechi Reuven ve'al yamut, we've already mixed it up by Moshe's blessing. Ve'eshet avi imo bilvad.

General Rule in the Distinctions Between "Ein Lah Hefsek" and "Bilvad"

R' Yitzchak: Not always by the father, not always, actually. By the wife... It goes like this: by the father, when the prohibition is because of his mother, it becomes less by his father. When the prohibition is because of his father, the father goes on forever, but through the mother it's only one.

Sheniya #7: Wife of the Father's Half-Brother from the Mother

R' Yoel Asher: And the wife of the father's half-brother from the mother. The wife of the... That means the aunt, the father's brother's wife, from the mother. And the wife of the father's brother... The wife...

R' Yitzchak: And the wife of the mother's brother.

R' Yoel Asher: The Rambam made numbers,

R' Yitzchak: We can say the numbers. So, seven is the wife of the father's half-brother from the mother, meaning the wife of your uncle, but not your actual uncle, rather your uncle from the mother. Yes? Yes. This is the wife of the father's half-brother from the mother. What is the matter with this? The wife of the father's brother is forbidden, but this is specifically from the father. The wife of the father's half-brother from the mother the Chachamim added.

Sheniya #8: Wife of the Mother's Brother – Whether from the Mother or from the Father

R' Yoel Asher: This is the... But the wife of the mother's brother,

R' Yitzchak: Whether from the mother or from the father. Further, in the Torah it only says the wife of the father's brother,

R' Yoel Asher: But the wife of the mother's brother the Chachamim added,

R' Yitzchak: Any sort of them.

Sheniya #9: Son's Daughter-in-Law – Has No Limit

After that is the son's daughter-in-law, and the Torah only says your daughter-in-law.

R' Yoel Asher: And the Chachamim added also his son's daughter-in-law, a grandson's daughter-in-law. And this one has no limit, even the daughter-in-law of the son of the son of his son until the end of the world is forbidden,

R' Yitzchak: Until she would be the wife of one of us a sheniya upon Yaakov Avinu. That means, Yaakov Avinu may not marry any Jew's wife. Why one says the whole time Yaakov Avinu and not Avraham Avinu I don't know. Perhaps Avraham Avinu didn't yet have the law of Israel? Do you understand the question? Ah.

R' Yoel Asher: Interesting. Okay, Yaakov had twelve children, there are already several signs there.

Sheniya #10: Daughter's Daughter-in-Law – Only

And the daughter's daughter-in-law only.

R' Yitzchak: That means,

R' Yoel Asher: Your daughter-in-law has no limit, the daughter's daughter-in-law is only that generation itself.

Sheniya #11: Son's Son's Daughter – Only

And the son's son's daughter only. This is a granddaughter. And the son's son's daughter.

Sheniya #12: Son's Daughter's Son's Daughter – Only

And the son's daughter's son's daughter only. It's interesting why the Chachamim excluded this. It's not relevant, it's not applicable.

R' Yitzchak: In this case it's applicable, everything is applicable.

R' Yoel Asher: The son's daughter's son's daughter, a Jew has to be a hundred years old to reach such a... Well,

R' Yitzchak: I said. Make a man.

R' Yoel Asher: A person should rejoice, he has reached age one hundred, and there have come more mitzvos.

R' Yitzchak: A great-grandchild this must be. I once heard of something,

R' Yoel Asher: A Jew should reach age one hundred, and he says, ah, there have come a few more prohibitions. I now have a prohibition of a... daughter's son's daughter-in-law, yes.

R' Yitzchak: Son's son's daughter. Once people used to marry younger.

R' Yoel Asher: Yes, once it was... By us it looks insane, but in ancient times it wasn't so. Age wasn't such a strong factor. A rich man could take a girl. Today it's more a rare thing. Thirteen...

Dispute Between Rambam and Ramban: How Far Does the Prohibition Go by Grandchildren?

R' Yitzchak: By the way, there is a dispute. You see, the Ramban says that the son's son's son's daughter is also forbidden. The Rambam was mechadesh that it only goes until her grandchild. It depends how one understands the reasoning, the logic. If it should be seen in halacha lemaaseh, it's so relevant lemaaseh. In Shulchan Aruch it actually says that one may not. One must know, if someone has a great-great-grandchild from his son, according to the Rambam it's permitted, but according to the Ramban, and so rules the Shulchan Aruch, it's forbidden.

R' Yoel Asher: One must remember the halacha. Twelve we're holding, twelve. Twelve.

Sheniya #12 (Review): Son's Daughter's Son's Daughter Only

Twelve is the son's daughter's son's daughter only, his grandchild, the daughter of the son's son.

Sheniya #13: Daughter's Daughter – Only

Thirteen is the daughter's daughter only, another sort of great-grandchild.

Sheniya #14: Daughter's Son's Daughter – Only

Fourteen is the other sort of great-grandchild, and the daughter's son's daughter only. Girls,

R' Yitzchak: Yes. And fourteen is what? The daughter's son's daughter. Yes. Very good. So these are all sorts of grandchildren? All of these sorts of grandchildren, basically, the Rambam holds it only goes until great-grandchildren.

R' Yoel Asher: Only that generation,

R' Yitzchak: Yes. Great-grandchildren, yes? It goes four generations almost. The daughter's son's daughter.

Sheniya #15: Wife's Son's Son's Daughter – Only

R' Yoel Asher: And the wife's son's son's daughter.

R' Yitzchak: Fifteen. Fifteen is what?

R' Yoel Asher: A step-grandchild. That means the wife's son's son's daughter.

Halacha 2 (Continued): List of Sheniya's

R' Yoel Asher: Thirteen is the other sort of great-grandchild.

R' Yitzchak: The daughter's son's daughter only. And fourteen is what? And the daughter's son's daughter very good. So these are all of these sorts of grandchildren? Basically the Rambam holds it only goes until her grandchildren. Her grandchildren, it goes four generations as it were. And the daughter's son's daughter.

R' Yoel Asher: And the wife's son's son's daughter.

R' Yitzchak: Fifteen. Fifteen is what?

R' Yoel Asher: A step-grandchild. That means the wife's son's son's daughter, the daughter of the wife's grandchild.

R' Yitzchak: Through males. And sixteen is her grandchild of your wife, as it were.

R' Yoel Asher: Through the women, through daughter's daughter. And seventeen is upward, the mother of the father of the father of his wife, the mother of...

R' Yitzchak: The mother of the father of his wife, yes?

R' Yoel Asher: The mother of the mother of the father of his wife, yes.

R' Yitzchak: And mother, mother...

R' Yoel Asher: Eighteen. Eighteen is three generations of women: and the mother of the mother of the mother of his wife. Nineteen is and the mother of the father of the mother of his wife.

R' Yitzchak: Another way, yes? Yes. What does it mean? Your father-in-law's father's mother. And twenty is and the mother of the father of his wife, that means your father-in-law's sort, your father-in-law's father's mother. Now,

Sheniya's That Have No Limit

R' Yoel Asher: The Rambam is clever. The sheniya's that have no limit are four. There are four types of sheniya's that have no limit, that go around forever. The mother's mother upward, no difference how many generations of mothers.

R' Yitzchak: You are Rachel, whatever, you are Chava.

R' Yoel Asher: As you say. And the mother's mother, and the mother's father upward. And the wife of the father's father, the wife of the father's father, that means the grandfather's wife upward, and the wife of the son's son downward. These four have no limit.

R' Yitzchak: And all the others that he counted,

R' Yoel Asher: The other sixteen is only four generations.

Sheniyos to Arayos – The Reason for the Prohibition of Closeness

R' Yoel Asher: These are arayos, and then sheniyos to arayos. That means, sheniyos to arayos are from the same category, that it's a matter of arayos, that it's a prohibition as close family relations.

And now the Rambam goes to count other forbidden relations, but which are not forbidden because they are a close relative. And in Moreh Nevuchim the Rambam explains that it's a different type of prohibition. That the prohibition of closeness is that a person should not live with a person who is very close to him, who turns around in his house, it's very easy to marry. It's one type of prohibition. But here there are other types of prohibitions which are forbidden for other reasons. This is called issurei kedusha.

R' Yitzchak: Yes, the thing is, this is the reason, but it's a different level, it's not kares. Arayos has kares, sheniyos doesn't have kares, rabbinic prohibitions don't have anything at all in kares.

Now we're going to learn from... And again, the laws of all these arayos

R' Yoel Asher: One must learn in Hilchos Issurei Biah.

R' Yitzchak: No, I said, the essential prohibition, all the details of this, we went a bit fast, it's not legitimate what we did. No one will be able to remember from this shiur which grandmothers are forbidden and which not, which are on the... Better before one goes to the grandmother

R' Yoel Asher: One should enter into a stumbling block.

R' Yitzchak: But just so is, again, the Rambam brings this only because he's going to use the concept "sheniya" later, in Hilchos Kiddushin you need to know it. The main thing is, when we learn Hilchos Issurei Biah, there we'll go more into the definitions of which sort of sheniyos there are and why.

Halacha 4 – Issurei Lavin / Issurei Kedusha

R' Yoel Asher: Now, the Rambam is still in the middle of giving the definitions. Later he'll say about which of them for example kiddushin takes effect and so on. Now,

R' Yitzchak: Besides this there is a new sort of prohibition.

R' Yoel Asher: Says the Rambam, "**Anyone whose relations the Torah forbade and he is not liable for kares for relations with her**", everything that the Torah forbade the relations, one may not live with that woman, but there is no obligation of kares, it's only forbidden by a prohibition.

R' Yitzchak: Is called "issurei lavin". "**And they are also called**",

R' Yoel Asher: There's another way how one calls them, often one calls them "issurei kedusha". That means not issurei korva, rather issurei kedusha. That means, because of the level of kedusha, because of this is the prohibition. "**And they are nine**", these are nine types of prohibitions. "**And these are they**" – yes, it's clear that a Kohen Gadol is so holy that he is forbidden even to a widow. Ah,

R' Yitzchak: This is called issurei kedusha? But all of them are so? Yes, yes. Aha,

List of Issurei Kedusha

R' Yoel Asher: So we see that a Yisrael is even a mamzer is forbidden. "**And these are they: a widow to a Kohen Gadol**". A Kohen Gadol has the highest level of kedusha, that he may not marry except "**and he shall take a woman in her virginity**", he may only marry a virgin, not any widow.

A regular Kohen is a weaker level of kedusha, he may not marry a divorcee or a zona or a chalala. Chalala means one who was born from a forbidden relation, from issurei kedusha, whether to a Kohen Gadol or to a regular Kohen. The divorcee is forbidden to a Kohen Gadol and also to a regular Kohen. That means, a widow is permitted to a regular Kohen, and a divorcee is forbidden to both, all sorts of Kohanim.

And for a Yisrael, a widow, divorcee, or zona, chalala, is not forbidden. But what is indeed forbidden to a ben Yisrael? A mamzeres, one who was born from issurei arayos, to a ben Yisrael. And likewise a bas Yisrael to a mamzer, a Jewish daughter may not marry a male mamzer.

Further, a bas Yisrael may not marry an Amoni or Moavi. That means, a Kohen certainly not, but even a bas Yisrael, who has only the basic kedusha, may not marry an Amoni or Moavi.

And a bas Yisrael may not marry a petzu'a daka or kerus shafcha. Also somewhere where he will stand, presumably in Hilchos Issurei Biah it will stand more clearly what this means, a sort of blemish in the body, where the reproductive organs are damaged, a bas Yisrael may not marry them.

A person may not marry his divorcee after she was married to another. There is a law, if a person divorced his wife, he can take back his divorcee only before she received kiddushin from another man. And this is an issur kedusha, that means only a prohibition.

And a yevama, a yevama who did not receive yibum, the seventh is a yevama who did not receive yibum, who married a stranger, and still the right of the yavam is upon her, she still has a zika, so it's called in Hilchos Yibum, she is still bound, she has not yet done the mitzva of yibum or chalitza, and she went and married a stranger.

R' Yitzchak: This means a prohibition.

Discussion: How Does the Rambam Count Nine?

R' Yoel Asher: I wanted to say something a bit interesting,

R' Yitzchak: The Rambam says that

R' Yoel Asher: She married a stranger, should have said yevama to a stranger.

R' Yitzchak: There's only here here... No, I'm missing. It means...

R' Yoel Asher: No, it goes into the next. With the divrei sofrim, nine are everything together.

R' Yitzchak: Yes. You mean so? No. Chalutzah and Nesinin you mean so? Perhaps one must count that.

R' Yoel Asher: Perhaps I didn't count correctly.

R' Yitzchak: And one must make petzu'a daka and kerus shafcha two different ones, or Amoni and Moavi two different ones. One must look how the Rambam counts in other places. He counts? Someone counts here? I don't see how he counts. Ah,

R' Yoel Asher: He actually did it so.

R' Yitzchak: What must one divide? Earlier he didn't finish so?

R' Yoel Asher: Ah, divorcee and zona and chalala is three.

R' Yitzchak: And here one doesn't need to divide? What is this? Why shouldn't one divide divorcee?

R' Yoel Asher: I don't know. One can divide it this way.

R' Yitzchak: Not clear what to divide.

R' Yoel Asher: Is this a language of the Mishna, are there nine or what?

R' Yitzchak: No, I mean the Rambam himself made the number. Therefore it's harder for me to understand how he counted.

R' Yoel Asher: But perhaps one must indeed learn chalutzah and Nesinim? This is with divrei sofrim.

R' Yitzchak: Means it's different. Means it's... Right,

R' Yoel Asher: It's not on... The "and they are nine" goes up on the word issurei kedusha.

R' Yitzchak: Apparently. So how does one count? How can it be that the Rambam says a number and we don't know how to count? Let's see. Rav Lechem Mishneh. Ah, the Lechem Mishneh already asks this question. The Lechem Mishneh already didn't know how to count. Perhaps the Yad Peshuta knows how to count? Not clear, very strange. Let's see. Widow, divorcee, zona, so he counts. Why? One must count how the Rambam learns mitzvos. Perhaps one must look in Sefer HaMitzvos.

R' Yoel Asher: How the Rambam counts.

R' Yitzchak: Ah, look at issurei biah. Ah, he says it so, so one must count, because the Rambam in the Sefer HaMitzvos counts widow to a Kohen Gadol

R' Yoel Asher: And issurei kedusha also two.

R' Yitzchak: Therefore, this was the Lechem Mishneh's question, that either there are seven or eleven. It comes out that one must do apparently so. We'll do so.

R' Yoel Asher: So the explanation is that although the verse is one language, **"divorcee and zona and chalala he shall not take"**, but the Rambam counts this out extra.

R' Yitzchak: The numbers don't update here. Okay, I know. Anyway, it comes out that one must do so, and then there are nine. Okay.

Halacha 5 — Rabbinic Prohibitions: Chalutzah and Nesinim

R' Yoel Asher: Already, now the Rambam is going to say, we finished with the Torah law, there are also forbidden relations from the Rabbis.

R' Yitzchak: Right. What is this?

R' Yoel Asher: There is so,

R' Yitzchak: Chalutzah. The chalutzah. Yes,

R' Yoel Asher: A woman who received chalitzah. Yes. It says that a yevama who instead of yibum one did chalitzah, **she is like a divorcee**, she receives the law like a divorcee.

R' Yitzchak: She looks similar to a divorcee.

R' Yoel Asher: Right, similar. A divorcee says that she was already someone's wife. She was also already like someone, she already had a zika to a yavam, so she is like a divorcee, **and she is forbidden to a Kohen from the words of the Sages**. It smells like a divorcee, one who has the scent of a get. By Nesinim, there are mamzerim. Mamzerim means one who we know was born from a forbidden relation, for example,

from one who married an married woman. But Nesinim are such doubtful mamzerim.

R' Yitzchak: The Rambam says here that he's not going to tell us what it is.

R' Yoel Asher: Look, **"And the Nesinim are like mamzerim, both males and females"**, which means, the boy and the girl should be a mamzer or mamzeres, **"and their prohibition is from the words of the Sages"**. Ah, you wonder what the word Nesinim means? **"And in Hilchos Issurei Biah it will be explained to you what the Nesinim are"**. He keeps you in suspense. You must finish Sefer Nashim, you must wait until Sefer Kedusha.

R' Yitzchak: Okay.

Discussion: Why Does the Rambam Put Rabbinic Law Extra?

R' Yoel Asher: But interesting, the rabbinic ones are also like prohibitions, because a rabbinic prohibition, it's a rabbinic prohibition, it's not a rabbinic positive commandment. Why does he put positive commandment extra?

R' Yitzchak: It's nothing. I don't know why he puts it there. Not clear.

R' Yoel Asher: One must understand. Perhaps because it's relevant later in the law as he's going to say whether there is kiddushin or not.

Halacha 6 — Issurei Aseh

R' Yitzchak: He says,

R' Yoel Asher: **"And there are those whose relations are forbidden by a positive commandment"**, that the prohibition of relations is by a positive mitzva, **"and they are not liable for prohibitions"**. **"And they are three"**, there are three such. **"Egyptian and Edomite"**, and Edomite is only **"first generation and second generation"**. Ah, no, first generation and second generation goes on both, Egyptian and Edomite. First generation and second generation, that means that the third generation already "may enter the congregation of Hashem", **"both males and females"**. **"And a non-virgin to a Kohen Gadol"**, one who was already violated to a Kohen Gadol. That means not a widow, but perhaps another sort of non-virgin, one who was violated.

Discussion: Non-Virgin to Kohen Gadol — Why Is Non-Virgin Different from Widow?

R' Yoel Asher: That means not a widow, but something another sort of non-virgin, one who became a rape victim. Yes, I mean a rape victim to a Kohen Gadol.

R' Yitzchak: Yes. The Rambam says non-virgin. Why does he say non-virgin? Non-virgin to a Kohen Gadol. That means, not a virgin, as it says in the Torah virgin, but it doesn't say "not a virgin", this word isn't there. Widow, why is widow indeed? How does widow stand?

R' Yoel Asher: Someone: The Rebbe shlita means a relations not with kiddushin? Not any widow or not any divorcee.

R' Yitzchak: Rather just relations. She's not a proper virgin. Yes, that's the meaning. But why is this called different? We must learn.

R' Yoel Asher: "And he shall take a woman in her virginity" is a positive commandment (mitzvas aseh), and there is no negative commandment (lav) on this.

R' Yitzchak: Why is a widow yes then?

R' Yoel Asher: Doesn't it explicitly state widow? I don't remember.

R' Yitzchak: Someone: Simple am ha'aretz, does it explicitly state widow, yes? I don't remember.

The Rambam's Explanation: A Negative Commandment Derived from a Positive Commandment

R' Yoel Asher: I don't remember. Do you remember. Forget it. Ah, the Rambam is going to say. Ah, so says the Rambam: **"Because it does not say regarding these 'he shall not come' or 'he shall not take'", by Egyptian and Edomite there is no language of a negative commandment, rather it states it in the language of a positive commandment. "Rather from the implication of what is stated 'the third generation may come to them'", it states in the Torah by Egyptian and Edomite "the third generation may come to them", it's a lav haba miklal aseh (a negative commandment derived from a positive commandment), which means it's a positive commandment, that "you learn" — from there you derive — "that the first and second generation may not come", but the third generation may come.**

And the same thing with a non-virgin, **"and from the implication of what is stated 'and he shall take a woman in her virginity,' you learn that one who is not a virgin he shall not take". One who is not a virgin he shall not take, and a negative commandment derived from a**

positive commandment is considered like a positive commandment.

But not so with a widow, I don't remember but a negative commandment derived from a positive commandment.

R' Yitzchak: But it is written explicitly. That's what I'm asking.

R' Yoel Asher: Where does it state? A widow to a Kohen Gadol, where does it state? Let's look at those verses there.

R' Yitzchak: He doesn't bring our questions. He doesn't explain to me.

R' Yoel Asher: Let's go look at those verses.

Finding the Verse in Parshas Emor

R' Yitzchak: A widow to a Kohen Gadol? A widow to a Kohen Gadol? I don't know. What should I look at? The prohibition of a widow to a Kohen... does it state explicitly? Well, let's try to remember. A divorced woman and a widow... yes, it states explicitly. Why do you want? It states explicitly, it doesn't state regarding the widow. Parshas Emor, I didn't remember. That's the answer.

R' Yoel Asher: Many times when you have a difficult Rambam you can look in the Chumash, the Chumash explains.

R' Yitzchak: It's embarrassing that I didn't remember that it states explicitly. Okay.

R' Yoel Asher: Let's move on. Wonderful. That's it.

R' Yitzchak: Chapter 1 ends.