

Laws of Marriage Chapter 3 (Auto Translated)

English

Auto Translated

Shiur Overview

Summary of Shiur 3 — Laws of Marriage, Chapter 3

Introduction to the Chapter

Chapter 3 of Laws of Marriage is described as the chapter where **the actual laws of kiddushin** begin. The first two chapters only gave the general mitzvah of kiddushin and the terminology. Chapter 3 brings **all the fundamental principles of the laws of kiddushin** — how one does it in practice.

Structure of this chapter: The chapter is divided into several parts: (1) the three types of kiddushin — money, document, intercourse — and how one performs each one; (2) the formulations that must be said; (3) who performs the kiddushin — the father for a minor, agency; (4) the proper order l'chatchilah — what one should actually do in practice; (5) the blessing on kiddushin.

Insights:

1. **The character of Sefer Nashim compared to Sefer Ahavah:** Sefer Ahavah (prayer, Shabbat and the like) speaks about how a Jew should conduct himself — l'chatchilah mitzvot. Sefer Nashim, however, **deals with reality** — people live, one meets women, things happen in the marketplace — and the halachah must give status to the reality. Therefore the chapter begins with **b'dieved questions** (whether kiddushin took effect or not), and only at the **end of the chapter** comes the l'chatchilah — how a good Jew who follows the Sages should perform kiddushin, with a blessing, like a mitzvah.

2. **Distinction between "mekudeshes" and "yesh lekadesh kachah":** That kiddushin "works" doesn't yet mean one should do it that way. Kiddushei bi'ah works one hundred percent, but it's not the Jewish way. There is a distinction between the law's effectiveness (mekudeshes) and the l'chatchilah (yesh lekadesh kachah).

3. **Sefer Nashim compared to Sefer Kinyan:** In Sefer Kinyan everything depends on the da'at of the two parties, people can agree to whatever they want. But with kiddushin **it is not dependent only on the two people** — it is a mitzvah from the Torah with fixed rules.

4. **Practical relevance:** Even HaEzer (Sefer Nashim) is mostly relevant for **rabbis**, not for every Jew. Every Jew performs kiddushin as it appears in the siddur, but not everyone needs to know that there are three types of kiddushin.

Halachah 1 — Kiddushei Kesef

The Rambam: "If with money he betroths — it should not be less than a perutah of silver or the value of a perutah... and he should say to her 'Behold you are betrothed to me' or 'Behold you are engaged to me' or 'Behold you are to me as a wife'... and he gives it to her before witnesses."

Explanation: The minimum for kiddushei kesef is a perutah of silver or the value of a perutah (like Beit Hillel, against Beit Shammai who holds a higher amount). He must say a formula of kiddushin and do it before witnesses.

Insights:

1. **"Mekudeshes" and "me'oreses" — the language of the Sages and the language of the Torah:** "Mekudeshes" and "me'oreses" are formulations of the Sages and the Torah (as already discussed in chapters 1-2). "Harei at li l'ishah" is different — **it doesn't speak about an act of acquisition, but about the result** — "with this you shall be my wife." **After Matan Torah "harei at li l'ishah" is the result of "harei at mekudeshes"** — "kidashna" is the act, "li l'ishah" is the result, but it's **all the same thing**, as the Rambam already said earlier that there is no difference between the formulations.

2. **Witnesses — where does it appear in the Rambam?** The Rambam did **not enumerate witnesses** in chapter 1 when he stated the essential mitzvah. But **yes, it appears** in chapter 1: **"Rather he should acquire her first before witnesses and afterwards she will be his wife."**

3. **Whether the "saying" is indispensable — a dispute:** **Later in this chapter one will see that without saying also works in certain situations.** The Rema says that even **in silence**, if one knows that they intended kiddushin, it is valid.

4. **Foundation: the "saying" is a revelation of the matter, not a mitzvah of speech:** The utterance in kiddushin is not a mitzvah of speech — it is a mitzvah of intention. The "saying" is merely a revelation of what he intended. Therefore, if he says a **wrong formula**, the explanation is that **he had the wrong intention**, not that he had the wrong speech.

5. **"Osukim b'oto inyan" — what does it help?** "Osukim b'oto inyan" (that one is already occupied with the matter of kiddushin) **only helps with a doubtful formula** — a formula that is not clear. But **it doesn't help with a completely wrong formula** — because a wrong formula means that he **intended to do the wrong thing**.

Halachah 2-3 — The Man is the Acquirer, and He is the Giver

The Rambam: "And the man is the one who says words whose meaning... and he is the one who gives"

Explanation: The man is the one who must say the words of kiddushin, and he is the one who must give the money of kiddushin.

Insights:

1. **Not only the form of the words, but the content of the words:** The Rambam speaks here not only about the **form of the words** (the words), but about the **content of the words** — the content must express that **he is the**

acquirer and she is the acquired. This is not a two-sided acquisition or a partnership, but he is acquiring her. This is part of the **essence of kiddushin**, not just a law in the validity of the speech.

2. Introduction to halachah 4: This is primarily an **introduction to halachah 4** (natan hu v'amar hu), where the Rambam deals with what happens when it goes in reverse. But it is also a **part of the explanation of what kiddushin is**.

3. Textual insight: The division into sections (halachah 2 / halachah 3) is a **printing error**. According to the rule in precise Rambam editions (R' Shabsai Frankel, R' Shilat) — two dots mean a break between halachot, one dot means not.

Halachah 4 — She Gave and She Said / She Gave and He Said / He Gave and She Said

The Rambam: "If she gave and she said... she is not betrothed. And similarly if she gave to him and he said... she is not betrothed. If he gave and she said... this is doubtfully betrothed."

Explanation: If **she** gave the money **and** she said — she is not betrothed. If **she** gave the money but **he** said — also she is not betrothed, because he must be the giver. But if **he** gave and **she** said — it is doubtful kiddushin.

Insights:

1. She gave and she said: Even if she says "Harei ni mekudeshes lach" — which is a true formula of acquisition (she expresses that she is being acquired) — nevertheless she is not betrothed, because **he** must be the giver.

2. She gave and he said: Even if he says the entire correct formula, but if **she** gave the money — she is not betrothed. The foundation: in the acquisition of kiddushin there is no such reality that the **seller** (she) should give money — the **buyer** (he) must give.

3. He gave and she said — doubtful kiddushin: The doubt is: on one hand, he actually gave (the essential act of acquisition is present); on the other hand, he didn't say (he must say). Perhaps it is like he says "amen" to her words, but it remains a doubt. If one knows for certain that **osukim b'oto inyan** — both intend to betroth — then according to the Shulchan Aruch there is no problem. The doubt is only a **lack of knowledge**.

4. Distinction between wrong formula and wrong action: With a wrong formula the doubt is whether they intend kiddushin at all; with "he gave and she said" the doubt is that the **action** is not correct — he must be the one betrothing (active), not just that she is being betrothed (passive).

Halachah 5 — Kiddushei Shtar

The Rambam: "And if he betrothed with a document, he writes on paper or on anything he wishes, 'Behold you are betrothed to me' or 'engaged to me' and all similar expressions, and gives it to her before witnesses."

Explanation: With kiddushei shtar the man writes on paper (or anything) "Behold you are betrothed to me" and gives it to her before witnesses. He doesn't need to say — the document itself says the words.

Insights:

1. With kiddushei shtar he doesn't need to say — the document takes the place of speech. The document itself "says" what he would have said.

2. No strict laws of documents: The Rambam says "on paper or on anything he wishes" — not like other documents where one needs parchment or specific materials. (By get it does say something about good paper.)

3. Utterance at the time of giving with a document: The Beit Shmuel says one must say (an utterance) at the time of giving the document. But according to the understanding that the writing itself is already like the utterance, one doesn't need to say again when giving the document. The Rambam only says "and gives it to her before witnesses" — no utterance is mentioned at the giving.

Halachah 5 (continued) — Lishmah

The Rambam: "And it must be written for the sake of the woman being betrothed, like a get."

Explanation: The document of kiddushin must be written lishmah — for the specific woman being betrothed, just like with a get.

Insights:

1. Must one write her name? Lishmah doesn't mean writing the name — it means that the writer must **have in mind** for which woman he is writing. Proof: even by get, where the Rambam says explicitly that names is one of ten indispensable things, that is a separate law — not the same as lishmah. Furthermore, two women with the same name — the name itself doesn't help.

2. For the sake of the man also? The Rambam writes only "for the sake of the woman". The question whether one must also write for the sake of the man remains open.

3. Who can write? The man himself doesn't have to write — he can tell a scribe to write for the specific woman. The main thing is that the **writer** (whoever writes) must know for whom he is writing.

Halachah 6 — And He Only Writes It With Her Knowledge

The Rambam: "And he only writes it with her knowledge."

Explanation: One may not write the document of kiddushin without her knowledge/consent.

Insights:

1. Mi'da'atah = with her consent — because "a woman is only betrothed with her knowledge" (general principle that a woman is only betrothed with her consent).

2. At the time of writing there must already be her consent — a man cannot keep a ready document in his pocket and wait for a "good moment" to give it to her. There must be a **ceremony** — he tells her "I am writing now for you", it is written lishmah, and it is with her knowledge. This is **different from get**, where one can write without the woman's knowledge.

Halachah 6 (continued) — If He Wrote It Not Lishmah or Not With Her Knowledge

The Rambam: "If he wrote it not for her sake or for her sake but not with her knowledge, even though he gave it to her with her knowledge before witnesses, she is not betrothed."

Explanation: If the document was not written lishmah, or lishmah but not with her knowledge, even if he gives it to her later with her consent before witnesses — she is not betrothed, not even stringently.

Insights:

1. **"With her knowledge" means consent, not awareness:** She doesn't need to know when the document is being written, and she doesn't need to be there. "With her knowledge" means her consent/agreement. But — her consent later (at the time of giving) doesn't help; it must be her consent at the time of writing.

2. **The nature of kiddushei shtar:** Kiddushei shtar is not merely a substitute for money (instead of a valuable object one gives a note). It is a "type of ceremony" — one sits down and writes a document. This is the type of kiddushin — the act of writing itself is part of the acquisition.

Halachah 7 — Kiddushei Bi'ah

The Rambam: "He says to her 'Behold you are betrothed to me' or 'Behold you are engaged to me' and all similar expressions, or 'Behold you are to me as a wife' — through this intercourse, and he secludes himself with her before witnesses and has intercourse with her."

Explanation: With kiddushei bi'ah he says to her a formula of kiddushin with "through this intercourse", secludes himself with her before witnesses, and has intercourse with her.

Insights:

1. **"Bazeh" vs. "bevi'ah zo":** By money it says "bazeh" (with this money/ring), and that applies to all formulations. Here by bi'ah it says "bevi'ah zo". Seemingly "bazeh" would also work here. We say "betaba'at zo" — but the Rambam writes only "bazeh."

2. **Seclusion before witnesses — the mechanism:** The intercourse itself is not before witnesses, but the seclusion for intercourse is before witnesses. This is based on the Gemara "hen hen edei yichud hen hen edei bi'ah" — the witnesses don't need to see the intercourse, because there is a presumption: when a person says "bevi'ah zo" and secludes himself, we believe that there was intercourse.

3. **The seclusion room after chuppah:** The seclusion room that we do after chuppah has nothing to do with kiddushei bi'ah — it is a matter of chuppah, a separate topic. "Yichud" here means secluding himself to have intercourse.

4. **Completion of intercourse acquires:** The Rambam says "his intention is on completion of intercourse." In the Gemara there is an inquiry whether beginning of intercourse acquires or end of intercourse acquires, and the conclusion is that ordinarily his intention is on completion of intercourse. Practical difference: if one extends her hand and receives kiddushin from a second man in the middle of intercourse (before completion of intercourse), the second kiddushin takes effect, because the first one has not yet acquired. The Maharik says: if he specifies that he means beginning of intercourse, it

becomes betrothed through beginning of intercourse. "His intention is on completion of intercourse" is only ordinarily.

5. **Not in the usual manner: "Whether he had intercourse with her in the usual manner or not in the usual manner, she is betrothed."** The rule: throughout the entire Torah, not in the usual manner has the law of intercourse ("two acts of intercourse with a woman"). But mere closeness/touching/embrace is not intercourse and doesn't help for kiddushin.

6. **The nature of kiddushei bi'ah — why Rav discouraged it:** With money and document the man gives the woman something — "You become mine, but I give you something tangible now." With bi'ah it's reversed — "You become mine, and I am already obligated to you now, I am now having benefit from you." It is a different type of acquisition — more than showing ownership, not a giving. This fits well with the fact that the Sages prohibited it.

7. **Distinction from before Matan Torah:** Bi'ah is too similar to what was done before Matan Torah (where bi'ah itself made an acquisition). The main distinction is the utterance with witnesses — that didn't exist at all before Matan Torah.

Summary of the Three Types of Kiddushin:

All three types of kiddushin have two elements — utterance and an act:

- **Kiddushei kesef** — utterance + giving of money (he is the sayer and the giver)

- **Kiddushei shtar** — writing (which already includes the utterance) + giving

- **Kiddushei bi'ah** — utterance + intercourse. Here the utterance is the most indispensable, because without it it's just intercourse.

Halachah 8 — Formula of Utterance: The Content Must Be "That He Acquired a Woman"

The Rambam: "The words that the man says when he betroths must have the meaning that he acquired a woman, not that the meaning is that he sold himself to her."

Explanation: The content of the words that the man says must express that he is acquiring her, not that he is selling himself to her. He is her husband, not she is his husband.

Insight:

"That he sold himself to her" — not only that she bought a man, but even that he made himself acquired to her "as a person" — this too is invalid, because the direction of the acquisition must be that he is acquiring her.

Halachah 8 (continued) — Invalid Formulations: "He Sold Himself to Her"

The Rambam: "How so? If he said to her or wrote in a document that he gave her, 'Behold I am your husband', 'Behold I am your betrothed', 'Behold I am your man', and all similar expressions, there is no kiddushin at all."

Explanation: When the man says formulations that mean he is making himself subordinate to her, or that he is becoming the "object being acquired" — it is not kiddushin at all.

Insights:

1. **The foundation of "he sold himself to her":** The problem with formulations like "Hareini ishech" is a fundamental question of the structure of kiddushin: **the man must be the acquirer, and the woman must be the acquired.** When he says "Hareini ishech" he makes himself the object being acquired, which is the reverse of the Torah structure. It is compared to a horse that can do nothing in an acquisition — but here the man himself is the object. "The Torah acquires him as a man, not as an object."

2. **"Hareini ba'alyich" — why invalid:** Even if he says "I am your husband" — which sounds like he is the master — it is not good, because the meaning is "I am yours." The woman is acquired to the husband and is forbidden to all the world, but the husband is not forbidden to all the world — he can have multiple wives. Therefore the formula must express that **she belongs to him**, not that **he belongs to her**.

Halachah 9 — Valid Formulations

The Rambam: "If he said to her or wrote to her, 'Behold you are my wife', 'Behold you are designated for me', 'Behold you are acquired by me', 'Behold you are my charufah', and all similar expressions — she is betrothed."

Explanation: Formulations that express that he is acquiring her — are valid formulations for kiddushin.

Insights:

1. **"Charufati"** is explained from the verse "and she is a maidservant designated for a man" (Vayikra 19:20) — it means designated for marriage. Yehudah used to call a betrothed woman "charifah", as it appears in Gemara Kiddushin 14a.

2. **More than just "meaning the right thing":** The valid formulations are not just formulations that "mean that he is acquiring her" — they are actually **synonyms for kiddushin**, all meaning the same as "mekudeshes."

Halachah 10 — Formulations of Doubtful Kiddushin

The Rambam: "If he said to her 'Behold you are designated for me', 'Behold you are appointed for me', 'Behold you are my helper', 'Behold you are opposite me', 'Behold you are my rib', 'Behold you are my enclosed one', 'Behold you are under me', 'Behold you are my forbidden one', 'Behold you are my seized one' — she is doubtfully betrothed, provided that he is speaking with her about matters of kiddushin."

Explanation: Formulations that can mean kiddushin but can also mean other things — are doubtful kiddushin, only when he is already speaking with her about kiddushin.

Insights:

1. **Sources of the formulations:** "My helper" and "opposite me" come from "a helper opposite him" (Bereishit 2:18). "My rib" — from what Chavah was created from Adam's rib. "My enclosed one" — from "and closed up the flesh in its place" (Bereishit 2:21). All are allusions to the first description of a woman in the Torah.

2. **Why only doubtful:** Each formula can also mean something else — "designated" can mean a special secretary or student; "under me" can mean a servant or a child; "opposite me" can mean against me. The doubt is not about who is the

acquirer — the doubt is **whether the formula means kiddushin or just some connection/relationship**.

3. **The condition of "speaking with her about matters of kiddushin":** Without this condition it is nothing — like the example of a secretary to whom one says "you are designated for me" — no one thinks about kiddushin. Only when he is already speaking about kiddushin does it make the "chances" higher that he meant kiddushin, and therefore one must be stringent.

4. **[Digression: Practical difference for modern "proposals":]** With a modern "proposal" (when a man asks "will you marry me" and gives a ring) — this is a situation of "speaking with her about matters of kiddushin." If he says words that are "open" (doubtful formulations), one can actually be concerned for doubtful kiddushin according to the Rambam. The "proposal" is halachically much more serious than people think — it can be relevant to questions of a married woman, immersion, etc. The main deficiency is that the entire custom of "proposal" is not Jewish — "this is what makes it truly a terrible thing, a very ugly matter."

5. **[Digression: Distinction between erusin and shidduchim:]** What is called today "erusin" in Hebrew (or in the language of later authorities) doesn't mean the halachic "erusin" (= kiddushin), but what the Gemara calls "shidduchim" — a promise/commitment to have a wedding. **Kiddushin is not a promise — kiddushin is an acquisition**, a substantive halachic act.

[Digression: Comparison Between Erusin/Shidduchim Then and Now]

1. **The three levels always existed:** There were always three stages: (a) one talks — this is "shidduch" in the Gemara, (b) one is committed to the other — "designated" — this is erusin, (c) "bringing her into his house" — nisu'in. What we call today "shidduchim" (like among Chassidim with l'chaim, engagement ring, etc.) is essentially functionally the same as erusin from the time of Mishnah and Gemara. "Shidduch" in the Gemara ("mekadesh without shidduch") means only the stage of talking/dating, not any acquisition.

2. **"Meshadech" — language:** "Meshadech acharehah" means "he runs after her." Shidduch means "to speak, to be occupied with this" — usually between the parents.

3. **Engagement ring — concern for kiddushin:** Among Litvaks the groom himself gives the engagement ring to the bride — this looks exactly like kiddushin! Why aren't we concerned? Because everyone assumes that "real" kiddushin will still be done under the chuppah. But the same answer applies also to "will you marry me." The stringency among "very heimish" people that the groom himself should not give the ring is therefore well-founded.

4. **An arusah is forbidden in touching:** An arusah is also forbidden in touching — one doesn't yet live together.

5. **Stringency not to postpone a wedding:** The custom that one doesn't postpone a wedding. The origin: Chassidic rebbes adopted this because when there were problems (no money, in-laws don't pay) weddings were postponed, and they said "first the wedding." A new explanation: there was also a tradition among rabbis/poskim that if problems develop between groom-bride, one should make the wedding (not

cancel the shidduch), because one cannot make a "little get in doubt" — the scandal would have been too great.

Halachah 11 — Kiddushin in Any Language; Osukim B'oto Inyan

The Rambam: "And a man may betroth a woman in any language that she understands. And the meaning of the words in that language should be acquisition as we explained. If he was speaking with the woman about matters of kiddushin, and she consented, and he stood and betrothed and did not specify and did not say anything to her — he gave into her hand, or had intercourse — since they are occupied with the matter, it is sufficient and he does not need to specify."

Explanation: One can betroth in any language that she understands, as long as the content means "acquisition." If they have already spoken about kiddushin and she has consented, and he has betrothed without saying specific words — it is enough.

Insights:

1. **"Language" means two things:** "In any language" means either (a) any language (English, Chinese, etc.), or (b) any slang or expression. But the Rambam sets a condition: "that she understands" — she must understand.

2. **Utterance is a revelation of the matter, not an obligation:** From the fact that the Rambam says that when they are osukim b'oto inyan he doesn't need to specify, one sees clearly that the utterance in kiddushin is not an essential obligation, but a revelation of the matter — it makes clear what he means with the act.

3. **"Osukim b'oto inyan" — two interpretations:** What does "speaking with her about matters of kiddushin" mean? Two approaches:

- (a) It is already a chuppah, in-laws are standing with candles, he can't get the words out, he just puts in the ring — this is a simple case.

- (b) A young man and woman who are in a relationship, they talk about having a wedding, and he takes out a ring without saying words — this is a much further stringency.

4. **[Digression: Practical difference for dating:]** Should one seriously fear that when a young man and woman who are dating, and he gives her a gift, that this should be kiddushin? One can answer that today everyone understands that "real" kiddushin will still be done under the chuppah, so the ring is only a gift. Furthermore one also needs witnesses, which is another reason why a simple gift while dating is not kiddushin.

Halachah 12 — Witnesses to Kiddushin, No Need to Say "You Are My Witnesses"

The Rambam: "And similarly witnesses to kiddushin and divorce, he does not need to say to them 'You are my witnesses'. Since he betrothed before them or divorced..."

Explanation: One doesn't need to specifically say to the witnesses "You are my witnesses." If he has betrothed or divorced in their presence, it is enough.

Insights:

1. **Connection between "osukim b'oto inyan" and "no need to say you are my witnesses":** Both stem from the same foundation — testimony in kiddushin is a reality, not a formal appointment. When it is "osukim b'oto inyan", everyone who stands there knows that here is kiddushin, so one doesn't need to say "you are my witnesses".

2. **Designation of witnesses:** One doesn't need to designate witnesses specifically for kiddushin. Witnesses is a reality — anyone who can publicize the matter is a witness. This also fits with the case of "he was speaking with the woman about matters of kiddushin and she consented" — this can only make sense if one doesn't need to designate witnesses, because if one needs to designate witnesses, that itself would already be a revelation of intent.

3. **Witnesses — a part of kiddushin after Matan Torah:** The Rambam already said in the first chapter that after Matan Torah there are two distinctions: (a) to acquire (kinyan), (b) with witnesses. One would have thought that one needs to designate witnesses with "you are my witnesses" — but the Rambam says no.

Halachah 13 — "My Half" and "Your Half"

The Rambam: "One who says to a woman 'Be betrothed to my half' — she is betrothed."

Explanation: This is like he says "Behold my wife you and another" — you will have half of me, because a man can halachically take two wives.

"But if he said to her 'Your half is betrothed to me' — she is not betrothed, because one woman is not suitable for two."

Explanation: A woman cannot have two men, so "your half is betrothed to me" is not a proper formula.

"And similarly one who says 'Behold you are betrothed to me and to this one' — she is not betrothed." — The same reason.

"Your half is betrothed to me with a perutah and your half with a perutah" or "Your half with half a perutah and your other half with half a perutah" — she is betrothed" — because in practice a whole perutah came out with a whole person.

Halachah 14 — Doubtful Kiddushin: Installments and Double Deals

"Your half is betrothed to me with a perutah today and your half with a perutah tomorrow" — or "Your two halves with a perutah" — or "Your two daughters to my two sons with a perutah" — or "Your daughter is betrothed to me and your cow is sold to me with a perutah" — 'in all these she is doubtfully betrothed'."

Explanation: The doubt is whether "with a perutah" means one perutah for both together (which would not be enough for kiddushin) or a perutah for each separately. Stringently we take it as kiddushin.

Insight:

The distinction between "your two halves with a perutah" (doubtful) and "your half with a perutah and your half with a perutah" (valid) is that "your two halves" makes it unclear whether there is enough perutah for each half.

Halachah 15 — The Father Betroths His Daughter: Minor and Na'arah

The Rambam: "The father betroths his daughter without her knowledge all the time that she is a minor and when she is a na'arah... her authority is in his hand, as it says 'My daughter I gave to this man', and her kiddushin belong to her father."

Explanation: The father can betroth his daughter without her knowledge, both when she is a minor and during the six months of na'arut, until she becomes a bogeret.

Insights:

- 1. The father's status — not an agent, more than an agent:** In regular kiddushin the man is the acquirer and the woman is the acquired (and also the seller — she is both). With a minor this is split: the father is the seller, the daughter is the acquired. The father is not an agent — he has a special ownership over his daughter. Just as a woman consents with her knowledge, so the father consents with his knowledge — he stands in place of her knowledge.
- 2. "Therefore the father receives his daughter's kiddushin from the day she is born until she becomes a bogeret"** — from when she is born. With a person who is too young one cannot betroth, but a father can even a baby, because her knowledge is not relevant — the father's knowledge is what makes it.
- 3. "And even if she was deaf or insane... she is a fully married woman"** — even if she will never have knowledge (deaf or insane), she belongs entirely to the father. Normally a deaf, insane and minor person cannot be acquired because they don't have knowledge, but here one doesn't need their knowledge — the father's knowledge is enough.
- 4. He is entitled to her findings and her handiwork and her ketubah** — the father's ownership goes further than just kiddushin: he also receives her findings, her earnings, and her ketubah if she is divorced or widowed from erusin. "Kiddushin of the father" means two things: (a) he can betroth her, (b) he receives the money.

Halachah 16 — Kiddushin Through Intercourse with a Minor

The Rambam: "A girl of three years and one day can be betrothed through intercourse with her father's knowledge. Less than this, if her father betrothed her through intercourse — she is not betrothed."

Explanation: Under three years is not called an act of intercourse, so even the father's knowledge cannot help.

Insight:

The deficiency is **not** a matter of knowledge (consent), but simply because **it is not called an act of intercourse** — it is not intercourse at all. This is a distinction: with a minor without her father's knowledge the problem is knowledge/authority; with under three years the problem is that the act itself doesn't exist.

Halachah 17 — Bogeret: The Father Has No Authority Over Her

The Rambam: "When the daughter becomes a bogeret the father has no authority over her, and she is like all other women that a woman is only betrothed with her knowledge."

Explanation: When a girl becomes a bogeret (after na'arut has passed with the six months), the father loses his authority, and she is like all other women who can only be betrothed with their own consent.

Insights:

- 1. The normal state of a woman:** The Rambam establishes that the normal state of a woman is **"a woman is only betrothed with her knowledge"** — this is the rule. A minor/na'arah under the father's authority is the **exception**. The moment she becomes a bogeret, we return to the normal rule.
- 2. What does "with her knowledge" mean — an insight in understanding kiddushin:** "A woman is only betrothed with her knowledge" means that **she has her own authority, and she gives it up for the man**. The man now receives the role that the father had until now. Until now she belonged to the father; now she belongs to herself, until she decides to let herself be betrothed. Kiddushin is a transfer of authority — she transfers her authority over herself to the man.
- 3. The man is also entitled to her findings and her handiwork** (as the father was), but the main point is that **until she decides, she belongs to herself** — she can decide that she doesn't want to be betrothed at all.

Halachah 18 — A Minor Who Married and Was Widowed/Divorced: In Her Own Authority

The Rambam: "And if she was widowed or divorced during her father's lifetime, she is in her own authority even though she is still a minor, her father has no authority over her."

Explanation: A minor whose father married her off (nisu'in, not just erusin), and the man died or divorced her — she is in her own authority, even though she is still a minor. The father does not get back his authority.

Insights:

- 1. Authority does not return (chozer v'ni'ur):** One might think that when the man's authority expires (through death or divorce), the father's old authority should return. But no — **once she was under the husband's authority, she has already acquired her own ownership**, and it doesn't go back to the father.
- 2. Question:** But she is still a minor! She doesn't have knowledge, she cannot betroth herself. So how can we say she has "her own authority"? — **"The father has no authority over her"** but she also doesn't have full authority over herself, because she is not of age. (What happens practically — is dealt with later.)

Halachah 19 — She Was Betrothed Without Her Father's Knowledge

The Rambam: "If she was betrothed before she became a bogeret without her father's knowledge — she is not betrothed. Even if the father consented after she was betrothed [she is not betrothed]. Even if

she was widowed or divorced from those kiddushin — she is not forbidden to a kohen. Both she and her father can prevent."

Explanation: A minor/na'arah who let herself be betrothed without the father's knowledge — is not betrothed. Even if the father consents afterwards — it doesn't help. If the "man" died or a get was made — she is not forbidden to a kohen, because there were no kiddushin at all.

Insights:

1. **The father consented afterwards — doesn't help:** The father's later consent cannot fix the act, because **there was no act of acquisition** — the father is the seller, and he didn't sell.

2. **She was divorced — interesting point:** The Rambam mentions "she was divorced" — this means that a get was actually made, even though there were no real kiddushin. **Even so she is not forbidden to a kohen** — the get is nothing, because there were no kiddushin.

3. **"Both she and her father can prevent" — a very difficult passage:**

- **Strong question:** The Rambam has already ruled that it doesn't help at all — she is not betrothed, even if the father consented. If so, what does "can prevent" mean? Prevent what, if it's not valid anyway?

- **Source:** The language comes from the **Gemara** — "Minors who were betrothed without their father's knowledge, both she and her father can prevent."

- **The Maharik's answer:** The Maharik wants to learn that if the father stands there and **both** consent (she and the father), it can work as kiddushin. Only if one of them prevents — it doesn't work. **Question on this:** But the Rambam says "et bitecha" — the father betroths, not she! If she receives the kiddushin (not the father), it's a problem altogether.

- **Conclusion: "I don't know"** — the Rambam's opinion here is not clear. Like Rashi's custom: when one doesn't know, one says "I don't know", instead of forcing an answer. **The Kesef Mishneh himself writes "and it requires study"** — and if the Kesef Mishneh didn't understand, one shouldn't be embarrassed. Criticism of "today's commentators" (Artsroll, Mevo'arim) who force answers even when something doesn't fit.

4. **The Rambam's approach in context:** The Rambam rules **according to a major opinion** that kiddushin of a minor without her father's knowledge doesn't help at all — no consent, no in his presence, nothing. But **in the Gemara and Rishonim this is not so simple** — there are reasons to say otherwise. The Rambam emphasizes all details (even divorced, even in his presence) to exclude all sides.

Halachah 20 — Doubtful Bogeret

The Rambam: "If the daughter was doubtfully a bogeret — whether her father betrothed her without her knowledge, or whether she betrothed herself without her father's knowledge — therefore she requires a get out of doubt."

Explanation: When there is a doubt whether she is already a bogeret, there is a doubt on both sides: if the father takes kiddushin (perhaps he no longer has authority), or if she takes

it herself (perhaps she doesn't yet have authority). Therefore she requires a get out of doubt.

Insight:

The Rambam will later establish a rule that whenever he says "doubt" he means that a get is required out of doubt (stringently).

Halachah 21 — Agency in Kiddushin

The Rambam: "A man can make an agent to betroth for him a woman — a certain woman, or one of the women. And similarly an adult woman can make an agent to receive her kiddushin — either from a certain man, or from a man among the men. And similarly the father makes an agent to receive kiddushin for his daughter when she is in his authority."

Explanation: A man can make an agent to betroth a woman for him — either a specific woman, or he lets the agent choose. Similarly an adult woman can make an agent to receive kiddushin. Also the father can make an agent to receive kiddushin for his daughter.

Insights:

1. **Two types of agency:** (a) **Agent for delivery** — the sender has already decided whom, and the agent only carries out. (b) **Agent with broader authorization** — the sender lets the agent decide ("go choose a woman for me"). With the second he **actually gives up his authority over himself** — "I consent to what you will do." With any acquisition one can do this, not only with kiddushin.

2. **Agent to receive:** The woman's agent is called **agent to receive** (he receives the kiddushin for her), as opposed to the man's agent who is called **agent for delivery**.

3. **"Go out and receive your kiddushin" — a minor as receiver:** The father can say to his minor daughter "Go out and receive your kiddushin" — she should receive it herself. How can a minor be an agent, when one needs an adult for agency? This is not really a law of agency — because the minor is in her father's authority, it is as if it comes directly to the father. This is a special law of "her father's hand", not the regular law of agency. In such a case the father is the seller, the daughter is both the acquisition (object) and the "agent" (receiver).

Halachah 22 — Witnesses at Appointing an Agent: Agent to Receive vs. Agent for Delivery

The Rambam: "Anyone who makes an agent to receive kiddushin must make him before two witnesses. But the man who made an agent to betroth a woman for him does not need to make him with witnesses, because there is no place for witnesses in the man's agency except to make known the truth of the matter. Therefore if the agent and the sender admit, they do not need witnesses, like an agent for a get and like an agent whom he authorized to separate terumah for him and similar cases."

Explanation: An agent to receive must be appointed before two witnesses. But an agent for delivery doesn't need witnesses at the appointment — only to make known the truth of the matter, and if both (agent and sender) admit, it is enough.

Insights:

1. **Why the distinction?** With an agent to receive, when the agent receives the kiddushin, then the act of acquisition happens — that is the moment of the taking effect of kiddushin. Therefore one needs witnesses at the appointment, because the appointment is part of the acquisition process. With an agent for delivery, the agent only does an act (he carries over), and the acquisition happens only when he gives it to the woman — then one certainly needs witnesses, but not at the appointment itself. But — the Rambam doesn't say explicitly the reason. The Rambam's custom is generally not to state the reasons for the laws.

2. **The Ra'avad disagrees:** The Ra'avad holds that with both — either agent to receive or agent for delivery — one needs witnesses at the appointment. His reasoning: with a get there is "before me it was written and before me it was signed" (a special proof), with terumah there is no law of witnesses at all — but kiddushin, where there is a fundamental law that kiddushin requires witnesses, both agent for delivery and agent to receive need witnesses.

3. **[Digression: Sale of chametz:]** With sale of chametz, where the rabbi is an agent, one doesn't need a formal agency ceremony — it is enough that both admit, as the Rambam says with agency in general. People are accustomed to a ceremony of kinyan, but from the law it is not necessary.

Halachah 23 — The Agent Becomes a Witness

The Rambam: "The agent becomes a witness. Therefore if he made two his agents to betroth a woman for him and they went, they are his agents and they are the witnesses to the kiddushin, and they do not need to betroth her for him before two others."

Explanation: An agent can also serve as a witness. If one makes two agents, they can be both the agents and the witnesses to kiddushin, without need for other witnesses.

Insight:

A person himself cannot be his own witness, but an agent can be a witness. "His agent is like him" means only with the taking effect of the acquisition — he stands in the man's place for the act — but he doesn't become the sender himself, therefore he can also be a witness.

Halachah 24 — Who is Valid for Agency

The Rambam: "Everyone is valid for agency, except for a deaf person, insane person and minor... and it says 'So shall you also separate' — to include the agent, 'just as you are members of the covenant so your agent must be a member of the covenant', to exclude the gentile."

Explanation: Everyone is valid for agency, except for a deaf person, insane person and minor (because they are not of sound mind) and a gentile (because he is not a member of the covenant).

Insights:

1. **Each disqualification has a different reason:** Deaf, insane and minor are disqualified because they are not of sound mind — the agent must know what he is doing, he must understand the taking effect of kiddushin. "A taking effect of

kiddushin cannot be made by an insane person or a tree or a robot."

2. **The reasoning of "members of the covenant":** Kiddushin is an "insider" thing — it happens within the covenant. It is not a "universal" acquisition, but an acquisition that belongs to the covenant. Whoever is not in the covenant cannot effect kiddushin.

3. **Distinction between a gentile and a slave:** A gentile cannot be an agent for any acquisition matter. But a slave is different — he has entered the covenant through circumcision, he can be an agent for monetary matters, and "So shall you also separate" doesn't exclude him. His disqualification is only specifically for kiddushin and gittin — because he himself is not "subject to gittin and kiddushin" (a maidservant is not a regular married woman, a slave cannot himself betroth a woman).

4. **Two levels of "insider":** With a gentile the disqualification is that he has nothing to do with Jews (first level). With a slave the disqualification is that he has nothing to do with kiddushin (second level) — "an insider on an insider." The agent must belong to the specific thing he is doing. With a slave one doesn't need a verse — it is reasoning.

Halachah 25 — Formula of Utterance with the Man's Agent

The Rambam: "The man's agent who betrothed says to her 'Behold you are betrothed to so-and-so with this money or with this document'."

Explanation: The agent of the man says "betrothed to so-and-so" (not "to me").

Insights:

1. **Distinction between money and document with agency:** Earlier (with regular kiddushin) the Rambam didn't say that one must say with a document, because when the man himself writes it for the sake of the woman and with her knowledge and gives it to her, everything is clear. But with agency, where the man himself doesn't give it, one must explicitly say it.

2. **"To so-and-so" instead of "to me":** The agent cannot say "betrothed to me" — he must say "to so-and-so". If on the document the names are already written, perhaps the agent doesn't need to say "to so-and-so" because it is already written in the document.

3. **The agent can write the document himself:** The agent doesn't need to bring a document from the sender — he can write the document himself, if he writes it "with her knowledge" (with the woman's knowledge). Even when sending through an agent the document must be with the woman's knowledge — she must know at the time the document is being written.

4. **Distinction between money and document with agency:** With money the agent can go "door to door" and betroth a woman (if he has authorization). With a document he cannot do this, because the document must be with the woman's knowledge.

Halachah 26 — Formula of Utterance with the Woman's Agent

The Rambam: "And if it is the woman's agent — he says to him 'Behold so-and-so who sent you is betrothed to me', and he says to him 'You have betrothed her to you'."

Explanation: When the agent of the woman comes to receive kiddushin, the man says "Behold so-and-so is betrothed to me", and the agent answers "You have betrothed her to you".

Insights:

1. **New law of utterance from the receiver:** Usually with kiddushin the receiver (the woman) doesn't need to say any specific utterance. But here, when the agent is receiving, he must say "You have betrothed her to you" — so that it should be clear that he is aware that he is doing it for her. If it is clear in other ways (like "osukim b'inyan"), perhaps it also helps.

2. **If the agent says "to me":** If the agent says "to me" instead of "to you", and the woman consents, he himself will become betrothed to her.

Halachah 27 — Kiddushin Through the Father

The Rambam: "And similarly one who betroths through the father — he says to him 'Behold your daughter so-and-so is betrothed to me', and he says to him 'You have betrothed her to you'."

Explanation: When the man betroths through the father of the woman, the man says "Behold your daughter is betrothed to me" and the father answers "You have betrothed her to you".

Insights:

1. **Why is it called "the father betroths his daughter":** Because he says "You have betrothed her to you" — just like every agent "betroths". One can say that an agent betroths the woman.

2. **"And if the father or the agent said 'yes' — it is enough":** If the father or agent says only "yes" instead of "You have betrothed her to you", it is enough. Even **silence** helps — a silence that is like admission.

3. **Osukim b'oto inyan:** If one is already speaking about the matter, and everyone knows why one is there, and the man gives the father or agent the money without saying a word — it is enough. This is parallel to the law with regular kiddushin.

4. **Document with agent to receive:** "And if he betrothed with a document he only writes it with the knowledge of the father or with the knowledge of the agent" — just as with regular kiddushin the document must be with the woman's knowledge, so with a minor it must be with the father's knowledge, and with an agent — with the agent's knowledge.

5. **Rule:** "And similarly in all matters of kiddushin, the law of the man with the woman is like the law of agent with agent or with the father" — all laws of kiddushin are the same with an agent as with the man and woman themselves.

Halachah 28 — The Mitzvah is Greater When Done by Oneself Than Through an Agent

The Rambam: "It is a mitzvah that a person should betroth his wife himself more than through his agent. And similarly it is a mitzvah for the woman that she should betroth herself by her own hand more than through an agent."

Explanation: It is a mitzvah that the man should betroth himself, and also the woman should receive kiddushin herself, not through an agent.

Insights:

1. **Source from Perush HaMishnayot:** The Rambam in Perush HaMishnayot says that when a person occupies himself with mitzvot it has more completeness than when he gives it to another.

2. **Connection to the mitzvah in kiddushin:** Until now one spoke about the acquisition aspect of kiddushin, but here one sees that kiddushin also has a mitzvah aspect (like taking a lulav). With lulav one must go seek a lulav, but with kiddushin the mitzvah is that when one wants to find a wife one should do it in the manner of kiddushin.

3. **The woman also has the mitzvah:** The Rambam says explicitly that also on the woman there is the mitzvah — "it is a mitzvah for the woman that she should betroth herself by her own hand".

Halachah 29 — It is Not Proper to Betroth One's Daughter When She is a Minor

The Rambam: "Even though the father has authority to betroth his daughter when she is a minor and when she is a na'arah to whomever he wishes, it is not proper to do so, rather it is a commandment of the Sages that a person should not betroth his daughter when she is a minor until she grows up and says 'I want so-and-so'."

Explanation: Although the father has authority from Torah law to betroth his daughter as a minor or na'arah, the Sages say that one should not do it — one should wait until she grows up and says herself whom she wants.

Insights:

1. **"Authority" vs. "proper":** The father has "authority" from the law of acquisitions/ownership, but it is not "proper" — it is not how a Jew should conduct himself.

2. **Commandment of the Sages, not a Torah mitzvah:** "The mitzvah is greater when done by oneself than through an agent" is a Torah mitzvah, but "that he should not betroth his daughter when she is a minor" is only a commandment of the Sages, a "beautification", not as strong. Because usually a father does understand who is good for his daughter — perhaps we are speaking of a "wild beast" of a father who makes a match just for money.

3. **[Digression: Chassidic customs:]** All Chassidic fathers today conduct themselves this way — they don't ask the daughter if she wants. This brings out that the enactment of the Sages not to betroth minors is not as strong as the mitzvah is greater when done by oneself.

4. **Connection to mitzvah bo:** Can a daughter say to the father "wait until I am grown, so that I will have the mitzvah is greater when done by oneself"? As long as she is a minor she doesn't yet have the mitzvah, so there is no concept of "mitzvah bo". But she can argue: postpone it until I will be able to have the mitzvah myself. The father also has his own "mitzvah is greater when done by oneself" — he is the one betrothing, he also has a mitzvah.

Halachah 29 (continued) — And Similarly the Man, It is Not Proper for Him to Betroth a Minor

The Rambam: "And similarly the man, it is not proper for him to betroth a minor."

Explanation: Not only should the father not betroth his minor daughter, but also the man himself may not betroth a minor.

Insight:

The prohibition is not only on the father, but also on the man/young man who goes seeking a girl. Even if the father is not particular about the enactment of the Sages, the man is also obligated in the enactment of "until she grows up and says."

Halachah 30 — And He Should Not Betroth a Woman Until He Sees Her

The Rambam: "And he should not betroth a woman until he sees her and she is proper in his eyes, lest she not find favor in his eyes and he divorce her or lies with her while he hates her."

Explanation: One should not betroth a woman until one sees her and she is proper in his eyes — she pleases him.

Insights:

1. **"He sees her" means actually checking out** — not just "giving a look" (as certain Chassidim interpret), but making sure that she finds favor with him.
2. **"Proper in his eyes":** The Rambam writes specifically "in his eyes", not just "proper." This doesn't mean that she is pious/proper, but that she is acceptable/finds favor with him, like "the matter was proper before the king."
3. **Two bad outcomes:** (1) "He will divorce her" — he will divorce her, because not-finding-favor leads to divorce; (2) "He lies with her while he hates her" — this is from "children of nine measures" — intercourse out of hatred, which is rabbinically forbidden (not a Torah prohibition).

Halachah 31 — Sources from the Torah for the Three Methods of Kiddushin

The Rambam: "And similarly with a document she is betrothed by it from the Torah, just as he completes and divorces... And similarly the money... and its interpretation is from the words of the scribes, as it says 'When a man takes a woman', and the Sages said the taking should be with money, as it says 'I gave the money of the field, take it from me'."

Explanation: A document works from the Torah through analogy — comparing entry to exit: if a document works for divorce, it also works for kiddushin. Money is also Torah law, but "its interpretation is from the words of the scribes."

Insights:

1. **Textual problem:** In one version it says "and the money is from the words of the scribes," but the Rambam switched it back — money is Torah law, only "its interpretation is from the words of the scribes."
2. **What does "its interpretation is from the words of the scribes" mean?** This means that the Sages (scribes) innovated this interpretation — they derived from "when he takes" that taking means money (through "I gave the money of

the field, take it from me"). Moshe Rabbeinu himself didn't know about kiddushei kesef — only the Sages interpreted it.

3. **A general foundation in the Rambam:** When the Sages derive something from the Torah, it is "from the words of the scribes" even when it is Torah in force. This means: it is a Torah law that works from the Torah, but because the Sages brought it out, a new court can disagree (because "a court can disagree with another court" — only on enactments one cannot disagree, but on interpretations of Torah yes). This is the Rambam's approach in Laws of the Rebellious.

Halachah 32 — The Custom of Israel: Money/Value of Money, Document Yes, Intercourse No

The Rambam: "Even though the essence of the matters is so... all Israel has practiced with money or with the value of money, and similarly if he wished to betroth with a document... but one does not betroth with intercourse l'chatchilah, and one who betroths with intercourse receives lashes of rebellion."

Explanation: Although all three ways work from the Torah, the custom of Israel is to betroth with money/value of money. A document is also permitted. But to betroth with intercourse is forbidden l'chatchilah, and one receives lashes of rebellion.

Insights:

1. **Two interpretations of "lashes of rebellion":** (1) "Mardut" is Aramaic for "discipline" — lashes; (2) From one of the Geonim — it is a proclamation: "This one rebels against the words of Torah," one strikes him for his rebellion.
2. **The reason:** "So that Israel should not be promiscuous in this matter" — if one will be able to betroth with intercourse, it will become a lawless thing.
3. **B'dieved:** "If he had intercourse with her for the sake of kiddushin, his kiddushin are complete kiddushin" — it works, but he receives lashes.

Halachah 33 — One Who Betroths Without Shidduch / One Who Betroths in the Marketplace

The Rambam: "And similarly one who betroths without shidduch, or one who betroths in the marketplace, even though his kiddushin are complete kiddushin, one strikes him with lashes of rebellion so that this matter should not become a habit leading to promiscuity."

Explanation: To betroth without a shidduch beforehand, or to betroth in the street, works b'dieved, but one receives lashes of rebellion because it can lead to promiscuity.

Insights:

1. **What does "shidduch" mean?** This is not clear. In the Gemara "shidduch" means something — perhaps speaking with her father, perhaps "running after her" (he pursues her, he asks her). It must be something more than just knowledge/consent (because kiddushin must anyway be with her consent). It must be steps before that — discussing that one will have a wedding.
2. **The Rambam's reason — "and it will resemble betrothing her as it was before Matan Torah":** A kedeshah before Matan Torah also had a certain formality (one registered, one paid). If kiddushin becomes only a formality without true preparation, it is almost like a kedeshah

with a "hechsher." Kiddushin is not automatically the opposite of kedeshah — it can be a betrothing that is also like a kedeshah, when he does it without the proper preparation and honor.

3. The Rambam's ideal: Kiddushin must have a certain refinement — not just a technical act of acquisition, but a process with introduction, appeasing, shidduch, seeing, and only then kiddushin. Kiddushei bi'ah is a "disgraceful act" because the first time with the woman is the intercourse itself, without introduction. This is similar to the law of "it is a mitzvah to appease one's wife."

Halachah 34 — The Blessing of Erusin

The Rambam: "Anyone who betroths a woman, whether by himself or through an agent, must bless before the kiddushin... he or his agent... and if he betrothed and did not bless he should not bless after the kiddushin because this is a blessing in vain, what was done is already done."

Explanation: One must make a blessing before the kiddushin — prior to their performance, as with all mitzvot. If one betrothed without a blessing, one should not make it afterwards, because it is a blessing in vain.

Insights:

1. Dispute between Rambam and Ra'avad on prior to performance: The Ra'avad disagrees: "**We do not say so, rather he betroths and afterwards blesses.**" The Ra'avad's reason: kiddushin depends on the knowledge of others — the woman can say "no, I don't want." So one cannot make a blessing beforehand, because perhaps it won't work out. The Rosh agrees with the Ra'avad.

2. The Rosh's fundamental argument — a blessing of praise, not a blessing of mitzvah: The Rosh argues: who told the Rambam that the blessing of erusin is a blessing of mitzvot? One doesn't only say "who sanctified us", one says other things (praise matters). Perhaps it is a blessing of praise. If so, the entire law of prior to performance falls away. But just because there is language of praise in the blessing doesn't mean it's not a blessing of mitzvot — there are blessings of mitzvot that have praise inside.

3. Another proof from the Rosh: One doesn't say at all which mitzvah it is — one doesn't say "on the kiddushin" as one says "on the slaughter" or "on the circumcision." This is a good proof that it's not a classic blessing of mitzvah.

4. Our custom in practice: One says the blessing before kiddushin (like the Rambam), and we are

not afraid of the Ra'avad's concern, because once kiddushin is done with shidduch (not in the marketplace), the concern that she will cancel is not realistic. But if it already happened that one betrothed without a blessing, we do not rule like the Rambam that it is a blessing in vain — one makes it afterwards.

5. Who says the blessing: According to the Rambam, the one betrothing himself (or his agent) must say the blessing. Our custom is that the one officiating at the kiddushin (the rabbi) says the blessing — in order not to embarrass grooms who cannot say the blessing.

The Text of the Blessing of Erusin

The Rambam: "Blessed are You, Hashem our God, King of the universe, who sanctified us with His commandments and separated us from forbidden relations, and forbade to us the betrothed women, and permitted to us the married women through chuppah and kiddushin. Blessed are You, Hashem, who sanctifies Israel."

Explanation: The blessing mentions that the Almighty separated us from forbidden relations, forbade betrothed women, and permitted married women through chuppah and kiddushin.

Insights:

1. "And separated us" vs. "and commanded us": In our siddur it says "and commanded us concerning forbidden relations." The Rambam's language "and separated us" makes more sense, because it's not that one is commanded on forbidden relations, but that one is separated from forbidden relations. The language "separation" has a source in a verse ("and you shall separate from all the peoples").

2. "And forbade to us the betrothed women" — whose betrothed women? The simple explanation is that "betrothed women" means **someone else's betrothed woman** — the Almighty innovated at Matan Torah that not only a married woman is forbidden, but even a betrothed woman of another Jew is forbidden. This fits with what the Rambam learned in chapter 1 — the innovation of Matan Torah that kiddushin (erusin) already makes an acquisition. "To us" means "to us Jews" — the Almighty forbade to Jews betrothed women (of others) and permitted married women (one's own, through chuppah and kiddushin).

3. Torah law with rabbinic law in one blessing: "Chuppah" in "through chuppah and kiddushin" is perhaps a rabbinic element — this is interesting that one mixes it into a blessing with Torah matters. (This remains a dispute.)

4. Conclusion of the blessing — "who sanctifies Israel" vs. "who sanctifies His people Israel through chuppah and kiddushin": The Rambam concludes only "who sanctifies Israel," but our custom (according to the Rema) is "who sanctifies His people Israel through chuppah and kiddushin." The simple explanation of "who sanctifies Israel" is like "who sanctified us with His commandments" — the Almighty sanctified the Jews through mitzvot. "Who sanctifies Israel" is the same concept.

The Custom of a Cup of Wine

The Rambam: "And the people have practiced to arrange this blessing over a cup of wine or of liquor. If there is wine there he blesses on the wine first and afterwards blesses the blessing of erusin and afterwards betroths. And if there is no wine or liquor he blesses this blessing by itself."

Explanation: It is a custom to say the blessing of erusin over a cup of wine. If there is wine, one makes first "who creates the fruit of the vine", then the blessing of erusin, then betroths. If there is no wine or liquor, one makes the blessing without it.

Insights:

1. Wine is not indispensable: The Rambam's language "and the people have practiced" shows that it is a custom, not an obligation. So the wine is not indispensable — without wine one makes the blessing by itself.

2. Drinking from the cup: The Rambam doesn't write that one must drink from the cup. Our custom is that one drinks and gives the groom and bride to drink. For the bride it certainly doesn't fall away, but for the groom — if the one officiating at the kiddushin is exempting the groom with the blessing (because the groom has the obligation), perhaps the groom must drink.

3. Bread instead of wine: There was a question whether one can make it over bread. The conclusion is that there is no such thing as bread with the blessing of erusin — not like kiddush which includes bread because it is a place of a meal.

The Custom of a Ring

The Rema says one should betroth with a ring, and there is a reason according to Tikkunei HaZohar (which the Rema himself doesn't say, but is added). The simple reason (Sefer HaChinuch) is that one holds the ring and remembers that one had a wedding.

Conclusion of Chapter 3

With this concludes **Chapter 3 of Laws of Marriage** of the Rambam — the chapter that includes all the fundamental principles of the laws of kiddushin in practice: the three types of kiddushin (money, document, intercourse), the formulations (valid, invalid, doubtful), who performs the kiddushin (the man, the father, agency), the proper order l'chatchilah (shidduch, seeing, not with intercourse, not in the marketplace), and the blessing on kiddushin.

Full Transcript

Shiur 3 in Hilchos Ishus Chapter 3 — How a Woman Becomes Betrothed

Introduction to the Chapter

R' Yitzchak: Good. Today is the third shiur in the holy Rambam Hilchos Ishus, from Sefer Nashim, Hilchos Ishus, and we are in the middle of learning the mitzvah of marriage with kiddushin.

R' Yoel Asher: Yes. So the Rambam has already given us several important introductions. We already know that one must be mekadesh, he said that right at the beginning, not like it was before Matan Torah, rather there is a mitzvah of kiddushin. We also already know who the people are, we know that it must be a male with a female, and a gedolah. Now we're going into all the halachos.

R' Yitzchak: We don't actually know anything except that there is a mitzvah of kiddushin. We know the meaning of many words that will be used in these halachos. There isn't a single thing stated about what the din is regarding gedolah and ketanah.

R' Yoel Asher: That will be stated here. That will be stated in this chapter. After we have already—

R' Yitzchak: Explained in the previous chapter, which we've already learned, the translation of a bunch of words that will be used. Yes. We say thank you to the authors of the sefer Peirushei HaKesef, who send the money for kiddushei kesef. Kiddushei kesef, okay, good.

And we're going to learn chapter 3. So here begins essentially hilchos kiddushin, so to speak, one could say. That is, one can make it like sections. The first two chapters are only in a general manner, the mitzvah of kiddushin, true, but more like the meaning of the word kiddushin, the meaning of all the words that will be used.

And now we're saying halachos of kiddushin. And I think that, I looked at the next two chapters afterward as well, but I think more or less, this chapter is all the essential halachos of kiddushin, all the main general halachos of kiddushin. That is, there is a mitzvah of kiddushin, we already know that, but what is the mitzvah? How does one do it? We learn everything in this chapter 3.

Afterward the further chapters are just many more details that need to be filled in, what is something like this, what is something like that, such sorts of things. So more or less, this chapter, I wrote here, wrote down for myself my headings, I'll need to find a way to put it here, but we're learning the three types of kiddushin that we learned. We actually learned that in chapter 1, right? That there are three types of kiddushin: kiddushei kesef, kiddushei shtar, and kiddushei biah.

But we still don't know what he means, what one does with this money, how it works. That's what we're going to do in this chapter. The first half of this chapter explains the three types of kiddushin, how one does them, basically how one does it.

Afterward we learn because by all of them more or less there are expressions that must be said. Even by the shtar, one writes in the expressions, but the other two one certainly must say, or at least the beginning will say, perhaps one can we say with ten, one must know which expressions are kosher.

Afterward we learn about who makes the kiddushin? Usually the woman is mekudeshes, but if she is a ketanah, the father can be mekadesh her. Here it teaches the halachah that one can make kiddushin with a shaliach, as everyone knows in the second chapter in Kiddushin.

Afterward the Rambam tells us, that after I've told you all the ways one can make kiddushin, you'll know that there is a lechatchilah order. It's not proper to do kiddushei biah for example, it's not proper to do shlichus, it's not proper that the father should be mekadesh the girl, and the like. He says however halachah lemaaseh practically how to do it. And afterward he adds one more thing, halachah lemaaseh, which is the berachah on kiddushin, that one makes a berachah.

The Difference Between Sefer Ahavah and Sefer Nashim

R' Yoel Asher: I want to say my introduction if I may. Two small introductions. We're going from middah and ahavah to ishush, it's very different, and consequently one sees halachos differently. Because until now one has more or less spoken about how a Jew should conduct himself, it means as if how a Jew davens. And one says how a Jew should daven.

Here one deals with other things, one deals with reality. People live, one meets women, and one says such kinds of... and one sees in many such halachos of interesting qualities of tumah, if a person said such and such. This is by nature, also

in kinyan it will be like this kinyan. One deals with people who do things, and the halachah finds the solution for that. It's very different from when one says daven such and such, or keep Shabbos such and such.

The second thing is that the Rambam it's also connected with this, that the first few halachos speak about if a situation has occurred, how is it kiddushin or is it not kiddushin? Because there is here a concept of kinyan. There is a mitzvah and there is a kinyan. There are two things: there is a practical thing, whether the kiddushin succeeded or not. And very much by the eved, there are very many things that feel like, but because that's the reality.

Actually at the end of the chapter the Rambam will say, now I'm going to tell you how a good Jew who wants to follow the Chachamim does, at which age, and how one is mekadesh. That's the lechatchilah. At the end he finishes with the lechatchilah. The beginning deals with reality to answer, one should know the status of people, and one is not.

R' Yitzchak: Yes. What you're saying is more true for the next chapters, which go into many details. What we're learning here that there are, for example, three types of kiddushin — kesef, shtar, biah — but only one of them is really not proper, kiddushei shtar simply, not the custom, I don't know exactly what the geder of it is. That's not really the same thing. As you say, it's more like... one must say it a bit differently.

There are ways mide'oraisa, from the essential din, that work, and there are indeed times when it turns out to do so. That is, one must know, I would say so, because I learned Kiddushin with my son, and immediately one asks such questions. And these sorts of halachos, you're right, that it's different from, let's say, halachos of Sefer Ahavah. Hilchos Shabbos there are already many... Sefer Ahavah you can say that. Yes.

That is, what works doesn't yet mean that one should do it. There is a difference between "mekudeshes" and "yesh lekadesh kachah". Kiddushei biah works one hundred percent, but it doesn't yet mean that it's a Jewish way to do so.

R' Yoel Asher: How it looks here, that the same person who wanted to know how to keep Shabbos, he looks in this sefer, but how one finds a wife is something that happens in the marketplace. And at the end it comes back, when one doesn't do things in the marketplace, rather one does it indeed with a leshem yichud, that now one is going to do kiddushin according to the Torah. Because it's a mitzvah, the same mitzvah as any other mitzvah, with a berachah. But the in any case—

R' Yitzchak: Hilchos kiddushin is here indeed. That is, the Rambam, for example, made an order of sixty mitzvos that every Jew must do always, and kiddushin is one of them, because that's indeed. That is, at some point, I don't know if it's not, but that one should have a wedding, one should have a wedding with kiddushin, that is indeed really a mitzvah almost. It's in the siddur, it's one of the things that's in the siddur.

The Difference Between Sefer Nashim and Sefer Kinyan

R' Yoel Asher: It's also very different from all things in Sefer Kinyan. In Sefer Kinyan everything is, if one doesn't know the daas of the person. People among themselves can make all kinds of business partnerships if they agree. The halachah only speaks of... Here it's not dependent on the two people. It's a mitzvah, it's still a mitzvah.

R' Yitzchak: One can say other things. There are halachos that are relevant for every Jew, there are things that only the rav needs to know. That is, usually, for example Even HaEzer, mostly only rabbis need to know that. Sefer Nashim, and what comes after Nashim in the Rambam? Kedushah. Kedushah is indeed relevant for every Jew, hilchos kashrus. Also Nashim, every Jew must make kiddushin, but not every Jew needs to know that there are at all three types of kiddushin. That's only relevant for rabbis to know. Everyone will do what's in the siddur.

R' Yoel Asher: But the Torah doesn't say how a partnership should look, the Torah does say how a man and woman should have a partnership, or he does how to make the kinyan. To a certain limit—

R' Yitzchak: Because we learned chatichus, one can make tenayim, maaseh lemishkatos baTorah, that's the topic there with him. Okay, anyway, we're holding here chapter 3, where it says, the chapter begins like this:

Halachah 1 — How a Woman Becomes Betrothed: Kiddushei Kesef

R' Yoel Asher: He began that there is a mitzvah of kedushah, and he already also said the basic that there are three types, and here he's going to explain about them the details.

If it's with kesef he is mekadesh, it cannot be less than a perutah of kesef, or a shaveh perutah, or something that's worth this amount, and with this he rules, the Gemara rules that there is a dispute between Beis Shammai and Beis Hillel, whether it must be a dinar or a perutah, and we rule that the lower amount is Beis Hillel.

And for this he must say something to her. Later there will be many more halachos about this saying. And it will also be we'll see that... not always must one say, but first the Rambam begins with the lechatchilah.

That one must say, and one says **harei at mekudeshes li**, you are betrothed to me. **Or harei at me'oreses li**, mekudeshes and me'oreses are lashon Chachamim and lashon Torah I think, yes? The Torah always says... the Torah says to us... yes? We spoke about Torah with the previous chapter.

R' Yitzchak: The Rambam said that there's no difference. All the baalei...

Discussion: The Expressions of Kiddushin — Mekudeshes, Me'oreses, Li Le'ishah

R' Yoel Asher: Yes. **Or harei at li le'ishah** is even more, as it doesn't speak about an action that happened about a kinyan, one says the fact, with this you should be my wife. That's the same thing—

R' Yitzchak: According to what came the chiddush from Matan Torah is harei at li le'ishah is the meaning, once happened the harei at mekudeshes. Kidashna is li le'ishah. The result is more than the harei at mekudeshes.

R' Yoel Asher: Kidashna is an action. I don't know—

R' Yitzchak: Who said mekudeshes and ishta? The same thing. There's no difference at all. One doesn't usually call a woman who will be mekudeshes.

R' Yoel Asher: One does say, or de'oraisa one says yes, or de'oraisa. Okay. One says mekadeshes by the chuppah.

R' Yitzchak: Mazal tov hikadashta.

The Requirement of Witnesses

R' Yoel Asher: Very good. **And he gives it to her before witnesses.** One must give it before witnesses. The Rambam didn't enumerate witnesses in the first chapter when he said the essential mitzvah. He did say.

R' Yitzchak: He only said one must give kedushah.

R' Yoel Asher: Certainly he said.

R' Yitzchak: Right at the first line he said that one needs witnesses. Certainly he said. How—

R' Yoel Asher: How, again? Chapter 1, lekuchin edim. I don't see any "before witnesses". Certainly it says **"but rather he should acquire her first before—"**

R' Yitzchak: **witnesses and afterward she will be his wife".**

R' Yoel Asher: Ah, interesting. Yes—

Discussion: Whether the "Saying" is Essential

R' Yitzchak: I already spoke about this. Is this is... yes, this is what one must do, one must say and there must be witnesses. All these details, we'll see further. But now the Rambam simply says... I see that it's actually a dispute. That is, later one will see that there are ways that without saying also works, it says explicitly.

But lemaaseh there is a dispute, and the Rema says explicitly that even in silence, if one knows that they said that they meant kiddushin it's kosher, and by Shmuel it means that it's not clear, because you see all the time normally it says that one says, there are even types of saying that don't help.

Simply, usually by every kinyan one says for example usually something, but the word that one says is a revelation that this is what one means. There are no halachos, it's not a mitzvah she'bidibur, it's a mitzvah she'bikavanah, only the saying is a revelation of what he meant. If he says the wrong expression, it's simple that he had—

R' Yoel Asher: The wrong intention, not that he had the wrong speech. About this, that oskim be'oso inyan, it's certainly that what he says, even if he says it out wrong, that's what he means. He means the good of the...

R' Yitzchak: Let's learn properly. Oskim be'oso inyan only helps on a doubtful expression, it doesn't help on the wrong expression. Yes, on the wrong expression.

R' Yoel Asher: There's a great opinion that he has a bad view on marriage, he doesn't know what he's doing here, or whatever, it's not a good matter.

R' Yitzchak: He meant to do the wrong thing. In any case, there is—

Kiddushin – Hilchos Ishus Chapter 3: Laws of Kiddushei Kesef and Shtar

Halachah 3 (continued) – The Man is the Acquirer, and He is the Giver

R' Yitzchak: In any case, now further, who says it? Yes.

R' Yoel Asher: The Rambam says, **and the man is the one who says the words**, the man is the one who must say meaningful words. He elaborates more here, besides the three expressions, he says, what is the content of the words? Not the form of the words, not the words. What is the content of the words? It can be in any language, obviously. What is the content of the words? Something that implies from it that he is acquiring her as a wife. That he is the acquirer, and she is the thing that is being acquired. And also **and he is the one**

who gives, he is the one who must give the money. With the words mekadesh we've already understood, also earlier he called he is koneh, we've understood. But this he wants to tell us very clearly, that this is that the man is the one who is acquiring. It's not some two-sided kinyan, that he is acquiring her and she is acquiring him, or just a partnership, rather he is acquiring her.

R' Yitzchak: This is an introduction to the next halachah. The normal way is nasan hu ve'amar hu, he does all things. That's what the Rambam says. Afterward the Rambam says, what is? If it goes in reverse.

R' Yoel Asher: What I mean to say is that this is not about the speech, it's not so the speech should be kosher, rather it's explaining the nature of kiddushin. It means like this, for example, what you said earlier, that if someone was silent, there's a chuppah and he didn't say, whatever, but one said, he gave the ring. And he said, I don't remember the expression, yes? But there must also be the thought, he must understand that the man is acquiring the woman.

R' Yitzchak: Could be, but that's not what the...

R' Yoel Asher: That's not the speech. I'm saying, it's not only an introduction to nasan hu, rather the Rambam still put it in the same paragraph, because it's part of the explanation of what kedushah is.

Discussion: Whether This is an Introduction or a Separate Halachah?

R' Yitzchak: The Chelkas Asifin is not true. Here already begins a new paragraph, it's a mistake. There aren't two dots here. What doesn't have two dots? I'm reading out. Rules of the... the printer made here a mistake in writing in paragraph 2, it's not correct. The rule of the old Rambam, whether in Safsei Frenkel, or in R' Sheilet, is that there where there are two dots, then it means that the Rambam made a break in halachah. If there's only one dot, even if there's a number, the printer made many times wrong numbers. So this is certainly an introduction. That is, the Rambam rewrote. The Gemara says nasan hu ve'amar hu is certainly indeed good, the Rambam only rewrites it, that's how it comes out. True. If not, questions begin.

Halachah 4 – If She Gave and She Said / If She Gave and He Said

R' Yoel Asher: What happens **if she gave and she said to him harei ani mekudeshes lach?** One did it in reverse.

R' Yitzchak: If she says, she gives to him, and she says, even she says the correct text, as if harei ani mekudeshes.

R' Yoel Asher: She says that she... even the speech is good, you see, he begins with this.

R' Yitzchak: The speech is good speech.

R' Yoel Asher: But she is the one who gives the money. Yes, but she plays her role well, that she is the thing that is being mekudash.

R' Yitzchak: She doesn't make it.

R' Yoel Asher: But she makes it.

R' Yitzchak: She may not be mekudeshes of her own will, but she doesn't make it. If she makes it,

R' Yoel Asher: It's certainly not good. **And any expression of acquisition**, but even even even if she said, I am acquired to you, **she is not mekudeshes.**

Kiddushei Shtar and Kiddushei Biah: The Nature of the Kinyan and the Laws of Declaration

Halacha 3 (Continued) — Kiddushei Shtar: "L'da'atah" and Declaration at the Time of Giving

R' Yitzchak: I mean to say a good nusach (formula), which was late,

R' Yoel Asher: Late. But he places the emphasis here on the kinyan (acquisition), that she becomes acquired, she says the good thing, **she is not mekudeshet (betrothed). And similarly if she gave to him and he said**, even if he said the entire thing, but she is the one who gave, she gave him money, and he said. He said "Harei at mekudeshet li (Behold you are betrothed to me)," **she is not mekudeshet**. He is the one who must do it.

R' Yitzchak: Because he must give. There is no such thing that the koneh (acquirer), that the second one, the makneh (one who effects the acquisition), should give money. He must give the money,

R' Yoel Asher: And she is the mashpia umekabel (giver and receiver).

R' Yitzchak: I don't know.

R' Yoel Asher: Koneh and nikneh (acquirer and acquired). Yes,

R' Yitzchak: He must give. That is clear. In other words, that which he must give, that is certainly me'akev (indispensable). On the other hand, if there begins a doubt, what is perhaps?

He Gave and She Said – Doubtful Kiddushin

R' Yoel Asher: He gave and she said,

R' Yitzchak: What happens if he gave the... If he gives and she says, she says the correct nusach,

R' Yoel Asher: She says "Hareini mekudeshet lach (Behold I am betrothed to you)."

R' Yitzchak: Apparently. Yes, but we spoke that the Rema says it's a good nusach.

R' Yoel Asher: Then it is "**Harei zo mekudeshet b'safek (Behold this one is betrothed in doubt)**".

Discussion: Why Is It a Doubt?

R' Yitzchak: Why is it a doubt? This is a Gemara, the Gemara says it's a doubt. We can understand simply the doubt, because on one hand, he actually gave, on the other hand is... But he must say. Although she says the correct nusach, perhaps it's as if he says amen, you know, but it remains a doubt. Further on this they discuss, whether the doubt is only a doubt as if a lack of knowledge, if we know for certain that they are "involved in that matter,"

R' Yoel Asher: We know that he is acquiring her.

R' Yitzchak: No, all these doubts here are, if you have the wrong nusach, the simple meaning is you don't intend to be mekadash, you intend to do something else. If one knows for certain that they want to be mekadash, it may work, because the doubt is only...

R' Yoel Asher: He gave the money, that means to be mekadash, and she also says the words that you were the one who was mekadash me. No, because "Hareini mekudeshet lecha b'taba'at zo shenatata li (Behold I am betrothed to you with this ring that you gave me),"

R' Yitzchak: That is the doubt. If it's the wrong action, that means we know she wants to become mekudeshet to him, but

he must be mekadash her. The action is not that she becomes mekudeshet to him, the action is that he becomes her mekadash. So it is indeed a doubt. But the Shulchan Aruch says that if one knows for certain that they mean it, then there is no problem. But the simple meaning is, perhaps they don't mean it, they mean something else as a thing, they don't want to be mekadash. That is the question. Perhaps it is indeed a doubt,

R' Yoel Asher: You can think this way or that way. But yes. Okay. That is the halacha of kiddushei kesef (betrothal with money).

Halacha 5 – Kiddushei Shtar (Betrothal with a Document)

R' Yoel Asher: Now we will learn how one does kiddushei shtar. Says the Rambam, "**And if he betrothed with a shtar (document)**", if he wants to be mekadash with a shtar,

R' Yitzchak: What does one do? It's interesting his language, okay.

R' Yoel Asher: "**He writes on paper**". Also here it says "if with money he betroths," there is no difference. "If he betrothed with a shtar" is like this: "**He writes on paper**". First of all, on what can one write? Here there are no strict laws of a shtar like in other places, I don't know, here there is no requirement for parchment or what. I mean by a get (divorce document) it does say something that it must be good paper, but in any case, whatever, paper, **or on anything he wishes**, whatever, he writes on it "**Harei at mekudeshet li (Behold you are betrothed to me)**" or "**me'oreset li (engaged to me)**," and anything similar to these words, and he gives it to her before witnesses.

R' Yitzchak: Then he doesn't say, by kiddushei shtar it already says,

R' Yoel Asher: The shtar itself says it, the shtar says the words

R' Yitzchak: That he would have said.

Lishma – The Shtar Must Be Written for the Specific Woman

R' Yoel Asher: And it must be written for the sake of the woman who is being betrothed, like a get, he cannot go buy a shtar that says on it "Harei at mekudeshet li," he must write, and when he writes it he must have in mind this woman. It doesn't say here whether the woman's name actually appears. In other sources it appears that in kiddushei shtar one writes the woman's name. For the sake of the woman who is being betrothed means, one can learn, that's how I understood, for the sake of the woman who is being betrothed one can learn,

R' Yitzchak: No, what something? By a get one doesn't write the woman's name, the point is that one must write and intend this woman, it's not a general thing, one cannot buy, just like a get, a get also, but one doesn't write in the woman's name, why would one write the name? Also the name won't help. Ah, by a get one does write the names? It's just so it should be proof, it's a takanas chachamim (rabbinic enactment). He can say that

R' Yoel Asher: Here it's enough that there are witnesses.

R' Yitzchak: Ah, that's what you mean, by a get one must write, so that's actually very good, the Rashba argued that one must write the names, not clear.

R' Yoel Asher: I mean in the language of the Rambam it's quite clear for the sake of the woman who is being betrothed, but perhaps in the language one can learn, one must write for the sake of, which means to write her name.

R' Yitzchak: Okay. Lishma of the get certainly doesn't mean. By a get also one must know whether it's me'akev mid'oraita (biblically indispensable), at least the writing of the name, it may be that it's only a takana, that means, at least writing the nicknames is a takana, it's not clear what at all one remembers such a get. One must know whether it's shemo yishma, whether it's actually me'akev, or the Ramban isn't here said

R' Yoel Asher: Whether he writes or a shaliach (agent) can write or he can buy a written one. But that he should write it for the sake of the woman, it means that he cannot. It means that if someone writes, it must also be the agent of the man, because it must be for the sake of the woman.

R' Yitzchak: No, no difference, he can tell the scribe to write for Rachel a strong one.

R' Yoel Asher: The Rambam says "the husband writes," but the language "the one who writes"...

R' Yitzchak: Okay. "Lishma," the one who writes it must know for whom he is writing it. If he writes it

R' Yoel Asher: For the sake of the man also presumably. No. It doesn't say. Apparently for the same reason one must have for the sake of the man. Perhaps not because he gives it over? Okay.

R' Yitzchak: Yes, what does it have to do? It must be for the woman, so says the Rambam. Even by a get the Rambam says explicitly that it must be names, one of the ten things that is me'akev in a get by the Rambam. So it's not, if he had to write that, he would have had to write that. It certainly doesn't say that one must write her name. It must be lishma, it's a different thing. By writing the name also, if two women with the same name it doesn't help, right? It's not a... Look,

Halacha 6 – And He Writes It Only With Her Knowledge

R' Yoel Asher: The next halacha is also, it says new things, "**And he writes it only with her knowledge**", that when one writes it she must know that one is writing it for her. This is also very different from a get or from anyway.

R' Yitzchak: No, with her knowledge means with her consent, because "a woman is only betrothed with her knowledge."

R' Yoel Asher: That at the time of the writing there must already be her consent. It means, a man cannot go around having in his pocket, I mean someone, for the woman, that when there will be a good moment he will give it to her. There must be some kind of ceremony, that he tells her, "I am now writing for you," and one writes, and it's lishma, and it's with her knowledge.

Kiddushei Shtar and Kiddushei Biah: The Nature of the Kinyan and the Laws of Declaration

Halacha 3 (Continued) — Kiddushei Shtar: "L'da'atah" and Declaration at the Time of Giving

R' Yitzchak: She must agree.

R' Yoel Asher: Yes, yes.

R' Yitzchak: "**If he wrote it not for her sake or for her sake but not with her knowledge, even though he gave**

it to her with her knowledge before witnesses, she is not mekudeshet." It means, not even stringently.

The Nature of Kiddushei Shtar — A Ceremony, Not Just a Substitute for Money

R' Yoel Asher: No, it made a bit clearer to me what kiddushei shtar is. Kiddushei shtar is not some form of, instead of money which must have a certain value, he gives her a note. It's not that. It's a sort of ceremony, it's something that one does. One sits down and writes a shtar. That seems to me like this kind of kiddushin.

"L'da'atah" Means Consent, Not Knowledge

R' Yitzchak: She doesn't have to know when one writes the shtar, she doesn't have to be there. "L'da'atah" doesn't mean knowledge, "L'da'atah" means consent.

R' Yoel Asher: Yes, but her consent later won't help. Her consent at the time of writing.

R' Yitzchak: Yes, okay.

Declaration at the Time of Giving the Shtar

R' Yitzchak: And apparently according to this one doesn't need to say. He brings that the Beit Shmuel says that one must say, but it's the opposite. If one understands that the writing is already as if the declaration has come, then one sees —

R' Yoel Asher: Not that one should —

R' Yitzchak: Need to say when one gives it. The Rambam doesn't say that one gives it.

R' Yoel Asher: The Rambam only says, "and he gives it to her before witnesses."

R' Yitzchak: So it appears. Yes.

Halacha 4 — Kiddushei Biah (Betrothal Through Intercourse)

R' Yoel Asher: The next mitzvah will be kiddushei biah. Says the Rambam,

R' Yitzchak: This is the second way. One can write with a shtar, and one discusses how one does the shtar. And if... kiddushei biah. What does he do?

The Formula of Declaration by Kiddushei Biah

R' Yoel Asher: He says to her, okay, here I can understand why he says a past tense, because later he will say did but the past. Okay, one can say it. **He says to her, Harei at mekudeshet li...** No, the Rambam could have been more precise, I could have done more.

R' Yitzchak: It doesn't mean if he wants, if he betrothed it.

R' Yoel Asher: It's betrothed with biah. If the kedusha (sanctification) that he chose is kedushat biah, he does it like this: **He says to her, Harei at mekudeshet li or Harei at me'oreset li, and anything similar to this, or Harei at li l'isha (Behold you are to me as a wife),**

R' Yitzchak: And he must also say with this biah. Yes.

"Bazeh" by Money and Shtar, "B'biah Zo" by Biah

R' Yoel Asher: By the previous ones it said bazeh (with this). Bazeh. Bazeh. Harei at li l'isha. Ah, bazeh is added to all of them. One must do the punctuation well.

R' Yitzchak: Yes, yes.

R' Yoel Asher: Okay, very good. The bazeh goes up to all. And here it is b'biah zo (with this intercourse). Apparently, bazeh will also help here. Bazeh will mean here... I don't know,

one must pronounce the word more than b'kesef zo, yes? We say b'taba'at zo, okay.

R' Yitzchak: We say b'taba'at zo. It doesn't say in the Rambam b'taba'at zo. Bazeh.

Yichud Before Witnesses — The Mechanism

R' Yoel Asher: But here it is b'biah zo. **He secludes himself with her before witnesses. And has intercourse with her,** the secludes himself with her only goes up to the secludes himself with her. Yes, apparently, the Rambam doesn't say it clearly, but apparently that's how one understands. And afterwards is has intercourse with her.

R' Yitzchak: Yes, there is a rule that...

R' Yoel Asher: No, has intercourse with her is not a law in the yichud (seclusion). It doesn't have to be at the same time. Then when the witnesses see the yichud he has intercourse with her.

R' Yitzchak: Yes, certainly it must be the same time.

R' Yoel Asher: Ah,

R' Yitzchak: Because this is kedushat biah. When is kedushat biah? Only the biah he doesn't do before witnesses, but the yichud for biah is before witnesses.

Discussion: The Yichud Room After the Chuppah

R' Yoel Asher: So the yichud that we do is a very interesting thing, because the idea of yichud is, what it says here secludes with before witnesses, and the witnesses know that there is a biah. It's only a way to overcome that in practice they are... If the kedusha is the biah, there must be a witness just like by money, like by shtar. No, no,

R' Yitzchak: No, on this there is a halacha. On this is this a halacha?

R' Yoel Asher: On this is the halacha the yichud. I said, the yichud that we do, the custom that we do after the chuppah, is very interesting, because from where do you know at all that there is such a law of yichud when it's not a sign and proof of biah?

R' Yitzchak: No, the yichud that we do has nothing to help.

R' Yoel Asher: It's a custom, say, it shows nothing about kedushat biah.

R' Yitzchak: What does this come in here?

R' Yoel Asher: No, I said, the word yichud, what does the word yichud mean? Both here, everywhere is a yichud that has the possibility of biah.

R' Yitzchak: No, not by the yichud room.

R' Yoel Asher: I know, the yichud room is a borrowed name. Because it's not yichud, it doesn't fit with yichud. Why does one speak, when one speaks about the laws of yichud, or yichud before witnesses...

R' Yitzchak: It's a topic of chuppah (wedding canopy), a different topic, it hasn't yet been mixed. It's a topic of chuppah, it has nothing to do. Yichud here means secludes himself to have intercourse, and there is a Gemara, they are the witnesses of yichud they are the witnesses of biah. That means, the witnesses don't need to see the biah, because it's like a chazaka (presumption). That a person says, with this biah, and he goes to seclude himself, it's enough the witnesses believe that there was a biah. What if he comes and says there wasn't? I don't know.

R' Yoel Asher: Just as one says the halacha.

R' Yitzchak: Now, there is another one.

His Intent Is for Complete Intercourse

R' Yoel Asher: Biah is a thing that can have stages, there can be something that has phases. When one is mekadesh with biah, **his intent is for complete intercourse.**

R' Yitzchak: Is this at any level. One learns,

R' Yoel Asher: We will see that beginning and end will stand later.

R' Yitzchak: When one is different. So one that one must know,

R' Yoel Asher: When one is mekadesh with biah, his intent is for complete intercourse.

R' Yitzchak: Which part of the biah does he mean? It's interesting, it could be that he could have meant differently. That means, in the Gemara there is an inquiry whether the beginning of intercourse acquires or the end of intercourse acquires, and the conclusion is that when a person is mekadesh with biah he means the complete intercourse. Now, what if someone comes and says I mean something else? It doesn't say. As if, what will be the halacha?

R' Yoel Asher: Ah, he says his intent simply as if when he doesn't say.

R' Yitzchak: A person who means biah, usually the male, that which he enjoys the most, about that presumably his intent is for complete intercourse. Yes. If there wasn't completion, it may be that it's not good, she hasn't yet become betrothed. That is the word. The question is, which second did the biah become? If a second one comes, simply his hands and received kiddushin, in the middle of the biah, before the complete biah, then I hold the second one's kiddushin.

R' Yoel Asher: Someone who is mekadesh with biah a person is also someone who isn't here to gladden other Jews, he is here for his pleasure.

R' Yitzchak: Ah, so the Maharik says explicitly, if he specifies, he says that he speaks mekadesh with the beginning of intercourse, it becomes betrothed. The word is more than the person's intent. He says explicitly, if he simply his hands received kiddushin in the meantime, then the second one's kiddushin work. The first one, if it was such a biah, he is not a ba'al eshet ish (husband of a married woman).

Discussion: The Nature of Kiddushei Biah — Why Rav Mangid

R' Yoel Asher: The going of issurei biah is a different thing. There one says, what does biah mean? Biah can also mean meaning. But here one says that the kinyan is some certain...

R' Yitzchak: He means that. Generally speaking one transgresses with beginning. But kiddushin is his intent is relaxed. And when he completes his intercourse.

R' Yoel Asher: No, I say automatically it makes sense that if one specified differently it's also good, because there was a biah. That means, when it's not a law of biah, it doesn't help what they say doesn't help. They say, I don't want to go into detail, but let's say touching, I know, hugging will be... It doesn't help, because there is no word biah. It's already called biah, automatically it can already, yes, it's only the matter of simply his intent.

Not in the Normal Way

R' Yoel Asher: "And whether he came upon her in the normal way or whether he came upon her not in the

normal way, behold she is betrothed." Biah can also be not in the normal way,

R' Yitzchak: It's also called a biah. As you say, simply some closeness doesn't mean, because this is not in the normal way is a halacha that generally throughout the entire Torah not in the normal way has a law of biah. How does one know? That it says somewhere in the Gemara, yes?

R' Yoel Asher: Ah, also in issurei biah one learns so.

R' Yitzchak: Yes, two lyings with a woman, some such language. Yes, it's not clear. Yes, in any case.

Summary: The Three Types of Kiddushin

R' Yitzchak: Until here we have learned the three types of kiddushin:

Kiddushei kesef — Kiddushei kesef comes with a declaration and a giving, he must be the sayer and the giver.

Kiddushei shtar — That he should write and give.

And **kiddushei biah** — which also must say and do an action, which then is... Presumably by kiddushei biah the most indispensable is the words, because if not it's just a biah, there is no such thing that...

Why the Declaration is Indispensable for Kiddushei Bi'ah

R' Yoel Asher: Right, because if not, before Matan Torah it would also always have been kiddushin.

R' Yitzchak: Specifically just in the—

R' Yoel Asher: The normal way there are always witnesses.

R' Yitzchak: No, there are no witnesses.

R' Yoel Asher: I'm saying, just in the normal way there are witnesses. One only needs to see the yichud, the beginning. People see that he goes there and he... okay.

R' Yitzchak: I only mean to say that it should be good, but bi'ah da'at hakiddushin. The declaration and the witnesses, both these things, they make it for bi'ah, for kiddushei bi'ah, and not for mere bi'ah. This is apparently the point. I also thought about this, perhaps it's similar to kiddushei shtar, because it's something the pleasure of the bi'ah, just as the da'at took a bi'ah. You see that it has to do... I imagine that the reason for what da'at...

Discussion: Gemar Bi'ah Means His Pleasure, Not Her Pleasure

R' Yoel Asher: No, but gemar bi'ah doesn't mean her pleasure. It means, in the end she receives something. On the contrary, it must be that he gives her something, yes, he is acquiring her now.

R' Yitzchak: Perhaps she also receives something.

R' Yoel Asher: So, gemar bi'ah doesn't mean... means that he has nothing with her, it has to do with him.

R' Yitzchak: How does it work?

R' Yoel Asher: This is also shelo k'darkah. His pleasure is what is relevant here. It's interesting. It could be that it's a different kind of thing, it's showing ownership, it's a kinyan, a different kind of thing. No, I'm saying, it fits very well with what we gave from Rav Mangid that it's an issur d'rabbanan.

R' Yitzchak: No, Rav Mangid will say explicitly.

R' Yoel Asher: No, Rav Mangid says, the issur d'rabbanan fits very well, because it's not just because you're doing a crude thing, it's deeper than that. Because by the other kinyan it's simple like this: you become mine, but I give you something now at least. When you begin to become mine, I give you something.

R' Yitzchak: You become mine,

R' Yoel Asher: And I'm already obligated to you now. I'm now going to have pleasure from you. It's a different kind.

R' Yitzchak: Okay. What you're saying is, let's understand later.

R' Yoel Asher: Yes yes,

Distinction from Before Matan Torah

R' Yitzchak: We come to kingship. Kedushat bi'ah is about this. Okay. You're bothering me, it's not a way, because it's too similar to before Matan Torah. But I say it's not similar, because the declaration comes with the witnesses. This is the main distinction. This wasn't there at all. Now one will learn, what is the proper text? It was learned that one must say, usually that one says words, and one must learn which text, what is the proper text. Says halacha vav.

Halacha 6 — The Text of the Declaration: He Acquires Her, Not She Acquires Him

R' Yoel Asher: Yes. Says the Rambam, "**The words that the man says when he betroths must be in their meaning**" — the meaning that the words explain, the types, the content of the words that he says, "**that he acquires a woman. Not that their meaning should be that he sold himself to her,**" not that he, that the woman bought a man, that he sold himself to her, or whatever, and he subjugated himself to her, rather he is her master, not she is his master.

R' Yitzchak: No, that he subjugated himself to her, as if even as a person,

Kiddushin: Invalid, Valid, and Doubtful Formulations — And the Distinction Between Erusin and Shidduchim

Halacha 3 (continued) — Formulations of "Hikneh Atzmo Lah": Invalid Formulations

R' Yoel Asher: Not that the woman bought a man, that he sold himself to her, or whatever, that he subjugates himself to her.

R' Yitzchak: He is acquiring, yes.

R' Yoel Asher: He is her master, not she is his master. No.

R' Yitzchak: That he subjugated himself to her, even as a person. Even if he says "hareini ishech," which "ishech" means I am obligated to you, is also not good. Do you understand? It's not just who is the top and the bottom, it's more that she must...

R' Yoel Asher: Who does the kinyan? That's the point.

R' Yitzchak: You can say that, we're not talking about who does. Always, he says now, we're not talking about "amrah hi." We're talking that what he says, he must say, the meaning of what he says must be that he is now acquiring her, not that he becomes...

R' Yoel Asher: She is the kinyan.

R' Yitzchak: He is not the kinyan.

R' Yoel Asher: Here he is the kinyan, he makes the kinyan, but he becomes the kinyan. The kinyan can't make itself like... No, usually the kinyan is a horse, yes? The horse can't do anything. Here, she is the kinyan, he can't become the kinyan. When he says "ani makneh atzmi lach," yes? He makes the kinyan, but he is the cheftza hankineh, because he says "harei ani nikneh lach."

R' Yitzchak: I hold that it's yes about this. You can think that for example, if there were such a thing that...

R' Yoel Asher: I hold that it's yes about this, because when he is acquiring and she is the kinyan.

R' Yitzchak: No, no. What happens here? Even when he is makneh atzmo lah, it's only that...

R' Yoel Asher: A makneh atzmo lah is this, is this the kinyan. No.

R' Yitzchak: Only Rachmana, makneh atzmo as a man, not as an object.

R' Yoel Asher: But he is a... he means that his manhood is a davar hanikneh, but he is a davar hanikneh, he is a shikneh atzmo.

R' Yitzchak: Correct, correct, correct, I'll tell you what I mean.

R' Yoel Asher: What does hikneh atzmo mean?

R' Yitzchak: Hikneh atzmo... like you're going to say, "hareini ishech."

R' Yoel Asher: It's not a kinyan. It means in total, "hareini ishech" doesn't mean yikneh atzmo lah.

The Rambam's Language: "Keitzad?"

R' Yitzchak: Certainly. Read, "keitzad?"

R' Yoel Asher: "If he said to her or wrote in a document that he gave her, 'I am your master,' 'I am your betrothed,' 'I am your husband,' and all similar things, there is no kiddushin at all." Why?

R' Yitzchak: Because this is "enyanam she'hikneh atzmo lah." Therefore he says, the meaning would be... I am yours, but your what? Even your master, not good. The meaning would be something like that an ishah is kinuyah to her husband, she's forbidden to the whole world, the husband however is not forbidden to the whole world, no one. The husband can have as many wives as he wants, she should belong to him.

R' Yoel Asher: And he doesn't belong to her. As we'll see about this later.

R' Yitzchak: Later we'll see about the other. Yes, exactly. But in any case, this is the structure. One must already go in and see who is the... It doesn't have to do with who is the koneh and who is the makneh. It's more that the ishah, this is the...

R' Yoel Asher: One congregation in general is very good.

Halacha 4 — Formulations That Are Valid

R' Yitzchak: But if he says... This is certainly not good at all. But, what is yes, other formulations that are good, we learned kidashta and so on, but there are other things that are valid.

R' Yoel Asher: Yes, "If he said to her, or wrote to her, you are my wife, or you are my betrothed, or you are bound to me", you are bound to me, like in Yoma there is the word zakuk a lot. "You are my purchased one", you are what I have bought. Or "you are my charufa." Charufa is a term from... kiddushin. Like several terms are... yes, in the

Torah one sees that charufa means... but there are those who say that charufa is a term from... subjugation?

R' Yitzchak: Charufa means kiddushin. It says "**and she is a maidservant charufa to a man**". It means somehow designated for marriage. As Yehuda explicitly used to call erusin charufa. As it says in the Gemara in Kiddushin daf 14a.

R' Yoel Asher: Yes. "**And all similar things, she is betrothed**", because all these things also mean the right thing, that the man is acquiring her and she is your wife.

R' Yitzchak: But...

R' Yoel Asher: Now will stand other formulations, "**If he said to her or wrote to her...**"

R' Yitzchak: Not only do they mean, I just want to say more, all these formulations, not only do they mean that he is acquiring her, they mean kiddushin. They mean the kinyan, called kiddushin, these are all synonyms, everything means the same thing. As if. Later we'll see that there are formulations where there's a doubt whether they mean kiddushin, even though he makes her, understand? The doubt isn't about whom it means is obligated. The doubt is, is this what means kiddushin, or perhaps it means just some service.

R' Yoel Asher: Some connection.

R' Yitzchak: Some connection that isn't that.

Halacha 5 — Formulations of Doubtful Kiddushin

The Formulations and Their Sources

R' Yoel Asher: "If he said to her, or wrote to her, you are designated to me", you are my unique one, you are designated for me. One can think that this means wife, because that's what kiddushin means, that you are only for me. But it's however not clear. A person can have another kind of format of being designated, and I know, you are my only client, my only student. This is lacking. You are designated for me. "**You are appointed to me**". Here he will enumerate three things, four things. From this week's parsha, from things that we see how the Torah describes the first time a couple. "**My helper**", it says "**ezer kenegdo**", "**you are my helper**" or "**you are opposite me**". Remember the thing that a woman can be either a helper or an opponent?

R' Yitzchak: Yes.

R' Yoel Asher: Yes, yes, the formulations that can hint at a woman. Therefore, the halacha will actually be that it can actually, it remains a doubt. "**You are my rib**", we learn that Chava was the rib, it was a piece from the body of Adam. "**You are my closed one**", it says "**vayisgor basar tachtena**". So he mentions the language of the verse.

R' Yitzchak: He says "you are my closed one."

R' Yoel Asher: Or "**you are beneath me**", you are subjugated under me, or you are under me. "**You are my forbidden one**", not "arusati" but "asureti", you are forbidden to me, bound to me. "**You are my seized one**", you are seized under me, you are caught by me. All these formulations, "**she is betrothed in doubt**", because these are open. One can, all these can also be heard, therefore one must be stringent and needs a get, because one can also hear that it hints at a woman. Perhaps they mean well, perhaps they understand what they're saying and they mean well, or perhaps not, because it doesn't say clearly in the words.

R' Yitzchak: Or perhaps what do we think they mean?

R' Yoel Asher: All mean a daughter, I'm not subjugated. A person can also have a servant who is subjugated, or a child who is subjugated. All these can be learned this way. "Designated" can also mean other kinds of ways. "Designated" can mean a bit my chavruta for "designated". It's not clear that it's a wife.

R' Yitzchak: That it's kiddushin. But this is a doubt in general.

The Condition: "And This Is When He Is Speaking With Her About Matters of Kiddushin"

R' Yoel Asher: This is only in Torah. The Rambam, "**And this is when he is speaking with her about matters of kiddushin**". The thing that one only needs to be stringent is when one is speaking about matters of kiddushin, automatically the formulation fits that this is what was meant.

R' Yitzchak: But means speaking with her initially about matters of kiddushin.

R' Yoel Asher: And the words are words that aren't exactly kiddushin. It's only perhaps he meant, but perhaps it's nothing, perhaps he's flying in the air. When it's speaking with her about matters of kiddushin one can say so. He has already said such that it's a majority that not.

R' Yitzchak: And the speaking with her about matters of kiddushin makes the chances higher. "Designated" means, I don't know, it's special, whatever, it doesn't mean designated. If he's in the middle of talking about kiddushin, he can say he mentions that verse, whatever, let's say for kiddushin. He mentions that this means a wife. If not, no one knows what he means. I mean that Rashi said that he can mean other things.

Discussion: The Practical Reality of Doubtful Kiddushin

R' Yoel Asher: It's a bit interesting, because when one says she is betrothed in doubt, a person would think, because there's a serious chance that he meant this, because it hints. Again, we're not talking when a person has a secretary and he says, I want you to be my designated secretary, does it now start to think, well, what does one say designated to me? We're talking, when not engaged speaking with her about matters of kiddushin, means still when it's open. Yes, he met a girl, and I know what he said. Then there's no secretary. Secretary, you are designated to me, because you are my only secretary, is a bit means nothing. We're talking yes in a case when it's a man with a woman with some situation, yes? He wants to tell her things that he wants to hint to her.

R' Yitzchak: Yes? What's missing? What's missing?

R' Yoel Asher: Must one speak about a secretary.

R' Yitzchak: This is what we're talking about. Exactly your case, this is the halacha. Then it's a secretary, then go know what it means. It certainly doesn't mean that. He's Russian, you help. It's a good secretary. When what the halacha talks about is exactly the halacha.

R' Yoel Asher: That he's seeking a wife.

R' Yitzchak: It must be yes the woman he's dating. It must be that he's talking when kiddushin. Could be that it means just a woman he's dating.

R' Yoel Asher: No, I'll say it means just a...

R' Yitzchak: Woman he's dating. No, I'll say it means just...

R' Yoel Asher: A woman he's dating. They're on a date. They're on a date. A question begins. If it's a secretary, the question doesn't begin. You see, I was right when I publicized

that people should be careful with their speech. If one does the modern, we understand, Shlomo Ameinu Yisrael, one makes a l'chaim at a vort, and one goes everything according to the custom. Here those who give flowers and make a proposal and say, would you marry me? Yes, what does one say? Something like that. Is this called speaking with her about matters of kiddushin, must one actually be concerned even about words that are open. I didn't take that one shouldn't do it l'chatchila. I didn't say what's certain, and I'm not saying to be stringent. But I say better one shouldn't use such words, because this is called a case of speaking with her about matters of kiddushin. And even she gives him... he gives her. And he says words, will you marry me, one must fear that...

R' Yitzchak: It's all on the she is betrothed in doubt. Okay, what's a distinction?

R' Yoel Asher: Say, there's a place to be stringent, based on the Rambam, because after all when it's speaking about matters of kiddushin, words that can mean this or that...

R' Yitzchak: One must fear doubtful kiddushin. Why shouldn't one do it?

R' Yoel Asher: Because... one must know, first of all perhaps there's a question of eshet ish, even if she's only a bride it's only a prohibition. I'm saying, one must know that you're putting yourself into something. Let's say, a person, the proposal he doesn't take as seriously as one takes the kiddushin. You should know that it's as serious as kiddushin. It's relevant for various things, regarding immersion, regarding...

R' Yitzchak: The main thing is because you hold that it's not Jewish.

R' Yoel Asher: This is obviously, this is what makes it really a terrible thing, a very ugly thing. But I'm also saying...

R' Yitzchak: Perhaps it's already enough by the Lithuanians, I know they've been conducting themselves this way for so long approximately.

R' Yoel Asher: Perhaps they don't wait to say the words?

Discussion: Distinction Between Erusin and Shidduchim

R' Yitzchak: Okay, we need to just understand, okay, it's not our conversation, we need to just understand, it's known by everyone that today what we call erusin in Hebrew, or also in lashon hakodesh more or less, the language of the Acharonim, doesn't mean erusin, but what we call shidduchim in the Gemara. Now, it's however very funny to me, because...

R' Yoel Asher: What is already a finished thing?

R' Yitzchak: It's not kiddushin, but what then is it not kiddushin? Kiddushin means a promise that one will have a wedding. What does kiddushin do?

R' Yoel Asher: It designates... No, kiddushin is not a promise, kiddushin is a kinyan.

R' Yitzchak: Well, one makes a kinyan. We call it literally a kinyan.

R' Yoel Asher: We call it a document, we call it a document, we call it a document.

R' Yitzchak: How does that work? When you ask me in learning, ta'ama d'kra, whatever, you look at the broad view, I...

Discussion About Erusin, Shidduchim, and Kiddushin in Modern Times; Halacha 8 – Kiddushin

in Any Language

Discussion: The Nature of Shidduchim and Erusin – Then and Now

R' Yitzchak: Now, it's however very funny to me.

R' Yoel Asher: Because it's already a finished thing.

R' Yitzchak: It means kiddushin. Well, what then is it not kiddushin? Kiddushin means a promise that one will have a wedding. What does kiddushin do?

R' Yoel Asher: It designates... kiddushin is not a promise, kiddushin is a kinyan.

R' Yitzchak: Well, one makes a kinyan, we call it literally a kinyan.

R' Yoel Asher: By us we don't call it a kinyan, we make a document between two mechutanim.

English Translation

R' Yitzchak: How does this work? When you ask me ta'amei dikra (reasons for the verses) in learning, whatever, you look at the broad picture, I see, we see this... You ask a question. Let's understand, once upon a time there used to be a custom that one would make erusin (betrothal) a year before, afterwards one would have a wedding. Later they combined the two things. It's interesting, afterwards came shidduchim (matchmaking), which is basically the same thing. What it says in the Gemara "mekadesh b'lo shidduch" (betrothing without matchmaking) certainly means a step before the kiddushin, you understand? I'm asking you. What we do as kiddushin is basically what used to be erusin.

R' Yoel Asher: But you're saying correctly, that one doesn't actually need a get (divorce), but in any case, one doesn't break off erusin so easily. It's not a get, because there is...

R' Yitzchak: I'm not going into halacha, it's accepted that the halacha is this way. I'm just saying, the idea is, it seems to us that the idea of what we call a kallah (bride), an arusah (betrothed woman), is literally the idea of what it was back then.

R' Yoel Asher: And shidduch is what would have been called in the period of dating, or as we say.

R' Yitzchak: Exactly, you see that there's a shidduch before that too. Shidduch in the Gemara doesn't mean kinyan (acquisition), by us shidduch is already a kinyan.

R' Yoel Asher: Shidduch means "meshadech acharehah" (pursuing her), it's a language of he runs after her.

R' Yitzchak: No? I don't know, I remember shidduch means... I don't remember what the language means, but I remember that it means to speak, that is, to be engaged in this. Usually it was between the fathers generally, but today also by the Chassidim it's between the parents. I mean to say, shidduch means that one talks about this in order to become an arusah, in order to become... But "meshadechet" is not the same... As you say, there's dating, there's fiancé, as it's called in English, which is arusah, and afterwards there was a wedding.

For some reason, the chachmei halacha (halachic authorities) understood that erusin is something like, because the halacha is that she becomes an eshes ish (married woman), as if it's already the next level. But it's not, there are always the three levels that exist: first one talks, afterwards one is committed to the other, as if "meyuchedes" (designated), afterwards is

"machnis l'veiso" (bringing into his house). These were always the three levels.

R' Yoel Asher: You're talking about how it perhaps should be, not how it is, because today certainly, one gives a watch, whatever one gives, one gives a nice ring for the kallah, but it's al da'as (with the understanding) that one will still do what is called kiddushin.

R' Yitzchak: But this requires examination.

R' Yoel Asher: We are careful that there shouldn't be chupas niddah (wedding during menstrual impurity), and we plan out the chuppah with yichud (seclusion). It's very obvious al da'as that one will still do a ma'aseh kinyan (act of acquisition). A ma'aseh nisuin (act of marriage). A ma'aseh nisuin.

R' Yitzchak: And that one gives an engagement ring is also not maintained at all.

R' Yoel Asher: The very frum don't do it.

R' Yitzchak: Because of this one does it as if. But think about it, one even gives a ring, Ribbono shel Olam (Master of the Universe), you want to convince me?

R' Yoel Asher: There are also shavlonos (templates/forms), which this is still for.

R' Yitzchak: It's still kiddushin, afterwards. This is the idea. Before what, go learn, a mishlacho v'lachasah (sending and taking) in Choshen (Mishpat), because it's al da'as kiddushin, and Rishonim discuss. It's not before the kiddushin. We conduct ourselves with a kallah, literally as one used to conduct oneself in the time of the Mishnah and Gemara, with an arusah.

R' Yoel Asher: And shanah rishonah (first year) also made more sense this way, because shanah rishonah is how one conducted oneself with a kallah.

R' Yitzchak: What comes to be shanah rishonah? After the wedding. What we... Practically.

R' Yoel Asher: Our shidduchim can be a wedding. No, no, what something? What something is the part of the rishonah? If something the Chazon... No.

R' Yitzchak: No, what something? What something is the rishonah included from when one makes a journey? No, no, not true. There is a day, but there is a day.

R' Yoel Asher: No, what something? I'm saying that what we conduct ourselves practically socially, you understand that you hold that in practice...

R' Yitzchak: Being someone else's kallah is a great avlah (wrong), true? It's worse than just someone else's girlfriend, and it's worse... Not exactly like an eshes ish. Almost. By people it's viewed until the eshes ish.

R' Yoel Asher: About this one doesn't even need to warn.

R' Yitzchak: No, I'm showing you that what you caught, that the "will you marry me" sounds like kiddushin, the whole attitude that we have sounds like kiddushin.

R' Yoel Asher: I'm saying that "will you marry me" is much worse, because it also has the ceremony and the action. It's in public, he gives her a ring and he says words to her.

R' Yitzchak: I'm asking you a question, we do the ceremonies, literally.

R' Yoel Asher: Everyone does the ceremonies. You make a l'chaim (toast). Therefore, even words are enough. Certainly. Because if he gives her a gift, that he can say even if the father

gives, the mother gives her the ring, but it's as if through agency.

R' Yitzchak: For whom does he give it?

R' Yoel Asher: The mother is only there because the...

R' Yitzchak: It's a way for the minors that a man can be mekadesh es bito (betroth his daughter). I'm explaining this. No, you understand what I'm saying, and what I want to argue is as if, that hey, but what, what do all the rabbis accept? I'm sure that not one rav has yet ruled that it's a concern.

R' Yoel Asher: But one doesn't let go easily. That means, one also accepts more than just. One accepts it like a get regarding, it makes work with... Socially. So, it means, one doesn't make a formal get, but one also understands that it's not like shidduchim in the Gemara, it's not like dating.

R' Yitzchak: Right. I agree. But what. But I'm telling you, the reason why one isn't concerned to learn kiddushin is because everyone assumes that this means that one will still make the kiddushin. If so, the same thing, when he says "will you marry me," he means to say, are you telling me that tomorrow one will make erusin. He means, he doesn't mean something different than what the Chassidim mean when they make their l'chaim, true? So, hey, the language is indeed perhaps exactly a language of kiddushin.

R' Yoel Asher: I don't know. After all, the thing that not he does it, this is that... Let's say more clearly, this is that everyone knows that one is already forbidden in touching, yes? Is itself a certain thing, he's not yet mentioned here.

R' Yitzchak: Arusah, arusah is forbidden in touching, I don't understand what you're saying. Arusah is also forbidden.

R' Yoel Asher: I'm saying, when he gives...

R' Yitzchak: This is erusin, this is the end of erusin, one doesn't yet live at the end.

R' Yoel Asher: One may not even.

R' Yitzchak: I'm asking a good question. Ask the rabbis, how can it be that they decided not to do any erusin? It seems to us that what we call shidduchim is properly erusin from the Gemara. And by the way, I think that the stringency for example that the groom doesn't give the engagement ring is really only by the very heimish. I think that every Litvak gives the ring, the groom to the kallah. It's very interesting to me. One says not for the sake of kiddushin, I don't know.

R' Yoel Asher: You can ask rabbis? You know that there was a tradition among the rabbis and among the poskim that if problems arise because one is a chosson kallah (engaged couple), one should make the wedding.

R' Yitzchak: You know of such a thing?

R' Yoel Asher: It's a very controversial thing. But one can understand where they're coming from, because one can't make a get in doubt. Imagine the scandals that would be if it's a get in doubt. The whole street that would stink. But they also felt something that it's not a problem to cancel a shidduch like when shidduch meant just getting to know each other or dating.

R' Yitzchak: Yes, this is somewhat a new interpretation of the stringency. I thought it was a superstition.

R' Yoel Asher: I wouldn't say superstition, I would say that many times it's because you've started to have fear. Who says it's to work? Try it out, it's a push, try it out, because it's such

cold feet. Cold feet need to be pushed. This is the role of parents is to push the children.

R' Yitzchak: Cold feet on the rav. This can be more a psychological thing, can be. Okay, let's go further. As the halacha is accepted that one doesn't push off a wedding, the reason for the strictness came because when weddings were pushed off, when there's no money and the in-laws didn't pay, the Chassidic rebbes said, "One doesn't push off a wedding, you made a wedding, first the wedding."

R' Yoel Asher: An advice has already been given. Kiddushin cannot be dependent on a very anchor, on a very mood of today afternoon. Already.

Halacha 8 – Kiddushin in Any Language; Engaged in That Matter

R' Yitzchak: Okay, another halacha, 8, yes?

R' Yoel Asher: Says the Rambam, "**And a man may be mekadesh the woman in any language that she understands.**" He can be mekadesh with any language. It doesn't have to be a certain language, or any language.

R' Yitzchak: Language apparently means two things: either that it can be English.

R' Yoel Asher: And also apparently which slang or whatever it is. But it says here yes, "that she understands." He can for example, if he speaks Chinese and she understands, yes, she must understand.

R' Yitzchak: One must ask if someone doesn't understand lashon hakodesh (Hebrew) whether one fulfills the obligation.

R' Yoel Asher: Okay, one doesn't understand what one is saying. Yes.

R' Yitzchak: "**And the words must be understood in that language as acquisition as we explained.**"

R' Yoel Asher: That means, the translation must be in the language that means that he has acquired her. Says the Rambam, "**If he was speaking with the woman about matters of kiddushin, and she agreed**" – she consented, "**and he stood up and was mekadesh**" – he was mekadesh, "**and did not specify and did not say anything to her.**" He stood up and he only did the act of kiddushin. "**He gave into her hand, or had relations**" – he did kiddushei bi'ah (kiddushin through relations). Then "**since they are engaged in the matter, it is sufficient and he doesn't need to specify.**" Since they are engaged in this matter, it's clear that... So here you see clearly that the statement...

R' Yitzchak: Is a revelation of the matter that this is what he means by this, that there's no obligation of statement. I didn't turn around a thing, but there's a dispute how you read the text. Yes, "and so... and so..." I see that there's some connection with the two halachos, I don't know what the connection is.

R' Yoel Asher: Not clear, but "since they are engaged in the matter." Okay.

R' Yitzchak: What's the problem?

Discussion: What Does "Engaged in That Matter" Mean – Chuppah or Dating?

R' Yoel Asher: No, I'm thinking whether one must here all the words of the Rambam, that one must be afraid... "He stood up and was mekadesh" means that he gave some gift, no? Because he doesn't say anything at all. So one must seriously

be afraid that when a chosson gives a kallah who are dating, I mean a boy and a girl who are dating, and he gives her a gift, one must be afraid of kiddushin. It's an interesting thing. Yes, further. You can say that the intention usually... You can say that we understand that not. Ah, this is what I'm asking. Ah, engaged in that matter means they're talking about their relationship, or engaged in that matter means about kiddushin, he says "I want to be mekadesh you"? Yes.

R' Yitzchak: There's a difference. There's a relationship, and a wedding is not the same thing. Erusin, whatever that means.

R' Yoel Asher: Again, one can say two streams. Speaking with her about matters of kiddushin means there's a chuppah, in-laws are standing with candles, and he can't bring out the words, he places the ring. Or it can be a boy and a girl who are in a relationship, and one talks, yes, you think that we can make this work, and he gives and takes out a ring and he said nothing. It's much a further stringency, I don't know exactly what one is talking about.

R' Yitzchak: It's not a stringency, leniency, whatever you want to call it.

R' Yoel Asher: Good, but that it's called kiddushin. It can be that in today's times one still doesn't even in such a case have fear of the... I mean, one will be able to answer that one will still not call it kiddushin, because everyone understands that one will make the kiddushin at the chuppah. So one understands that the ring that you've now given is a gift.

R' Yitzchak: If one understands, one understands.

R' Yoel Asher: But also, it must be with witnesses. So this, the whole time comes in the word of witnesses.

R' Yitzchak: Yes? Let's go learn.

Halacha 8 (Continued) / Halacha 9 – Witnesses of Kiddushin and Divorce, No Need to Say "You Are My Witnesses"

R' Yoel Asher: "And so witnesses of kiddushin and divorce, he doesn't need to say to them 'you are my witnesses'." Ah, about this it's connected, very obviously. Says the Rambam such a halacha, there is the Rambam has already said in the first chapter that Rabbi Yitzchak awakened me, not as I thought, and here, that there must be witnesses of kiddushin. It's a part of the... The difference between before Matan Torah (giving of the Torah) and after is there are two differences: acquiring and with witnesses. Witnesses is an important thing, everyone will think that one must say "you are my witnesses," one must designate witnesses. But says the Rambam no, "since he was mekadesh in their presence or divorced", it was...

Languages of Kiddushin, Designation of Witnesses, and Kiddushin Through the Father

Designation of Witnesses — One Doesn't Need to Designate Witnesses

R' Yoel Asher: One doesn't need to designate witnesses. The witnesses are a reality. Witnesses are those who can publicize the matter. It doesn't concern me...

R' Yitzchak: Further, because it's "engaged in that matter" and "prohibition," whatever. In other words,

R' Yoel Asher: The moment that... It's enough that he sees it.

R' Yitzchak: Yes, but he must be aware that he's seeing kiddushin. But what?

R' Yoel Asher: Like someone who is a witness at an accident must have seen the accident.

R' Yitzchak: No, but it's a different case. There's sometimes a way that he goes, "he didn't say" and so on, he says the wrong language, which then one doesn't know. The Rambam says after what he has already said the correct language, or it's "engaged in that matter," everyone who stands there knows that here there is kiddushin. Therefore one doesn't need to say "you are my witnesses."

R' Yoel Asher: Yes, but it's also very importantly connected, because the case that he spoke about "if he was speaking with the woman about matters of kiddushin and she agreed," this is when there are still other people there who they can be witnesses. Says the Rambam, this can also only be consistent with the halacha that one doesn't need to designate, because if one doesn't need to designate it's also obvious. If a person says, come to her, two witnesses, be there, and he gives her the ring, certainly she is mekudeshes, because this is even more a revelation of intention than that, it's also a revelation of intention to designate witnesses. If as one doesn't need to designate witnesses, then however it's enough to be concerned. Not to be concerned, it's enough for kiddushin.

Languages of Kiddushin — "My Half" and "Your Half"

R' Yitzchak: So now one can learn it, certain languages that are valid or not valid, basically,

"Be Betrothed to My Half" — She Is Mekudeshes

R' Yoel Asher: Right? Yes, "One who says to a woman 'be betrothed to my half', who is mekadesh to half of me? 'Behold she is mekudeshes'." The Rambam explains, why? "To what is this similar? To one who says to her 'behold you are my wife and another woman'?" Half of me? You will be half mekudeshes to half of me? It means I can take two wives? You'll be half. This is the meaning of what he's saying. "For it turns out that you have only half a man", you'll have half of me, half of my time, or whatever my money, from me. And one can do it, because a man according to halacha can take two wives.

"Your Half Is Betrothed to Me" — She Is Not Mekudeshes

"But if he said to her 'your half is betrothed to me', half of you should be mine, she is not mekudeshes, because one woman is not suitable for two men." It's not relevant such a thing that a married woman should have more than one husband. Therefore, "your half is betrothed to me" is not a proper thing, it doesn't work, one can't. "And so one who says 'behold you are betrothed to me and to this one'," if he says "I'm taking you with another woman," then it will work, but he says the opposite, "you are mekudeshes to me and to whatever other man you want," "she is not mekudeshes", is also the same reason.

"Your Half for a Perutah and Your Half for a Perutah" — She Is Mekudeshes

What happens if he said this way, "your half is betrothed to me for a perutah and your half for a perutah," or he says, "your half is betrothed to me for half a perutah and your other half for half a perutah", "behold she is mekudeshes", because in practice it came out a whole perutah with the whole person. A weird thing, but yes.

Doubtful Kiddushin — Installments and Double Deals

R' Yitzchak: It's all languages, someone fell in,

R' Yoel Asher: Just sometimes such a thing happened. **He said to her, "your half is betrothed to me for a perutah today and your half for a perutah tomorrow,"** I'm buying you in installments, or **"your two halves for a perutah,"** or such a case.

R' Yitzchak: Why is it called? What's the problem with this?

R' Yoel Asher: Because it's divided into halves.

R' Yitzchak: Earlier one said that it's good. Ah, because half a man one said that one can buy. So why is "your two halves for a perutah" a problem?

R' Yoel Asher: Your two halves, until now one didn't have any two halves, one said half of you.

R' Yitzchak: Half today and half tomorrow I understand, perhaps one can divide it into two.

R' Yoel Asher: But what does half mean? What is the problem with your two halves?

R' Yitzchak: Why until now was it okay?

R' Yoel Asher: I don't know. It's not why... except you worked, not just half you didn't. Yes,

R' Yitzchak: Does it mean as if there is only half a perutah for one of them? It's not clear what happens.

R' Yoel Asher: Okay,

R' Yitzchak: Let's see. Two halves with a perutah? Not clear. I don't understand. Okay. Or,

"Your Two Daughters to My Two Sons with a Perutah" — Doubtful Kiddushin

R' Yoel Asher: **"Your two daughters to my two sons with a perutah,"** I have two sons and you have two daughters, let's make a double match with a perutah. But one can't with one perutah. Perhaps that's the question, did he mean perutah with one perutah? Or perutah each? Okay, until here, that's the doubt.

"Your Daughter is Betrothed to Me and Your Cow is Sold to Me with a Perutah" — Doubtful Kiddushin

"Your daughter is betrothed to me," if he says such a case, "your daughter is betrothed to me," and I want to make another deal, since we're good, we're good at making deals, let's also sell the cow. It's a very Jewish situation, one made a match, let me also sell a car. **"And your cow is sold to me with a perutah"** — or **"your daughter and your land to me with a perutah"** — perhaps the question is also whether "with a perutah" refers to each one or both together. Both together can't be, because you didn't leave a whole perutah for kiddushin. But it's not certain. **"In all these she is betrothed doubtfully,"** it's doubtful kiddushin. That means, stringently one will have to accept it as kiddushin.

R' Yitzchak: Not clear. In short, that's the question. The problem is the half perutah. Okay, until here. Yes, whoever wants to learn more about these doubts, scholars who want to have fun can learn all kinds of investigations about this.

R' Yoel Asher: Yes, young men sit in yeshiva, in kollel, one learns "Ish Mekadesh" in great depth, and so forth.

R' Yitzchak: And you will even say that if he says the language of kiddushin it's valid. All these questions don't say the language of kiddushin, but the Rambam says clearly "mekudeshet," that it can't be. Okay.

The Father Betroths His Daughter — Minor and Na'arah

R' Yoel Asher: Okay, here we're going to learn about the law. Until now we've spoken about a man betrothing a woman. Now we're going to speak about a minor, that then the

R' Yitzchak: father betroths his daughter.

The Father's Authority Over His Minor and Na'arah Daughter

R' Yoel Asher: Says the Rambam: **"The father betroths his daughter without her knowledge as long as she is a minor and when she is a na'arah."** "Mekadesh" means to say that he receives kiddushin for her. It's interesting the language "mekadesh,"

R' Yitzchak: because it's not he who is mekadesh,

R' Yoel Asher: but the other one is mekadesh. It means that she becomes betrothed to the other one, she doesn't become betrothed to the father. But the father is more than an agent. The father is... not an agent. It's interesting, because when a woman is mekudeshet, it's simple that she is the kinyan. The man is the koneh, and she is the kinyan. When the father receives from the male, from the man, a ring, it's not simply in the capacity of... and the father is not the kinyan, he is like an agent, but he's not an agent, it's more than an agent. The kiddushin happens when the father receives it.

Discussion: The Father's Status — Not an Agent, More Than an Agent

R' Yitzchak: What's the problem? You don't know what to call the kinyan, you can so to speak call it the object of the kinyan,

R' Yoel Asher: The object being acquired. The father has a

R' Yitzchak: object and he sells it.

R' Yoel Asher: No, here there is a koneh with a makneh. Ah, he is a makneh. She is not a makneh, because she is the kinyan.

R' Yitzchak: No, she is both.

R' Yoel Asher: She is both, here is the father, here it is divided. She is both, she is the makneh and the kinyan.

R' Yitzchak: Perhaps one needs her da'at, and her da'at that she should be acquired. By the father's da'at that she should be acquired. The same thing.

R' Yoel Asher: No, a nikna can't make... Okay, let's not go back. A person can yes. An object can't,

R' Yitzchak: A person can yes.

R' Yoel Asher: A person can sell himself,

R' Yitzchak: If he wants.

R' Yoel Asher: Right, but he can be the one who gives you money, or he can make the act of kinyan, or the koneh makes the act of kinyan, or this is only a law in kedushah.

R' Yitzchak: A person can sell himself, a woman can betroth herself, that means she agrees, he must do it, she agrees, with her knowledge. The same thing with the father, with his knowledge the father can accept it.

R' Yoel Asher: Okay, and the father sells, there is a kinyan and a makneh externally. **The father betroths his daughter without her knowledge as long as she is a minor.** As long as she is a minor, it can even be without her knowledge. His da'at is enough, because he has authority over her.

R' Yitzchak: Says the Rambam, her authority.

The Time of the Father's Authority — Until She Becomes a Bogeret

R' Yoel Asher: But both when she is a minor, and also the six months afterward when she is a na'arah, from when she brought signs she is a na'arah for six months. In these times **her authority is in his hand**, the authority of the girl is in the father's hands. **"As it says 'I gave my daughter to this man,'"** this means he can give the daughter, **"and her kiddushin to her father,"** and the kiddushin goes to the father, the father receives it.

R' Yitzchak: And when the Rambam speaks,

The Father's Rights — Found Objects, Handiwork, Ketubah

R' Yoel Asher: It's interesting, because we haven't yet had why we should speak about other kinds of he is entitled to what she finds. But since, we have now laid down the law that the father is the master over his daughter regarding kiddushin, he also says regarding other matters.

R' Yitzchak: I think it means here two things. There is what he can betroth her,

R' Yoel Asher: And that the money goes to him.

R' Yitzchak: Kiddushin money means that he also receives the money. The same thing, it could be that one gives her, but he must decide on such a thing.

R' Yoel Asher: **"And so he is entitled to what she finds."** He is entitled to what she finds, the found object, **"and to her handiwork,"** what she earns from her handiwork. What else? **"And to her ketubah if she is divorced or widowed from the betrothal."** If someone betrothed her, but she wasn't yet, there wasn't yet nisuin. And he dies or he divorces, what happens then? She returns to the father as before, because she is still a minor, and and then the father also acquires the money from the ketubah. **"He is entitled to everything until she becomes a bogeret,"** until she becomes a bogeret, until she becomes twenty, yes? No, bogeret is when she gets signs, yes, yes, excuse me. When she becomes thirteen and a half, twelve and a half. Until then the father has ownership over her.

From the Day She is Born Until She Becomes a Bogeret

Later the Rambam will say that initially one shouldn't do it, but the Rambam says here what the essential Torah law is that he has the right. **"Therefore the father receives kiddushin for his daughter from the day she is born until she becomes a bogeret,"** from when she is born until she becomes a bogeret, until she becomes a bogeret.

R' Yitzchak: That means, the measure captures a thing, one doesn't even need to be in her da'at. By a person, being too small for example one can't. A father can even a baby, because it's not relevant who,

R' Yoel Asher: Because the father's da'at is now what makes it.

R' Yitzchak: Even, and not only that,

Even if She Was Deaf or Mentally Incompetent

R' Yoel Asher: **"Even if she was deaf or mentally incompetent,"** even if she will not have any da'at permanently, she won't get any da'at, she is deaf or mentally incompetent, she belongs entirely to the father. She truly doesn't have da'at to be acquired,

R' Yitzchak: Just as we learned a deaf person, mentally incompetent person and minor,

R' Yoel Asher: But when one doesn't need their da'at, one needs the father's da'at, the father's da'at is good. **"And the father betrothed her, behold she is a married woman completely,"** she is a married woman completely because it was proper kiddushin.

Kiddushin Through Relations with a Minor

R' Yitzchak: This is regarding kiddushin,

R' Yoel Asher: This is regarding relations, this is strong. Relations is a different kind of thing. So from when is it called an act of relations? From when is it called relations? Under three years is not called relations, it's not an act of relations. **"A girl of three years and one day is betrothed through relations with her father's knowledge,"** it's already called relations.

R' Yitzchak: "Less than that,"

R' Yoel Asher: Less than that, **"if her father betrothed her through relations she is not betrothed,"** the father betrothed her through the fact that he made the other one perform relations on her, she is not betrothed because it's not called relations. Understand all these things that the Rambam says that it's not a thing that is,

R' Yitzchak: This doesn't have with da'at, that's the word.

Rambam Laws of Marriage: Kiddushin Through Relations, Bogeret, Agency in Kiddushin

Law 2: A Girl of Three Years and One Day — Kiddushin Through Relations

R' Yoel Asher: From when is it called relations? Under three years is not called relations, it's not an act of relations. **"And it adds a girl of three years and one day is betrothed through relations with her father's knowledge,"** it's already called relations. **"Less than that,"** less than that, **"if her father betrothed her through relations,"** the father betrothed her through the fact that he made his thing perform relations on her, **"she is not betrothed,"** because it's not called relations. It says all these things that the Rambam says, it's not a thing that is...

R' Yitzchak: This doesn't have with da'at, that's the word. Relations, not about she doesn't have da'at, but simply because it's not relations.

R' Yoel Asher: It's not an act of relations.

Law 3: Bogeret — Her Father Has No Authority Over Her

R' Yoel Asher: **"The daughter became a bogeret, her father has no authority over her"**. Once she became a bogeret, she brought signs of maturity,

R' Yitzchak: The father no longer has authority.

R' Yoel Asher: After na'arut passed, she already became an adult through the signs, and the six months that were added passed, **"her father has no authority over her,"** he no longer has authority over her, it expired. Whose authority is she now? Her own authority. **"And behold she is like all other women"**. She now becomes like all other women who have their own authority. Therefore they can be betrothed, meaning when they give themselves over for a new man to become their... **"For a woman is only betrothed with her knowledge"**. That means, from now the father can no longer receive kiddushin for her.

Discussion: The Normal State of a Woman — "A Woman is Only Betrothed with Her Knowledge"

R' Yitzchak: The Rambam lays down as if a normal woman is "a woman is only betrothed with her knowledge," as he already said that he will say in the next chapter. There is like an exception of a minor or a na'arah, and the moment she becomes a bogeret one returns to the normal.

R' Yoel Asher: And here we also understand what this means "a woman is only betrothed with her knowledge": that she has her own authority, and she gives it over to the man. Meaning, the man will now have the role that the father has until now had over a daughter.

R' Yitzchak: It means that she gives it over to him. Actually it's true that he is also entitled to what she finds and to her handiwork,

R' Yoel Asher: But... no, until now she belonged to the father. Now she belongs to herself as long as she decides. She can decide that she doesn't want to be betrothed to anyone, until she gives over her authority to him.

R' Yitzchak: Yes, but it's exactly so.

R' Yoel Asher: It's very much not first, there is one next to the other, yes? "Her father has no authority over her."

R' Yitzchak: It's true, it's true, but this is not...

R' Yoel Asher: The Rambam wants to give us the picture.

Law 4: A Minor Who Married and Was Widowed or Divorced — In Her Own Authority

R' Yitzchak: And there's another way how she can leave her father's authority even before she became a bogeret. What is the trick? The trick is thus:

R' Yoel Asher: We learned earlier that a minor the father can make a wedding. What happens if she died... I'm sorry, the man died or divorced? Earlier we learned if it was only betrothal. But if it was a full wedding, she already became a wife, she already entered the husband's authority, and afterward **"and was widowed or divorced during her father's lifetime,"** she became afterward a widow or divorcee, **"behold she is in her own authority,"** she is in her own authority, **"even though she is still a minor,"** even though she is still a minor. It doesn't go back. Once she was in the husband's authority, and when he died or he divorced,

R' Yitzchak: She received her own authority.

R' Yoel Asher: **"Her father has no authority over her,"** the father no longer has authority. An interesting thing, because one can think that the man's authority expired, and now returns and awakens the old authority of the father. But no,

R' Yitzchak: It doesn't go that way.

R' Yoel Asher: She already acquired her own ownership.

Discussion: Can a Minor Have Her Own Ownership?

R' Yitzchak: She doesn't have her own ownership, because she is a minor, she can't betroth herself. She doesn't have her own.

R' Yoel Asher: Betroth herself she can't. The man doesn't have it,

R' Yitzchak: But she is still a minor. "Her father has no authority over her."

R' Yoel Asher: Soon one will see what happens. She doesn't have authority.

R' Yitzchak: There is no one with da'at. You can't say that she has authority, because she doesn't have

R' Yoel Asher: a way to agree.

Law 5: She Was Betrothed Before Becoming a Bogeret Without Her Father's Knowledge

R' Yoel Asher: **"She was betrothed before becoming a bogeret without her father's knowledge"**

R' Yitzchak: We now

R' Yoel Asher: learned until the woman, the widow,

R' Yitzchak: the young widow unfortunately. No, no, the normal kiddushin.

R' Yoel Asher: Later he goes to the widow again,

R' Yitzchak: Yes.

R' Yoel Asher: What happens to a woman who was betrothed as a minor, but without her father's knowledge? She doesn't follow the laws that the Rambam says that as long as she is a minor she is in the father's authority, and she thinks that she is on her own. **"She is not betrothed"** — it doesn't help. She thinks that she has her own authority, but she doesn't have it. **"Even if the father consented after she was betrothed,"** even if the father agreed, but it doesn't help, because there was no act of kinyan. Only the father can acquire it for her.

He says, even if she was widowed or divorced from those kiddushin, what happens? She became a minor. As a minor she herself took kiddushin, not the father did. And the person that she convinced herself that he is halachically the man died, or divorced. It's interesting, divorced means, there wasn't a rabbi who said one needs a divorce,

R' Yitzchak: but one made a divorce. Yes, yes, finish, finish the law.

R' Yoel Asher: The novelty is... she is not forbidden to a kohen, she is not forbidden to any kohen. She is not called a widow or divorcee who is forbidden to a kohen gadol or to any kohen. And also, both she and her father can prevent if she tries to receive kiddushin.

Discussion: What Does "Both She and Her Father Can Prevent" Mean?

R' Yitzchak: What does it mean? Both she? It's asked.

R' Yoel Asher: She? Afterward,

R' Yitzchak: Does the "she" refer to the widowed one? What does it mean?

R' Yoel Asher: We don't look at it as if it was true kiddushin. The father can prevent. It means, the father sees that someone gives kiddushin for his daughter, he can prevent, he can send him away. Nothing happened here. He prevents.

R' Yitzchak: Not clear what it means further further can prevent. It's a big problem to continue reading the Rambam.

R' Yoel Asher: Perhaps it only refers to widowed and divorced.

R' Yitzchak: Afterward why? So what? The Rambam says that nothing can. Very unclear. It's the language of the Gemara, but what the Rambam means here is very unclear. In the Gemara it says a minor who was betrothed without his knowledge without her father's knowledge, both he and her father, can prevent. But what does it mean both and her father can prevent? It means as if if the father agrees, if he says if she agrees. It's very unclear what the law means. If someone will

have two hours, he can try to figure out. I don't know what the Rambam means here. It's very strange to me. The commentators on the Rambam make whole acrobatics. What contortions so the Rambam should make sense. What will I do? One can't do much. Continue. Look what the Rambam says.

R' Yoel Asher: Continue the Rambam.

R' Yitzchak: Whether she was betrothed in his presence or whether she was betrothed not in his presence, there's no difference. Even if the father is standing there, you might think perhaps he consents? No, one must understand. Ostensibly the entire halacha is simple, the simplicity is obvious, for one who has learned the principles until now. The answer is that in the Gemara, and also in the Rishonim, the poskim, it's actually not so clear, because there are those who say that there are different ways that one can think that the father does indeed consent, or perhaps he consented later, does that also work, etc. etc. All these things that the Rambam says here, that even afterwards, this is decided according to a major position that the Rambam understood. It could have been different, there are reasons to say differently, especially the Raavad and so on. And he, the Rambam rules completely that it doesn't help at all, and therefore he emphasizes, even if she was divorced, one might say no, nevertheless, it's called somewhat of a get, perhaps it means she is indeed a divorcee, she is forbidden to a kohen, and the like. All of this is subject to dispute.

R' Yoel Asher: The Maharik wants to learn this way, I saw here quickly, that the Maharik wants to say this way, that if the father is there and she consents and the father consents, but it just didn't happen exactly that way,

R' Yitzchak: But if one must insert a whole thing,

R' Yoel Asher: But if the father is there, one performs kiddushin, she accepts kiddushin as a ketana, when the father is there, it's only if she objects or if the father objects. If both consent, they can indeed accept it as kiddushin.

R' Yitzchak: But it's written that the father betroths his daughter,

R' Yoel Asher: No? No, that the father betroths his daughter, the simple meaning is that the father receives the kiddushin, here she receives it. There's no such thing written.

R' Yitzchak: You want to say that she receives it,

R' Yoel Asher: But it does become "we will take from this one." No, but the man thinks that he's dealing with the one who is the makneh, which is the woman.

R' Yitzchak: You can think whatever you want.

R' Yoel Asher: The woman is the kinyan. No, he must deal with the makneh. Now the right of the makneh is

R' Yitzchak: Someone where the father is not acquiring. In the Rambam nothing is written. The Rambam is here copying a slogan from the Gemara, it doesn't come in. According to how the Rambam rules that it's entirely the father, that all these concerns are not relevant, this doesn't come in.

R' Yoel Asher: And he says "she is not forbidden to a kohen," which means it was nothing at all.

R' Yitzchak: So the piece "either she or her father can prevent," all the poskim didn't understand what the Rambam is saying. Each one comes out with a Torah. So I have an old custom from the holy Rashi, that when one doesn't know something, one says "I don't know." It's there from scratching out. Today's commentators, all the Artscrolls and the Mevo'arim, have a custom that even when something doesn't fit, they scratch something in. One says, one doesn't understand. There are different theories, it's not clear what the Rambam wants to say here, and the holy Rambam himself didn't understand, he wrote "and it requires study." If the holy Rambam didn't understand,

R' Yoel Asher: I don't need to understand.

Halacha 6: Doubtful Bogeret

R' Yoel Asher: We know that we are not part of the Talmud, so we don't do chasurei mechsera v'hachi katani. We are simple learners and say what it looks like to us. One can still add, when a sefer makes its own chasurei mechsera v'hachi katani, the simple meaning is that it's a continuation of the Gemara.

So it's asked. If the daughter was a doubtful bogeret, what happens with a doubt? It's a doubt whether she had signs. Whether her father betrothed her without her knowledge,

R' Yitzchak: Or whether she herself betrothed herself without her father's knowledge.

R' Yoel Asher: In both ways there's a doubt, because it's truly a doubt. If the father accepts kiddushin because he thinks she's still a ketana, or because she accepts because she thinks she's already an adult, it's a doubt.

R' Yitzchak: Both sides are a doubt.

R' Yoel Asher: What does one need?

R' Yitzchak: Therefore she requires a get out of doubt. He'll say later the rules, and he'll say that whenever he says doubt it means this.

R' Yoel Asher: Very good.

Halacha 7: Agency in Kiddushin

R' Yoel Asher: Until now we've discussed the direct way when the man gives to the woman, or the man gives to the father at least. Here we're going to learn about agency. One can also take another person and make an agent.

Says the Rambam, the man has the right or the power, he can make an agent to betroth a woman for him, make an agent who should betroth. The agent, it could be that he can... he decided, or he's thinking of a certain woman, a certain woman, or he can even tell him, go betroth one of the women, any one.

R' Yitzchak: That means that the agent has a right to decide,

R' Yoel Asher: And on this he consented. Yes. It's very different from two types of things. By the second one, he truly gives over his authority to him. I consent to what you're going to do.

R' Yitzchak: That by every kinyan you can do this way.

R' Yoel Asher: Go buy me a piece of meat, I can choose. And similarly the adult woman...

R' Yitzchak: Does the first one call a shaliach l'holachah, right?

R' Yoel Asher: And here we're talking about the woman, the woman who is being betrothed, can also make an agent to

receive her kiddushin. Either from a certain man, or from any of the men.

R' Yitzchak: The same thing. Because we call this a shaliach l'kabalah, yes? Yes.

R' Yoel Asher: And similarly? And similarly.

Shaliach L'kabalah and Validity of Agency in Kiddushin

Shaliach L'kabalah — Woman and Father

R' Yoel Asher: And similarly the adult woman makes an agent to receive her kiddushin, either from a certain man or from any of the men.

R' Yitzchak: The same thing. We call this a shaliach l'kabalah, yes?

R' Yoel Asher: And similarly the father makes an agent to receive the kiddushin of his daughter when she is in his authority. And how...

R' Yitzchak: Another thing,

R' Yoel Asher: That the father who has the right over the daughter can also make the daughter herself be the agent or herself the recipient, recipient. And the father says to his minor daughter go out and receive your kiddushin. In such a case the daughter will be... what?

Discussion: How Can a Ketana Be an Agent?

R' Yitzchak: How can she be an agent?

R' Yoel Asher: Didn't we learn here that there's a certain law of agency, that an agent must be an adult?

R' Yitzchak: Certainly it must be an adult.

R' Yoel Asher: But we haven't seen this yet.

R' Yitzchak: We'll see in the next piece. But here this is a novelty, that it means in her father's hand, since the ketana is in her father's authority, it's as if it comes directly to the father. It's not truly the same law of agency. It must be so.

R' Yoel Asher: It's different, yes.

R' Yitzchak: The commentators explain it to him.

R' Yoel Asher: It's interesting, because in such a case the father will be the makneh, she is the kinyan and the agent.

Halacha 15 — Witnesses at Appointment of Agent

R' Yoel Asher: Okay. Says the Rambam, **Anyone who makes an agent to receive the kiddushin**, now, the one who makes an agent, **must make him in the presence of two witnesses**. One needs two witnesses that he made the agency.

R' Yitzchak: L'kabal, kabalah. Whether when the woman makes an agent, whether when the father makes an agent, this must be done in the presence of witnesses. This is the Rambam's novelty, the Rambam's reasoning, that agency of kabalah must have witnesses.

R' Yoel Asher: Because agency of kabalah is very different from agency of holachah, because agency of kabalah is when the entire kiddushin has already been done

R' Yitzchak: When he receives it. And shaliach l'holachah... granted,

R' Yoel Asher: Shaliach l'holachah... again. Shaliach l'holachah, the agent will come and he'll give the kiddushin to the woman. Then there must also certainly be witnesses. When the agent gives it over to the woman? Yes, certainly. Because

then is the act of kinyan. The shaliach kabalah is an act of kinyan, because when the agent receives the kiddushin, then the kinyan happens. When does one say for example the blessing? When he gives it to the shaliach kabalah.

R' Yitzchak: Yes, certainly. Not when he gives it to the shaliach l'holachah.

R' Yoel Asher: Therefore one must have testimony. It makes very good sense why one must have testimony.

Discussion: When Does One Need the Witnesses?

R' Yitzchak: "Anyone who makes an agent to receive the kiddushin" means when he

R' Yoel Asher: Is appointing the agent.

R' Yitzchak: Certainly. When he's appointing the agent. The Rambam began...

R' Yoel Asher: No, perhaps the Rambam means "must make him in the presence of two witnesses" is when one does the kiddushin, one must have two witnesses, because then the act of kinyan happens.

R' Yitzchak: One can't read into

R' Yoel Asher: The translation of the Rambam? No, no, no, one can't, one can't.

Shaliach L'holachah Doesn't Need Witnesses

R' Yitzchak: **But the man who made an agent to betroth a woman for him,**

R' Yoel Asher: **He doesn't need to make him with witnesses.**

R' Yitzchak: When a man makes an agent for kiddushin, one doesn't need to make witnesses that he's making that person an agent. Says the Rambam, **for there's no place for witnesses in the man's agency except to make known the truth of the matter**. There's no issue of witnesses. There could indeed be such a case where witnesses are lacking. For example, if the man denies, if the man says, "I never sent," then one will need to call witnesses in beis din to know what happened.

R' Yoel Asher: **But therefore if the agent and the sender admit,**

R' Yitzchak: If they both admit that

R' Yoel Asher: It indeed was that he sent him and that he performed the kiddushin in his agency, **they don't need witnesses, like an agent for a get, and like an agent whom he authorized to separate terumah for him and the like**. Like an agent whom one authorized, one gave him permission that he should be the one who separates terumah, it's enough that both consent.

R' Yitzchak: **In all cases a person's agent is like himself.**

R' Yoel Asher: By all halachos the law is a person's agent is like himself. Once both admit, a person's agent is like himself,

R' Yitzchak: **And he doesn't need witnesses.**

R' Yoel Asher: But not so, when one makes a shaliach l'kabalah one does need it. The Rambam doesn't say why.

Discussion: Why the Difference Between Shaliach L'kabalah and Shaliach L'holachah?

R' Yitzchak: The Rambam is more explaining the second side, that to make an agent one doesn't usually need any witnesses. There's a special law of shaliach l'kabalah that it

does need witnesses. The Rambam doesn't say why. The Rambam's custom is generally not to say the reasons for the mitzvos, the reasons for the halachos, so one may learn Rambam without knowing why. But so says the holy Rambam. The Rambam says that shaliach l'kabalah doesn't need any witnesses. Does need witnesses, sorry, shaliach l'kabalah does need witnesses, and shaliach l'holachah and any other agency in the Torah, generally agency, the appointment of the agent doesn't need any witnesses. Certainly the kiddushin itself, when one gives it to the agent,

R' Yoel Asher: When the agent gives it, that's no doubt that it needs witnesses. The novelty is that when one makes an agent, because when the woman sends a shaliach l'kabalah it's not just according to the truth of the matter,

R' Yitzchak: Rather it's something more than that,

R' Yoel Asher: It's to receive the kiddushin. Not so when the agent of the man, yes, is what? Is only to do an act, is only to do something, not to do a kinyan,

R' Yitzchak: Because the kinyan happens when he goes

R' Yoel Asher: To give the kiddushin to

R' Yitzchak: The woman will become a kinyan.

The Raavad's Dispute

R' Yitzchak: The Raavad disputes this, and the Raavad holds that by both one needs agency. One doesn't need witnesses you mean? One does need witnesses. By both one does need. The Raavad says, witnesses, he brings a proof,

R' Yoel Asher: Why is it not like others where the admission of the agent and the sender is enough?

R' Yitzchak: Says the holy Raavad, when you send a get or you send terumah, by a get the Rambam says, "in my presence it was written and in my presence it was signed," you see that the agent stands with that person's get. Or by terumah the Rambam says,

R' Yoel Asher: There's no relevance of any law of witnesses in terumah.

R' Yitzchak: But kiddushin, which needs witnesses, there is indeed a law that kiddushin must be before witnesses, if so both shaliach l'holachah and shaliach l'kabalah need witnesses.

R' Yoel Asher: So if the Raavad goes according to his position to the end, will he indeed by witnesses by kiddushin through a document not need?

R' Yitzchak: No, he only says it's not a proof, but I don't know if he holds so in practice, that this is the reasoning. In any case, this is the law of the Rambam. It's not so clear why there should be the difference. I don't know if even the Rambam knew, it's written in the Mishna and in the Gemara, the Rambam understood that so it's written in the Gemara, one should do so. Okay? I don't know why. Okay? I don't know why. That is, in other words, I want to say here the general rule of halacha. Everyone agrees that a shaliach l'kabalah needs witnesses. The Rambam's novelty is that a shaliach l'holachah doesn't need, and he has a proof from the Yerushalmi with such things. But why there should indeed be the difference is indeed difficult. The reasoning that both need witnesses makes sense. The reasoning that only the holachah doesn't need witnesses and the kabalah does need, the Rambam doesn't say any reasoning.

Further Discussion About the Difference

R' Yoel Asher: Let's think this way, when when the... when the woman sends an agent, the agent meets the man who wants to give the kiddushin, then the kiddushin happens. And by this one also can't help, for example that she later changed her mind that she doesn't want. She's already gone into motion. A man sends and he says, "meet a woman and

R' Yitzchak: Give her the ring." When the agent gives the woman the ring, she becomes betrothed. There's no difference at all.

R' Yoel Asher: He gives it in place of the man, and here she receives it in place of the woman. I truly don't know where... something there's some kind of gradual difference that the Rambam said.

R' Yitzchak: You imagine all the time, there's a difference. I don't know what difference there is. Forgive me. Perhaps you have someone here?

R' Yoel Asher: You should say the Rambam further.

R' Yitzchak: Perhaps you have someone here?

R' Yoel Asher: You said you stood and said. Halacha 16. No, I don't have it clear yet. I can't pinpoint it. Further.

Digression: Sale of Chametz and Agency

R' Yitzchak: I say, regarding the reason that an agent who has terumah doesn't need any of this, is why I conduct myself to... I have a big online sale of chametz campaign, because people are accustomed to some kind of ceremony of receiving kinyan for the... the rabbi is an agent. Agency doesn't need to be any agency, doesn't need to be any formal thing. It's enough that both admit.

R' Yoel Asher: As is simple, yes.

R' Yitzchak: As one would say. Says the Rambam further.

R' Yoel Asher: As the Rambam, everyone agrees. There's no doubt such agency, generally, doesn't need any witnesses, only as the Rambam says, to make known the truth of the matter.

R' Yitzchak: Now you don't know now of two types of creation.

R' Yoel Asher: Kiddushin is different, because there is indeed a law that kiddushin needs witnesses,

R' Yitzchak: This is indeed there in gittin. But not so mitzvos like terumah, there is indeed no law that there must be witnesses or anything that one destroyed the chametz or whatever. Says the Rambam further. We already know of two types of creatures now, we know of agent and witness. Can the same person be both? Can he be such an androgynous, such a two-faced? Yes, the agent becomes a witness. Therefore if he made two people his agents to betroth a woman for him.

The Agent Becomes a Witness

R' Yoel Asher: Therefore if he made two people his agents to betroth a woman for him.

R' Yitzchak: Makes two people agents. One doesn't say agency is like himself that far. A person himself can't be his own witness, but an agent can indeed be.

R' Yoel Asher: Like himself means by the kinyan, not that he now becomes him. **Therefore if he made two people his agents to betroth a woman for him and they went. They are his agents and they are the witnesses of the kiddushin, and they don't need to betroth her for him in the presence of two others.** Says the Rambam further, now the Rambam is going to learn laws of agency,

R' Yitzchak: Who is invalid for agency.

Who Is Valid for Agency

R' Yoel Asher: Says the Rambam, **Everyone is valid for agency**. Everyone, that means everyone. Now he's going to say in practice most people not, only Jews, men, adults, Jewish adult men. All the other eight billion people not.

R' Yitzchak: It's just a language like that, all people, all people are Jewish adult men,

R' Yoel Asher: There are a few funny people who are not. True, the Rambam says so, yes, the whole world should primarily be scholars. Says the Rambam further, **except for a deaf-mute, an imbecile, and a minor**.

R' Yitzchak: Okay, no, then he's not a person of understanding. This is a clear way of saying the halacha, everyone except for these three,

R' Yoel Asher: That's all. It's very interesting, because aside from the three, and the three each have a different reason. It's not, God forbid, racist that a slave is like a deaf-mute, imbecile, and minor. No, there are certain types, laws. A deaf-mute, imbecile, and minor is simply because they are not people of understanding. The agent must be a person of understanding,

R' Yitzchak: He must know what he's doing. He must know he's creating the legal status of betrothal. A legal status of betrothal cannot be created by an imbecile or a child or a robot.

Disqualification of a Non-Jew

R' Yoel Asher: And the non-Jew, **because he is not a member of the covenant**, he is not a member of the covenant. Let's first say what the Rambam says. The Rambam says because that's what it says, the Rambam doesn't give the reason, he says **"and it is stated"**, it says in the verse **"so shall you also set apart"**, and from this verse we learn that an agent can be the one who gives the terumah,

R' Yitzchak: **"to include the agent"**.

R' Yoel Asher: And when it says **"just as you"**, the simple meaning is that the agent must be somewhat similar to you, he must be like "you". **"Just as you are members of the covenant, so too your agent must be a member of the covenant, to exclude the non-Jew"**. I mean, if one wants to give a logical explanation, it lies in the words themselves. He is not... That is, the betrothal is within the covenant. The betrothal is an inside thing.

Agency in Betrothal – Laws of Agency, Formula of Declaration, and the Mitzvah of Doing It Oneself Rather Than Through an Agent

Disqualification of Non-Jew and Slave for Agency in Betrothal – The Derivation from "So Shall You Also Set Apart"

R' Yoel Asher: Let's first say what the Rambam says. The Rambam doesn't give the reason, he says faithfully. It says in the verse "so shall you also set apart", and from this verse we learn that an agent can be the one who gives the terumah.

R' Yitzchak: "To include the agent".

R' Yoel Asher: And when it says "just as you", the simple meaning is that the agent must be somewhat similar to you, he must be like "you". "Just as you are members of the covenant,

so too your agent must be a member of the covenant, to exclude the non-Jew".

I mean, if one wants to give a logical explanation, it lies in the words themselves. That is, the betrothal is within the covenant. The betrothal is an "inside" thing, it's something that happens in our "family". And if you're not in the covenant, there is no betrothal. It's not an acquisition that is "international", a "universal" acquisition, like someone paying for a cow. It's more "within" the covenant than that.

R' Yitzchak: Soon we'll see whether it helps for a non-Jew. Yes, it's an agent.

R' Yoel Asher: But the slave...

R' Yitzchak: He says that member of the covenant means he didn't have circumcision, as I said later.

R' Yoel Asher: No, not circumcision. The covenant of Mount Sinai, the covenant of the Jews. Right.

R' Yitzchak: He's not a Jew.

R' Yoel Asher: It doesn't say uncircumcised, it says non-Jews.

R' Yitzchak: Right.

Discussion: Distinction Between Non-Jew and Slave Regarding Agency

R' Yoel Asher: But a slave is a story unto itself. A slave has entered into the covenant.

R' Yitzchak: A non-Jew cannot be an agent for monetary matters either, so it seems. A non-Jew cannot be an agent for anything. Agency doesn't work for non-Jews, it only works for Jews. But not when betrothal is special. The next level is the special thing of betrothal. Yes.

R' Yoel Asher: Explicit Rambam. Yes, but when there needs to be a certain law, he can build the sukkah for you.

R' Yitzchak: No, no.

R' Yoel Asher: He can. Yes, it wouldn't be my discussion. He can carry packages for you. He can be an agent, technically. But when there needs to be a legal status, an acquisition he also actually won't be able to make.

R' Yitzchak: Aha. He can't make an acquisition. He says a non-Jew, he's not connected in relation to the covenant.

R' Yoel Asher: He's not one of ours.

R' Yitzchak: But the slave.

R' Yoel Asher: The slave has entered into the covenant. A slave must undergo circumcision. And the proof is, he can even be an agent for monetary matters, and there isn't the problem that he is... "so shall you also set apart" doesn't exclude him.

But he is disqualified for agency in betrothal and divorce for a different reason, because he is not subject to the laws of divorce and betrothal. Since the laws of divorce and betrothal don't apply to him, he's not the regular, a maidservant for example is not a regular married woman, and a slave doesn't have the right to betroth a woman himself, he doesn't have a portion in the laws of divorce and betrothal, therefore he cannot be a...

It's interesting, here we don't need a verse for what. And therefore I think yes, the thing is, just as an agent must belong to the thing.

R' Yitzchak: He belongs, but it has nothing to do with the thing. That's what I'm telling you.

R' Yoel Asher: Earlier the thing was Jews, that you have nothing to do with Jews. And here the thing is that you have nothing to do with betrothal, you have nothing to do with the... It's an insider on an insider. It's a...

R' Yitzchak: I don't want what is an insider. In short, continue.

Law 2 – Formula of Declaration by the Man's Agent

R' Yitzchak: Now we're going to learn how it works practically technically, how one makes a betrothal with an agent.

R' Yoel Asher: The Rambam says, "**the man's agent who betrothed**" – if the man sends an agent, "**he says to her**" – the agent says, "**behold you are betrothed to so-and-so with this money**" – with this money you should be betrothed to that so-and-so, the sender.

R' Yitzchak: "**or with this document**".

Discussion: Distinction Between Money and Document in Agency

R' Yoel Asher: It says here, by document earlier it didn't say that one must say.

R' Yitzchak: And here it says yes that one must say.

R' Yoel Asher: Because here it's missing to say it, because he doesn't give it to you. When he writes it for the woman's sake and with her knowledge, and he gives it to her, everything is fine. But here he doesn't give it to you.

R' Yitzchak: So if an agent with a document...

R' Yoel Asher: When one writes it must actually be with her knowledge, that's also interesting, even when one sends through an agent it must be with her knowledge.

R' Yitzchak: One wrote the document with her knowledge, the agency doesn't need to be with her knowledge. The document one must write...

R' Yoel Asher: She must know at the time when one writes the document.

R' Yitzchak: That is, the agency she must agree to. He calls her on...

R' Yoel Asher: Phone and asks her, must send her a telegram, yes? No difference. No, when it says "should be betrothed any woman in the world", with money he can go door to door and take a woman. With a document he cannot do that.

R' Yitzchak: True. The novelty here, the Rambam only answers the question, but he says that betrothal says betrothed to me.

R' Yoel Asher: One cannot say to so-and-so.

R' Yitzchak: An agent is not such an agent further, he's not such a messenger to say betrothed to me. He says betrothed to so-and-so.

R' Yoel Asher: No, what I mean to say is, for example, if on the document it says yes the name, earlier it said that it doesn't need to. If it says for example on the document, the woman is betrothed to the man, perhaps the agent doesn't need to say, because it already says in the document that it's to so-and-so. If there's only a practical problem about to so-and-so...

R' Yitzchak: It doesn't mean that he must say, he must write the document. The agent can write the document also. You forgot from the whole thing. He's an agent, he can write the document himself. The man doesn't need to write the document, he doesn't need to carry a document from that one. He can write the document himself, over... if he makes a document with her knowledge.

R' Yoel Asher: I hear.

R' Yitzchak: He can even decide himself for whom to make a document, then he will write the document for that woman's sake.

R' Yoel Asher: I hear.

Law 3 – Formula of Declaration by the Woman's Agent

R' Yoel Asher: "**And if the woman's agent**", this is when the woman's agent betroths. What happens when the woman's agent comes to receive betrothal? Must the man or the father say to the agent, "**behold so-and-so who sent you is betrothed to me**", the woman who sent you, the woman who sent you, "**and he says to him you have betrothed her to you**". Oh, he must say like giving a receipt. He must say, yes, I received it for you.

Discussion: Law of Declaration by the Recipient

R' Yitzchak: Although there is no such declaration by the recipient usually.

R' Yoel Asher: But here it's all agency. He needs it, everything, one must know that he is aware that he's doing it for her.

R' Yitzchak: I don't know what that means, yes. It's a new law of declaration?

R' Yoel Asher: Ah, he's going to say that being engaged in the matter also helps.

R' Yitzchak: Yes, see? Okay.

R' Yoel Asher: It must be clear. It must be clear. If it's clear in other ways, perhaps it also helps. But the point is the so-and-so, and not that the agent should think that he received. He can't say, "ah, yes, forget it, I received." He can say it for that one.

R' Yitzchak: That's what he says, he can say, if he says "to me".

R' Yoel Asher: It will become his, if she agrees, yes.

Law 4 – Betrothal Through the Father

R' Yoel Asher: "**And similarly one who betroths through the father**", he's just encroaching, what does it mean? "One who betroths through the father", he just sends a person.

R' Yitzchak: Any betrothal through the father.

R' Yoel Asher: "**he says to him behold your daughter so-and-so is betrothed to me, and he says to him you have betrothed her to you**".

R' Yitzchak: The Rambam says, about this is the father betroths his daughter. You asked me why he says "the father betroths his daughter", it's the father receives the betrothal of his daughter.

R' Yoel Asher: The answer is because he says "you have betrothed her to you". Okay, actually every agent says it. True.

R' Yitzchak: By every agent, an agent betroths. Can you say that an agent betroths the woman.

Law of Silence as Admission in Betrothal

R' Yoel Asher: "And if the father or the agent said", he didn't say "you have betrothed her" but he said **"yes"**, **"it is sufficient"**. And now the Rambam says an even greater novelty, even he expressed it through silence. There is a way of saying "yes" through saying, and there is also silence as admission, I know. He doesn't say shaking the head or something.

R' Yitzchak: But a type of silence that is as admission.

R' Yoel Asher: "And if they were engaged in the matter" if one is talking about this, that everyone knows that "for this reason we gathered", and one is engaged in this, **"and gave to the father or to the agent and did not explain and did not say anything"**, is also sufficient, as we learned by regular betrothal.

"And if he betrothed with a document", the Rambam says, **"he only writes it with the knowledge of the father or with the knowledge of the agent"**.

R' Yitzchak: This he's speaking of the knowledge of the agent to receive.

R' Yoel Asher: The same thing. Just as the woman, just as the document must be with the woman's knowledge, this is when she is an adult, when she is a minor it's the father's knowledge, and when it's through an agent it's the agent's knowledge.

"And so in all these matters of betrothal".

R' Yitzchak: All other conditions that...

R' Yoel Asher: We learned earlier, **"the law of the man with the woman is like the law of agent with agent or with the father"**.

Law 5 – The Mitzvah of Doing It Oneself Rather Than Through an Agent

R' Yoel Asher: Until now we've learned the possible scenarios, what happens with all kinds of complications of all kinds of people. Now the Rambam is going to say, an honest Jew who wants to do everything as it says, the Rambam should do it like this: **"It is a mitzvah that a person should betroth his wife himself rather than through an agent"**. It's a greater mitzvah that he should do it himself than through an agent.

And he brings a language, the Rambam in the Commentary on the Mishnah the Rambam says, when a person himself engages in mitzvot it has more completeness than when he gives it to another person to do. There's something of a completeness in doing the mitzvah.

R' Yitzchak: This has more connection to the mitzvah in betrothal. It's very interesting.

R' Yoel Asher: As we'll see later, there is a mitzvah, there is a blessing on the mitzvah that we'll see. It's a mitzvah. That is, until now we've talked about the acquisition aspect of betrothal.

R' Yitzchak: The technical.

R' Yoel Asher: But there is also a mitzvah, there is also a mitzvah like shaking the lulav. It's very different. With lulav one must go find a lulav. Here it's a mitzvah that when one wants to find a wife one should do it in the manner of betrothal. But it's still a mitzvah, in practice when one does it it's a mitzvah.

R' Yitzchak: Right, but there is here another giant thing, as we're going to see. First of all there is the matter of mitzvah, and then there is the second giant thing, which the Rambam is going to explain basically at the end of this law.

R' Yoel Asher: **"And similarly it is a mitzvah for the woman that she should betroth herself by her own hand rather than through an agent"**, that she should be the one who receives the betrothal. You see that she also has the mitzvah, right? The Rambam says.

R' Yitzchak: **"And even though the father has permission to betroth..."**

Law 6 – It Is Not Proper to Betroth One's Daughter When She Is a Minor

R' Yoel Asher: **"his daughter when she is a minor and when she is a young woman to whomever he wishes"** – I told you earlier that the father has permission to betroth his daughter when she is a young woman to whomever he wishes – means that he has permission from the law of acquisitions, from the law of ownership, doesn't mean that it's a thing, when one talks about how a Jew should conduct himself.

R' Yitzchak: It's not a good thing.

R' Yoel Asher: **"it is not proper to do so, rather it is a commandment of the Sages that a person should not betroth his daughter when she is a minor until she grows up and says 'I want so-and-so'"**. A person should not betroth his daughter when she is a minor, he should wait until she grows up, and she should say "I want so-and-so".

Discussion: Distinction Between Torah Mitzvah and Rabbinic Commandment

R' Yitzchak: Why is there a distinction? Earlier there is a mitzvah, that is, from Torah law there is a mitzvah because the mitzvah of doing it oneself rather than through an agent. On this there is what the Sages said. I mean that the secret is that this certainly changed. Once the custom was more that all fathers would betroth their daughters, as it says "I gave my daughter to this man", it was normal. Later the custom became different, the Sages made an enactment, as said, a mitzvah that one should not do it, understand?

R' Yoel Asher: But actually there is, because the same reason that says it's a mitzvah for the woman that she be betrothed, on that part she should... No, it's not the same part. No, one can say like this, as long as she is a minor she doesn't yet have the mitzvah. Therefore, since there isn't yet the obligation, there also isn't the mitzvah of doing it oneself. But one can perhaps say, push it off until I will have the mitzvah myself. But that's a different thing. This is a matter that "until she grows up and says 'I want so-and-so'". A practical thing, as the Sages said that it will bring disasters basically.

R' Yitzchak: It's not a matter of... All Hasidic fathers today conduct themselves still, they don't ask the daughter if she wants.

R' Yoel Asher: They don't ask me enough. No.

R' Yitzchak: I'm only saying this to bring out, that the enactment of the Sages not to betroth minors, this is not as strong a thing as the mitzvah of doing it oneself rather than through an agent. Why not? Because usually a father understands yes who is good for his daughter. We're talking perhaps about a wild beast of a father who makes a match just for more money. What it says here "until she grows up", this is

a certain enhancement. It's not like earlier perhaps a mitzvah. With Torah law it's even better.

R' Yoel Asher: Understand? But I'm saying, this is but also... It can be but also relevant, that is, you can still say that an enhancement of the mitzvah is still there, because in practice when she...

R' Yitzchak: Will be grown up she will do the mitzvah of doing it oneself. The father has the mitzvah of doing it oneself.

R' Yoel Asher: She can demand, "Daddy, I want to have the mitzvah. I have a right". If a child says to the father, let's say there isn't the enactment of the Sages "until she grows up", can the daughter say, "Daddy, I have the mitzvah. Wait until I receive the mitzvah." "The mitzvah of doing it oneself rather than through an agent".

R' Yitzchak: The father has the mitzvah of doing it oneself rather than through an agent. Ah.

R' Yoel Asher: It can be.

Betrothal: Prohibition of Betrothing a Minor, Until He Sees Her, The Three Methods of Betrothal, and Betrothing Without Prior Arrangement

Law: "And Similarly a Man, It Is Not Proper for Him to Betroth a Minor"

R' Yoel Asher: It can be but also relevant, that is, you can still say that an enhancement of the mitzvah is still there, because in practice when she will be

R' Yitzchak: grown up she will do the mitzvah of doing it oneself. The father has the mitzvah of doing it oneself.

R' Yoel Asher: She can demand, "Daddy, I want to have the mitzvah. I have a right." If a child says to the father, let's say there isn't the enactment of the Sages until she grows up, can the daughter say, "Daddy, I have the mitzvah. Wait until I receive the mitzvah." Perhaps I have the mitzvah of doing it oneself rather than through an agent.

R' Yitzchak: The father has the mitzvah of doing it oneself rather than through an agent. It's his.

R' Yoel Asher: Does he have the mitzvah.

R' Yitzchak: What kind of mitzvah is it? The mitzvah is betrothal.

R' Yoel Asher: The father betroths the mitzvah.

R' Yitzchak: He also makes the same blessing.

R' Yoel Asher: "And similarly a man, it is not proper for him to betroth a minor."

R' Yitzchak: That means, this isn't just a halacha on the father, but just in general.

R' Yoel Asher: It's not a way. It's a prohibition on a person, as if...

R' Yitzchak: Again, to be mekadesh a minor can only be done with the father.

R' Yoel Asher: They warned the fathers, and they also warn the people. People, young men who go out looking for a girl, even if you meet some man who isn't careful about the takanas chachamim (enactment of the Sages), you are also obligated with the takanas chachamim until she grows up and says [she agrees].

Halacha: "And One Should Not Be Mekadesh a Woman Until He Sees Her and She Is Acceptable in His Eyes"

R' Yoel Asher: The Rambam says further, "**And one should not be mekadesh a woman until he sees her and she is acceptable in his eyes.**" What does it appear to be, in the Gemara it says, well, until he sees her, yes, that she should find favor in his eyes. Why?

R' Yitzchak: So, in other words, the chassidim who say that "he sees her" means one should give a look, it's not true. "He sees her" means to say, to check out. The Rambam explains.

R' Yoel Asher: "Until he sees her and she is acceptable in his eyes." The chassidim will also say "acceptable" means that she is an honest person, kosher. Not acceptable in his eyes. That's why the Rambam wrote "in his eyes," not acceptable that she is acceptable, that she has a hechsher (certification) from the Eidah HaChareidis. You can't know if that person is pious, but she appears acceptable. Okay. Acceptable doesn't mean kosher, just acceptable - the matter is acceptable before the king. Yes, it means agreeable, yes, finding favor. "**Lest she not find favor in his eyes.**" Why? We are afraid of this, lest she not find favor in his eyes.

R' Yitzchak: And then there can be two problems.

R' Yoel Asher: Or two worst case scenarios can result. "**He divorces her**" - he will divorce her, because not finding favor will lead to a get (divorce), or perhaps it goes with the approach, as we rule in halacha that one can divorce for not finding favor. "**Or he lives with her while he hates her**" - it's no longer good. It's from the bnei tesha midos (nine types of people), the Rambam lists the bnei tesha midos. I mean, he says indeed

R' Yitzchak: In any case that one may not be confused due to hatred. This is already another matter of miderabanan (rabbinic law), no, it's not a Torah prohibition.

Halacha: The Three Methods of Kiddushin - Money, Document, Relations

R' Yoel Asher: Now the Rambam will say another thing, another thing that one doesn't do.

R' Yoel Asher: Yes, says the Rambam, one who is mekadesh through relations, he said earlier that one of the three ways is to be mekadesh through relations. It's actually true that it's kiddushei Torah (Torah-level kiddushin). And likewise with a document she becomes mekudeshes from the Torah. I still hold before this, yes. The Rambam says, the three ways that we said earlier are from the Torah.

R' Yitzchak: Just as he completes and divorces. Go further.

R' Yoel Asher: And likewise with a document she becomes mekudeshes from the Torah, just as he completes and divorces, as it says "and he writes her a document," there is on this, in the Gemara it's called comparing entry to exit, that the verse there refers to divorce, but also in a hinted way it also refers to kiddushin, that it can also be completing and bringing in. If a document is good enough for taking out,

R' Yitzchak: It can also compare entry.

Discussion: The Version Regarding Money - From the Torah or From the Words of the Scribes?

R' Yoel Asher: And likewise money, here there are two versions, as we learned in chapter one, but the version here is that money is also Torah law, and its interpretation is from the words of the Scribes, unlike the other two where also the interpretation is clear in the Torah. Here there is added an

interpretation from the words of the Scribes, as it says "when a man takes a woman," and the Sages said that "when he takes" can also mean money, and the Sages said the taking should be with money. That which "when a man takes a woman" means, that taking can mean relations is obvious, yes? No,

R' Yitzchak: No, that's not written. Where does it say relations? It says "and he is intimate with her" in the next verse.

R' Yoel Asher: But we know, "when he takes" means that the taking is a mitzvah.

R' Yitzchak: The Gemara has it so, the Rambam learned from the Gemara. Okay.

R' Yoel Asher: "When a man takes a woman." And the Sages said, the taking should be with money, as it says "I gave the money for the field, take it from me." The Sages expounded that the word taking means money, so money is also Torah law. In the other version it said "and money is from the words of the Scribes," but the Rambam apparently switched it back. Earlier, also here he

R' Yitzchak: Again clarified the interpretations. Whether it means a difference, because the Rambam means here to bring out the opposite that it works according to all opinions. But what the Rambam is explaining here is that it works from the Torah, but the Sages discovered this interpretation. That's the meaning.

R' Yoel Asher: No, but look also, in practice the main kiddushin is with money.

R' Yitzchak: Right, right, that's what I'm saying, "its interpretation is from the words of the Scribes" doesn't mean to say that it's... What does "its interpretation is from the words of the Scribes" mean? It means that the Scribes innovated it. Moshe Rabbeinu didn't know about kiddushei kesef (kiddushin with money).

R' Yoel Asher: I'm saying that money is Torah law.

R' Yitzchak: The Rambam means that it works from the Torah. It's a Torah law, it works, but the Sages interpreted it, they extracted it from the Torah. The Rambam has a principle that even when the Sages learn something from the Torah that is d'oraisa (Torah-level), it's miderabanan (rabbinic).

R' Yoel Asher: The Rambam says, even...

R' Yitzchak: Words of the Scribes can be a choice of d'oraisa. That means you can argue about it. You don't have to... Moshe Rabbeinu didn't know about it. Before the Sages interpreted it this way,

R' Yoel Asher: It wasn't so. Perhaps the halacha existed, it wasn't known. But so what?

R' Yitzchak: It obligates us with law because it obligates us with law through the interpretation of the Torah.

R' Yoel Asher: One must follow the interpretation of the Torah.

R' Yitzchak: But the Sages gave it the force of Torah law. No, they didn't give it any force, it's inherently so. They claim that something is written in the Torah. When the Sages claim that something is written in the Torah, is it what, d'oraisa or derabanan? It's d'oraisa.

R' Yoel Asher: D'oraisa according to the Sages, we believe the Sages.

R' Yitzchak: You can argue with them, you can make a new beis din (court). The Rambam says, a beis din can disagree with another beis din, but on enactments one cannot disagree. You can make a new beis din and rule that you don't rule that way.

R' Yoel Asher: It doesn't work.

R' Yitzchak: But for enactments it must be. D'oraisa doesn't need to be. So says the Rambam in the list.

Halacha: The Custom of Israel - Money/Equivalent of Money, Document Yes, Relations No

R' Yoel Asher: Okay, the Rambam says so, **"Even though the essence of the matter is so."** In any case,

R' Yitzchak: This is all an introduction to this. All these things are equally d'oraisa, there's no difference at all. Here we're not dealing with the essential law, here we're already dealing with the form of the mitzvah, how one should do it.

R' Yoel Asher: This is what the Rambam wants to come back to. He says, although it's d'oraisa, but in practice **"all of Israel have practiced"** to do what? **"With money or equivalent of money."** **"And likewise if he wants to be mekadesh with a document,"** one may also. That means, the custom of Israel is money or equivalent of money. A document also works, because it's also a mitzvah, and it was never forbidden with equivalent of money.

R' Yitzchak: The custom is either money or equivalent of money.

R' Yoel Asher: That's the custom. That means equivalent of money. And one can also with a document. But the first thing that he

R' Yitzchak: Except for kiddushei Torah, **"but one should not be mekadesh through relations initially."** And not only that,

R' Yoel Asher: But the Sages forbade it. The Sages made a punishment for this. What does makkos mardus (lashes of rebellion) mean? **"And one who is mekadesh through relations receives makkos mardus."** **"In order."** It's not nice, he gets makkos mardus. "In order." It's not nice, he brings for a moment only. Okay, let's finish. Why? **In order that the Jewish people should not be promiscuous in this matter**, that Jews should not be promiscuous in this matter of relations. If one will be able to be mekadesh through relations, it will be a lawless thing. **But if he had relations with her for the sake of kiddushin, his kiddushin are complete kiddushin**, if someone does it, even now, it works, the woman will become mekudeshes, but he will receive lashes for doing it in this manner.

Explanation of "Makkos Mardus"

R' Yoel Asher: He says, "mardus" he brings two meanings. He says that in Aramaic, the word "mardus" is the same word as "yaser" in Hebrew, like "I discipline them," one gives lashes. "Mardus" is a language of punishment, a language of lashes. Or, he brings from one of the Geonim, that it's like a proclamation, "this one rebels against the words of Torah," one gives him lashes for the rebellion that he did. Okay?

Halacha: Being Mekadesh Without Courtship / Being Mekadesh in the Marketplace

R' Yoel Asher: Okay, the Rambam says further, similar to what the Sages enacted that kiddushin must have a certain refinement. **And likewise one who is mekadesh without**

courtship, without having proposed beforehand, **or one who is mekadesh in the marketplace**, someone who is mekadesh in the street, in some random way, **even though his kiddushin are complete kiddushin**, but **one gives him makkos mardus**, and one gives him makkos mardus so that this matter should not become a habit leading to promiscuity, because this thing can lead to promiscuity, to become accustomed to promiscuity. Why?

R' Yitzchak: That one goes to a strange woman,

R' Yoel Asher: Or that one does it in the marketplace, **and it will resemble the kedeisha (cult prostitute) that existed before the giving of the Torah**. You remember that a kedeisha also has a certain formality.

Discussion: What Does "Shidduch" Mean?

R' Yitzchak: One must register there with the secretary of the kedeisha, whatever, one must pay money. It's not just a joke. The Rambam thought that a person can do kiddushin, but it's not official kiddushin, not proper courtship. I don't know what it means, the Rambam doesn't explain what shidduch means, by the way. Whatever shidduch means, perhaps it means one must speak with her father, I don't know. I saw that he is meshadech after her,

R' Yoel Asher: Can mean he goes after her. What was said, he tells her, he asks her that he wants to have a wedding with her. You must understand,

R' Yitzchak: Kiddushin must be with her consent, that's not the issue. It must be something more than that. It's clear that she must agree. I want to discuss this beforehand.

R' Yoel Asher: Yes, but I don't need to agree now when I give you the ring. One must speak about it, yes. How do you say we're giving the shiur today?

R' Yitzchak: What's the shiur? It's not the same thing as until he sees her. Do you understand what I'm saying? Shidduch means something, I don't know what it means. Because I... Do you understand what I'm asking you? No. Okay.

R' Yoel Asher: But the Rambam explains... What? We discussed this earlier,

R' Yitzchak: What we call becoming a shidduch and so on. Yes, but that's not what it means. What we call is actually erusin (betrothal) in my opinion. That means, the idea. But in the Gemara, when one says a shidduch, it means something. I don't know what it means. Understand?

R' Yoel Asher: It means some discussion,

R' Yitzchak: But I'm saying you don't know what you discussed.

R' Yoel Asher: But not that I give you a ring and at the time of the kiddushin there's the discussion and the seeing, something must be steps before that, steps before that of discussing that one is going to have a wedding and she should agree.

R' Yitzchak: It's not clear what the meaning is, I'm sorry, I don't know what Hebrew means, I don't know what the Gemara is talking about when one does this, when one speaks of this. But what the Rambam means I know. The Rambam thinks that if it's just a formality of kiddushin, even a kedeisha could have, after all, the other understands, after all the kedeisha would have had to add a... Imagine, you want to make a kedeisha nowadays, very simple, there should stand there a sign with rules, and on the way out a sign for the get, it

should be as kosher as ten in the whole thing. The Rambam says, no, don't do that. That's the Rambam's idea.

R' Yoel Asher: The Rambam says, you shouldn't think that kiddushin is automatically the opposite of kedeisha. There can be a mekadesh who is also a kedeisha.

R' Yitzchak: That means, this is like the dispute about the formality of kiddushin with the Ravva.

R' Yoel Asher: There can be humility during the Torah. It means, you did kiddushin that works, but you did it in a disgraceful manner, like being mekadesh through relations, a disgraceful act, because the first time you're with her is the relations itself, instead of the introduction, the taking beforehand. Means all these things, very similar to the, like appeasing

The Blessing of Erusin: Dispute Between Rambam and Raavad, Text of the Blessing, and Custom of the Cup

Dispute Between Rambam and Raavad: Blessing Before or After Kiddushin

Words of the Rambam – Blessing Over La'asiyas (Before Performance)

R' Yoel Asher: Now, once we know about the part of the mitzvah in it, just as every mitzvah has a blessing, there is also here a blessing, the Rambam says so:

"Anyone who is mekadesh a woman, whether through himself or through an agent, must make a blessing before the kiddushin," one must make a blessing before the kiddushin. Who must make the blessing? The one who is mekadesh, **"he or his agent,"** and after he makes the blessing, then he is mekadesh, **"in the manner that one blesses before all mitzvos."**

The Rambam says, **"And if he was mekadesh and didn't bless,"** if he was mekadesh and didn't make the blessing, **"he should not bless after the kiddushin,"** he should not make a blessing after kiddushin, **"for this is a blessing in vain."** **"What was already done is done."** As the Rambam always holds, that mitzvos must be done over la'asiyas (before their performance), so before one does it.

Position of the Raavad – Blessing After Kiddushin

R' Yitzchak: But the holy Raavad disagrees. The holy Raavad says, **"We do not say so, rather he is mekadesh and afterwards blesses."**

Why does the Raavad say why? One can't do it that way. What if he will say "behold you are mekudeshes," and she will say "no, I don't want"? Then it's over, it's dependent on the opinion of others. Therefore the Raavad argues that the blessing must be before the kiddushin.

And so also says the holy Rosh.

Argument of the Rosh – Blessing of Praise, Not Blessing of Mitzvos

R' Yitzchak: And the Rosh in general argues, if I remember, who said before the Rambam that the blessing is a blessing of mitzvos? It's a blessing of praise. You see, one doesn't only speak in kiddushin, one says "who sanctified us," one says other things. So this is just a blessing of praise. Therefore,

R' Yoel Asher: In general, even blessings of mitzvos that have praise and thanksgiving. Again,

R' Yitzchak: There is such a thing called blessing of mitzvos, and on this there are laws if you didn't see it. There is such a

thing called blessing of praise, which one can say doesn't have if you didn't see it,

R' Yoel Asher: There aren't all these concerns. I'm saying, that which it contains language of praise, one doesn't say that it's not a blessing of mitzvot, because there are blessings of mitzvot that have praise. Yes,

R' Yitzchak: For example which? Perhaps it's actually also not a blessing of mitzvah. The second blessing, perhaps the first is "who sanctified us with His commandments," not only that, the Rosh argues, one doesn't say at all which mitzvah, one says something about not bearing false witness, and about the generations and children of the covenant.

R' Yoel Asher: Let's go further, yes.

The Custom in Practice

R' Yitzchak: Anyway, one must know this, because we don't lead to say the blessing before kiddushin, we actually make the blessing afterwards.

R' Yoel Asher: Why? Behold you are mekudeshes to me, ah, again the rabbi says the blessing like the Rema. According to the Rema, it's a blessing in vain.

R' Yitzchak: No, how is it among us? Sorry, I'm confused. How does it go by us? Does one say the blessing first?

R' Yoel Asher: One says the blessing first, yes.

R' Yitzchak: One says the blessing first, yes.

R' Yoel Asher: One says the blessing first. We don't fear the Raavad's concern

R' Yitzchak: That he will nullify the kiddushin.

R' Yoel Asher: Okay, it's not really a concern. Once it was said that one shouldn't do it in the marketplace and one should only do it in a manner with courtship, the concern is no longer relevant. No,

R' Yitzchak: The Raavad says all the learning that something dependent on the opinion of others, then the blessing is afterwards. There are many times when something dependent one doesn't make a blessing at all. For example, this is one of the reasons why one doesn't give charity. The Rav held that bringing into the covenant of Avraham Avinu is also a blessing of mitzvot.

R' Yoel Asher: Perhaps to check out the father?

R' Yitzchak: No, the bris milah (circumcision) already happened. The mohel does the bris milah. Perhaps the father does it himself, he can actually do it beforehand.

R' Yoel Asher: Okay, in practice so says the Rambam about the blessing in vain. The Rambam says, how does one bless? What is the blessing?

R' Yitzchak: I'm saying that in practice it's not a blessing in vain, we don't rule like this Rambam. If it happens, one makes the blessing afterwards.

Text of the Blessing of Erusin

Language of the Blessing According to the Rambam

R' Yoel Asher: What is the blessing? The Rambam says so: One says **Blessed are You, Lord our God, King of the universe, who sanctified us with His commandments and separated us from forbidden relations**, as the Almighty says the verse "and I separated you from the nations." There is a language by forbidden relations,

R' Yitzchak: There is a language of separation. In our siddur it says "and commanded us concerning forbidden relations." The Rambam's language makes a bit more sense, because it's not "commanded us all forbidden relations," it's "commanded us against the forbidden relations."

R' Yoel Asher: What is the language?

R' Yitzchak: Not to forbidden relations.

R' Yoel Asher: But "separated us" is a language, there is a language in the verse

R' Yitzchak: Each man from each man from his close relative? Yes, yes. The Rambam says so in Sefer Kedusha.

Explanation of "And Forbade to Us the Betrothed Ones"

R' Yoel Asher: *****And He forbade us the betrothed women***, this is very interesting, because this is an isur d'rabbanan (rabbinic prohibition),**

R' Yitzchak: Which we will see later,

R' Yoel Asher: That one should not yet live with the arusah (betrothed woman) without chuppah (wedding canopy).

R' Yitzchak: That's a mistake. It's not a mistake, there are commentators, but the simple meaning, "va'asar lanu et ha'arusot" means to say someone else's arusah. Not my own arusah.

R' Yoel Asher: What is "knisah l'ba'al ad brachah v'chuppah? Kallah asurah l'ba'al alah b'lo chuppah u'kedushah?" (Entry to the husband until blessing and chuppah? The bride is forbidden to her husband without chuppah and sanctification?)

R' Yitzchak: Again, no, I'm telling you what it means. "Asar arusah" means according to the simple meaning.

R' Yoel Asher: What does "v'hitir lanu" even mean?

R' Yitzchak: No, "lanu" means us Jews. That is, the Almighty made a chiddush (innovation).

R' Yoel Asher: I'm telling you simply, the simple meaning I was right, look, the next statement was, "lanu et ha'nesu'ot al yedei chuppah v'kiddushin" (to us the married women through chuppah and kiddushin),

R' Yitzchak: Nesu'ot is opposite to arusot. I don't agree, one doesn't make blessings on mitzvot d'rabbanan (rabbinic commandments). The simple meaning is, we learned in the halachah chapter 1, the Almighty was mechadesh (innovated) a great chiddush at Matan Torah (the giving of the Torah) that what? That not only is a nesu'ah (married woman) forbidden to have relations with another man, but one becomes an ish v'ishah (man and wife) at the time of kiddushin. This is indeed a birkat ha'kiddushin (blessing of betrothal). So one explains, this is weak, that the Almighty separated the arusot for us, and separated them so much. That even an arusah of another Jew is forbidden to another. That's how I think the simple meaning is. I don't see that the other interpretation is a great difficulty.

R' Yoel Asher: Right, because the other interpretation is mixing a d'oraita (Torah law) with a d'rabbanan (rabbinic law). But one can mix a d'oraita with a d'rabbanan. We know "mitzvotav" (His commandments) to follow the Torah, "mitzvotav" to follow the mitzvah of lo ta'aseh (negative commandment), as the Rambam said earlier.

R' Yitzchak: It's very far-fetched,

R' Yoel Asher: True. No, but this also fits, "v'hitir lanu et ha'nesu'ot lanu al yedei chuppah" - how does chuppah come in

here? When you say chuppah you've also said a d'rabbanan. No, b'kiddushin. But chuppah you've also said a d'rabbanan. So "lanu" means the Almighty and the Sages permitted the Torah kiddushin, and the Sages placed upon it chuppah. I don't agree. I think arusot and chuppah v'kiddushin, it's implied for the proper formulation of the words. Well, well, we're both Acharonim (later authorities).

Conclusion of the Blessing

R' Yoel Asher: "**Baruch Atah Hashem mekadesh Yisrael**" (Blessed are You, Hashem, Who sanctifies Israel). We say "mekadesh amo Yisrael b'chuppah u'kiddushin" (Who sanctifies His people Israel through chuppah and kiddushin), but the Rambam says "mekadesh Yisrael." It's very interesting how "mekadesh Yisrael" comes in, perhaps it fits like the Rama, if it's a birkat ha'shevach (blessing of praise). So one went to such a poetic thing, that the Almighty sanctified the Jews at Ma'amad Har Sinai (the standing at Mount Sinai)?

R' Yitzchak: No, no, that's not the simple meaning. The Almighty sanctified the Jews with the mitzvah. This is Hebrew translation.

R' Yoel Asher: Ah, He sanctified the Jews with mitzvot. He gave the Jews mitzvot.

R' Yitzchak: Just as we say, "asher kidshanu b'mitzvotav" (Who sanctified us with His commandments). This is Hebrew translation. "Mekadesh Yisrael." This is the simple meaning. What can you add? What we add...

R' Yoel Asher: Ah, usually by the mitzvah it says "al ha'shechitah" (on the slaughtering) or "al ha'milah" (on the circumcision). Why shouldn't one say "al ha'kiddushin"? "Baruch Atah Hashem."

R' Yitzchak: Because this is actually the proof of the Rosh, that it's not a birkat ha'mitzvah (blessing on a commandment). It's a good proof.

R' Yoel Asher: Okay. The Rambam says,

R' Yitzchak: He says a longer, more beautiful blessing. What's the problem? A more beautiful blessing.

Who Says the Blessing

R' Yoel Asher: "**Zo birkat eirusin**" (This is the blessing of betrothal). According to the Rambam, so it's certainly according to the Rambam, perhaps not according to the Rosh, certainly the mekadesh (one who betroths) must say the blessing. Or his agent means when one is mekadesh or an agent, but the mitzvah of "mitzvah bo yoter mi'bishlucho" (a mitzvah is better performed by oneself than through an agent) he does it himself.

Our custom is that the ba'al mesader kiddushin (master of ceremonies) makes the blessing, and the Rama, not the Rama, but the commentators say that this is because there are grooms who don't know the blessing. So in order that they not be embarrassed, another makes the blessing. So, yes. So we learned, yes?

R' Yoel Asher: Yes. The Rambam also didn't write further "lanu et ha'nesu'ot lanu." If one would have said "ha'nesu'ot lanu," what is "lanu et ha'arusot"? It would also mean "arusot lanu."

R' Yitzchak: I hear. Okay. I don't know.

Custom of the Cup of Wine

Words of the Rambam

R' Yoel Asher: The Rambam says further, "**Zo hi birkat eirusin, v'nahagu ha'am**" (This is the blessing of betrothal, and the people have customarily) there is a custom "**I'hasdir brachah zo al kos shel yayin o shel sheichar**" (to arrange this blessing over a cup of wine or beer).

R' Yitzchak: By the way, do you remember that in the Rambam's language here it said that the mitzvah of kiddushin is that one should make a ketubah and kiddushin, even though ketubah is d'rabbanan? It could be that this "hitir" comes with the entire order, even though the detail is d'rabbanan? Or not me'akev (indispensable). Okay. It's certainly that... Anyway, this is the birkat ha'eirusin, I don't know what this piece says here. Obviously, but this is then. Perhaps he means to say that this is obligatory, but the later one is only a custom.

Discussion: Blessing of Betrothal and Chuppah

R' Yoel Asher: I'm just thinking for example, the blessing is a set blessing. The Rambam doesn't say that the blessing is made only if one does chuppah at that time. He says, anyway, even if one does kiddushin and one will do chuppah some other time, one says it here, because it's part of the eternal blessing. It's not a birkat ha'mitzvah on what I'm doing now. I'm already saying another piece perhaps. I say the Rambam, when a person makes the blessing now, what happens when a person makes the blessing not when he's at the chuppah, and later he makes chuppah,

R' Yitzchak: Because the Rambam will later say at the chuppah. We make at the time of kiddushin with chuppah have no connection.

R' Yoel Asher: We have yes the thing that we do chuppah, we call it chuppah because it's called the man's, by it's an introduction,

R' Yitzchak: The man's house. Hello, hello, that's nisu'in. We make kiddushin and nisu'in at the same time, or one after the other, whatever. The kiddushin one makes already under the chuppah, but it's not missing. Kiddushin has nothing to do with the chuppah. This is not a blessing on the chuppah.

R' Yoel Asher: The blessing is made when it's not at the chuppah, and one makes it on kiddushin, and one says here it becomes a...

R' Yitzchak: Yes, but there are extra blessings of nisu'in. There are extra blessings on this.

Order of the Blessings

R' Yoel Asher: The Rama says further, "v'nahagu ha'am I'hasdir brachah zo al kos shel yayin o shel sheichar." When one arranges the blessing, one does it with a cup, just like a cup of blessing that one arranges birkat ha'mazon (grace after meals) over the cup. Therefore the language that one should arrange, I think also by havdalah or other places, "I'hasder al ha'kos" (to arrange over the cup).

The Rambam says, "**Im yesh sham yayin mevarech al ha'yayin techilah**" (If there is wine there, he blesses on the wine first). How does one do it? Once there is already a cup, there are already several blessings now. The question begins, how does one do it? Make first the blessing on the wine, "**v'achar kach mevarech birkat eirusin, v'achar kach mekadesh**" (and afterwards he blesses the blessing of betrothal, and afterwards he betroths), and then he gives the ring. "**V'im ein sham yayin v'lo sheichar**" (And if there is no wine or beer there), then one makes the blessing by itself without it. That is,

R' Yitzchak: Because you're going after a custom, it's a custom. This perhaps means to say, it's only that the wine is not me'akev.

R' Yoel Asher: No, one shouldn't do bread instead of it, I don't know what is a case.

R' Yitzchak: Perhaps yes? I don't know, it's not relevant. There is something like this to make a blessing over a cup.

R' Yoel Asher: Something of importance, something of establishment,

R' Yitzchak: Yes. It doesn't say in the Rambam that

R' Yoel Asher: One must drink from the cup.

R' Yitzchak: We conduct ourselves that one drinks and gives to the groom, to the bride to drink. For the bride it's certainly not missing, perhaps for the groom, because if there's a claim that perhaps, you understand, the ba'al mesader kiddushin must actually be motzi (fulfill the obligation for) the groom with the blessing, because it will be his obligation to make the blessing, therefore perhaps he must drink, but... Do you understand what I'm saying? Yes.

Discussion: Bread Instead of Wine

R' Yitzchak: He actually brings that there was what one says that one must make it over bread. And the Rambam doesn't ask in a responsum, about this he says doesn't know that bread comes in. Kiddush comes in because it's a place of a meal. Perhaps in havdalah also? Ah, on the contrary, havdalah not. In short, there's no such thing as bread. This is the chiddush.

Return to Previous Discussion: Kiddushin Through Relations and the Ideal

R' Yitzchak: The Rambam says, no, don't do that. This is the Rambam's ideal.

R' Yoel Asher: The Rambam says, you shouldn't think that kiddushin is automatically the opposite of kedeshah (prostitution). There can be a mekadesh who is also a kedeshah.

R' Yitzchak: That is, this is like the dispute of the formality of kiddushin with the real kiddushin.

R' Yoel Asher: There can be "ervah b'reshut ha'Torah" (immorality with Torah permission) like this. It means, you've done kiddushin that works, but you've done a reprehensible act. Just as being mekadesh through relations is a reprehensible act, because the first time you're with her is the relations itself, instead of the introduction, the taking beforehand. And all these things are very similar to this, just as to appease, yes, it's a mitzvah to appease one's wife, beforehand, so it shouldn't be a crude thing, things shouldn't be crude.

R' Yitzchak: Okay? Exactly, but this is not to appease. To appease, further one can appease a kedeshah also. It means that there must be something of a real wedding had, understand? This is something the word. Not kedeshah, but had a wedding.

Custom of the Ring

R' Yoel Asher: Very good. So in practice, the custom is to give through money or something worth money. He brings that the Rama says that one should be mekadesh with a ring, and there is a reason according to Tikkunei Zohar. The Rama doesn't say that there is a reason from Tikkunei Zohar. He adds it, true?

R' Yitzchak: But the simple reason is like the Sefer HaChinuch, he brings there also, so one holds the ring, one remembers that one had a wedding,

R' Yoel Asher: So this is the simple meaning.

R' Yitzchak: So it's accepted. The Rambam says further.

Conclusion of Chapter 3 of Hilchot Kiddushin

R' Yoel Asher: Wonderful, we're going to finish chapter 3.

R' Yitzchak: This is chapter 3 of Hilchot Kiddushin.