

Laws of Marriage Chapter 5 (Auto Translated)

English

Auto Translated

Shiur Overview

Summary of the Chavrusa Learning: Rambam Hilchos Ishus — Kiddushei Kesef (Details)

General Introduction

The chavrusa is learning in **Rambam Hilchos Ishus (Sefer Nashim)**, in the laws of **kiddushin** — specifically the details of **kiddushei kesef**: what is considered "shaveh kesef" and what is not, which things can one be mekadesh with, and which not.

Halacha: One Who Is Mekadesh with Something That Is Asur B'hana'ah — She Is Not Mekudeshes

The Rambam's words: One who is mekadesh with something that is assur b'hana'ah — she is not mekudeshes. And even if it was assur b'hana'ah mi'divrei chachamim, such as chametz from the sixth hour on the fourteenth day — she is not mekudeshes.

Explanation: Something that is assur b'hana'ah has no monetary value for a Jew, because one may not sell it and may not have benefit from it. Therefore it is not "shaveh kesef" and kiddushin does not take effect.

Chiddushim and explanations:

1. Why is this not shaveh kesef: Even if the item has an absolute market value (a non-Jew can buy it), for a Jew it is "lo suchal alav" — you can't do anything with it, so it's not worth a perutah for you.

2. Which issurei achilah are assur b'hana'ah: Of all issurei achilah, primarily only **chametz on Pesach** and **basar b'chalav** are also assur b'hana'ah. Other prohibitions like

neveilah, treifah, pig — are only forbidden to eat but permitted in benefit (as it says "to the dog you shall throw it").

3. Issur hana'ah mi'derabbanan — chametz from the sixth hour: The Rambam brings that even chametz from the sixth hour on erev Pesach, which is only forbidden mi'derabbanan (mi'd'oraisa the prohibition only begins later), is also not mekudeshes.

4. Two approaches to the reason for issur derabbanan:

- **Approach 1:** It's a practical matter — she is an honest Jewish woman who won't eat chametz on erev Pesach, so for her it's not worth a perutah.

- **Approach 2:** The chachamim's takanah is so strong that it makes the cheftza itself assur b'hana'ah — **hefker beis din hefker**.

5. Dispute about the source: R' Yoel Asher brings that **Rashi in Pesachim** argues that the yesod is hefker beis din hefker — the rabbanan had the power to make the cheftza assur b'hana'ah. R' Yitzchak questions whether in the Gemara itself the reason is stated clearly, or only that she is not mekudeshes, and perhaps we don't need this yesod at all — it's simply practically not shaveh kesef.

Halacha: If One Transgressed and Sold — One Can Be Mekadesh with the Money

The Rambam's words: If one sold a davar issur hana'ah (not avodah zarah) and is mekadesh with the money — she is mekudeshes, because the money doesn't absorb the prohibition. But avodah zarah — if he was mekadesh with its money she is not mekudeshes, because the money of avodah zarah is forbidden.

Explanation: With most issurei hana'ah, if one transgressed and sold it, the money is permitted in benefit. But with avodah zarah the law is different.

Chiddushim and explanations:

1. **The distinction between regular issurei hana'ah and avodah zarah:** With avodah zarah it says "**v'lo yidbak b'yadcha me'umah min hacherem**" — the money also becomes forbidden (tofeis damav).

2. **Dung of avodah zarah — she is not mekudeshes:** Even dung from an animal that is avodah zarah, which is very far from the avodah zarah itself and has no importance, is also assur b'hana'ah. The source is "**me'umah**" — which includes even dung.

3. **Dung of shor haniskal — she is mekudeshes:** In contrast, with shor haniskal, which is also assur b'hana'ah, the dung is **not** forbidden, because "**its dung is not assur b'hana'ah since it is not an important thing relative to the ox.**" The distinction: with avodah zarah it says "me'umah" which includes everything; with shor haniskal there is no such inclusion, and dung is not important enough to be included in the prohibition.

Halacha: One Who Is Mekadesh with Peiros Shevi'is, Eifer Parah Adumah, Mei Niddah — She Is Mekudeshes

The Rambam's words: One who is mekadesh with peiros shevi'is, or with eifer parah adumah, or with water that was filled to make mei niddah — she is mekudeshes.

Explanation: Even though there are restrictions on these items, they are not in the category of "asur b'hana'ah" and therefore kiddushin takes effect.

Chiddushim and explanations:

1. **Peiros shevi'is:** Peiros shevi'is actually belong to the person — there is an exemption from ownership in a certain sense (one must make it hefker, not do business), but it's not assur

b'hana'ah. So it's shaveh kesef and kiddushin takes effect.

2. **Eifer parah adumah:** It's not clear why it's permitted — it seemingly belongs to hekdesch. In the Gemara there's a specific reason for this.

3. **Water that was filled to make mei niddah:** This is water that was filled with the intention to use for mei parah (haza'ah). This is a type of **designation** for hekdesch, but not yet hekdesch itself. It's not in the category of issur hana'ah.

4. **Ra'avad's hasagah:** The Ra'avad says "**davka b'hischayev**" — he limits the law of water that was filled, that it's only mekudeshes in a specific case.

Halacha: Kiddushin with Hekdesch — B'shogeg vs. B'meizid

The Rambam's words: If one was mekadesh b'shogeg with hekdesch — she is mekudeshes, and he must pay keren v'chomesh to hekdesch and bring a korban asham like anyone who commits me'ilah b'shegagah. But if he was mekadesh b'meizid — she is not mekudeshes.

Explanation: With shogeg, the law of me'ilah works — the object goes out to chulin, it becomes his, but he must pay. With meizid he is not in the category of mo'el, the object remains hekdesch, so he gave nothing.

Chiddushim:

- The yesod of me'ilah b'shogeg is that through the act of me'ilah the object goes out to chulin — "it's already his, but he committed me'ilah, so he must pay." But with meizid — "**you're like not a mo'el**" — the object remains hekdesch, it doesn't become yours, so she is not mekudeshes.

Halacha: Kiddushin with Ma'aser Sheni

The Rambam's words: If he was mekadesh her with ma'aser sheni, whether b'shogeg or b'meizid — she is not mekudeshes, because since he may not use it for his

other needs until it is redeemed — it says "la'Hashem hu."

Explanation: Ma'aser sheni a person may eat in Yerushalayim, there is benefit in it, but one may not use it for other things until one redeems it. Kiddushin before the chillul is forbidden.

Chiddushim:

- Interesting discussion whether ma'aser sheni is "not yours" or only "there is a prohibition." The conclusion: it is actually his (he's going to go up to Yerushalayim), but there is a prohibition to use it for other needs. The verse "la'Hashem hu" limits the use — for eating yes, for other things only after chillul.

Halacha: A Kohen Who Was Mekadesh with His Portion of Kodshei Kodashim/Kodashim Kalim

The Rambam's words: A kohen who was mekadesh with his portion of kodshei kodashim or kodashim kalim — she is not mekudeshes, because they were only permitted for eating alone.

Explanation: The kohen receives his portion from korbanos, but he only has a right to eat, not ownership that he can give away or sell.

Halacha: Kohen/Levi/Yisrael with Terumah, Ma'aser Rishon, Ma'aser Ani

The Rambam's words: A kohen who was mekadesh with terumah gedolah, terumas ma'aser, and bikkurim; a Levi who was mekadesh with ma'aser rishon; a Yisrael who was mekadesh with ma'aser ani — she is mekudeshes.

Explanation: These are gifts that belong to them completely — not just for eating, but full ownership.

Halacha: Matanos She'lo Hurmu K'mi She'hurmu — A Yisrael Who Inherited Tevel

The Rambam's words: "Matanos she'lo hurmu harei hen k'mi she'hurmu" — therefore, a Yisrael to whom tevel fell from his mother's father who was a kohen, and he separated terumos and ma'asros — they are like terumos and ma'asros that fell to him in inheritance, and if he was mekadesh a woman with them she is mekudeshes, because even though they are not fit for him to eat he may sell them to one for whom they are fit.

But: A Yisrael who was mekadesh with terumah that he separated from his threshing floor — she is not mekudeshes, because he may not sell it — he only has tovas hana'ah, and tovas hana'ah is not money.

Explanation: A Yisrael who inherits tevel from his grandfather (his mother's father who was a kohen) — we view it as if the grandfather already separated, so the grandson inherited terumah with monetary ownership. He may not eat it (he's a Yisrael), but he can sell it to a kohen — this gives him monetary value for kiddushin.

Chiddushim:

1. **The mechanism:** The principle "matanos she'lo hurmu k'mi she'hurmu" makes us view the tevel as already separated. The grandson therefore inherits terumah with full ownership.

2. **A Yisrael who separates terumah from his threshing floor:** A regular Yisrael who separates terumah from his own threshing floor — he has no ownership of the terumah, only tovas hana'ah (he can choose which kohen to give it to). But tovas hana'ah is not money — "the kohen becomes his friend indeed, but it's not worth any money."

3. **General yesod:** For kiddushin one must give something that is "yours" — monetary ownership. Possibly this is also the deeper reason for all the previous halachos (issurei hana'ah, hekadesh, ma'aser sheni) — "part of issur hana'ah is that it removes ownership as if."

Halacha: Kiddushin with Gezel, Genevah, Chamas

The Rambam's words: One who is mekadesh a woman with gezel or genevah or chamas — if the owners despaired and it became known that he acquired that item through ye'ush, she is mekudeshes. And if not — she is not mekudeshes.

Explanation: Gezeilah = one takes by force; genevah = one takes unnoticed; chamas = one forces the other to sell. After ye'ush the gazlan acquires the object, so it's his and kiddushin works. Before ye'ush it's not his.

Chiddushim:

1. **Chamas:** Rashi HaKadoshim is brought that there is a chamas that doesn't acquire — essentially **telihu v'zabin**. The distinction between chamas that works and that doesn't — one must learn in hilchos gezeilah.

2. **"Noda" — what does this word mean? Two interpretations:**

- **Noda BiYehudah** (brought by R' Avraham Blumen): The **witnesses** must know at the time of kiddushin that there was already ye'ush. Because if witnesses see an act of kiddushin with gezel, they think it's not kosher — they need to see a kosher kiddushin. (Testimony is not only on what one sees with one's eyes, but on what one understands — as we learned with eidus birur.)

- **Simpler explanation** (R' Yoel Asher): "Noda" means that the **gazlan himself** knows that he acquired it through ye'ush — i.e., the ye'ush already happened **before** the kiddushin, not after.

3. **Ye'ush in gezeilah vs. ye'ush in aveidah:** Ye'ush in gezeilah never means that the nigzal won't call in beis din — the gazlan becomes obligated in money. Ye'ush only means that the owner gives up on the object itself, not on his claim.

4. **Shinui reshus simultaneously with kiddushin:** An important chiddush — the shinui reshus (which is necessary together with ye'ush in order to acquire gezeilah) happens at the same moment as the kiddushin, when he

gives it over to the woman. This means that when he gives it away, he himself doesn't yet have a kinyan gezeilah — the gezeilah is only acquired through her receiving it. This is a paradoxical situation: he gives something he hasn't yet fully acquired.

[Digression: Mitzvah Haba'ah Ba'aveirah in Kiddushin]

5. **Is there a problem of mitzvah haba'ah ba'aveirah in kiddushin with gezeilah?** R' Yoel Asher raises that even if the kinyan kiddushin is chal, there is a mitzvah aspect in kiddushin (one makes a birchas hamitzvos), and perhaps one cannot make the berachah because it's mitzvah haba'ah ba'aveirah. With an esrog gazul one wouldn't be yotzei — perhaps the same with kiddushin?

6. **R' Yitzchak's answer — mitzvah haba'ah ba'aveirah is only with mitzvos she'bein adam la'Makom:** The principle of mitzvah haba'ah ba'aveirah is not so clear as a principle — there are different reasons in different places in Shas. The main reason is "hakrivehu na l'fechasecha" — one cannot bring before the Almighty a stolen item. But kiddushin is not such a type of mitzvah that one gives something to the Almighty — it's a formal kinyan. Both sides have benefit from each other, so it's not really "buying" a woman. R' Yoel Asher adds: if it were a shifchah (where only the man has benefit) it would be actual ribbis, but a woman — both are benefiting, so it's only **k'ribbis**.

7. **R' Yoel Asher's nuance — kinyan yes, mitzvah no:** R' Yoel Asher suggests a distinction: the kinyan kiddushin is chal (she is mekudeshes), but the person has not fulfilled mitzvos kiddushin properly. He had a wedding, but not in the desired manner. R' Yitzchak doesn't agree that this makes sense as a practical nafka minah.

8. **[Digression: Whether kiddushin is a mitzvah according to the Rambam]:** The Rambam's position that kiddushin itself is a mitzvah (with a birchas hamitzvos) is a chiddush — the Rosh and other Rishonim don't agree. They hold that it's a mitzvah to have a wedding,

but not that kiddushin itself is a specific mitzvah. The Rambam was mechadesh this.

Halacha: One Who Enters His Friend's House and Takes a Vessel or Food and Is Mekadesh a Woman with It

The Rambam's words: "One who enters his friend's house and takes a vessel or food and the like and is mekadesh a woman with it... and the owner comes and says to him why didn't you take such-and-such item which is better than it... he only said this so as not to be embarrassed with him... and since he was mekadesh with his friend's property without his friend's knowledge this is gezel and she is not mekudeshes. And if he was mekadesh her with something that the owner is not particular about such as a date or nut and the like — she is mekudeshes out of doubt."

Explanation: Someone comes into a friend's house, takes a vessel or food without permission, and is mekadesh a woman with it. The owner comes and says "why didn't you take the better vessel?" — this is not proof that he agrees, rather he doesn't want to cause embarrassment. Therefore she is not mekudeshes (because it's gezel). But if he was mekadesh with a small thing that an owner is not particular about — she is mekudeshes out of doubt.

Chiddushim:

1. **"Shelo l'hisbyeish" — not "shelo l'vayeish":** R' Yoel Asher is medayek that the Rambam says "shelo l'hisbyeish imo" (he is embarrassed with him) — not "shelo l'vayeish oso" (he doesn't want to embarrass him). This means that the owner himself is in a vulnerable, uncomfortable situation. He's embarrassed by the whole situation — his friend robbed him in his own house, in front of the kallah. The sarcastic answer ("why didn't you take the better one?") is a way to get out of the discomfort, not a mechilah.

2. **The principle that people don't want others to steal from them:** Even when the owner speaks in an "interesting way" (sarcastically), we cannot assume he agrees. People say such things only because they don't want to make anyone uncomfortable.

3. **"Makpid" is not "makneh":** The owner doesn't need to be makneh — the question is only whether he is makpid or eino makpid. But even the quote "why didn't you take the better one" is not proof that he is eino makpid, because he only said it out of embarrassment.

4. **Can the thief later claim in beis din that the owner agreed?** R' Yoel Asher asks: if two months later they want to have a din, will the thief claim "he told me to take it." The owner will answer "I only said it because I was embarrassed." This is exactly the halacha — we believe the owner that he only said it out of embarrassment.

5. **Why "mekudeshes out of doubt" with a date or nut — two explanations:**

- **Explanation of many mefarshei HaRambam:** The doubt is whether the date/nut is worth a shaveh perutah. With small things we don't know if it's worth enough.

- **R' Yoel Asher's explanation (which he prefers):** Even when the date/nut is certainly worth a perutah, the doubt is whether the owner is truly eino makpid. The principle "ein ba'al habayis makpid" is not one hundred percent certain — it's a chazakah/sevara, not a certainty. Therefore it's mekudeshes out of doubt. **Proof:** If the doubt were only in shaveh perutah, the Rambam could have referred to his earlier "yirah li" (from an earlier halacha about doubt in shaveh perutah), and he wouldn't have needed to mention the new principle of "ein ba'al habayis makpid."

6. **Distinction between shaveh perutah and hakpadah:** Shaveh perutah is one law, but hakpadah is a broader thing. A person is not makpid even on more than a shaveh perutah — he would give a whole cake for the other's shidduch. The doubt is not whether it's worth a perutah, but whether the owner is makpid or not.

7. Haskamah shelo mi'da'as (analogy to ye'ush shelo mi'da'as): R' Yitzchak brings the Maharis and Tosafos Ta'anis about gezeilah. Tosafos has a concept of "ye'ush shelo mi'da'as" — when the owner would have been meya'eish if he had known, but in practice he doesn't know. We pasken that ye'ush shelo mi'da'as is not ye'ush. R' Yoel Asher formulates: just as there is "ye'ush shelo mi'da'as," there is **"haskamah shelo mi'da'as"** — when we know the owner would have agreed, but he actually didn't agree. The Maharis's doubt is perhaps whether such a "haskamah shelo mi'da'as" works or not — and this is the yesod for why she is only mekudeshes out of doubt.

[Digression: Practical Examples of Neheneh MeChaveiro]

A lively discussion about practical situations — whether one may use a friend's things without asking (milk from fridge, tissues, soap). R' Yitzchak says that among chassidic Jews this is not a question with small things (food, tissues), but one shouldn't take a dining room table. R' Yoel Asher brings a story from the Steipler's house where some tissues lay for a year because he didn't know where they were from. Both agree that the Torah cannot explain every situation — a person must use common sense. R' Yitzchak mentions hilchos derech eretz where one finds such halachos (for example, one shouldn't give to one's son because perhaps the owner doesn't have enough).

Halacha: Partnership — Divided Without His Partner's Knowledge

The Rambam's words: "If there was merchandise between him and his friend and he divided it without his friend's knowledge... since it requires an appraisal of beis din... she is not mekudeshes, for this one does not take for himself what he wants and leave what he wants."

Explanation: Two partners have merchandise. One appraised on his own and took "his portion" and was mekadash a woman with it, without the other partner's knowledge. She is not

mekudeshes, because a partnership requires a shumas beis din (a professional appraisal) to divide.

Chiddushim:

1. The Rambam's sharp language: "V'yanich mah she'yirtzeh" — he emphasizes that partnership doesn't work according to one's "good heart." Even when he honestly means 50/50, it can come out 80/20 without a professional appraisal.

2. "Shuma" doesn't necessarily mean a beis din, but a professional appraisal — when it's cash one can count, but when it's a house or merchandise one needs an estimator.

3. If both partners agree, do we need a shumas beis din? The law is that when one demands a shumas beis din, he can demand it — and therefore one cannot divide on one's own without the other's agreement.

4. Not even mekudeshes out of doubt (unlike halacha 5), because the entire act of unilateral division is invalid — "ein zeh notel l'atzmo mah she'yirtzeh."

Halacha: Gezel Mimenah V'kidshah Bo

The Rambam's words: He robbed (or stole or took by force) from the woman herself, and then is mekadash her with that same object. "If there were shidduchim between them beforehand and she took it and was silent — she is mekudeshes."

Explanation: When he previously robbed from her and then is mekadash her with the same money/object — if they were already previously engaged and she took it and was silent, she is mekudeshes.

Chiddushim:

1. What does "shidduchim" mean: Rishonim say that shidduch is from the language of "v'shadchas ar'a" (Targum on "v'shoktas ha'aretz") — language of rest. The Ran connects it to the verse "u'matz'an menuchah ish beis ishah." But others (contemporary) argue that menuchah doesn't mean the shidduch itself, but that one has come to an agreement — one has already

discussed the surrounding matters (nichsei melug, money, tena'im). In today's language: after the "l'chaim" (vort), not just after a few dates.

2. Question — what is the kinyan? R' Yoel Asher asks: when he robs from her and gives it back — there's no shinui reshut! The money is hers, he's just giving it back. How does the kiddushin work?

3. The explanation — "she was mochel the gezeilah": The mefarshim say that when she agrees to the kiddushin, she is mochel the gezeilah, through which he acquires, and he can give it for kiddushin.

4. R' Yoel Asher's alternative sevara: When he robs from her and gives it back, he has fulfilled "v'heishiv es hagazeilah" — but he still owes her more (damages, embarrassment, kefel, etc.). So he still must pay her. Perhaps the kiddushin is through the fact that he received extra debt — that is, through the fact that he gives back, she receives something new (the return), and this can serve as kiddushin-money. R' Yitzchak asks: how does it become his? There must be ye'ush and shinui reshut so he can give something that is "his" for kiddushin. R' Yoel Asher answers that it doesn't need to become his — she receives back the theft in some other way. R' Yitzchak holds against this: at the time of kiddushin there must be a kinyan, he must give something that is his.

5. "V'im lo shiddach osah me'olam": If there was no shidduch, she certainly didn't forgive the gezeilah. R' Yoel Asher admits that according to his sevara it would perhaps help even in such a case, but he admits this doesn't fit with the Rambam.

6. "V'im amrah hein": When she says explicitly "hein," she is mekudeshes, because this clearly proves she is mochel the gezeilah.

[Digression: Whether the Kallah Should Say "Hein" at the Chuppah]

R' Yitzchak notes that today we don't conduct that the kallah should say "hein" at the chuppah. He brings the Ba'al HaTanya's Torah on "od yishama kol chasan v'kol kallah" — that today

there is no "kol kallah" because she is silent, but in the future, when "nekevah tesovev gever," we will hear her voice. R' Yoel Asher turns it around that perhaps this is specifically a protection for the woman — if we teach her to say "hein," this can be the same coercion as forcing her to come to the wedding. R' Yitzchak answers that kiddushin is always "mi'da'atah" — it makes sense that she should make her da'as clear. In the Rambam it actually says "at the time of the question they should say hein."

Halacha: Pikadon and Kiddushin

The Rambam's words: "And similarly if he gave her a deposit and said to her take in this deposit, and then said to her you are mekudeshes to me with it — if he said to her before she took it and she took it and was silent, she is mekudeshes. And if after she took it... for all silence after giving money is not effective... but if she said hein she is mekudeshes."

Explanation: When a man gives a woman a deposit, and then says "you are mekudeshes to me with it": if he said it **before** she took it, and she takes it and is silent — mekudeshes. But if she already took it as a deposit, and **after** he says "you are mekudeshes to me with it" and she is silent — not mekudeshes, because silence after giving money is not effective. But if she says "hein" — mekudeshes.

Chiddushim:

1. What happens to the deposit when he says "you are mekudeshes to me with it"? When he says "you are mekudeshes to me with it" **before** she takes it, he withdraws the deposit status — it becomes hers, no longer a deposit but a kinyan. Kiddushin must be that it becomes hers. R' Yoel Asher had suggested that it remains a deposit but with benefit, but R' Yitzchak rejected this: a deposit is not benefit, it's a responsibility.

2. The yesod of "silence after giving money is not effective": Usually with kiddushin, when he gives and she takes in silence, this is proof

that she agrees — because if she doesn't want to, she should say no. But when she already took it for other reasons (as a deposit), her silence is not proof that she agrees to kiddushin — she already took it for another purpose.

3. Two chakirots that are mixed in these halachos: The Rambam mixes together two separate chakirots: (a) whether the object is "his" — whether he can give it (matter of kinyan/ownership), (b) whether she agrees — whether she wants to be mekudeshes (matter of da'as). Silence relates to both: it can be a lack in da'as (she doesn't know what's happening), and it can be a lack in kinyan (because she already took it as a deposit).

4. Why is silence not good here but yes good at a regular chuppah? R' Yoel Asher asks: at a regular chuppah the chasan says "harei at mekudeshes" after he gives the ring — this is also silence after giving money? R' Yoel Asher answers himself: there it's different, because when he gave it it was already clear what was happening. Here the distinction is that at the time of giving it wasn't yet clear — she thought it was a deposit.

5. "But if she said hein" — why does "hein" help? When she says explicitly "hein," this clearly proves she understands what's happening and she agrees — even if she already took it as a deposit. This solves both chakirots: she knows what's happening, and she agrees.

Halacha: He Returned to Her a Debt That She Had with Him

The Rambam's words: **One who returns to her a debt that she had with him and says to her you are mekudeshes to me with it — if he said before she takes it, and there were

shidduchim, she is mekudeshes. And if there were no shidduchim, she is not mekudeshes until she says hein. And if he said to her after she took it — even if she said hein, she is not mekudeshes, for nothing reached her hand from him, rather she took what was hers, and his debt was already paid from the moment she took it, and she

cannot return and claim the debt from him another time.**

Explanation: He owes her money (she lent him), and he brings back the debt. If he says "you are mekudeshes to me with it" **before** she takes it, and there were shidduchim — she is mekudeshes (because we reckon that she is mochel the debt and takes it as kiddushin). If there were no shidduchim — she must say "hein." But if he says "you are mekudeshes to me" **after** she already took the debt — even if she says "hein," she is not mekudeshes, because she received nothing from him — she only took what was hers.

Chiddushim:

1. Two problems with debt-kiddushin: (a) The silence problem (as in previous halachos), and (b) that it's **her own money** — he's only paying a debt he must pay anyway, so he's not giving her anything new.

2. How does kiddushin work when there were shidduchim: When there was already a shidduch relationship, we reckon that she is **mochel the debt** and takes the money **as kiddushin** (as a gift). That is, her agreement (through silence) makes it as if she receives something new.

3. Why "hein" doesn't help after giving the money: With a regular gift, if he already gave her the money and then says "you are mekudeshes to me" — we learned earlier that "hein" does help (speech after giving money). But with **debt** it's different: even "hein" doesn't help after giving the money. **Why?** Because with a regular gift, when he already gave her his money, she actually received something — the question is only whether she agrees. But with debt, **after** she took it, the debt is already paid — it's **history**. There is no debt left to be mochel, and there is no money that he gave her. "Shelah natlah" — she took what was hers.

4. One might have thought the debt remains: One could have thought that when he says "you are mekudeshes to me with it," he means that the money is **kiddushin-money** (extra money), and the debt remains still a debt

— so she can claim from him again. The Rambam explicitly excludes this: **"and she cannot return and claim the debt from him another time"** — we understand that the money **is** the debt-payment, not separate kiddushin-money. So after she took it, it's paid off, and there's nothing to be mekadesh with.

5. The mechanism when it's before giving the money with shidduchim: When he says "you are mekudeshes to me" **before** she takes, and there were shidduchim — the explanation is (like Rashi's understanding): she is **mochel the debt** (it becomes as if his), and then she takes it as kiddushin. Without this mechanism it doesn't work — one can't simply say "she has money, as if I was mekadesh with it."

6. Whether one needs a form of giving money: Even when in substance there is nothing (he's giving her back what's hers), one needs at least a **form of giving money** — an act of giving — so that her will to be mekudeshes should take effect. Without the formal act of giving, her agreement alone doesn't help.

Halacha: One Who Is Mekadesh with a Loan — She Is Not Mekudeshes

The Rambam's words: One who is mekadesh with a loan, even if it was with a document, she is not mekudeshes. How so? Such as if he had a debt of a dinar with her, and he said to her you are mekudeshes to me with the dinar that I have in your hand — she is not mekudeshes, for a loan is given to be spent, and there is no existing thing to benefit from now, for she already spent that dinar and its benefit has passed.

Explanation: When she owes him money (he lent her), and he says "be mekudeshes with the dinar that you owe me" — she is not mekudeshes, even with a document. Because "a loan is given to be spent," so we reckon that the money is already gone, and there is no existing thing to be mekadesh with.

Chiddushim:

1. What does "a loan is given to be spent" mean in lomdus: When I lend you money, the money becomes **immediately yours**. "He has with her" only means that I can **claim from you** — you must pay me — but **my money doesn't lie with you**. The money is yours. So when he says "be mekudeshes with the dinar with you," there is no "dinar with you" — it's **her** dinar.

2. The Rambam's language of "benefit": The Rambam introduces the concept of **benefit**: "and there is no existing thing to benefit from now... and its benefit has passed." There was a benefit when she received the loan, but **now** the benefit is already past. And **being mochel a debt** doesn't count as benefit for kiddushin purposes — although in practice it's a great benefit (one doesn't have to pay!), but halachically it doesn't count as "benefit reached her hand."

Halacha: A Loan on a Pledge

The Rambam's words: If he had a loan with her on a pledge, and he was mekadesh her with that loan and returned the pledge to her — she is mekudeshes, for she benefits from the pledge now, and benefit has reached her hand.

Explanation: If he lent her money with a pledge (she gave him an object as security), and he says "I forgive you the loan, and here is your pledge back" — she is mekudeshes. Because she receives **now** benefit from the pledge that he returns.

Chiddushim:

1. The main chiddush — what makes the difference: The Rambam's main problem with a loan is that **at the time of the act** she receives nothing. With a loan on a pledge, although the main thing he's thinking about is the mechilat hamilveh (which is a "bigger deal"), but **in practice** she goes home **with the lamp** (the pledge). She receives **now** something physical — "benefit reached her hand" — and that's enough for kiddushin.

2. The principle: It's not important what the man **thinks** he's giving (mechilat debt), but what she **receives in practice** at the time of the act. With a simple loan she receives nothing now; with a loan on a pledge she receives the pledge back — and that's an existing thing to benefit from now.

Halacha: One Who Is Mekadesh with the Benefit of a Loan

The Rambam's words: "Such as if he lent her now two hundred zuz and said to her you are mekudeshes to me with the benefit of the time that I will give you on this loan, that it will be in your hand such and such days and I won't claim it from you until such and such time — she is mekudeshes, for she has benefit now to use this loan until the end of the time he set."

Explanation: He lends her now two hundred zuz and says: you are mekudeshes to me with the benefit of the time that I'm giving you on the loan — you can use the money until such a time. She is mekudeshes because she has benefit now to use the loan.

Chiddushim:

1. The Rambam's fundamental understanding of "benefit of a loan": According to the Rambam, "benefit of a loan" doesn't mean that one adds more time to an existing loan. The Rambam means that the **essence of the loan** — the fact that he's lending her now — is the benefit. Every loan is inherently a "profit of time": when I lend you money for a week, I give you the right to use my money for a week. This is what a loan is worth — and the proof is that one pays interest for it. So "benefit of a loan" is not something added to the loan, but that's what a loan is.

2. The distinction between "mekadesh with a loan" and "mekadesh with benefit of a loan" according to the Rambam: Three halachos are agreed upon in the Gemara: (a) mekadesh with a loan — she is not mekudeshes;

(b) loan with a pledge — mekudeshes; (c) mekadesh with benefit of a loan — mekudeshes. The Rambam explains: "mekadesh with a loan" means he is **mochel** an old loan — this doesn't work (because a loan is given to be spent, it's already her money). "Mekadesh with benefit of a loan" means he **gives her now** a new loan — this does work, because she receives benefit now.

3. Why "such as if he lent her now" means at the time of the act: R' Yoel Asher asks whether "now" means he already lent earlier and now he's adding time. R' Yitzchak makes clear that no — "now" means **when** he gives her the money he says the kiddushin formula. This is the whole distinction: with "mekadesh with a loan" the money has long been with her; with "mekadesh with benefit of a loan" he's giving her now.

4. "And it's forbidden to do so" — like ribbis: The Rambam says that although she is mekudeshes, it's forbidden because it's **like ribbis**. R' Yoel Asher asks why only "like ribbis" and not actual ribbis? R' Yitzchak answers: Ribbis is when one **buys** something — one pays for the time that one has the other's money. Kiddushin is not a true transaction — it's a formal kinyan. Both sides have benefit from each other, so it's not really "buying" a woman. R' Yoel Asher adds: if it were a shifchah (where only the man has benefit) it would be actual ribbis, but a woman — both are benefiting, so it's only **like ribbis**.

The Rambam's Critique of His Teachers — "Words That Are Not Fit to Be Heard"

The Rambam's words: "And my teachers explained the matter of benefit of a loan with words that are not fit to be heard."

Explanation: The Rambam says that his teachers (the Rif and others) explained "benefit of a loan" in a way that is not worthy to be heard.

Chiddushim:

1. Whom does the Rambam mean by "my teachers": The Maggid Mishneh and all mefarshim learn that the Rambam means the

Rif. The Rif's explanation was that "benefit of a loan" means he already lent earlier and now he's adding more time — "extension of time literally." The Rambam holds that it's not clear why this should be better than being mochel the loan entirely, and therefore he learns completely differently.

2. The Ra'avad's position: The Ra'avad brings the explanation of "the Rambam's teachers" and says that the Rishonim explained this way, and it's possibly better. The Ra'avad agrees that the Rambam's case will also work, but he means that even just adding time to an old loan also helps. R' Yoel Asher asks: perhaps when she already has the money ready to pay and he adds time, she can use the money again — so there isn't the problem of "a loan is given to be spent"?

3. What does "not fit to be heard" mean: Two approaches: (a) it's such a bad explanation that one shouldn't even hear it; (b) "to hear" can mean "to accept" — like "ki shamata l'kol ishtecha" where the Targum translates "kibalta" — meaning one shouldn't **accept** it as halacha, not that one may not learn it. Certainly one may learn the Rif's explanation.

4. Why does the Rambam bring it at all: Everyone used to learn the Rif, so the Rambam had to hint that one shouldn't learn the Gemara incorrectly. R' Yoel Asher asks: the Rambam is a halacha book, why does he bring explanations he doesn't hold of? R' Yitzchak answers: the Rambam is a book of **all** halachos that stand in the Gemara — what doesn't stand he doesn't need to say, but he wants to reject a false learning.

5. Whether the Rambam disputes the halacha: R' Yoel Asher asks: according to the Rambam, if someone does like the Rif's case (adding time to an old loan), is she mekudeshes or not? R' Yitzchak says: it's not clear — the Rambam doesn't go into the law of that case. "Not fit to be heard" can mean he holds it's a bad explanation in the Gemara, but not necessarily that he disputes the halacha itself. Although most likely, if he says "not fit to be heard," he's probably not in agreement.

6. The distinction between mechilat debt and giving: R' Yoel Asher tries to understand: canceling a debt is in a certain sense "more" than benefit of a loan, because one receives more from it. R' Yitzchak brings that this was the reasoning of the Rambam's teachers — that there is a distinction whether it's already past or he's giving now.

Halacha: A Loan and a Perutah

The Rambam's words: If he said to her "you are mekudeshes to me with this perutah and with the debt that I have with you" — she is mekudeshes.

Explanation: Although the loan is worth more, but because a loan is given to be spent, only the perutah counts. The Gemara calls it "a loan and a perutah — her mind is on the perutah."

Chiddushim:

- One would have thought that the small perutah becomes batel to the loan, and since a loan doesn't make her mekudeshes everything shouldn't work — but the Rambam says no, she is mekudeshes through the perutah.

Halacha: A Debt That He Has in the Hand of Others — In the Presence of All Three

The Rambam's words: If he had a debt in the hand of others, and he said to her "you are mekudeshes to me with the debt that I have in the hand of this one" — in the presence of all three.

Explanation: A third person owes him money. He says to the woman: you are mekudeshes with the debt that this one owes me. This must be in the presence of all three — the man, the woman, and the debtor all stand together.

Chiddushim:

1. Why does this work, although a loan is given to be spent: A loan is given to be spent only means when the money is **with her** — then there is no tangible thing, only a debt. But when the debt lies **with a third person**, she receives

a real shaveh perutah — because through the presence of all three the debtor becomes obligated to pay **her**, and this is like she receives something tangible.

2. Comparison to a check: R' Yoel Asher and R' Yitzchak compare this to a check — a check is essentially a document that tells the bank (which is the debtor): pay for this one. This is "a debt that I have in the hand of others." R' Yitzchak also notes that perhaps with a document alone it also works without the presence of all three.

Halacha: He Was Mekadesh Her with a Deposit or Loan That Is in Her Hand

The Rambam's words: If he was mekadesh her with a deposit that he has in her hand, or with a loan that she borrowed — if the deposit and loan or a perutah's worth of them exists in her possession, she is mekudeshes.

Explanation: He has with her a deposit (something he gave her to guard) or a loan (something she borrowed from him). If the object or part of it (a perutah's worth) still exists with her — she is mekudeshes.

Chiddushim:

- **Why deposit/loan is different from a monetary loan:** With a monetary loan it's "given to be spent" — there is no tangible thing, only a debt. But with a deposit/loan the actual object lies with her, and when he transfers ownership of the object to her, something tangible passes to her. Deposit = guardian (he's guarding her item), loan = borrower (she borrowed from him).

Halacha: Mekadesh with the Reward That I Will Speak for You to the Ruler

The Rambam's words: "You are mekudeshes to me with the reward that I will speak for you to the ruler" — and he spoke for her to the ruler, and the ruler left her alone and didn't claim from her — she is not mekudeshes, unless he gave her

a perutah of his own. For the benefit that came to her from his words is like a loan.

Explanation: He spoke to the government that she shouldn't have to pay, and the government indeed released her. But she is not mekudeshes because the benefit is like a loan — he removed a pressure/debt, not gave something.

Chiddushim:

1. **The yesod of "saved is not given":** In simple terms he perhaps saved her a hundred thousand dollars in taxes — much more than a perutah! But "saved is not given." The **form of giving** is missing — nothing passed over from him to her. This is the common denominator of all cases: without an act of giving — without a tangible transfer from him to her — it doesn't work for kiddushin, even when the value is much greater.

2. R' Yitzchak hints that here lies a "secret" — a deeper sevara — but he doesn't want to say it on camera, only for a small group face to face ("the secret of the wise and understanding").

Halacha: Mekadesh with Work — Wages Are Acquired from Beginning to End

The Rambam's words: "You are mekudeshes to me with this work that I will do with you" — she is not mekudeshes, unless he gave her a perutah of his own. For the worker acquires the wages from beginning to end — every time he does part of the work, he acquires part of the wages, and it turns out the entire wage is a loan.

Explanation: He says: you are mekudeshes with the work I'm going to do for you (for example building a kitchen). She is not mekudeshes without an additional perutah.

Chiddushim:

- **Why wages are like a loan:** The Rambam's yesod is that wages are acquired from beginning to end — every minute he works, she owes him a bit more. By the time he finishes, everything is already a loan with her. R' Yoel Asher makes it clear: when he worked twelve hours, one pays

him now a loan from twelve hours ago, a loan from ten hours ago, a loan from five minutes ago. Even the last five minutes — that's also already a loan (however small). So the entire wage is "entirely a loan" — and mekadesh with a loan she is not mekudeshes.

Halacha: Give a Dinar to So-and-So and I Will Be Mekudeshes to You — Kiddushin Through Benefit from a Gift to a Third Party

The Rambam's words: A woman who said give a dinar to so-and-so as a gift and I will be mekudeshes to you, and he gave and said to her you are mekudeshes to me with the benefit of this gift that I gave at your request — she is mekudeshes, even though nothing reached her, she benefited from her will being done and so-and-so being benefited because of her.

Explanation: A woman says to the man "give a dinar as a gift to so-and-so, and I will be mekudeshes to you." He does so and says "you are mekudeshes with the benefit of the gift that I gave at your request" — she is mekudeshes, although she received no money, because she has benefit from her will being fulfilled.

Chiddushim:

1. The same law also works in reverse: if she says "give a dinar to so-and-so and I will be mekudeshes to *him*" (not to the giver), that so-and-so must say "you are mekudeshes to me with the benefit of this gift that I received through your will." The mekadesh himself must say "you are mekudeshes to me."

Halacha: Benefit That Comes from the Mekadesh's Side

The Rambam's words: If he said to her here is this dinar as a gift and be mekudeshes to so-and-so — he is not an agent, rather he gives her a gift — and so-and-so said to her you are mekudeshes to me with this benefit that came to you

because of me — she is mekudeshes even though the mekadesh gave her nothing.

Explanation: A third party gives her a dinar as a gift and says "be mekudeshes to so-and-so." So-and-so then says "you are mekudeshes to me with the benefit you received because of me." She is mekudeshes although the mekadesh himself gave nothing.

Chiddushim:

- This works in both directions — either he can give in her honor to a second party, or she can receive from a third party because of the mekadesh.

Halacha: An Important Person — When the Woman Gives to the Man

The Rambam's words: If she said to him here is this dinar as a gift and I will be mekudeshes to you, and he took it and said to her you are mekudeshes to me with this benefit that I received from you as a gift — if he is an important person, she is mekudeshes, for she has benefit from his being benefited from her, and with this benefit she acquires herself to him.

Explanation: When the woman gives the man a dinar as a gift and he says "you are mekudeshes with the benefit that I received your gift" — only if he is an "important person" is she mekudeshes, because she has benefit from the fact that he takes from her.

Chiddushim:

1. **Taking a gift is also a certain giving** — he gives her something through the fact that he takes.

2. **R' Yoel Asher's chiddush — "beloved person" instead of "important person":** R' Yoel Asher asks whether the law of "important person" can also be applied to a "beloved person" — a person she loves very much, although he's not an important person in the community. His sevara: the benefit from the fact that a beloved person takes your gift also has tangible value. He

compares it to maftir Yonah — people pay for the honor to give to an important person.

3. R' Yitzchak's rejection: He doesn't agree. "Beloved" only means for her personally it has value, but this is not a shaveh perutah that one can sell on the market. The Gemara says specifically "important person" — a person with objective importance.

4. R' Yoel Asher's practical question: He brings that R' Moshe (Igros Moshe) has a question about when the kallah gives the chasan the ring (as is the custom today in modern weddings). He argues that in our reality, every kallah is "excited" for her chasan — this is a type of belovedness. R' Yitzchak answers that the Rambam says clearly that this is not enough — it must be an important person.

Halacha: Kiddushin with a Pledge

The Rambam's words: One who says to a woman be mekudeshes to me with a dinar and here is this pledge in your hand until I give the dinar — she is not mekudeshes. The dinar didn't reach her hand, and the pledge he didn't give to be hers.

Explanation: He says "be mekudeshes with a dinar" but only gives her a pledge until he brings the dinar — she is not mekudeshes, because the dinar didn't come to her, and the pledge wasn't given as hers.

The Rambam (continuation): If he had a pledge on a debt that he has with others... even though it's not his she is mekudeshes, because a creditor has some acquisition in the body of the pledge.

Explanation: If he has a pledge that a borrower gave him for a debt, and he gives the pledge to the woman — she is mekudeshes, because a creditor has a "partial acquisition" in the pledge.

Chiddushim:

1. What does "partial acquisition" mean? R' Yoel Asher asks whether this means one may use it, or only that one has a right to it. R' Yitzchak explains: "a creditor acquires a pledge" is an old lomdus matter — it means that the

pledge actually belongs to the lender. When the other gives a pledge, it's as if he exchanged the pledge for his money for now. The lender can give it because it's his.

2. What if the borrower pays back? R' Yoel Asher asks: if the borrower comes an hour later and pays back the debt and takes back the pledge — with what is she mekudeshes? R' Yitzchak answers that it's not retroactively void — it was his at the time of giving, and later it's returned, but that's a new transaction.

3. Distinction between a pledge and "on condition to return": A pledge is not a "giving on condition to return" — a pledge is truly yours (from the side of a creditor acquires a pledge), while "on condition to return" is a condition on the giving itself.

Halacha: On Condition That You Return It to Me

The Rambam's words: One who says to a woman you are mekudeshes to me with this dinar on condition that you return it to me — she is not mekudeshes, whether she returned it or didn't return it. For if she didn't return it the condition wasn't fulfilled, and if she returned it — nothing reached her hand.

Explanation: He gives her a dinar with a condition that she return it — she is not mekudeshes in any case. If she doesn't give back — the condition isn't fulfilled. If she gives back — she received nothing.

Chiddushim:

1. This is the matter of "a gift on condition to return" that one knows from the laws of esrog (where it works — with an esrog it's a good giving, but with kiddushin not).

2. The distinction between a pledge and on condition to return: With a pledge it's truly a giving (a creditor acquires a pledge), not a giving on condition to return. The pledge is yours.

3. Question about benefit: R' Yoel Asher asks — one must know how much benefit one needs from the gift. R' Yitzchak answers: with a dinar

we don't speak of benefit — a dinar is money, it's property, one doesn't need special benefit.

Halacha: A Bundle of Myrtle with Hidden Coins

The Rambam's words: If he gave her a bundle of myrtle and said to her you are mekudeshes to me with this, and she received it, they said to him but there isn't a perutah's worth in it, and he said let her be mekudeshes with four zuz hidden inside the bundle... if she said hein she is mekudeshes; and if she was silent she is not mekudeshes with this money, for silence after money came to her hand is not effective. And she will be mekudeshes out of doubt because of the bundle, perhaps it's worth a perutah in another place.

Explanation: He gives her a bundle of myrtles with hidden four zuz — if she says "hein" (yes), she is mekudeshes. If she is silent, she is not mekudeshes with the money, because silence after giving money doesn't help. But she is mekudeshes out of doubt because of the bundle itself — perhaps it's worth a perutah in another place.

Chiddushim:

1. **The mechanism:** When he said "you are mekudeshes to me with this" (about the bundle), there was not yet any shaveh perutah anywhere (because the myrtle itself isn't worth a perutah). The four zuz were only discovered afterward — but this is already "after giving money," because the money is already in her hand. Silence at such a stage is not agreement.
2. If she says "hein," this connects with his words about four zuz, and it becomes valid kiddushin.
3. The doubt remains only because of the bundle itself — perhaps it's worth a perutah in another country. This connects with the earlier halacha that "worth a perutah in another place" only counts when one can actually go sell it there.

Halacha: Be Mekudeshes to Me with This, Be Mekudeshes to Me with This — Dates One by One

The Rambam's words: One who says to a woman be mekudeshes to me with this date, be mekudeshes to me with this, be mekudeshes to me with this — if one of them is worth a perutah she is mekudeshes. And if not, she is not mekudeshes except out of doubt, perhaps one date is worth a perutah in another country.

Explanation: When he says "be mekudeshes to me with this" separately on each date, each date is a separate kiddushin attempt. One cannot combine them. One alone must be worth a perutah.

Chiddushim:

- The distinction between "with this, with this, with this" (separately) and "with this and this and this" (together) is critical: when he says separately "be mekudeshes to me with this" on each one, he means that each one alone should be enough for kiddushin. One doesn't combine them.

Halacha: Be Mekudeshes to Me with This and This and This — Dates Together

The Rambam's words: If he said to her be mekudeshes to me with this and this and this — if all of them together are worth a perutah she is mekudeshes. And if not, she is not mekudeshes except out of doubt.

Explanation: When he says "with this and this and this" in one sentence, one combines them all. If among all three there is a shaveh perutah, she is mekudeshes.

Halacha: If She Was Eating Each One

The Rambam's words: If she was eating each one — if the last one is worth a perutah she is mekudeshes. And if not, she is not mekudeshes except out of

doubt. For those dates she ate are like a loan, and one who is mekadesh with a loan she is not mekudeshes.

Explanation: If she eats each date as he gives it to her, the eaten dates are already like a loan (a debt she owes him). Kiddushin with a loan doesn't work. Only the last date that still exists can work.

Chiddushim:

1. The eaten dates are classified as "a loan" — he wants what she already ate to now become part of kiddushin, but this is essentially only a mechilah on a debt, which is "mekadesh with a loan she is not mekudeshes."
2. A question is raised: perhaps the benefit of being satiated is worth something? This is rejected — he didn't make himself mekadesh "with benefit," he made himself mekadesh "with money" (with the dates as an object).

Halacha: If He Said to Her "With These" — and She Eats Each One

The Rambam's words: **If he said to her you are m

ekudeshes to me with these — if all of them together are worth a perutah she is mekudeshes, even though she eats each one, for she is eating what is hers.**

Explanation: When he says "with these" (with all of these), all the dates become hers at once. Even if she eats them one after another, she's already eating her own — because the kiddushin already took effect from the first moment.

Chiddushim:

- The distinction between "with these" and "with this, with this, with this": with "with these" all the dates become hers at once, and the eating is already from her own. With "with this, with this, with this" separately, each date only becomes hers when he says it, and by then the previous one is already eaten (= a loan).

Halacha: Be Mekudeshes to Me with This Cup — A Cup with Different

Contents

The Rambam's words: One who says to a woman you are mekudeshes to me with this cup — if it was full of water, she is mekudeshes with it and with what is in it. And if it was full of wine, she is mekudeshes with it and not with what is in it. And if it was full of oil, she is mekudeshes with what is in it and not with it. Therefore if there wasn't a perutah's worth in the oil she is mekudeshes out of doubt, and if there was a perutah's worth in the oil she is mekudeshes certainly and we don't pay attention to the cup.

Explanation: When he says "with this cup," what "cup" means depends on the contents:

- **Water:** Both together (cup + water), because water is not important and is batel to the cup.
- **Wine:** Only the cup (not the wine), because wine is important enough that it doesn't become batel, but one drinks it immediately, and he said "with the cup" not "with wine."
- **Oil:** Only the oil (not the cup), because oil is very important and one doesn't drink it — the cup is batel to the oil.

Chiddushim:

1. **Maggid Mishneh's explanation of the Rambam's approach:** Water is not important and it is batel to the cup — therefore one counts both together. Wine is not important (like oil) but also not batel — therefore one counts only the cup itself (he said "with the cup"). Oil is so important that the cup becomes batel to the oil — therefore one counts only the oil.

2. **Rashi explained differently** — the Maggid Mishneh brings that Rashi's explanation is different from the Rambam.

3. **Difficult question on the Rambam:** Why with wine does he say "with it and not with what is in it"? When one gives a cup of wine, one usually means the wine! The answer that is suggested: because wine is important enough that it doesn't become batel, it's an "extra thing"

— he said "with the cup" not "with wine," so he means the cup.

4. Question about the cup's value: Why doesn't the Rambam say with water "if it has a perutah's worth" — perhaps the cup also isn't worth a perutah? The answer: a regular cup (not plastic) is always worth a shaveh perutah. But this doesn't remain entirely clear (a clay cup?).

5. Interesting: With oil the Rambam says explicitly "and we don't pay attention to the cup" — we ignore the cup completely. But with wine he doesn't say the reverse — "and we don't pay attention to the wine" — which points to a subtle distinction.

This concludes the fifth chapter of Hilchos Ishus.

| Full Transcript

Kiddushin with Something Forbidden in Benefit – Laws of Monetary Kiddushin

Introduction: Structure of the Study

R' Yitzchak: Good, we're learning the holy Torah. In the Torah there are many sections, all of them are equally good, even a small section of it is good, so let's learn a small section.

R' Yoel Asher: Very good. More details, we're learning in Sefer Nashim, in the Rambam's Sefer Mishneh Torah. And in Sefer Nashim we're learning Ishut. Nashim means all the mitzvot between a man and his wife. And we're holding in the middle of the laws of kiddushin. We've already learned the fundamentals of kiddushin, various who can be mekadesh, with what one can be mekadesh. And here one continues to expand on things with which one can or cannot be mekadesh, things that are or aren't considered kesef, and so forth.

R' Yitzchak: Right, basically the entire chapter is, you can call it laws of shaveh prutah or laws of the money of kiddushei kesef. It's all details in kiddushei kesef.

R' Yoel Asher: Right? Yes, it must be money that one can use, it must be that the one who gives it must be the owner of it, and the like.

R' Yitzchak: Various other concerns and inquiries come up regarding what is considered money.

R' Yoel Asher: And the like. When one speaks about money,

R' Yitzchak: Certainly, we must begin with gratitude to our

R' Yoel Asher: esteemed sponsor who makes it possible for this shiur to take place and for Torah to be disseminated. May the merit help him, may he have much money.

R' Yitzchak: And may the Almighty help that there shouldn't be any aspect of mekadesh with a loan, if one promises money and it's only borrowed, also not. May it come to fruition. It's very important, because a campaign with a loan is not a campaign, you know. Anyway, so, one who is mekadesh with something that is forbidden in benefit.

Law: One Who is Mekadesh with Something Forbidden in Benefit – She is Not Mekudeshet

R' Yoel Asher: We have learned that one can be mekadesh with kesef or with shaveh kesef. But something that is forbidden in benefit you can't do anything with. You can't even go sell it to a non-Jew, because you're not allowed to, because it's been forbidden to benefit. It's very different from other places, because it's worth money. But since a Jew is not allowed to make money from it, it's as if you can't do it, as if you can't.

R' Yitzchak: That means it's not worth any money to you.

R' Yoel Asher: Because we know that you're an honest Jew who wants to check what the Rambam rules.

R' Yitzchak: It means that you're obligated by the Torah. No, no, no, first of all, it's not true. One who is mekadesh with something that is

forbidden in benefit, obviously, you're an honest Jew, and she's not going to accept it.

R' Yoel Asher: You're actually going to follow, the one who says. But even in a case where she won't follow, it's not a difference.

R' Yitzchak: That's not legitimate. The rabbis say, soon we'll talk about sale. No, avar umakhar is a different question. But I'm saying that if you give it to a non-Jew who eats things forbidden in benefit, the rabbis say it's still worth nothing. It's simply so, right?

Which Forbidden Foods are Forbidden in Benefit

R' Yoel Asher: For example, what is forbidden in benefit? It doesn't matter, it's about the time, it's chametz and now it's Pesach, or because it's basar b'chalav. And the like, there are many things forbidden in benefit.

R' Yitzchak: Of forbidden foods there are only two of them that are forbidden in benefit, which are all of them. Only chametz on Pesach, and basar b'chalav have a prohibition of benefit? All others, pig...

R' Yoel Asher: What's going to be more difficult?

R' Yitzchak: We'll soon learn, there are other ways. I'm saying, of forbidden foods, that's basically what it is.

R' Yoel Asher: Neveilah and treifah are only forbidden in eating.

R' Yitzchak: It says explicitly "to the dog" that one may have benefit. Yes, yes.

R' Yoel Asher: Very good. Ever min hachai?

R' Yitzchak: Let's see. Ever min hachai may... Okay. Even...

Innovation: Even a Rabbinic Prohibition of Benefit – She is Not Mekudeshet

R' Yoel Asher: Okay, the Rambam says an innovation. This is simple, because this speaks of things that are forbidden by Torah law, and are forbidden in benefit. But **even if it was forbidden in benefit rabbinically**, even things that are not forbidden in benefit from the Torah, but rabbinically, from the words of the

Sages, such as chametz, in Sefer Zemanim and in the laws of Pesach we learned, that they add, the Sages add, instead of from midday on erev Pesach, the fourteenth day, from midday, they don't start from half a day earlier, from the sixth hour of the fourteenth day, which is only a rabbinic prohibition. Also she is not mekudeshet, because it's forbidden in benefit.

R' Yitzchak: Very good.

Discussion: Why a Rabbinic Prohibition Invalidates Kiddushin

R' Yitzchak: So it says in a Gemara, that the rabbis understood, apparently it has to do with this. I don't know, one can learn it two ways. Either one can say because the prohibition of benefit is more a practical thing. She's an honest Jewish woman, she won't now eat chametz even on erev Pesach, even though by Torah law one may, so it's not worth a prutah. Or one can say that the Sages, their enactment is so strong that it also makes the prohibition of benefit. Both ways one can say.

R' Yoel Asher: No, the Gemara stands on the prohibition of benefit.

R' Yitzchak: One doesn't say for this.

R' Yoel Asher: That's what it means. Hefker beit din hefker means that they made it into something forbidden in benefit.

R' Yitzchak: Does it say in the Gemara on this?

R' Yoel Asher: Yes. Even one who is mekadesh with kilayim wheat, rabbinic terumah, the kiddushin is not mekudash. On this the Gemara says there, the Rishonim, because hefker beit din hefker.

R' Yitzchak: It doesn't say in the Gemara.

R' Yoel Asher: Hefker beit din prevents the kiddushin, and in agreement. One who is mekadesh at the sixth hour is normal, even if I remember in the Nasi, in concern in kiddushin.

R' Yitzchak: Yes. Why?

R' Yoel Asher: Rashi says, he says...

R' Yitzchak: It doesn't say in the Gemara what you're saying, not in my Gemara, I need to check perhaps someone said this. You see? No, it says

there that it's not kiddushin. It doesn't say in the Gemara why.

R' Yoel Asher: The Gemara says later simply.

R' Yitzchak: The Gemara says that this is learned from the... No, not. One begins the answer how does it mean later? The Mishnah says that forbidden in benefit means even this. It's not clear why. I don't see that it should be clear why. And I don't know if we need this. Forbidden in benefit is practically forbidden in benefit, as you say. It's simply so. You understand?

R' Yoel Asher: Okay, fine.

Law: Avar Umakhar – Mekadesh with Their Money, Except for Idolatry

R' Yoel Asher: The Rambam says, what happens in such a case? Avar, a thing that is forbidden in benefit, that means one is also not allowed to sell it.

R' Yitzchak: No, not all things. Most things, that means one is not allowed to sell, but most things, most things forbidden in benefit, the money from them is not forbidden.

R' Yoel Asher: Ah, no, the question is whether it takes hold of the money. That's the next question, but one is not allowed to go sell it. What happens if the man, the mekadesh, had the thing, which if he had been mekadesh with it there would have been no kiddushin, but he did something clever, he went and already sold it to non-Jews, and he was mekadesh with the money he made from it. You might think, since he did a sin here, the money comes from a sin of transgressing the prohibition of benefit, but the money doesn't take hold, the new money is no longer money that's worth nothing, one may have benefit from the new money.

R' Yitzchak: The money itself remains permitted in benefit.

R' Yoel Asher: So automatically behold she is mekudeshet. The Rambam says, but this thing only helps for other things forbidden in benefit, like he mentioned chametz on Pesach, basar, b'chalav, and the like. But idolatry has a new law. **If he was mekadesh with its money, even if**

one wasn't mekadesh with idolatry itself, but with money from selling idolatry, she is not mekudeshet, because there's an extra law. Idolatry, when idolatry takes hold, the money also becomes forbidden. If one sold idolatry, we don't say that the money is already the next generation is already permitted, it's forbidden. Therefore, with idolatry even that wouldn't be kiddushin.

R' Yitzchak: Yes? Explain a bit?

Dung of Calves of Idolatry – She is Not Mekudeshet

R' Yoel Asher: One minute. **One who is mekadesh with dung of calves of idolatry.** What happens here?

R' Yitzchak: A very interesting case.

R' Yoel Asher: There's an industry called selling dung, fertilizing the fields, doing agriculture with waste from animals, where the animal was idolatry. One who is mekadesh with dung of calves of idolatry, the simple meaning is that he now has benefit from idolatry. So she is not mekudeshet, because everything from idolatry is forbidden in benefit. And one takes the furthest thing from idolatry, it has no respect at all, idolatry has some certain woman, it has nothing to do, this is already dung of calves of idolatry, very far. But because everything from idolatry is forbidden in benefit, **"and nothing of the cherem shall cling to your hand"**. We've already said that the money takes hold, and also anything from idolatry is forbidden in benefit, "and nothing of the cherem shall cling to your hand."

Distinction: Dung of an Ox to be Stoned – Behold She is Mekudeshet

R' Yoel Asher: That's idolatry, but there are other things where the thing itself is forbidden. **An ox to be stoned is forbidden in benefit, but one who is mekadesh with dung of an ox to be stoned behold she is mekudeshet.**

R' Yitzchak: Because it didn't go... Why?

R' Yoel Asher: The Rambam said, even though an ox to be stoned is forbidden in benefit, but **its dung is not forbidden in benefit, because**

it's not something significant relative to the ox. The ox itself, anything that is significant relative to the ox, means having benefit from the ox, but not dung.

R' Yitzchak: Which is not so with idolatry, there's a special verse "anything." "Anything" includes even dung, means nothing.

R' Yoel Asher: Nothing, not even its dung. And regarding this, if one eats a festive meal without a guest, it's not dung of an ox to be stoned. I remember that the Rambam there speaks of dung of a calf of idolatry.

R' Yitzchak: He doesn't say dung of idolatry, he says dung of your festivals.

R' Yoel Asher: Dung of your festivals, yes. The Rambam says there that it's as if he ate the innards of sacrifices of the dead.

R' Yitzchak: No, no, it doesn't say dung of idolatry. Okay. So there are other teachings that prohibition of benefit doesn't belong to the person and the like.

R' Yoel Asher: Other teachings.

R' Yitzchak: What's the problem with a rabbinic prohibition? Ah, Rashi, as he says, Rashi in Pesachim argues what you say, that since he was mekadesh the rabbis, if the rabbis said that prohibition of benefit is this. But there are generally things that argue from the law, and it's generally not... I don't see that one must reject the reasoning. What if a Jew is mekadesh with other things that are forbidden in benefit apparently.

R' Yoel Asher: Or not forbidden in benefit, sorry.

R' Yitzchak: Prohibition of eating, or forbidden things, things that are muktzeh, things that are not forbidden in benefit, or does the kiddushin not interfere?

Law: One Who is Mekadesh with Fruits of Shevi'it, Ashes of Red Heifer, Waters of Niddah – Behold She is Mekudeshet

R' Yoel Asher: One who is mekadesh with fruits of shevi'it, which apparently cannot have an owner, it must be ownerless in the field. **Or**

with ashes of the red heifer, which apparently belongs to hekdesch. **Or with water that was filled to make mei niddah,** the water that was used in the process of making ashes of the red heifer.

R' Yitzchak: It was filled, it will be the mei parah.

R' Yoel Asher: It's not yet, okay.

R' Yitzchak: It was designated, designation for hekdesch. And with this one should sprinkle from the ashes of the heifer.

R' Yoel Asher: It's a kind of designation like this. So **behold she is mekudeshet.** Why? Because there is indeed a prohibition to have benefit from these things, but the law is that you acquire it, you took the fruits of shevi'it that you need.

R' Yitzchak: Fruits of shevi'it belong to the person, not entirely.

R' Yoel Asher: But you have a

R' Yitzchak: exemption from conducting ownership, not doing business, but perhaps kiddushin is not a problem. The mei niddah I don't know what the story is with it truly.

R' Yoel Asher: It's not in the category of prohibition of benefit, but there's perhaps a mitzvah that one shouldn't have benefit from them.

R' Yitzchak: Not clear. Okay.

R' Yoel Asher: One can understand, it's something that has a permission, it's something that's temporary, it's not like a despicable thing.

R' Yitzchak: Ashes of the heifer?

R' Yoel Asher: Ashes of the heifer may be used in the Beit Hamikdash, and it becomes very significant.

R' Yitzchak: Not clear. In the Gemara there's a reason for this. The Ra'avad here says something similar, right? The Ra'avad says, with water that was filled, the Ra'avad says, specifically with obligation.

Kiddushin with Hekdesch, Ma'aser Sheni, Priestly Gifts, and Theft

Law 2 (Continued) — Kiddushin with Hekdesh: Inadvertently vs. Intentionally

R' Yoel Asher: It's a kind of designation like this. Yes. Behold she is mekudeshet. Why? Because there is indeed a prohibition to have benefit from these things. But the law is that you acquire it, you took the dung of the ox,

R' Yitzchak: You needed... Dung of the ox belongs to the person, not entirely.

R' Yoel Asher: There's only a

R' Yitzchak: greatness of conducting ownership, not doing business. But perhaps kiddushin is not a problem. You mean, you don't know what the story does with it.

R' Yoel Asher: It's not in the category of prohibitions of benefit, but there's something of a mitzvah that one shouldn't have benefit from them.

R' Yitzchak: Not clear. Okay.

R' Yoel Asher: One can understand. It's something that has a permission, it's something that's temporary. It's not like a despicable thing.

R' Yitzchak: Ashes of the heifer?

R' Yoel Asher: Ashes of the heifer may be used in the Beit Hamikdash, so it becomes very significant. Not just different from...

R' Yitzchak: Not clear. In the Gemara there are reasons for this. The Ra'avad here says something similar, right? The Ra'avad says, with water that was filled, the Ra'avad says specifically with payment for bringing and not from and not from and not, or with payment for filling the water. Not the water itself, because the water itself is in the service of the holy. But the payment that he carries the water, one pays him as if for this. But it could be that the Ra'avad thought that if one may take payment, in this lies already a certain...

R' Yoel Asher: A way of having benefit from it. There's something of a permission of benefit from an opening of benefit.

R' Yitzchak: Not entirely clear.

Law of Me'ilah Inadvertently and Intentionally

R' Yoel Asher: Okay. So if one did it inadvertently behold she is mekudeshet. And what else must one do? Now the law becomes thus, she is mekudeshet. And what happens now with the sin that was committed? He must pay principal and a fifth to hekdesch, just like the law when someone commits me'ilah with hekdesch, he must bring principal and a fifth to hekdesch, and bring, he must bring an asham offering, like anyone who commits me'ilah inadvertently. But the kiddushin is kiddushin. Why? Because you acquired it, through collection, it can become the person's.

R' Yitzchak: One only needs to pay for the law, only do teshuvah. Me'ilah works. One only needs to pay. The simple meaning is it's already his, but he committed me'ilah, he must pay.

R' Yoel Asher: But if he was mekadesh with it intentionally, one is not allowed to do this. A person cannot intentionally take out from the domain of hekdesch.

R' Yitzchak: Why not? Because then it doesn't go out to chulin. Then it's not called me'ilah. Me'ilah is when it's by mistake, inadvertently, then he brings an offering. Intentionally you're not a mo'el, you transgress, but it doesn't become yours, you don't just pay, it's a separate thing. Therefore she is not mekudeshet.

Law 2 (Continued) — Kiddushin with Ma'aser Sheni

R' Yoel Asher: If he was mekadesh with ma'aser sheni, so, whether inadvertently or intentionally she is not mekudeshet.

R' Yitzchak: Meaning even though ma'aser sheni is

R' Yoel Asher: something that a person may eat himself, he goes up to Jerusalem, there's literally benefit in it, but here there's a new teaching, **because he may not do with it his other needs until it is redeemed.** There's a prohibition that one shouldn't use the ma'aser sheni itself to have benefit from it, I don't know, to make kiddushin with it, but one must first redeem it. And the person went and was mekadesh still with ma'aser sheni before the

redemption. It says in the verse "it is for Hashem," that it's only for Hashem. Therefore the prohibition doesn't allow, like before, like things forbidden in benefit, as we said, everyone doesn't allow.

Discussion: Is Ma'aser Sheni "Not Yours" or Just "There's a Prohibition"

R' Yitzchak: It's the Almighty's,

R' Yoel Asher: It's not yours. No, it doesn't come out that it's not yours. There's a prohibition. It's his, he's going to go up to Jerusalem. There's something of a prohibition.

R' Yitzchak: He's going to redeem it. For redemption it's called redeeming,

R' Yoel Asher: He may indeed.

R' Yitzchak: For redemption it's not called redeeming. Even if he may use it not for his needs, for eating he may indeed, but just other things you may only when you redeem it. If not, it's the Almighty's, the Almighty's money, you have no right to be mekadesh with it. Similar to this, yes, you'll see the next thing.

Law 2 (Continued) — A Kohen Who Was Mekadesh with His Portion of Kodshei Kodashim or Kodashim Kalim

R' Yoel Asher: A kohen who was mekadesh with his portion of kodshei kodashim or kodashim kalim.

R' Yitzchak: He's a kohen, he may,

R' Yoel Asher: He receives his portion, one takes various portions from the offerings.

R' Yitzchak: His portion means even his portion,

R' Yoel Asher: One received the meat that he may eat. She is not mekudeshet,

R' Yitzchak: Even though it's entirely his,

Translation

R' Yoel Asher: "Because they were only permitted for eating." The kohen has the right to eat from it, but he doesn't have ownership.

R' Yitzchak: That he can give away.

Halacha 3 — Kohen/Levi/Yisrael with Terumah, Maaser Rishon, Maaser Ani

R' Yoel Asher: But a kohen who betrothed with terumah gedolah and terumas maaser and bikkurim - a kohen who betrothed with terumah gedolah that the kohen receives, or terumas maaser and bikkurim that the kohen receives, and similarly a Levi who betrothed with maaser rishon, or a Levi receives maaser rishon, and a Yisrael who betrothed with maaser ani that he received, she is betrothed, because there isn't the prohibition that it's only for eating. It's permitted for eating, permitted for benefit. Yes, it's his.

R' Yitzchak: It transfers to him. For a pig it's not permitted, but for him it's permitted, so he may.

Halacha 3 (continued) — Matanos She'lo Hurmu K'mi She'hurmu

The Foundation of Matanos She'lo Hurmu

R' Yoel Asher: Now we're going to learn such an interesting halacha. What does matanos mean? The Rambam says like this: "**Matanos she'lo hurmu**" - when someone must give matanos kehunah, he knows that he must give the maaser, terumah, but he hasn't yet separated it, he hasn't yet done the action of lifting it up and sanctifying it for terumah, "**harei hen k'mi she'hurmu**" - there are certain halachos where we look at it as if he already did it.

Regarding what? He says like this: "**Therefore, a Yisrael who inherited tevel from his maternal grandfather who was a kohen**" - a Yisrael who inherited from a kohen. How did a Yisrael inherit from a kohen? His grandfather, his mother's father, was a kohen, so technically he's not a kohen, but he is an heir of a kohen.

R' Yitzchak: But he didn't inherit...

R' Yoel Asher: He inherited tevel. So now he has terumah that must be separated. And in the tevel there's ninety percent this, and ten percent, whatever, it comes out several and eighty percent will be chullin, and there's perhaps fifteen percent or something that is - no, more. In short, there are terumos and maasros that still need to be separated. So he went...

R' Yitzchak: Who separates the terumos and maasros.

R' Yoel Asher: And what about the terumos and maasros now? The terumos and maasros, he must take his portion. Oy, he can't eat it. That is, as an owner, as property, it's his, because he inherited it. But he may not eat it, he must give it to a kohen, but he can sell it to a kohen.

Discussion: Why Can the Yisrael Sell the Terumah?

R' Yitzchak: So let's understand very simply. When he's a Yisrael, the terumos and maasros are never his.

R' Yoel Asher: He must give it to a kohen. A Yisrael cannot sell his terumos and maasros to a kohen.

R' Yitzchak: What does sell mean? He must give it. Yes, who says he can't sell? When he would have inherited terumos and maasros from his grandfather, it's his. He may not eat it, that's his problem, but it's his. His grandfather was a kohen, he inherited it. The Jew didn't inherit terumos and maasros, he inherited tevel, he himself took terumos and maasros. If they say "matanos she'lo hurmu k'mi she'hurmu," it's as if he already inherited the terumos and maasros from his grandfather, so it's his.

R' Yoel Asher: When we don't look at it as a Yisrael now taking terumah, when a Yisrael takes terumah it's not his. We look at it as if the grandfather already took it, as if it was "matanos she'lo hurmu," and regarding this halacha he entered "she'hurmu." We look at it as if the grandfather already separated this, so the kohen inherited it, I mean the Yisrael grandson inherited it, so he can sell it to a kohen, he has a monetary right in this, so he can betroth with it.

The Rambam's Language

R' Yoel Asher: This is in... in such a case, **"and he separated from them terumah and maasros, they are like terumos and maasros that fell to him in inheritance from his maternal grandfather,"** we look at it as if he inherited terumos and maasros, **"and if he betrothed a woman with them, she is**

betrothed," why? **"For even though they are not fit for him to eat, he has the right to sell them to one for whom they are fit,"** although he can't eat it, but he can sell it, so it has value to him.

Distinction: Yisrael She'hifrish Terumah Migarno

R' Yoel Asher: But not so a Yisrael who betrothed with terumah that he separated from his threshing floor - he now took terumah...

R' Yitzchak: A Yisrael, not a grandson of a kohen.

R' Yoel Asher: He does have benefit from it, he can decide which kohen to give it to, but he can't sell it. She is not betrothed, **"for he has no right to sell it,"** he doesn't have...

R' Yitzchak: The right to sell it.

Tovas Hana'ah Einah Mamon

R' Yoel Asher: What does he have? Tovas hana'ah.

R' Yitzchak: Tovas hana'ah means he has the right to give it to whichever kohen he wants, so it's worth something...

R' Yoel Asher: But not enough. Tovas hana'ah is not mamon.

R' Yitzchak: It's a concept in mamon. The kohen will indeed become his friend, but it's not worth any money.

R' Yoel Asher: For kiddushin it doesn't count as having given money.

General Principle: Kiddushin Must Be with "Yours"

R' Yitzchak: Yes, they learned that one must give money, money must be yours. That's simple. It could be that the previous halachos that we saw, it could be that the previous halachos are also the reason why one can't be with issur hana'ah, because it doesn't count as yours, or for example kodesh...

R' Yoel Asher: Or hekdesch, it's to Hashem.

R' Yitzchak: Yes, but even not hekdesch, issur hana'ah, simply, part of issur hana'ah is that it removes the ownership as if.

Halacha 4 — Kiddushin with Gezel, Geneivah, Chamas

The Foundation: Ye'ush Koneh

R' Yoel Asher: Hamekadesh es ha'ishah - for this reason, hamekadesh es ha'ishah with gezel or geneivah or chamas. Gezeilah means one takes from another by force, geneivah means one takes without the other noticing, and chamas is when one forces another to sell.

R' Yitzchak: Yes, it's very interesting, because usually chamas must work. That is, one must acquire. Chamas is basically taliuhu uzabin...

R' Yoel Asher: Which we learned earlier.

R' Yitzchak: It's not clear when it's chamas. He brings that Rashi Hakadoshim says that there's a chamas that doesn't acquire.

R' Yoel Asher: Okay, a case when we need to learn hilchos gezeilah we'll simply know better. And a case when chamas is not...

R' Yitzchak: It's an interesting thing to me, because it's as if he says if you throw down two years' worth of money and you take his thing, you paid, you're a chamsan. Like what the city does, you know? They take your...

R' Yoel Asher: Look, let's see. The last halacha will clarify for us.

R' Yitzchak: Okay, let's see.

The Rambam's Language: Ye'ush and "Noda"

R' Yoel Asher: "If the owners despaired"... also by chametz or despaired we are different, but if the owners despaired we've accepted the reality as it is, it's no longer my money. They've given up. It's a sort of hefker or it's a sort of ye'ush. "And it became known that he acquired that thing through ye'ush." Noda is an interesting word. There's what it means to say that one must know...

Discussion: What Does "Noda" Mean?

R' Yitzchak: It must be clear. He brings from Noda BiYehuda - I'm learning R' Avraham Blumen today - that "noda" means that at the time of making the kiddushin, the witnesses must know that there was already ye'ush.

R' Yoel Asher: Ye'ush simply or the mekadesh and mekudeshes?

R' Yitzchak: The Noda BiYehuda says that the witnesses...

R' Yoel Asher: Because the mekadesh and mekudeshes must know about the deed beforehand anyway. He's speaking in a case where the witnesses know it's gezel, so they think it's not valid kiddushin.

R' Yitzchak: They must know that it's kosher. The witnesses must see kosher kiddushin. If you see - see doesn't mean the witnesses, it means know. One knows, as we learned by edus birur, right? One doesn't need to see literally. The testimony is not on the eyes, right? Testimony is on what you understand that kiddushin is happening. If you see - it's a chiddush of Noda BiYehuda, I don't know if that's the simple meaning.

R' Yoel Asher: I would say more simply, "v'noda" means that the gazlan knows that he acquired it through ye'ush. Because if at the time he gave it it wasn't yet certain, yes, let's say there was ye'ush later than the kiddushin, perhaps it's not kiddushin. "V'noda she'kanah oso davar b'ye'ush" means one knows there was ye'ush.

The Din: Mekudeshes or Not

R' Yoel Asher: Okay. "She is betrothed." Why? Because although it was a great sin, but it's his. It must be his. After ye'ush the gazlan or the chamsan acquires. "And if not," if there wasn't yet ye'ush, the owner hasn't yet given up his ownership of it, and he hasn't yet acquired it, she is not betrothed because he gave her nothing.

What Does Ye'ush Mean?

R' Yitzchak: Yes, ye'ush doesn't technically mean he gave up. It means he'll call him to beis din, but a gazlan becomes obligated in money. That's the rule apparently of ye'ush by gezeilah. It doesn't mean if he calls him to Torah he'll get back his money, but he won't necessarily get back his object.

R' Yoel Asher: He's already stopped chasing him, that's what it means. It says that when

someone stole from someone in beis din, and someone is chasing him...

Kiddushin B'gezeilah – Ye'ush and Shinui Reshus, Mitzvah Haba'ah Ba'aveirah, and Hanichnas L'veis Chaveiro

Continuation: Ye'ush and Shinui Reshus in Kiddushin

R' Yoel Asher: And if not, if there wasn't yet ye'ush, the owner hasn't yet given up his ownership of it, and he hasn't yet acquired it, she is not betrothed, because he gave her nothing.

R' Yitzchak: Yes, ye'ush doesn't technically mean he gave up, it means he'll call him to beis din, but a gazlan becomes obligated in money. That's the rule apparently of ye'ush in gezeilah. It doesn't mean if he calls him to beis din he'll get back his money, but he won't necessarily get back his object.

R' Yoel Asher: He's already stopped chasing him, that's what it means. It says when someone stole from someone in beis din, and someone is still chasing him, nothing has happened yet, you haven't yet acquired. If you give it away now from someone, he'll grab it from the second person. Ye'ush probably means in the practical sense that the other is already comfortable with it. If he can find a way to call to beis din, call the police.

R' Yitzchak: No, ye'ush in gezeilah never means he won't call to beis din, it has nothing to do with that. It's a rule called ye'ush v'shinui reshus, and shinui reshus, he says, happens when he gives it to the woman.

R' Yoel Asher: Ah, that's interesting. The shinui reshus and the kiddushin happen at the same time.

R' Yitzchak: B'vas achas. And as it were, oy, it comes out that when he gave it he didn't yet have kinyan gezeilah, and only she receives it. The gezeilah is given for kiddushin essentially.

R' Yoel Asher: Right.

Discussion: Mitzvah Haba'ah Ba'aveirah by Kiddushin

R' Yoel Asher: So it's certain that it's mitzvah haba'ah ba'aveirah, yes? So I thought for example, perhaps birchas hakiddushin he won't be able to make, because on top of that it will be called mitzvah haba'ah ba'aveirah. That is, kiddushin is a kinyan, so for example when this is used for bentching an esrog, perhaps it would be even if it's b'vas achas, you're doing the sin right now, that wouldn't work. So it's interesting, because by kiddushin there's also a part that's a mitzvah. So it could be that in such a case there will have been a kinyan, but not a mitzvah, because by a mitzvah there's something of mitzvah haba'ah ba'aveirah that's me'akev. I don't know if there's such a thing.

R' Yitzchak: Because perhaps one won't be able to make a berachah.

R' Yoel Asher: Is what I'm saying now crazy?

R' Yitzchak: No.

R' Yoel Asher: The halacha... No, but I can understand why mitzvah haba'ah ba'aveirah shouldn't be me'akev kiddushin.

R' Yitzchak: That can be understood very well. What? It's not a mitzvah. I mean it's a mitzvah, but...

R' Yoel Asher: There's a type of mitzvah, but there's still a birchas hamitzvah on it. Yes? It's interesting, there's no other birchas hamitzvah, I can't say.

R' Yitzchak: Mitzvah haba'ah ba'aveirah isn't always a rule. I don't know why, but I don't understand that there's such a rule.

R' Yoel Asher: Mitzvah haba'ah ba'aveirah I understand when it's a mitzvah like... a mitzvah of eating, I don't know, of eating matzah, and this is a sin, so we don't do favors, Hashem, "hakrivehu na l'fechasecha hayirtzecha," but here is a different type of thing, here is a kinyan.

R' Yitzchak: I want to say that I don't know any rule of mitzvah haba'ah ba'aveirah, because let's remember from ten places. Sometimes one says this reason, sometimes one says another reason, sometimes there are distinctions. I don't have a clear understanding. It could be that you're

saying mitzvah haba'ah ba'aveirah is only a subject of like binyan l'makom.

R' Yoel Asher: Hashem doesn't need your favor, but when the question is did a chalus happen, it happened. That's why I say, the person hasn't yet fulfilled the mitzvah of kiddushin, he had his wedding, but the mitzvah in kiddushin k'sikkuno you haven't yet merited to fulfill.

R' Yitzchak: That already doesn't make sense. The step that would go further already doesn't make sense.

R' Yoel Asher: It's really not. How can he make a birchas hamitzvah when the sin happens at the time of the mitzvah? The kinyan happened, but he didn't have a mitzvah.

R' Yitzchak: No, because if you say that mitzvah haba'ah ba'aveirah, it speaks of such types of mitzvos that as it were one gives something to Hashem, Hashem says forgive the favors. Kiddushin, even if it's a mitzvah, like what's the mitzvah that says, how is the kinyan? Okay, there's also an obligation.

R' Yoel Asher: It's a mixture. A kinyan happens here, but you also do a mitzvah that you follow the word of Hashem, that you do it in the desired manner. And you didn't do it in the desired manner. That is, the Chachamim decreed that you should do it in a manner that's kosher. You're now doing a sin while you're doing it? You can make the berachah.

R' Yitzchak: No, I don't agree. If you agree with this distinction that mitzvah haba'ah ba'aveirah...

R' Yoel Asher: I already know that this is true. And the subject is removed from the entire din of mitzvah haba'ah ba'aveirah, also regarding the...

R' Yitzchak: There's something one does for Hashem. There's a mitzvah that one should have a wedding with a kinyan beforehand. Like the Rambam says, by the way, most other Rishonim don't agree with this either. This is a chiddush of the Rambam, we're learning Rambam now, but the Rosh and others aren't divided about this at all. They say there's a mitzvah to have a wedding, but we don't know that there's a mitzvah of

kiddushin. The Rambam was mechadesh something.

R' Yoel Asher: Can, we're saying that the Rambam made a birchas hamitzvos, there's a mitzvah.

R' Yitzchak: What their understanding is, as it were. He asks according to kabbalah, according to truth, I don't know, but it's their understanding, it's as if one gives something to Hashem, like a lulav, an esrog, a sefer.

R' Yoel Asher: This is not that type of mitzvah.

R' Yitzchak: Certainly. Certainly a Chassidic Jew must say that it is, but...

R' Yoel Asher: Leave that, leave that, leave that. That's a way of dealing with things. It can be a way of dealing with everyday things. How can one eat an animal through shechitah? How can one be with a woman through kiddushin? But that doing it k'sikkuno is still a mitzvah. And if you don't do it al pi tikkuno, you didn't do the mitzvah. Okay, it's true, not really relevant. The question is whether to tell the Jew, he should catch another zivug sheni, to do it k'sikkuno, in order to be able to...

R' Yitzchak: No, he simply shouldn't do it, it's not a nice thing to steal, and certainly not to be mekadesh with that thing. Our question is only practically, is she mekudeshes or not? I mean, that's why we're talking about this, not because it's a question of what to do.

R' Yoel Asher: Not because he's asking for a tikkun teshuvah, yes.

Halacha: Hanichnas L'veis Chaveiro V'lakach Kli O Ochel

R' Yoel Asher: Now like this, okay, further. "**Hanichnas l'veis chaveiro**" - the next one is an even bigger chutzpahnik. He comes into someone's house, "**v'lakach kli o ochel**" - he doesn't want to call it stolen because it's a friend, yes. Earlier it was a stranger, from a stranger one commits gezel, from a friend one takes.

R' Yitzchak: Yes.

Kiddushin with Shaveh Pruta, Partnership, and Theft — Discussion in

Hilchot Ishut Chapter 5

R' Yoel Asher: That's the question. He becomes very comfortable in that person's house, he searches through it as if it were his own house, and he takes a vessel or food, "**v'chayotza bahen**", something that has value, "**v'kidesh bo isha**". Without asking permission from the owner, without making a kinyan. A kinyan wouldn't help at all. So now, on the surface we already understand the question. But now the question is whether... that is, it's like theft, because perhaps the homeowner was agreeable, k'domeh.

The Homeowner's Response

The halacha says as follows: Even if it happened, the incident had a continuation, "**u'va ba'al habayit**", and the homeowner came, and he didn't yell at him, rather he said to him... he found some way out, he left it open. He didn't say, "Hey, you chutzpahnik, what are you stealing?" He also didn't say to him, "Okay, I'm giving it to you as a gift." In those two cases it would be certain. He left it ambiguous, so to speak. He said to him, "Why didn't you take my golden cup?" It's also such a cynical way of saying it. It's a weird relationship that these two people have. You consider yourself my best friend, yes? But we both know that you're a thief. Why don't you take my cup of Elijah? It's worth a bit more. He fixed him up like that. So you don't know now. A person could say that perhaps he meant by this to say I agree.

R' Yitzchak: Agreement is a funny thing, because he should have said retroactively that he's not makpid. No, there is such a thing called makpid. It's not that he's giving it as a gift, but he's giving it as a gift afterward. Just as you would say, honey he's not makpid, here too, she's mekudeshes out of doubt.

R' Yoel Asher: There's not makpid, but there's also he's happy, I'm happy with your shidduch, I want to be makpid now.

R' Yitzchak: He's happy, you should make a shidduch, with your own money, not with my money. The "not makpid," there is such a situation, there are indeed people who are

seemingly such good friends, that they are in practice, they can withstand, whatever you take from my house will become yours. That was already retroactively such a knowledge, such a kind of da'at, I know what. I agree.

R' Yoel Asher: I mean that he wants to come make a wedding with a woman, and he wants to take something from my kitchen there on the spot. A kitchen.

R' Yitzchak: But not from the dining room.

R' Yoel Asher: Ah, okay. I want to understand a vessel or food. Okay, continue.

R' Yitzchak: I'll already see, look at the next thing.

The Reason for the Homeowner's Words

R' Yoel Asher: Why? Because we say "**shelo amar lo davar zeh ela kedei shelo lehitbayesh imo**", so as not to be embarrassed with him.

R' Yitzchak: That is, he's standing there with his girlfriend, whatever with his kallah.

R' Yoel Asher: Ah, no, look, we need to understand the words. He doesn't say "shelo levayesh imo," "shelo lehitbayesh imo." The whole situation was very weird.

R' Yitzchak: Very uncomfortable. He caught a situation. And the wife is also standing there, the doubtful wife. He doesn't yet know if she's his wife.

R' Yoel Asher: For him it's also embarrassing, he's a friend that I let in, who hangs around in my house. He's embarrassed with him, yes? Not "shelo levayesh imo." When people say "shelo levayesh" from the situation, it's a vulnerable weird situation, he said to him such a kind of cynical thing, he didn't say to him you're caught, because then he would have given it to him. He didn't say to him it's okay, then it would also have been good. But he also wasn't protesting, because then we would have understood the matter of mekudeshes. Here it's a bit left open, we say the rule that we know people, people don't want to be stolen from. And even when they say it in such an interesting way, they only say it because they don't want to make anyone

uncomfortable. There is such a thing, because seemingly with this "nochach tochichun." Not about what I rebuke you. But a Jew would have needed, when a Jew asks the Rav, what should I do in such a case? One should tell him, you need to protest and say, Reb Yid, one doesn't steal, and one doesn't steal from you.

R' Yitzchak: I mean that this goes into many halachot, I don't have judgment. There is such a concept like "mishtateini bach."

R' Yoel Asher: Or...

R' Yitzchak: I need to understand the reality of people. That person is in the middle of taking his kallah, and he gave her something, and it's not appropriate to say, as if he also came out bad. You don't let that person have a wedding with your eye, he paid for this a thousand dollars last year. In short, it's a problem. You gave me some kind of thing, what should you erase this situation? You know, vessels are funny bread, they're friends, but they're not.

R' Yoel Asher: And seemingly, let's say when these two people end up in beit din two months later, whether when he wants to claim back the vessel from him, he'll also say, no, he told me, let's use "talui." He'll further answer, I only said it because I couldn't in that situation.

R' Yitzchak: Right, that's the halacha.

Ruling: Theft - She Is Not Mekudeshes

R' Yoel Asher: "V'ho'il v'kidesh b'mamon chaveiro shelo mida'at chaveiro harei zeh gezel v'einah mekudeshes." But "v'im kidshah b'davar she'ein ba'al habayit makpid alav", if he was mekadesh her with something that we can accept the rule that the homeowner is not makpid on it, "k'gon tamrah o egoz", some food, so there's a small thing. In the Torah there is such a takanah, that when a person comes into a field he is obligated there with a "ki tavo b'kerem rei'acha." Okay, the Gemara says that it's specifically for a worker, but it's a bit large, that food there is such a rule to let a person. On this the halacha answers, "**harei zo mekudeshes mi'safek**".

Discussion: The Meaning of "Mekudeshes Mi'safek"

And I know that some learn one interpretation, but I mean another interpretation. Many commentators on the Rambam say "mekudeshes mi'safek," that perhaps we don't know if it's worth a shaveh pruta. That is: On what thing is a person not makpid? The thing that is usually worth little. So the rule is, higher than a shaveh pruta a person is makpid. So we don't know if it's a shaveh pruta, if it's a shaveh pruta in another place, or if it's a shaveh pruta at all. Harei zo mekudeshes mi'safek.

But I mean that the matter of a doubtful shaveh pruta we already know. I mean that even when we're talking about when the date or nut is certainly a pruta. Rather the question here is whether the "the homeowner is not makpid on it" is not a hundred percent thing. In a thing that one can think that the homeowner is not makpid on it. Here the question becomes, it's not worth a thousand dollars, but it's not a question of shaveh pruta, because if yes the Rambam would have needed to mention his previous "yireh li."

R' Yitzchak: That a date or a nut...

Kiddushin with Shaveh Pruta, Partnership, and Theft — Discussion in Hilchot Ishut Chapter 5

Halacha 5 (Continued) — Discussion of Shaveh Pruta and the Homeowner's Concern

R' Yitzchak: We learned, a date and a nut are literally the examples from the Gemara of a thing that is shaveh pruta in their time. One must say that a date

R' Yoel Asher: Is a thing that becomes expensive.

R' Yitzchak: No, it can dry out.

R' Yoel Asher: As we thought then. No, but I think that the word here is more, and this is the question, whether is indeed this homeowner makpid? Or whether yes. We're talking, the whole time we're also talking when we don't know, when the homeowner is there and one can

ask him, it's also not a question earlier, one asks him, are you makpid? Are you giving it as a gift? We're talking when it's not. So here is the word, to what extent are people makpid? About this it's mekudeshes mi'safek, that one needs a get v'chadomeh, that one takes it stringently. And one agrees with you that it's with common sense.

R' Yitzchak: Why indeed do the other commentators say differently? It's that one had some reasoning why this interpretation isn't good.

R' Yoel Asher: Yes, let me try.

R' Yitzchak: Because perhaps there is indeed such a rule that if one is makpid it becomes one? I why do you understand what I'm saying? Okay, we need to go further.

R' Yoel Asher: But, I won't get stuck. I want to get stuck? No, no.

R' Yitzchak: Why not? How does a Jew want to get stuck if not

R' Yoel Asher: In a piece of Rambam?

R' Yitzchak: But I won't. Okay. I'll soon look at the other commentaries, and we'll see what it is.

Discussion: Shaveh Pruta Versus Concern

R' Yoel Asher: But I don't see why you should bring in again the topic of shaveh pruta, just because the Rambam wants to cover all sides?

R' Yitzchak: You explained very well, because the whole reason why that person is not makpid, is because it's barely a shaveh pruta.

R' Yoel Asher: No, I would have said not so. I would have said that shaveh pruta is one thing. A person is not makpid for... let's say more than a shaveh pruta. When a person comes into my house and he takes something that's worth two dollars, I'm still not makpid. That I say, it doesn't have to turn into the law of shaveh pruta. It turns here into the law of when is a person makpid for a shidduch? I'm ready to give a whole cookie cake for that person's shidduch.

R' Yitzchak: Okay, you know what? He brings that most commentators say like you, and the...

R' Yoel Asher: What's the problem? The Mishneh LaMelech, he openly says another

interpretation. I don't know why. Okay.

Innovation: Agreement Without Knowledge — Analogy to Ye'ush Without Knowledge

R' Yitzchak: He brings that others have interpreted differently. He doesn't see why. It can be very good. There is, he brings the Mahari"t, this is known. There is a Tosafot about this, about theft. There is such a concept of ye'ush shelo mida'at.

R' Yoel Asher: Tosafot that coins... a very nice expression. Just as there is ye'ush shelo mida'at, there is agreement shelo mida'at.

R' Yitzchak: There is essentially a question whether one may do this. That one goes into your friend's house, let's say you're a good friend. Okay, so we talked. By me and you, if someone is at our place in the living room, a guest, we're already talking that someone grabbed himself in, he has no right to be. He may take what he sees in the... We're talking in a normal way.

R' Yoel Asher: According to all the halachot. I should ask for milk whether I should go in the fridge take milk. Okay, now the revealing of intent was.

R' Yitzchak: I said.

R' Yoel Asher: It happens very many times such situations, two friends learn at someone's place.

Digression: Practical Examples of Benefiting from One's Friend

R' Yitzchak: See, it's simple. But here we're talking normally. No, among Chassidic Jews there's no question. The whole question is for Litvaks.

R' Yoel Asher: As it says, "shlisheh lecha shlisheh lecha shlisheh lecha."

R' Yitzchak: Sometimes, it goes in my bathroom, do you use the tissues? You go in, you're foolish.

R' Yoel Asher: There are indeed Litvaks, yes.

R' Yitzchak: Will we make a shower with my soap? No? You're being foolish.

R' Yoel Asher: By the Steipler in the house something was lying on the side, some tissues that someone once left in the toilet, didn't know where the tissues came from, where that person had acquired them. Yes? Could be that it was put in. For a year long he, ah, the tissues are in doubt. But among most people there is I say that practically I mean that among normal

R' Yitzchak: Chassidic Vyelopoler Jews there's no question. Obviously, don't take home that person's dining-room table, but if there's food or just a thing that's normal to use there's no question. But let's say one doesn't need a question, in Chassidic there will be a question, because there's a question. Tosafot Ta'anit, this is a ye'ush shelo mida'at, and we rule that ye'ush shelo mida'at is not ye'ush. So, it comes out, that how can you say? That is, "yesh lo mida'at" means, when he would have known he would certainly have agreed, but in practice he didn't know. So perhaps it's not good? About this could be that this is the Mahari"t's doubt. The Mahari"t had a doubt whether the agreement shelo da'at works.

R' Yoel Asher: Look, according to how one writes books today, I'm sure there's already a whole book for a guest how much... I take many guests. Everyone understands that... No one can have criticism that a guest eats very much. But everyone understands, let's say that one brings in dessert and he puts in his bag a bunch, one looks at him weird, but he also hasn't yet stolen. These things, somewhere the Torah can't explain everything to a person. Somewhere a person needs to use sense. But presumably someone has already written, when is a homeowner makpid here?

R' Yitzchak: There is in Hilchot Derech Eretz they saw such halachot, remember? One may say that he shouldn't give for his son, because perhaps he doesn't have enough.

R' Yoel Asher: There is the... right.

R' Yitzchak: He still learned in Hilchot Derech Eretz.

R' Yoel Asher: Yes.

R' Yitzchak: That is, all these things are very delicate, because sometimes there is someone who indeed doesn't have. One needs to know... according to the situation, there can't be halachot on this. Okay, afterward one learns. And afterward, perhaps by the Kozhnutzer also today, in your house, if you take milk, someone goes in the beit midrash and takes milk from the beit midrash and gives it to a woman, and he is mekadesh with it. Presumably she's mekudeshes.

R' Yoel Asher: Because someone will say no, the milk is made for the learners of the beit midrash for davening. If someone comes in the afternoon, he indeed shouldn't take to go further. But people do permit themselves, because there are such... yes.

R' Yitzchak: Okay. The same thing, it turns.

R' Yoel Asher: Also because some elderly Jew came out yelling. Okay.

R' Yitzchak: Now we'll already learn further.

Halacha 6 — Partnership: Division Without the Partner's Knowledge

R' Yoel Asher: What happens in such a case? **"Haytah sechoah beino u'vein chaveiro."** Two people have some partnership, they have some merchandise, a business together. And the person made himself such a kind of permitter, he was, last when it was from such **"v'chilkah shelo mida'at chaveiro"**, he quickly decided by himself that we're partners fifty mine fifty his, and he gave such a quick estimate and he took from his portion and was mekadesh, before one should formally divide with a halachically proper way. The person would have thought that it's approximately his portion, perhaps that person won't be makpid. So the halacha is as follows, **"ho'il u'tzrichah shumat beit din"**, usually when two people want to divide, can one demand? I wondered about this, "shumat beit din" means that lechatchilah one needs a shumat beit din? If both people say it's good, we can divide ourselves it's good. If one of them demands a shumat beit din, he can demand it. So **"einah mekudeshes she'ein zeh notel le'atzmo mah sheyirtzeh v'yani'ach mah sheyirtzeh"**. Partnership doesn't work that it

turns on the person's good heart, that both trust that... I mean the emphasis here from the Rambam, the Rambam is a bit a humorous language, the "v'yani'ach mah sheyirtzeh." He'll be even a good one also, he'll leave over.

R' Yitzchak: And fifty percent.

R' Yoel Asher: When you divide fifty, if it's eighty twenty, there will be another partner's claim. Therefore one needs a shumat beit din.

Discussion: What Does Shuma Mean?

R' Yitzchak: Shuma means, he brings, it means a monetary value. If it's money, an economy, if you go with cash register, you're cash, you can one can count. If that person is a thief, that's not about this one needs a shuma. Shuma means, it's some house, whatever. One knows, one needs an estimator, he should still say how much it's worth.

R' Yoel Asher: But there is such a thing, I wonder, is there something like a law, like for example each one borrows from a friend but before he should only pay with before, about this is there such a law somewhere that one should use a beit din? It looks something like, as if it's not recommended.

R' Yitzchak: Means such a professional, someone who knows.

R' Yoel Asher: A shuma, an appraiser, not the shuma of adult nakedness. No, I say that here there isn't even mekudeshes mi'safek, perhaps the partner agrees on that estimate. It looks more, it looks like tefillin it's not. It's not recommended, because its end is distress. Ah.

R' Yitzchak: That's not the order. That's what it means. The order of partners is that one may not divide oneself. One must wait for an official assessment. Okay. Already.

Halacha 7 — He Stole from Her and Was Mekadesh Her with It

R' Yoel Asher: What happens in such a case? A person... here we're talking about... I mean the level of chutzpah (audacity), you go up the ladder. Here is the greatest chutzpah. A person

steals from a woman. He steals, or he robs, or he is violent, as we learned before that he is a robber and he takes from the same woman. V'chazar (and then), immediately afterwards, he comes back with a smile, dressed up already with his kittel, with his shtreimel, and he gives her the money that he just stole from her. "Harei at mekudeshet bo" (Behold, you are betrothed with this). So, *"im kadam beineihen shidduchin"*** (if there were prior marriage negotiations between them). If beforehand they were already engaged, they already knew, they already dated or whatever it is, they already knew that it was coming.**

Discussion: What does shidduchin mean?

R' Yitzchak: I researched a bit. Shidduchin means approximately like what we call shidduchin. That is, shidduchin doesn't mean only between the mechutanim (in-laws), but often yes between the mechutanim. A shidduch means, I saw that the Rishonim say that shidduch is from the language, it says "vatishkot ha'aretz" (and the land was quiet), the Targum says "ushadchat ar'a". It means from the language of menucha (rest). But in the Ran it says that menucha means, because there's a verse "umatz'an menucha" (and they shall find rest), and this is "umatz'an menucha isha beit isha" (and they shall find rest, a woman in her husband's house), that menucha is when you have a wedding. But others I've seen argue, contemporary ones, that one shouldn't say that menucha is the shidduch itself, because then it doesn't fit so well.

R' Yoel Asher: Oshek b'shidduchin (oppression during engagement) means we're still holding one step before.

R' Yitzchak: No, shidduch, that's what I'm saying, right. Therefore, it's more implied that shidduch means as if they've reached an agreement. That is, they're negotiating about the money, you have to give such and such nichsei

melog (wife's property), I have to give so much, and shidduch means that they're working on coming to a certain menucha, to a certain kind of language like he's settled with the surrounding matters.

R' Yoel Asher: In today's language I would say, it means specifically after the l'chaim (engagement celebration), but it could already mean the last two dates? No, there isn't an agreement between them yet.

R' Yitzchak: Today is different, we already talked about it, because by us shidduch means we're not yet holding at kiddushin. But actually yes. Yes, they've already discussed, in short shidduch is something, they've already worked out the surrounding matters.

Natla v'shatka — harei zo mekudeshet (She took it and was silent — behold she is betrothed)

R' Yoel Asher: "V'natla v'shatka" (and she took it and was silent), she took it in silence, she was quiet. Has she thereby shown, she knows the situation, has she thereby shown that she agrees, "harei zo mekudeshet" (behold she is betrothed).

R' Yitzchak: And the fact that she takes it, that's just a preparation for the whole life that she's going to take her things.

Question: What is the kinyan (acquisition)?

R' Yoel Asher: What's the simple meaning? What's the simple meaning of "harei zo mekudeshet"? What happens regarding kinyan? Here there isn't a shinui reshut (change of domain).

R' Yitzchak: No, no, no, lo k'pid (not particular), as they learned, such a kind of thing, no?

R' Yoel Asher: I thought perhaps differently. I thought such a question: he steals from her, and afterwards he tells her "harei at mekudeshet" (behold you are betrothed), hasn't he fulfilled with this "v'heishiv et hagezeila" (and he shall return the stolen object), he's given it to her now, and he still has to pay her further. She can now

call him to a din Torah (rabbinical court) and demand her money. Perhaps because of this he is mekadesh (betrothing), because she's now received some money, extra money.

Kiddushin b'gezeila, b'pikadon, u'v'hachzarat chov — Rambam Hilchot Ishut Perek Heh (Betrothal with stolen property, with a deposit, and with return of a debt — Maimonides Laws of Marriage Chapter 5)

Continuation of discussion: Kiddushin b'gezeila — Does the woman receive "extra money"?

R' Yoel Asher: Here there isn't a shinui reshut.

R' Yitzchak: Lo k'pid, as we learned such a kind of thing, no?

R' Yoel Asher: It's such a kind of lo k'pid? No, I thought perhaps differently. I thought such a question: he steals from her, and afterwards he says "harei at mekudeshet". Hasn't he fulfilled with this "v'heishiv et hagezeila", he's given it to her now, and he still has to pay further. She can now call him to a din Torah and demand her money.

Perhaps because of this "harei at mekudeshet", because she's now received some money, extra money, she's received the kiddushin. The person hasn't yet gotten out of paying. Think, seemingly, if he says, "this is the money that I stole from you, harei at mekudeshet li (behold you are betrothed to me), and I don't owe you anything more," perhaps. But when he leaves it off, "harei at mekudeshet li", okay, this I've given for kiddushin, and now I'm returning the theft that you stole from me. No?

What doesn't look like that? It seems that the commentators say "she'machla lo et hagezeila" (that she forgave him the theft), she forgave him, therefore he acquired it.

R' Yitzchak: It was his, yes. Right. I think that's common sense, I don't know. Kiddushin is a bit of a...

R' Yoel Asher: Still, here he has a dispute.

R' Yitzchak: The Rambam says that one actually needs like you,

R' Yoel Asher: I actually need to still pay. I'm saying, according to you sometimes you can

R' Yitzchak: I understand that

R' Yoel Asher: You remain a thief, but I'm now grabbing money. Yes, she stole from her a large sum, so now she gets double. She now gets kiddushin, and he can still get from the groom kefel (double payment) another two.

R' Yitzchak: So she agrees. Yes, but there must always be some kind of ye'ush (despair of recovery). Because what ye'ush is there? What is there? How did it become his?

R' Yoel Asher: How did it become his? It doesn't have to have become his, that's what I think. She got back from him the theft in some other way.

R' Yitzchak: What's the difference? But now, now it's not his. At the time of the kiddushin there must happen some kind of kinyan, and he gives her something that is his, and she takes it, right? Otherwise the kiddushin won't happen.

R' Yoel Asher: No, but again, let's say, if she knows that in two weeks they're going to call him to a din Torah and get from him another kefel, she's getting from him now fresh money. She's getting from him money that she never thought of getting from him. Because that's gone, she still has in mind that she's going to take it back from him.

R' Yitzchak: Very sharp, because as if... in short, very good, but beforehand there was a ye'ush v'shinui reshut (despair and change of domain). That's in kedushin b'gezel mekudeshet (betrothal with stolen property is valid).

R' Yoel Asher: You think she's meyayesh (despairs)? She's not meyayesh. She still wants to get back that money.

R' Yitzchak: All robbery victims want to get back their money. No one says meyayesh that she doesn't want to get back her money. Ye'ush doesn't mean that.

R' Yoel Asher: Yes, then also such a kind of ye'ush. Okay, let's see.

R' Yitzchak: But I mean that this is a... I mean that in the... later she comes to beit din that she grabs her things,

R' Yoel Asher: And know that she started herself. Okay.

"V'im lo shidach ota me'olam" — When there were no marriage negotiations (And if he never arranged a match with her)

R' Yoel Asher: No, it could be that the reason why I'm not right is because of the next piece. Let's see. **V'im lo shidach ota me'olam** (and if he never arranged a match with her), if he was never mekadesh her, obviously there was no shidduch. So according to the simple meaning it's because the... here she simply certainly didn't forgive. Because she didn't make a shidduch l'merozot.

But according to my interpretation it would perhaps even in such a case, because as she grabbed extra money. She grabbed now money from kiddushin money.

R' Yitzchak: Again, but she needs to be clear at all that it's your kiddushin. That one steals your money, and he gives back a lousy guy. A thief. The simple meaning is, they know each other. It becomes somewhat of a game the whole thing. You have to remember that kiddushin at the end of the day isn't...

R' Yoel Asher: We're talking earlier, it's a formality.

R' Yitzchak: It's a real kinyan, but it makes the... the marriage makes it real, but it's not the simple meaning that one is engaged and must profit something.

R' Yoel Asher: It's true, it's true. We'll see more later, yes.

"V'im amra hein" — When the woman says yes (And if she said yes)

R' Yitzchak: I can give, people were mekabel (accepted) whoever the boy belonged to. It's certain that whoever the boy belonged to agrees that the groom should make with this kiddushin. Usually one must decide this way, because...

R' Yoel Asher: V'im amra hein (and if she said yes)... if she said yes in one of the cases, and she agreed to the shidduch, and she is mekudeshet, because it's simple that she forgives, and he acquires it, and she receives it.

Digression: Should the bride say "hein" at the chuppah (wedding canopy)

R' Yitzchak: It's interesting that no one conducts themselves at the chuppah that the bride should say yes. It was the subject of many questions. I don't know if there are questions, what am I saying? You see that there's such a concept, no, there's a Torah from the... Baal HaTanya, that it says "od yishama... kol chatan v'kol kalla" (the voice of groom and bride will still be heard). He says that in current times there is no kol kalla (voice of the bride), because the bride is silent. In the future to come there will be something... "nekeva tesovev gever" (a woman shall encompass a man), one will hear the voice of the bride. The feminists are upset that the bride stands at the chuppah and she's silent. She can say, "yes, I agree." You see that there's such a concept. I don't agree.

R' Yoel Asher: I want the opposite. Is this a way how one helps the girl that she should still be able to say "lo ratziti" (I didn't want)? If one teaches her to say "hein", she's going to say the same way that one forced her to come to the wedding hall and to stand there with the gown. One put pressure, she said "hein". No, I'm saying, you want here that she should also have a word? Okay,

R' Yitzchak: Fine. I'm just saying that you see that there's such a concept. You know that kiddushin is something that is always with her consent, so it makes sense that she should make clear her intent. Why shouldn't you make that the ceremony,

R' Yoel Asher: The ritual should be that it makes clear that she agrees? Yes, true,

R' Yitzchak: True. In the Rambam it actually says at the time of the question they should say "hein". Yes, then one certainly doesn't ask. Okay. R' Nachum asks decisively for young girls,

whatever, because of this the scandal shouldn't transgress on the ketana (minor).

R' Yoel Asher: Already.

Halacha 11: Kiddushin b'pikadon (Betrothal with a deposit)

R' Yoel Asher: The Rambam says further, "**V'chein im natan la pikadon**" (and similarly if he gave her a deposit), the man, the mekadesh (one betrothing), gives to the woman a deposit, he wants, I know, to keep with her a precious thing. "**V'amar la, 'kansi pikadon zeh'**" (and he said to her, 'take this deposit'), take the deposit, hold this for me. "**V'chazar v'amar la, 'harei at mekudeshet bo'**" (and he returned and said to her, 'behold you are betrothed with it'). So, "**im amar la kodem shetitlenu**" (if he said to her before she took it, if before she took it from him he said "harei at mekudeshet bo", with the thing that

R' Yitzchak: You're going to be able to have in your house,

R' Yoel Asher: "**V'natlato v'shatka**" (and she took it and was silent), she took it and she was silent, "**harei zo mekudeshet**" (behold she is betrothed).

What happens to the deposit when he says "harei at mekudeshet bo"?

R' Yitzchak: That is, it now becomes hers, it doesn't become a deposit but a kinyan.

R' Yoel Asher: It becomes hers. I would say, it's still a deposit, but you have the benefit that it lies in your house.

R' Yitzchak: No, a deposit isn't a benefit. A deposit is a responsibility,

R' Yoel Asher: On the contrary. Responsibility, but you'll be able to use it at the time... No,

R' Yitzchak: No, but still distorted. No, certainly.

R' Yoel Asher: Certainly.

R' Yitzchak: He means that he's deciding for her. He sees that the problem is later, look what he says, shtika l'achar matan (silence after giving). The other problem is only the other problem.

R' Yoel Asher: That is, she's now going to take it,

R' Yitzchak: It's going to be hers. Kiddushin, kiddushin must be hers. You're asking a question, whether one receives a regular deposit is for the benefit of the depositary. What do I mean? What is it? If it's some nice piece of silver? It's going to return to that one's drawer in the next ten years, wherever. But I mean that for the sake of kiddushin it means, as if he withdraws from the deposit, it becomes hers. Okay.

"V'im achar shenatlato" — Shtika l'achar matan me'ot (silence after giving money) (And if after she took it)

R' Yoel Asher: But v'im achar shenatlato (and if after she took it), if he gave her as a deposit. Yes, you hear? She took it as a deposit, and afterwards he called out. Ah, very good. So when he says "kansi pikadon zeh", he said one thing. And afterwards when he says "harei at mekudeshet li bo", he as if withdrew. "You know what? I'm withdrawing, I want to give it to you, it's a nice thing, I want it to become yours with kiddushin." Makes sense, he shouldn't just give it.

But if when she took it, she still looked at it as a deposit, and only afterwards he called out "harei at mekudeshet li bo", one should think why? Because the silence was after the giving of money. When he gave her the deposit, he had it in mind as a deposit. Afterwards when he said "harei at mekudeshet li bo", he had it in mind to transfer ownership to her. And her silence is... do you want to help me out here? Her silence is nothing. Her silence is agreement. She agrees that it should become...

R' Yitzchak: Let's understand the situation.

R' Yoel Asher: When he handed it over into her hands, did he have in mind to give it as a deposit or as kiddushin? Certainly, certainly. After she already received it, he changed his mind that he told her he's transferring ownership. What's the problem? It doesn't help. **"She'kol shtika she'l'achar matan me'ot eina mo'elet"** (for any silence after giving money is not effective). But the giving of money happened now when he

said "harei at mekudeshet li bo". "Achar shenatlato" (after she took it).

R' Yitzchak: No, but she took it as a deposit. So now, when he said "harei at mekudeshet li bo", he transferred ownership to her.

R' Yoel Asher: This is the topic of... what's it called? Like we learned with the "v'im amra hein".

R' Yitzchak: No, because... I don't know, what does shtika l'achar matan me'ot mean? What does it mean he already gave it as a deposit, and afterwards he transferred ownership to her? When he said "harei at

R' Yoel Asher: mekudeshet li bo" he transferred ownership to her. I mean that he

R' Yitzchak: means to say that

R' Yoel Asher: retroactively it became,

R' Yitzchak: what does it mean.

R' Yoel Asher: It seems that shtika l'achar matan me'ot is not a problem of the kinyan, of the deposit vessel. And likewise,

R' Yitzchak: if he would give now and say "I'm giving you the deposit", therefore.

R' Yoel Asher: But he says that this

R' Yitzchak: that he gave her earlier was for the sake of kiddushin.

R' Yoel Asher: He didn't mean a deposit, he meant kiddushin, and she agrees.

R' Yitzchak: But the agreement doesn't count, because the agreement already happened at the wrong time.

R' Yoel Asher: As if I already gave you, she agreed earlier. When she's silent, I have no proof that she wants to be betrothed. It could be that she

R' Yitzchak: thinks that he's just making a joke because it was already a deposit, something like that. A bit of truth is a deficiency in her.

R' Yoel Asher: This doesn't mean that after the groom gives the ring he says "mekudeshet li". That's not a problem. Here is something more, here is something because at the time when it was said it wasn't yet clear

R' Yitzchak: what's going on here, because she thought... You have to remember, all these questions,

R' Yoel Asher: why shouldn't she understand right away?

R' Yitzchak: "Shtika" (silence) isn't good. But look, he still conducts it,

"Aval im amra hein" — When she explicitly says yes (But if she said yes)

R' Yoel Asher: "Aval im amra hein harei zo mekudeshet" (but if she said yes behold she is betrothed), because then she knows yes. Okay, the silence here is something such, perhaps it's an embarrassment, she doesn't know exactly what's going on, she's confused, because a minute earlier you only said as a deposit.

R' Yitzchak: She's not confused,

R' Yoel Asher: she thinks it's nothing, it's not clear though.

The learning of silence: Two inquiries — intent and kinyan

R' Yitzchak: That is, all these questions are a bit interesting that one mixes here, all these laws mix out as if two inquiries. One inquiry is the inquiry whether it's yours, whether it means given and the like. The second inquiry is the inquiry whether she agrees.

Silence is always a... You can usually silence, as you say, most of our kiddushin is with silence. She doesn't say anything, and the sign that she takes it is simple that she agrees to kiddushin. I give you something, if you don't want to be betrothed you should say no, I'm not taking it. But if you've already taken it, that's not a proof, because you already took it for other reasons, understand? If you say clearly. That's the learning of silence.

But aside from silence there can be other things, there can be she's silent and with this is included that she's already forgiven the theft and the like.

Halacha 12: Kiddushin b'hachzarat chov (Betrothal with return of a debt)

R' Yoel Asher: Okay, next, halacha 12. "Hechezir la chov she'haya la etzlo" (He

returned to her a debt that she had with him). It means, he owed her money, so he has a debt with her.

R' Yitzchak: She has a debt with him.

R' Yoel Asher: She has a debt with him. Okay,

R' Yitzchak: Good.

Kiddushin with a Loan and a Debt — Laws 12-13

Law 12: He Returned to Her a Debt That She Had with Him

R' Yitzchak: But if you've already taken it, it's already taken for other reasons. You understand? If she says clearly. That's the lesson from silence. But aside from silence there can be other things, it could be that she's not protesting, and with that it's included that she's already forgiven the theft and the like.

R' Yoel Asher: Okay, next law twelve. **He returned to her a debt that she had with him.** That means, he owed her money, so he has a debt with her. She lent him money,

R' Yitzchak: And he brought back the

R' Yoel Asher: money that he owes her. **And he said to her: Behold you are betrothed to me with it.** If it's before she took it, before she took it, he said "behold you are betrothed to me with it," and she took it and was silent.

Two Problems: Silence and "Her Money"

R' Yitzchak: So here there are two problems, one problem is the silence, and the second problem is that it's her money.

R' Yoel Asher: He's giving back her money that he has to pay anyway,

R' Yitzchak: Which isn't theft,

R' Yoel Asher: But it's her money. So it's the same law, just like before, if they already spoke about a match, there was already between them a connection of a match, behold she is betrothed, because we view it as if she forgave him the debt, and she's now taking it as a gift,

R' Yitzchak: As kiddushin. And if there was no match,

R' Yoel Asher: But if there was no match between them, she is not betrothed, she doesn't become betrothed. Until she says yes, because the silence is nothing,

R' Yitzchak: Because the silence is not clear.

Why "Yes" Doesn't Help After Giving the Money

R' Yoel Asher: The silence is about money that he has to give her, so it's not clear. **And if he said to her after she took her debt**, this is all when he said "behold you are betrothed to me" at the right time, and she was silent at the right time. But if he gave her the debt that he owes her, and only after she took it did he say "behold you are betrothed to me," then it doesn't help even if she said yes, even if she says yes, I want to be betrothed, she is not betrothed, why? **Because nothing reached her hand from him**, she received nothing from him. **Rather she took what was hers**, she took money that he has to pay her, **and his debt was already paid from the moment she took it**, his debt was paid when she took it. **And she cannot go back and claim the debt another time**, she can't now come claim the debt again.

Discussion: Can We Say the Debt Remains?

R' Yoel Asher: So we see this clearly like this, because here I also could have asked the same question. One could have thought that when a person owes someone money, he owes there a thousand dollars, and he brings back a thousand dollars, and he says "behold you are betrothed to me with it," I would have thought that she can a month later ask him for the debt. What happens with the debt? Ah, what you gave me, that was kiddushin. The debt you still owe me. It seems that this is certainly a no, that we understand that this is the money of the debt. But then what?

R' Yitzchak: When there would have been a match,

R' Yoel Asher: Is she forgiving perhaps? Perhaps there's some gratitude that he brought back the money?

R' Yitzchak: One must think. No. Gratitude, that's called interest.

R' Yoel Asher: That in practice, he's giving her nothing, why should there be between them the agreement of silence?

R' Yitzchak: I'm saying clearly such a...

R' Yoel Asher: He means, some benefit is here, some good thing is here.

R' Yitzchak: No, the benefit, she's agreeing. The simple explanation is, again, you have to ask further whether he becomes exempt from the debt. The simple explanation, he becomes exempt from the debt.

R' Yoel Asher: It doesn't make sense otherwise. No, because look at the answer, the Rambam says, "she took what was hers and she cannot go back and claim the debt another time." She can't go back and take the debt from him. So that's what you're saying, that if there would have been a hava amina that this is extra money, this is only kiddushin money, then even when the "yes" was afterwards, it would perhaps have been, because this is extra money from the debt. But since one can't go claim it, the only question is whether she's happy that

The Foundation: Before Giving Money One Can Make an Agreement, After Giving Money Not

R' Yitzchak: She's already receiving the money, so she's agreeing to the match or that she's canceling from him. The problem here is very simple. Earlier we said that there are two topics, whether she's agreeing and whether she receives something. After she agrees, sometimes the agreement is so good that it makes it as if she receives something. But this, both things can only help before giving the money. First of all, before giving the money it helps. After giving the money, silence doesn't mean that you're agreeing, it can't, it's not proof that she's agreeing. But they learned earlier that speech after giving the money does help, right?

So here comes the law and it says that with a debt it's different. Because with a debt even saying after giving the money, it doesn't help. Why not?

Because she doesn't receive anything. When he gives her something that's actually his, now in practice he says, I'm giving you, it's not a deposit, it's yours. She received something, the question is only whether she's afterwards. But it says, she knows clearly that she's agreeing. This is hers, he's giving her nothing, she has her money one hundred percent. There's nothing to do, there's nothing to say that he gave her payment, or she's agreeing that he should give. What is she agreeing to? She's not agreeing to anything.

R' Yoel Asher: If she's receiving hers.

R' Yitzchak: Eh, can you further say that now retroactively she says that she's going to take it as kiddushin and she's forgiving the debt? There's no debt anymore to forgive, that's what the Rambam says. What are you forgiving? You're forgiving nothing. There's no debt to forgive,

R' Yoel Asher: It was already afterwards. Why shouldn't we say that "behold you are betrothed to me" means that the debt is still a debt, and this is kiddushin? It seems to me like a very good argument, but then one must be obligated to pay the debt extra.

R' Yitzchak: Again, let's say after giving the money. Afterwards one certainly can't do that. What does kiddushin mean? There's no longer a debt. I took from you owing the dollar, and finished. There's no debt, it was a former debt, it's history. You want to know beforehand? That's actually according to the Rama that you brought earlier, perhaps it is so, but here you see clearly that it doesn't work that way. It must be that the debt is canceled.

The Form of Giving Money is Necessary

R' Yoel Asher: But it's interesting that the thing of saying that she's agreeing is also only when there's a formality that the man gives something. What happened here? Money she didn't receive, because she received her debt. Here, in this law.

R' Yitzchak: No, she also received money.

R' Yoel Asher: She no longer has a debt? No. It's her money. When she's... peace afterwards. Just like the Rambam answers.

R' Yitzchak: Afterwards, afterwards, because it was already there in the case when it's at the time of the act, the explanation is that she's not now receiving payment of a debt, now she's receiving kiddushin. What about the debt? She forgives it, she gives it back to him beforehand, as if it becomes his. Or you'll make some other calculation, however it works technically?

R' Yoel Asher: It seems to me something like her will to become betrothed in a case when there's an act of giving money, even though we know that in the substance of it there's nothing there because he's giving her back hers, there was still some form of giving money, because if not, why should her wanting to be betrothed help?

R' Yitzchak: The section said that she forgives the debt and she's not taking kiddushin. That's how one must say, that's what Rashi says, I figured out this explanation. If not it's very difficult. I mean, can you just say like that, she has money? As if I was betrothed with it. It doesn't work.

Law 13: One Who Betroths with a Loan

R' Yoel Asher: Let's continue to one who betroths with a loan.

R' Yitzchak: Says the holy Rambam,

R' Yoel Asher: Somewhere in sixth, seventh, eighth, ninth grade, one learned "a man betroths," and one toiled over the sugya of "betrothing with a loan." **One who betroths with a loan**, someone betroths with the fact that he lent her money.

R' Yitzchak: One minute, let's explain what "betrothing with a loan" means, okay? Because there's a whole dispute what the meaning is at all. The Rambam says first the language:

The Rambam's Language and Explanation

R' Yoel Asher: **"One who betroths with a loan even if it was with a document"** - even if there was a loan document on the loan, he lent her money and they made a document on it - **"she is not betrothed"**. It's not betrothed. And the Rambam explains, **"How so? Such as when she owed him a dinar"** - she owes him money, his money is with her - **"and he said to**

her: Behold you are betrothed to me with the dinar that I have in your hand" - you should be betrothed with the dinar that's with you, with the money that you owe me. **"She is not betrothed"**. She is not betrothed.

What apparently could a person have said? That he gave her something now, he gave her the value of the dinar that's with her. But there's such a law, the Sages say: **"A loan is given to be spent"**. When a person lends someone money, it's not made for the other person to keep it at home. When someone borrows money, it's because he needs to use the money. So a loan is made to be spent. **"And there is no existing thing here to benefit from now"**. We reckon that when a person receives a loan, five minutes after he receives it, we reckon as if he's already spent it. We don't check whether he actually spent it or didn't spend it. A loan is made to be spent, so it's something that gets spent. Therefore there's no money here with which he's betrothing. **"For she already spent that dinar and its benefit has passed"**. It's already gone through, it's no longer there. Now there's only an obligation, an obligation that you'll have to pay, but there's no tangible thing. Therefore you didn't betroth with any money,

R' Yitzchak: You didn't betroth with a thing.

R' Yoel Asher: That means, even if the money is actually still there, but the "a loan is given to be spent" makes it as if it's already on the way out.

The Scholarly Explanation of "A Loan is Given to be Spent"

R' Yitzchak: You can say that. You can say more scholarly, as I usually think, that "a loan is given to be spent" means that when I lend you money, it immediately becomes your money. The entire money is your money. Eh, I owe you? There's "he has with her," that's what it's called. That means to say that I can claim from you, you have to pay me, but my money isn't lying with you. The money is yours.

R' Yoel Asher: Let's think, when he gives you the money now, it's also the same thing, yes? We're speaking here specifically "she owed him a debt." What happens when a person comes with

a thousand dollars and says "I'm lending you this money, and behold you are betrothed to me"?

R' Yitzchak: We'll see. Let's finish the entire Rambam's details of betrothing with a loan, but we're eager to seek other explanations that we see here. First, the Rambam says betrothing with a loan means when she already has the money, therefore "a loan is given to be spent,"

R' Yoel Asher: That the benefit -

The Rambam's Language of "Benefit"

R' Yitzchak: The Rambam puts in the language of benefit - let's say that there is benefit in receiving a loan, but it was already yesterday. Today she actually has a debt, but forgiving a debt doesn't mean any benefit. Something like that? Why does forgiving a debt not mean any benefit? Also a thing that one must understand, but that's what one says. It's a great benefit, I don't have to pay, yes? I had a Jew, I made a... in short, it happens, yes? A person says instead of I'll give you something, I'll forgive you a debt that you have. It's a great benefit,

R' Yoel Asher: But... we'll see later about benefit, one must also give something. Let's see. I mean...

R' Yitzchak: Very good will be clear. Now, what about... this is the normal loan,

Loan on a Pledge

R' Yoel Asher: Right? This is a regular loan when he borrowed money. But what happens when he borrowed money and he received a pledge? **"He had with her a loan on a pledge"**, that means, she borrowed from him a thousand dollars,

R' Yitzchak: And he gave her a wig,

R' Yoel Asher: And now he gave her a candelabra, yes? **"And he betrothed her with that loan and returned to her the pledge"**, he said "I'm forgiving you the thousand dollars, and here you have back your candelabra." **"Behold she is betrothed"**, because... why? Because... he's not only betrothing, apparently the main thing he's thinking about is the loan, but in practice she receives a pledge. **"For behold she benefits from the pledge now"**,

she's now going to have benefit from the pledge that he returned. Therefore, **"and behold the benefit reached her hand"**, she received benefit in her money.

R' Yitzchak: Because the Rambam looks only, the main problem is that now when he says to her "I forgive you the debt" as it were, she doesn't receive then she didn't receive. Now she does. That means in practice, she continues, she goes home with the candelabra,

R' Yoel Asher: As you say. That that he forgave her the loan is much a bigger big deal. True. And therefore that's what she's thinking about, but...

One Who Betroths with the Benefit of a Loan — The Rambam's Explanation and the Dispute with His Teachers

Continuation of Law 7: Benefit of Time in a Loan with a Pledge

R' Yoel Asher: She's now going to have benefit from the pledge that he returned. Therefore "behold the benefit reached her hand," there she received benefit in her money.

R' Yitzchak: Because the Rambam looks as if the main problem is that now, when he says to her "I forgive you the debt as it were," she didn't receive. Now she does. That means in practice, she goes home with the candelabra, as you say.

R' Yoel Asher: Interesting, you could have thought like this, that what she forgave on the loan is much a bigger "big deal," and therefore that's what she's thinking about. But we don't say that. We say, in practice she receives benefit.

R' Yitzchak: Certainly, forgiving money is money, more than the benefit from... the pledge is her pledge, technically. But here you have the proof that what you don't have now any benefit, because "she learned not to benefit," now you do have benefit. That's the Rambam's explanation.

R' Yoel Asher: I want to give myself to go up for a moment.

One Who Betroths with the Benefit of a Loan — Three Agreed Upon Laws in the Gemara

R' Yitzchak: "One who betroths with the benefit of a loan," here we are. Then, you can go there for a second. "Behold she is betrothed." So the Rambam explains. Yes, this is clearly said. Let's not... no, no, the Rambam is going to explain. But first let's say, the Gemara has such language. Let's make like three laws, this is agreed upon. The language is agreed upon, the question is only their explanation, right?

Number one, "One who betroths with a loan she is not betrothed." This is the conclusion of the Gemara, yes?

Number two, "A loan with a pledge is betrothed." "One who betroths with the benefit of a loan" also "is betrothed."

So it says in the Gemara, yes? This is all things that come out from the Gemara, which I mean that they're agreed upon. The question is but what is the meaning "one who betroths with a loan"?

The Rambam's Meaning in the Gemara

The Rambam explained, on this the Rambam said "how so." How "how so" the Rambam said in his explanation. That means, the Rambam is actually not unique, it's the Rambam's meaning in the Gemara, but other commentators will explain these all things differently.

But the Rambam explained, "one who betroths with a loan" means that she forgives a loan that she already has. This is not "betrothed." That means, she already has, he already lent her. And "one who betroths with the benefit of a loan" is explained like this. Yes,

The Rambam's Explanation: "Such as when he lent her now two hundred zuz"

R' Yoel Asher: "How so." **"Such as when he lent her now two hundred zuz"**, he lends her now two hundred zuz. **"And he said to her"**, and he says to her like this: **"Behold you are betrothed to me with the benefit of time that I will profit you with this loan"**. I'm going to give you more time than what was agreed upon.

R' Yitzchak: Not what was agreed upon, he's now in the middle of agreeing,

R' Yoel Asher: Right? So, freshly I have a later. Perhaps how much is the standard? As if, everyone knows that it's a... loans for a month, I'm going to profit you, **that it will be in your hand such and such days**, it will be able to be in your hands more, longer time, **and I will not claim it from you until such and such time**, I'll only claim it when such and such days come. Then, what did one give now? Did one now give some new thing, one gave some extension of time. **Behold she is betrothed, for behold she has benefit now to use this loan**

R' Yitzchak: ****Until the end of the time he set****. The Rambam doesn't put... The Rambam puts in here, it's not clear how to translate the Rambam, because the Rambam puts in here the concept of gaining time. But gaining time is also something that appears in the Gemara that must be learned. But by the Rambam, the word is not primarily the gaining of time. The word is the same thing as a loan. Every loan means a guarantee, the time that you have the money.

R' Yoel Asher: You'll be completely, he gained so much time, more time, until the end of time. No,

R' Yitzchak: You'll be completely

R' Yoel Asher: That's the simple meaning

Discussion: The Benefit of a Loan is the Essence of the Loan Itself

R' Yitzchak: That you receive money. A loan, what is that? Gaining time of a loan is interest. That's the meaning of a loan. When I give you my money for a week, what am I giving you? I'm giving you the right to use the world's money for a week. Two weeks, what's the difference? That's the benefit of a loan itself. It's not the money.

Earlier, the problem of one who betroths with a loan is that the loan itself is already not worth money, because it's yours, as if nothing was given. But the benefit of the loan, that's worth money. You know I have a proof that it's worth

money? One pays interest on it even, right? A loan is worth money. To have someone else's money for

R' Yoel Asher: a week is

R' Yitzchak: worth a certain amount. For that, the Rambam holds that it's good. What the Rambam says, the benefit of the time that I gained for you is not more time than something, it's nothing. The benefit of having...

R' Yoel Asher: You can use my money, you can have my money

R' Yitzchak: for a piece of time.

Discussion: When Does He Say the Betrothal — At the Time He Gives the Money

R' Yoel Asher: So I want to understand a bit. Such as when he lent her now means, afterwards he says.

R' Yitzchak: No, not afterwards.

R' Yoel Asher: Not at the time he gives you now the cash. Yes, at the time. Because that would certainly help. And when he says here you have the loan and I forgive you, it would certainly also help.

R' Yitzchak: No, not forgiving anything.

R' Yoel Asher: No, I'm saying the previous case of a loan, I waive the loan, and I give you now the money, it would certainly also help.

R' Yitzchak: Because then it's not "a loan is given to be spent," because now I give it to you, and I waive it. Or through the benefit of the loan. According to the Rambam, both speak of the time. There's no difference. That means, earlier one speaks afterwards simply to explain that a loan is given to be spent. If one gives it at that time and betroths with the benefit of the loan, there's what to say that with the very fact that I give you the loan in Yiddish, that's betrothed, that's the Rambam's understanding.

R' Yoel Asher: I would have learned in the Rambam, "such as when he lent her now two hundred zuz". He lent her now,

R' Yitzchak: an hour ago,

R' Yoel Asher: and now one must negotiate exactly on the condition.

R' Yitzchak: No, no, no.

R' Yoel Asher: Now I add time.

R' Yitzchak: No, we don't agree, because the Rambam disagrees with the interpretation that there's a difference when one does it. That's not another interpretation of the Rishonim, that the Rambam says it's not fit to be heard. The Rambam's meaning is, that betrothing with a loan means that he forgives the loan, and betrothing with the benefit of a loan means with the essence of the loan.

R' Yoel Asher: And he gives it to her now,

R' Yitzchak: always.

R' Yoel Asher: And not betrothing with something he already gave her.

R' Yitzchak: He gives her now the money. No,

Discussion: Why is This Better Than Forgiving the Loan?

R' Yoel Asher: Then one goes back to the previous question. He gives her the money, but he only gives her a loan. But I give you the benefit, besides what I give you, there's some form that I give money, I give you the benefit that you'll be able to use the money for a few weeks. As opposed to when I give you the benefit, but the money already lies with you,

R' Yitzchak: then you don't have it. You can say so, but then you're also not giving any benefit. Just to be clear, when I give you, I forgive, it becomes your money.

R' Yoel Asher: I'm not giving you any loan. It's not greater,

R' Yitzchak: It's less, because it's given money, and the loan didn't

R' Yoel Asher: The condition didn't give up for him.

R' Yitzchak: It's not any... exactly, it's her money. You forgive that you don't have to pay. That's the problem of the loan itself, according to today. Says the Rambam,

And It's Forbidden to Do So — Like Interest

R' Yoel Asher: And it's forbidden to do so, but in practice one may not do so because it's like interest. Why? Because interest always means that one pays money for the time that you have my money, I'll pay you on the debt. Here she earns a wife from the time. He says, I'll add more time, a lengthening of times, what do I get from that? I get a wife. Therefore it's like interest.

Discussion: Why Only "Like Interest" and Not Actually Interest?

Why? Not actually interest. Actually interest it is, not that I saw them bring from the Yerushalmi, because the man must give things for the wife, the wife must give things for the man. It's not really an acquisition that he has benefit from her, she has benefit from him. Let's learn later, there's a relationship of living, there are all sorts of things. So essentially it's like interest, but it has the form that it looks like she should buy something else with the money.

R' Yitzchak: The point is this, it's interest in completely different words. He betroths her with the thing that interest pays for, according to the Rambam's simple meaning, one hundred percent interest. But it's like interest, because I would have said, perhaps the Meiri says basically that, but I would have said simply that it's as we learn all the time. Betrothal is not true betrothal. That's not a purchase and sale. Interest is when one buys something. Buying a wife is a formality, as if that's how the acquisition happens, that's how she becomes your wife,

R' Yoel Asher: But you didn't buy something. No, I would have understood that the one who said it's not primarily interest is simple because he now gets a wife. So besides that he gets money, that he'll still get back the money when it ends, he now has benefit

R' Yitzchak: that he has a wife.

R' Yoel Asher: That would have been actual interest when the man has only benefit from the wife and the wife is a maidservant. Let's say so, when it would have been a maidservant it would indeed have been interest.

R' Yitzchak: Let's say,

R' Yoel Asher: Yes. But a wife isn't, it's as you say, it's a... both have benefit from each other, but also it's only a formal acquisition. Yes, okay, both benefit.

R' Yitzchak: That's perhaps the same thing, that's what I'm saying. According to the Rambam's simple meaning, that's the same thing. He betroths with the thing that interest pays for, but betrothal doesn't mean interest. That's the choice that's called interest.

"And My Teachers Explained" — The Rambam's Critique of His Teachers

R' Yoel Asher: Says the Rambam, the simple meaning that I've now given you in the topic of one who betroths with a loan versus one who betroths with the benefit of a loan is my simple meaning.

R' Yitzchak: But **"and my teachers explained"**,

R' Yoel Asher: my teachers, that means the commentators on the Gemara before the Rambam, the Rif and others, **explained in the matter of the benefit of a loan "things that are not fit to be heard"**. They explained not good simple meanings. That means, the Rambam doesn't hold of their simple meaning, and not only is it not a good simple meaning learned in the Gemara, but it's actually not good, "things that are not fit to be heard".

The Rif's Simple Meaning: Lengthening His Time Literally

R' Yitzchak: He translates, the Rav, Maggid Mishneh, the Maggid Mishneh and everyone learn as you say, that the Rambam means the Rif's simple meaning. The Rif's simple meaning was that the lengthening of his time is literally, that if he already borrowed money earlier and he now adds time to the loan, then it's something better than the first loan initially. It's not clear to understand why it's better. That's the problem. Therefore the Rambam learned completely differently, and we won't go into it now.

The Raavad also brought the simple meaning of the Rambam's teachers, and he says so the

Rishonim explained, and that's perhaps better. The Raavad says that he agrees that the Rambam's type of acquisition will work, but even if one doesn't do that, even if one only adds time later, it also helps.

R' Yoel Asher: Ah, it comes with a condition that she already has the money ready to pay, and now she can use the money again, because there's no longer the problem of a loan is given to be spent?

R' Yitzchak: The previous problem? I hear. Yes. Okay. Maybe.

What Does "Things Not Fit to Be Heard" Mean?

In any case, I think "things not fit to be heard" is simple, when otherwise the Rambam would have had to bring the simple meaning and say "and I say". He says it's such a bad simple meaning, it's not fit to be heard, you don't even need to write it in the Rambam.

R' Yoel Asher: But why does he say it then? Because it's very possible that you learn the Rif.

R' Yitzchak: Everyone used to learn the Rif. Also, "to hear" can be, we thought earlier that it's a holiday, he says it's heresy, you shouldn't want to hear. Can be "to hear", I see that's how the translator translates here. "To hear" can be like, I'll see in the translation, "to Adam he said because you listened to the voice of your wife". What does "because you listened" mean? Would you have heard? No, it listened to you. "Hearing", the translation translates "acceptance".

R' Yoel Asher: "Hear" many times means "to accept",

R' Yitzchak: Not "guard". "Hear". "Hearing" in the Torah can many times mean to follow, to accept. "Fit to be heard" perhaps means one shouldn't accept. Certainly one may learn the Rif, it's not a sin to learn the Rif's simple meaning.

R' Yoel Asher: Already, "fit to be heard" means to follow them, to follow them, because indeed it won't be good betrothal according to the Rambam.

R' Yitzchak: It can be that it will actually be, it's not clear that the Rambam disagrees with the

law.

R' Yoel Asher: Ah, he learns that it's not well learned from the Gemara?

R' Yitzchak: Yes, one must know. Perhaps presumably, it sounds funny if it's "not fit to be heard", presumably he doesn't agree with the Gemara. In short,

R' Yoel Asher: The Rambam apparently, the way he says it is simple that he would have said that she's betrothed, he says that from the Torah she wouldn't have been betrothed.

R' Yitzchak: But the Rambam doesn't go into what the law is of that other case that his teachers said the simple meaning.

R' Yoel Asher: He says that he only means to hint to you that you shouldn't learn the simple meaning falsely in the Gemara, he's a book of law, as he means to turn away.

R' Yitzchak: The Rambam is a book of all the laws that stand in the Gemara, those that don't stand in the Gemara,

R' Yoel Asher: don't stand, he doesn't need to say.

Summary: The Great Question — What is Worth More?

One must understand, it's still a great... it's very difficult for me. If I look at everything, whether he gives her now something, whether he only waives something that was already spent, everything will more or less make sense. Because although when one waives a debt, he gives the most, he gives more than less.

Rambam Laws of Marriage Chapter 5 – Continuation: Betrothing with a Loan, with a Debt That He Has in the Hands of Others, with a Deposit and with a Borrowed Item, with Benefit, and with Work

Law: Betrothing with a Loan and a Perutah – Her Intent is on the Perutah

R' Yoel Asher: He says that he only means to hint you shouldn't learn the simple meaning

falsely in the Gemara. He's a book of law, as he means to turn away. Anyway.

R' Yitzchak: The Rambam is a book of all the laws that stand in the Gemara. Those that don't stand in the Gemara, don't stand.

R' Yoel Asher: He doesn't need to say. One must understand, it's still a great... it's very difficult for me. If I look at everything whether he gives her now something, whether he only nullifies something that was already spent, everything will more or less make sense. Because although when one nullifies a debt, he gives the most, he gives more than when he gives a benefit of a loan.

R' Yitzchak: The Rabbi was the reasoning of the Rambam's teachers, that there's a difference if it's already night, but he gives now.

R' Yoel Asher: Therefore, she has the money now ready, means it's as if he gives it to her. He owes her and he lets her keep it, means that he gives it to her.

R' Yitzchak: Because the question is that then one can already say initially. That's basically what the Rambam says. When he gives you initially, you can also say that he gives you the loan. Why is that called the benefit of a loan and that... do you understand?

R' Yoel Asher: It can be when the Rambam says things not fit to be heard, you would shame my teachers. They were such great Torah scholars. Here they erred. It's a shame, it's a shame, it's very weak. Others would have said Torah study write it. The Rambam doesn't say Torah study write it, but don't mention it. It's a shame for them.

R' Yitzchak: The holy Rambam says he doesn't understand what the Rabbi is so... the Rambam is angry at him about that. Okay.

The Rambam's Language: He Said to Her Behold You Are Betrothed to Me with This Perutah and with the Debt That I Have with You

R' Yoel Asher: Says the Rambam further, **he said to her, such a case, behold you are betrothed to me with this perutah and**

with the debt that I have with you. But I have a debt with you, a loan, a loan, a perutah. **Behold she is betrothed.** The Gemara calls it a loan, a perutah, her intent, a perutah.

He says already, although the loan is more, but since a loan is given to be spent, but the perutah would—

R' Yitzchak: indeed receive something.

R' Yoel Asher: The other opinions would have been, since this is a small perutah, it becomes nullified to the loan, and a loan she's not betrothed. He doesn't say so. **And likewise if he said to her, but with the loan that I have with you and a perutah.** Previously it's first the loan—

R' Yitzchak: then there's a perutah.

Law: A Debt That He Has in the Hands of Others – In the Presence of the Three of Them

R' Yitzchak: That's another similar question of a loan. But not a loan that she owes him, but...

R' Yoel Asher: Yes, **he had a debt in the hands of others.** Another person owes him money. A third Jew owes money. Would he have said, let's say her relative or what? And he says to her, **behold you are betrothed to me with the debt that I have in the hands of this one,** I owe money to that person.

R' Yitzchak: That one owes me money.

R' Yoel Asher: Ah, owes. Ah, that one owes me money. Excuse me, I won't be a relative. Such a case. That one owes me money, and he says that one is betrothed with the debts that that one has. That one must pay it, he must pay it to you. Instead of paying me, that one must pay you.

And he says that **it's in the presence of the three of them.** There's the man there, the wife, and the person who owes the money. In the presence of the three of them, I think there's an opinion in the Gemara that from then he already owes to that one. It's not that when that one will come to bring back the money, it's not just a promise, I promise that when that one will give me the money, I'll tell him ah, carry it to that one. But the obligation on the third person, on the

creditor, is to pay for that person. One already acquires from then.

R' Yitzchak: So therefore—

R' Yoel Asher: As if he gives her a...

Discussion: Why Does a Debt That He Has in the Hands of Others Work, Although a Loan is Given to Be Spent?

R' Yitzchak: Ah, a loan is given to be spent, that's only when it's with her. When it's with that one, she receives the actual worth of a perutah. That makes sense what I learned a loan is given to be spent. A loan is given to be spent means, there's no money, there's only a debt. A debt is worth money, but now he gives her a debt that lies with that one, so it's worth money.

R' Yoel Asher: It's a check, it's a check.

R' Yitzchak: When one gives a check, yes? A check is basically a loan, right? A check says to the bank, that I borrowed from the bank money, right? He borrows from everyone money, and I write a check. He translates, I tell the bank, I write a document, whatever, in the end I tell the bank, the payment is for that one. Yes? That's the translation, a debt that I have in the hands of others, that stands that with a check one can betroth. And the Master of the Universe asks—

R' Yoel Asher: That means it's in the presence of the three of them. What does one translate?

R' Yitzchak: No, it can be that with a document it works even, not that a person stands in knowledge. As I saw here below.

R' Yoel Asher: Okay, further.

Law: He Betrothed Her with a Deposit or with a Borrowed Item That is in Her Hand

R' Yoel Asher: He betrothed her with a deposit that he has in her hand.

R' Yitzchak: I think it's basically a document. There are many investigations about the reason.

R' Yoel Asher: Okay, **he was mekadesh her with a pikadon (deposit). That means, he owes her money, and he has her pikadon. Wait, excuse me. He owes**

her money, and he took her... you're laughing.

R' Yitzchak: Not money, just a pikadon. **Pikadon she'yesh lo be'yadah**, he gave her to guard his table.

R' Yoel Asher: Ah, not a mashkon (collateral), excuse me, a pikadon. Okay, **she'yesh lo be'yadah. If it's a she'eilah (loan of an object) she'hish'ilah** with something that she lent him, an object that she lent him.

R' Yitzchak: What did he borrow from her? Yes. The difference with a pikadon is that with a pikadon he's a shomer (guardian), with she'eilah he's a sho'el (borrower).

R' Yoel Asher: Okay, very good. So, money, again, basically similar to malveh (loan), meaning money or something that's in her possession.

R' Yitzchak: Not money, malveh means money, and pikadon means not money.

R' Yoel Asher: I don't know, money, or a pikadon or an object that's in her possession. But it's in her possession be'pikadon or be'halva'ah (as a loan). So **if the pikadon and the she'eilah, or at least a shaveh perutah (the value of a perutah) of them, exists in her possession, if the pikadon or she'eilah, or at least a part of it, is in her possession, harei zo mekudeshes**, because she received something tangible.

R' Yitzchak: The thing passed over to her.

R' Yoel Asher: Unlike a malveh which is le'hotza'ah nitna (given to be spent), and here the thing is actually present, and she did receive the thing. What happens in such a case?

R' Yitzchak: We can go say more topics of...

R' Yoel Asher: Here we're going to open up things that are hana'ah (benefit) like... not an object or not actual money.

R' Yitzchak: Make some kind of chapter, hana'ah? Is hana'ah shaveh perutah? Something like... yes. Okay.

Halacha: Mekadesh with "I Will Speak on Your Behalf to the Authorities" – The

Benefit That Comes to Her from His Words Is Like a Loan

R' Yoel Asher: What happens when a person says this: **Harei at mekudeshes li be'sachar she'adaber alayich la'shilton?** (Behold you are betrothed to me in exchange for my speaking on your behalf to the authorities)

R' Yitzchak: I will say good things for you—

R' Yoel Asher: To the authorities so that you won't have to pay taxes, for example. **Ve'diber aleha la'shilton, he actually spoke, ve'hinicha ha'shilton ve'lo teva'ah**, the authorities actually left her alone and didn't take from her the money she owed. She now received great value, great benefit. But **einah mekudeshes**, she is not betrothed. Why? **Ela im natan lah perutah mishelo**. If he added a perutah, then yes, she is mekudeshes with the perutah. But with the benefit alone one cannot be mekadesh.

Why? **She'ha'hana'ah she'ba'ah lah mi'devarav harei hi ke'malveh**. The benefit that came through his intercession is like a loan. That means, she had pressure, and the government now removed the pressure. But it's not that the government gave her money. If the government gave her money, in such a case it would work. He would have been mekadesh her with money that another person gives her. But all he did was remove pressure, remove a debt. It's the same thing as a malveh. When someone is mekadesh be'malveh, what did he do? He removed the pressure that you have to pay me. Ha'mekadesh be'malveh einah mekudeshes. Interesting. I need to understand the nature of malveh.

Discussion: Why Saving Is Not Giving – The Foundation of the Form of Giving

R' Yitzchak: The same thing, being mochel (forgiving) money doesn't mean.

R' Yoel Asher: The whole time we keep coming back to this, with all these cases the common denominator is that there's a lack of a form of giving something. Because one could say that in a tangible way she receives much more. Let's say, it

saved her a hundred thousand dollars in taxes. But there was no form of giving money.

R' Yitzchak: Saving is not giving.

R' Yoel Asher: Saving, he gave much more than giving a perutah.

R' Yitzchak: It's very nice, but not for kiddushin. Give a perutah.

R' Yoel Asher: Give a perutah of his own. Why should a person, a normal person cares much more about the hundred thousand dollars than about the perutah. About this he thinks that the point is the form. There is a form of how one gives money and acquires.

R' Yitzchak: I don't know. No money passed from him to her. I don't know if this, nothing passed from him to her. You don't need a form, you need to give something. Nothing came from him to her. There was something that she is theoretically, you could say. That's the secret that there are people who will, let's not say the secret, let's keep it a secret.

R' Yoel Asher: What we say on camera, yes? Yes. Perhaps we need to make the...

R' Yitzchak: I have a secret here, especially for subscribers.

R' Yoel Asher: The prime subscribers, those who listen to every shiur, should be able to get a few secrets.

R' Yitzchak: Yes, but only a few... No, a secret isn't because you don't pay money, it's a secret because you need to have the ability to hear.

R' Yoel Asher: A secret, the main meaning of sod (secret) is when people come together, "sod chachamim u'nevonim" (the counsel of the wise and understanding). So a secret you don't say on a screen, a secret you need to come together.

R' Yitzchak: And later we'll talk, and we'll know. Okay.

Halacha: Mekadesh with Labor – The Wages the Worker Acquires from Beginning to End

R' Yoel Asher: Further. "**Harei at mekudeshes li be'melacha zo she'e'eseh imach**", a similar halacha, a new case that has

relevance. You are betrothed with, I'm going to work for you, I'm a handyman, I'm going to build you a kitchen.

What is the halacha? "**Einah mekudeshes, ela im ken natan lah perutah mishelo**", he added another perutah. Why? The Rambam says an interesting thing. When a person works for someone, a project, "**ha'sechirot yizkeh bah ha'po'el me'techilah ve'ad sof**."

Discussion: Why Wages Are Like a Loan

R' Yitzchak: That means, it's not clear when the obligation becomes due. The obligation is such, this is an obligation from beginning to end. He must pay when it was agreed that he must pay. But in practice, when I work for you, when does a bit of money from yours become as if mine, or am I owed? When do you owe me the money? Can you say that it becomes owed? At the end of all the work you get a hundred dollars. No, the answer is, if I build you a hundred dollar house, every penny that I build you—

R' Yoel Asher: I become owed. You know that the whole time he is acquiring the money. It means like this: He's going to build her something, yes? He's going to build her a nice table. If one would say that until he finishes building it's still no one's, let's say, and now he transfers it to her.

R' Yitzchak: We're talking now about the table. We're talking now about the wages. It's her table. He's building on her wood, whatever. He's building her a table, and that's not the question.

R' Yoel Asher: Okay, the one who gives her a gift. Okay, he's building in her house something.

R' Yitzchak: He's making for her. He's working for her. The question, the work is worth something. But the question is whether he gives —

R' Yoel Asher: Her a perutah like at the time... He's not yet obligated to be paid, only at the end, when he has finished his work. Then he gives her the value of such and such money. But there's a law that sechirot is acquired from beginning to end, that the whole time when he works, one owes him something.

R' Yitzchak: Eh, you don't have to pay. It's essentially a loan.

R' Yoel Asher: At the end one must pay him for everything from the beginning. Essentially when he worked twelve hours, you now pay him a loan from twelve hours ago, and a loan from ten hours ago, and also a loan from five minutes ago. But the five minutes ago is already very little, it's already more like a malveh. It becomes very similar to mekadesh with malveh. **Kol zman she'ya'aseh miktzat min ha'melacha, yizkeh be'miktzat min ha'sachar. Ve'nimtza it turns out that ha'sachar kulo is malveh.** It's like a loan by her, because she now has to pay him for all the work.

R' Yitzchak: He's collecting on the loan.

R' Yoel Asher: Loan upon loan, loan upon loan.

Halacha: "Give a Dinar to So-and-So and I Will Be Betrothed to You"

R' Yoel Asher: Let's go further. **Ha'ishah she'amrah, ten dinar le'ploni, matanah,** give to that person, give to my father, let's say, a dinar as a gift, **ve'etkadesh ani lach,** and I will be betrothed to you. **Ve'natan** he gave, **ve'amar lah,** and I said, **harei at mekudeshes li.**

Kiddushin Through Benefit: Gift to a Third Party, Collateral, and On Condition to Return

Halacha 5 (Continued) – Kiddushin Through Benefit from a Gift to a Third Party

R' Yitzchak: Let's go further.

R' Yoel Asher: **Ha'ishah she'amrah ten dinar le'ploni matanah,** give to that person, give to my father let's say, a dinar as a gift, **ve'etkadesh ani lach,** and I will be betrothed to you. **Ve'natan,** and he gave, **ve'amar lah,** and he said to her, **harei at mekudeshes li be'hana'at matanah zo she'natati al picha,** you should be betrothed to me with the benefit of the money that I gave to that person.

Harei zo mekudeshes, she is indeed betrothed, **af al pi she'lo higi'a lah kelum,**

harei nehenet bi'rtzonah she'na'aseh, ve'neheneh ploni biglelah, that she has benefit that it was done according to her will, and that person benefited because of her, that she has benefit that one gave to that person money, she can be betrothed with that benefit.

Ve'chen im amrah ten dinar le'ploni matanah ve'etkadesh lo, I will be betrothed not

R' Yitzchak: To you but to that person. That means, the opposite case from this.

R' Yoel Asher: Well, that person must still say "harei at mekudeshes li",

R' Yitzchak: Because you can't just say it like that.

R' Yoel Asher: And it was done so, **ve'natan lo ve'kidesah oto ploni ve'amar lah harei at mekudeshes li**

R' Yitzchak: **Be'hana'at matanah zo she'kibalti bi'rtzonech,** you are betrothed with

R' Yoel Asher: What I received.

R' Yitzchak: Yes, because someone else gave a kiddushin for her. What did he give for her? He gave for her the benefit that Yankel has money,

R' Yoel Asher: He received a gift. It's an interesting thing.

R' Yitzchak: Harei zo mekudeshes with the benefit.

Kiddushin Through Benefit That Comes from the Mekadesh's Side

R' Yitzchak: He said to her,

R' Yoel Asher: **Ha lach dinar zeh matanah ve'hitkadshi le'ploni,** take this dinar as a gift and be betrothed to so-and-so. But he doesn't say it as an agent, he's not an agent. He does it himself, he gives her a gift.

And afterwards comes **ploni ve'amar lah harei at mekudeshes li be'hana'ah zo ha'ba'ah lach bigali,** because of me. **Harei zo mekudeshes af al pi she'lo natan lah ha'mekadesh kelum,** the mekadesh gave nothing, that person gave. But in practice she

received the money, and it was for his sake. It's like a merit, no?

R' Yitzchak: It's the same thing,

R' Yoel Asher: Works both ways.

R' Yitzchak: Just as he can give in her honor to another, and with this she receives, she can receive from a third party.

Adam Chashuv: When the Woman Gives to the Man

R' Yoel Asher: What happens in such an interesting case? **Amrah lo**, she's a feminist, she says the opposite, I'm going to give you money. **Amrah lo, ha lach dinar zeh matanah ve'etkadesh lach**, I give you a dinar as a gift, and I will be betrothed to you.

Ve'lakcho, he follows, he takes the dinar, **ve'amar lah, harei at mekudeshes li be'hana'ah zo she'kibalti mimech matanah**, you should be betrothed to me with the benefit that I received from you as a gift.

If he is an adam chashuv (important person), if he is an adam chashuv, and that he received from her a gift is for her a benefit, an honor, **harei zo mekudeshes, she'hana'ah yesh lah be'heyoto neheneh mimenah**. She has benefit that he has benefit from her, **u've'hana'ah zo tikneh atzma lo**. With this benefit she acquires herself.

R' Yitzchak: She did receive something. But what does she receive? She receives that I take her gift. Taking a gift is also a certain giving.

Discussion: Can "Adam Chaviv" Work Instead of "Adam Chashuv"?

R' Yoel Asher: Adam chashuv hu, but I'm thinking to myself, we look at it as if everything that exists has honor, but it could also be if he is an adam chaviv (beloved person). She loves him very much, and she has such benefit that he received from her a gift. It would seemingly be the same thing. Does it have to be an adam chashuv who has value, as if the rabbi that people buy from him maftir Yonah?

R' Yitzchak: Perhaps it needs to be something that one can sell to another. That means,

R' Yoel Asher: Only an adam chashuv as if, it could be that he should be chaviv as chashuv. No,

R' Yitzchak: Chaviv means that for her it becomes, but for her it becomes is not something that one can...

R' Yoel Asher: Not a value of shaveh perutah. I know, I don't know. What a person can give to his most beloved person, a gift, has value. I know that the Gemara says adam chashuv, we look at it more politically, like the important people of the shul. The point is the benefit, there is the benefit of being neheneh mimenu.

R' Yitzchak: I told you, I don't know.

R' Yoel Asher: No, I'm saying, according to this it could come out that it always works. You know, Rav Moshe has a question whether the girl gave the boy the ring?

R' Yitzchak: What's the problem? It's not a question,

R' Yoel Asher: There's no question. There's a discussion of adam chaviv. I mean, I'm not talking about where both give. But I would say that one gives just like adam chashuv, one gives to someone she loves very much, and she takes, he stands the same thing.

R' Yitzchak: I heard your reasoning. It's not what it says in the Gemara. But the Gemara speaks of adam chashuv. Yes. Further. What do you mean,

R' Yoel Asher: It gets further stuck. No, I'm asking the question what is closer to our reality. Why isn't there an adam chashuv today? A person doesn't want to marry the Rosh Yeshiva. People get married when they're eighteen,

R' Yitzchak: Nineteen, twenty. What does she have to do? A nice young man.

R' Yoel Asher: It's a matter of chavivut (endearment). She's happy that it's worth to her that the man took from her.

R' Yitzchak: What does she have to do that there isn't an adam chashuv? So how much was there in the past? There is such a thing as importance. There is a person who is...

R' Yoel Asher: Every kallah is excited for her chatan,

R' Yitzchak: And here it says that's not enough.

R' Yoel Asher: Okay.

Halacha 6 – Kiddushin with Collateral

R' Yoel Asher: **Ha'omer le'ishah hitkadshi li**

R' Yitzchak: **Be'dinar ve'harei zeh**

R' Yoel Asher: **Ha'mashkon be'yadech ad she'eten ha'dinar**, he tells her, "You should be betrothed to me with a dinar", but he doesn't give her a dinar now. He gives her collateral, "ad she'eten ha'dinar, here you have the collateral in your hands, until I give the dinar you can hold my hat".

Einah mekudeshes, she is not betrothed. Why? **Lo ha'dinar higi'a le'yadah**, she didn't receive the dinar. One cannot be mekadesh with promising a dinar. She didn't actually receive the dinar. Eh, she received the collateral, but **ve'lo ha'mashkon natan liheyoto shelah**, the collateral didn't actually become hers. It only became some kind of sign that... a collateral. It's a notice that I must give you money. That's not the money he gave her. She received nothing.

A Creditor Acquires Collateral

And further: **Hayah be'yado mashkon al chov she'yesh lo etzel acherim**, he has collateral that another person gave him. A person borrowed money from him and gave him collateral. He took the collateral and gave it to the woman. The collateral isn't his, it belongs to a certain debtor.

Af al pi she'eino shelo harei zo mekudeshes, lefi she'ba'al chov yesh lo miktzat kinyan be'gufo shel mashkon. A creditor has a certain kinyan (acquisition), a certain right, or a certain ownership, in the body of the collateral. It means, one may use it or what? Or some certain kinyan on it?

Discussion: What Does "Miktzat Kinyan" Mean in Collateral?

R' Yitzchak: He can take it if he doesn't pay. So that means he has a certain kinyan.

R' Yoel Asher: If he doesn't pay.

R' Yitzchak: That's one of the practical differences. What is a mashkon?

R' Yoel Asher: A mashkon will get something. What will consist, when he gives her the collateral, is it that she's going to receive the debt? Or not necessarily? She's going to have it until it's brought back.

R' Yitzchak: She receives the rights of the collateral, until that person brings the money. I don't know if one can use it. Whatever the kinyan is, means a certain...

R' Yoel Asher: That means one received a collateral, yes. I imagine that the miktzat kinyan must be worth a shaveh perutah.

R' Yitzchak: We're talking, it's not...

R' Yoel Asher: I'm saying, that the thing is worth a million dollars doesn't help me yet. That the benefit that it's in my closet, or that he can use it, must be worth a shaveh perutah.

R' Yitzchak: It doesn't say here that he can use it. I don't know what you want to say. It doesn't say anything here about using. Whether he can use it, one needs to ask a different question. What it says here is that he has a certain right, and it's a certain... just like that. Just like that, it's... can he with this give a... can he with this give a...

R' Yoel Asher: No, I mean perhaps the word means something else. The "yesh lo miktzat kinyan begufo" means to say, therefore he may give it to another. It doesn't mean like he was mekadesh with theft or something. Because... whatever it's worth, if the hashtamshut is worth a shaveh prutah, it is mekudeshes.

R' Yitzchak: No, I don't agree. It means exactly this, that there is a lamdus that a ba'al chov koneh mashkon. This is a lamdus'dige thing. It belongs to the ba'al chov.

R' Yoel Asher: It's not any hana'ah,

R' Yitzchak: It's his. He gives her his. Ah, she needs to return it if the other one pays back the debt? Nu, problem. Then she will need to return her thing. No, but then it will become lemafre'a...

R' Yoel Asher: Not lemafre'a at all.

R' Yitzchak: It's not... it's his, it's his. It's not lemafre'a.

R' Yoel Asher: If the other one comes an hour later and he brings back the money, and he takes the money and she remains with the mashkon, with what was she mekudeshes? She had a mashkon for an hour. She had a mashkon for an hour.

R' Yitzchak: The hashtamshut needs to be a tashmish that is worth a prutah.

R' Yoel Asher: It doesn't say here anything about tashmish.

R' Yitzchak: What?

R' Yoel Asher: He says that there is a miktzat kinyan, and therefore he may...

R' Yitzchak: If it's worth a shaveh prutah. No, not true. You're not saying the truth. Because "ba'al chov koneh mashkon" is an old thing, it means that a mashkon belongs to you. Not completely, because you need to return it, but it's as if yours. When the other one gives a mashkon, as if he exchanged with you the mashkon with his money for now. If one has a deal, as if, you can say one has a deal that if he wants he can exchange it back, but now it's yours, it's your mashkon. Think about it, the money of the mashkon belongs to him, right? As if, what is the money that is against the mashkon? It's only lying by the other one, which is his money as if. Now he has the mashkon.

Halacha 7 – Al Menas Shetachzirehu Li

R' Yoel Asher: Okay. **"One who says to a woman, behold you are mekudeshes to me with this dinar on condition that you return it to me, she is not mekudeshes"**. But an "al menas shetachziri li", one makes such a condition, let's not go yet into conditions.

R' Yitzchak: Later one will speak more about conditions.

R' Yoel Asher: But this... but you're going to return it. It's called a matanah al menas lehachzir. One should have had this in hilchos esrog. In hilchos esrog, yes. **"She is not mekudeshes". Whether she returned it or**

did not return it, whether she followed and returned it, or whether she didn't return it. So, why? Why?

The Rambam says such a beautiful way. **If she did not return it**, if she didn't return it, **behold the condition was not fulfilled**, so the condition wasn't fulfilled, so she's not mekudeshes because she didn't return it.

R' Yitzchak: She received nothing.

R' Yoel Asher: Again, if she didn't return it, she never received anything and she was not mekudeshes. Either the condition didn't happen, she's not mekudeshes because it wasn't a good transaction, she didn't follow the transaction, and she received nothing.

And if she returned it, if she did return it, **she had no benefit from the dinar, and nothing came to her hand**, nothing came to her. I'll think now about... now they make me think again about mashkon,

Discussion: Distinction Between Mashkon and Al Menas Lehachzir

R' Yitzchak: Because by mashkon there is no nesinah al menas lehachzir. A mashkon is yours.

R' Yoel Asher: It's not a nesinah al menas lehachzir. But, okay, velo higia leyada kelum.

R' Yitzchak: The words velo higia leyada kelum is further the... no, al menas lehachzir means he returns it.

R' Yoel Asher: He received something, but okay. One needs to know about the matter of... yes, it says. Okay. One needs to know how much one needs to actually have hana'ah from the gift.

R' Yitzchak: One doesn't need any hana'ah at all. I don't understand what he's saying, it doesn't say anything about hana'ah.

R' Yoel Asher: When one gives money one doesn't need to have hana'ah, it's the money itself. But when one is mekadash with hana'ah, that's a question...

R' Yitzchak: That means, he gives her a dinar. A dinar is money.

R' Yoel Asher: The mashkon, I'm talking about this. Okay, let's go further.

R' Yitzchak: A dinar is money. I don't understand the problem.

Halacha 8 – Hadasim and Hidden Coins

R' Yoel Asher: The Rambam says further: **He gave her a bundle of myrtle,**

R' Yitzchak: **And the like,** it's something that isn't worth even a shaveh prutah.

R' Yoel Asher: Okay, go check out how much myrtle costs in the street. Yes, myrtle after yom tov. **And he said to her, behold you are mekudeshes to me with this,** with this, **and she accepted it,** she took it. **They said to him,** they said to him, **but it doesn't have a shaveh prutah in it. And he said,** you know what, **be mekudeshes...** he makes such a trick, such a prank. Many times people hide the ring that one gives to the bride, some kind of style thing. He says, **be mekudeshes then with the four zuz that are hidden inside the bundle.** Look carefully.

Kiddushin BeSefeik: Bundle with Hidden Money, Dates, and Cup with Various Contents

Halacha: Kiddushin with a Bundle that Has Hidden Coins (Continued)

R' Yitzchak: Then it's so,

R' Yoel Asher: **If she said yes,** if she said that she agrees to the match, to the kiddushin of the four zuz, **behold she is mekudeshes. If she said yes, behold she is mekudeshes,** that she agrees to the kiddushin, and there was money there. But **if she was silent, she is not mekudeshes with this money,** why? **Because silence after the giving of money to her hand is not effective.** So there was like this, here was, he gave a kiddushin that wasn't worth a shaveh prutah when he said harei at mekudeshes li. But afterwards it turned out that he did actually give, besides the bezo that didn't work, there was something new, the surprise that he hid in the bundle.

R' Yitzchak: But when he said,

R' Yoel Asher: If she says yes, and the yes connects with the words of arba'ah zuzim

hamucha'im betoch ha'agudah, something happens here. But if it was only silent silence, when he said, there weren't the four zuz. And what was there? Her silence. Many times they say silence is like admission, but shtikah she'l'achar matan ma'os einah mo'eles. What will happen? **And she will be mekudeshes in doubt because of the bundle, perhaps it's worth a prutah in another place.** The bundle he did say, on the hadas itself he said harei at mekudeshes li bezo, and on that she was silent, usually silence helps. But what's the problem? That perhaps it's not worth a shaveh prutah. So if it's certainly not worth a shaveh prutah, the four zuz won't help, because her silence from after the second, the tiskadshi be'arba'ah zuzim was already after the ma'os, was already after the giving. Utehei mekudeshes besefeik, shema tishveh prutah bemakom acher. One also needs to connect to the halacha of the previous halacha of the Rambam, that it's actually only in a case when one can go sell it.

R' Yitzchak: Okay, but that's the halacha.

Halacha: Hitkadshi Li BeTamarah Zo – Dates One by One

R' Yoel Asher: The Rambam, **One who says to a woman...**

R' Yitzchak: Another interesting person.

R' Yoel Asher: There are many interesting people in the world. But when it comes to people meeting women, all their things become interesting, I think. **One who says to a woman, be mekudeshes to me with this date,** with this date, and afterwards he gives her another one and another one, and he says hitkadshi li bezo, hitkadshi li bezo. So, **if one of them has a shaveh prutah,** if one of them alone is a shaveh prutah, **behold she is mekudeshes. And if not,** if not, it becomes the question like this, perhaps he meant to say this and this and this, all three together. But in practice he said separately, hitkadshi li bezo, hitkadshi li bezo, as if that one of them alone should be enough for kiddushin. **She is not mekudeshes except in doubt, perhaps one date is worth a prutah in another country.**

R' Yitzchak: When he says hitkadshi li bezo, hitkadshi li bezo, separately, then certainly he means one separately. One needs to make sure that one is a shaveh prutah. Understandably, one goes back to the topic, as we learned the rule earlier, and one always reviews, that any thing that is shaveh kesef, there is a name of shaveh prutah. But if he says, amar lah,

R' Yoel Asher: Hitkadshi li bezo uvezo uvezo,

Halacha: Hitkadshi Li Bezo Uvezo Uvezo — Dates Together

R' Yitzchak: He doesn't say hitkadshi li bezo, hitkadshi li bezo,

R' Yoel Asher: He says like one package, one kiddushin with several objects in it, then one can indeed count them all together. That means, it's several dates, so **if all of them together have a shaveh prutah**, among all three dates there is a shaveh prutah, then **she is mekudeshes**. **And if not, she is not mekudeshes except in doubt**. In doubt of shema shaveh, yes. What happens in such a case? **She was eating the first one first**, he gives her hitkadshi li bezo, and she eats it up, and so on.

Halacha: Haysah Ocheles Rishonah Rishonah

R' Yitzchak: So,

R' Yoel Asher: If the last one has a shaveh prutah, if the last one that she hasn't yet eaten is a shaveh prutah, then **she is mekudeshes** with the shaveh prutah. **And if not, she is not mekudeshes except in doubt**. Why? **Because those dates that she ate**, behold they were already eaten.

R' Yitzchak: Nu, what is there?

R' Yoel Asher: She needs to pay. She needs to pay, there's something of the...

R' Yitzchak: This one needs to know, one needs to pay. Yes, certainly one needs to pay. It's not kiddushin. Certainly. So those dates

R' Yoel Asher: That she ate, behold they are like a loan. He wants in the end...

R' Yitzchak: He wants in the end that the eaten dates should become part of his kiddushin of

now. That's eaten, there only remains here a loan. One is mekadesh her with this that I won't ask you to return it. **And one who is mekadesh with a loan, she is not mekudeshes**. The previous rule, he wants that the eaten dates should become part of his kiddushin of now. That's eaten, there only remains here a loan. **And it turns out that the kiddushin is only with the last date**, and furthermore there is a doubt that perhaps the

R' Yoel Asher: Last date is worth something. And perhaps the benefit that she is now satisfied? One can't say that, it's also worth part of a prutah, but the benefit... he wasn't mekadesh with hana'ah, he was mekadesh with kesef as I understand.

Halacha: Amar Lah Be'elu — And She Eats First One First

R' Yitzchak: Amar lah,

R' Yoel Asher: He said to her, behold you are mekudeshes to me with these, and he gives her a group of dates. He doesn't say bezo bezo bezo,

R' Yitzchak: But he gives them all at once,

R' Yoel Asher: He says be'elu. **If all of them together have a shaveh prutah, she is mekudeshes, even though she is eating the first one first, because she is eating her own**, she's eating already hers, because he told her be'elu and then he gives it to her.

R' Yitzchak: Earlier we spoke that he says bezo

R' Yoel Asher: Bezo bezo all at once.

R' Yitzchak: I'm still in the middle of saying. A new halacha. The Rambam says like this,

Halacha: Hitkadshi Li BeKos Zeh — Cup with Various Contents

R' Yoel Asher: One who says to a woman, behold you are mekudeshes to me with this cup, with this cup. Now becomes the question whether one means the cup, or whether one means what

R' Yitzchak: Is in the cup.

R' Yoel Asher: So one will say that everything depends on the context and on the content of the

words. **If it was full of water**, if the cup is full of water, water isn't worth much, **behold she is mekudeshes with it and with what is inside it**. One counts both, the water plus the cup together. If between both of them together there is a prutah, it's good. **And if it was full of wine**, the wine is worth much more than the cup. **Behold she is mekudeshes with it**,

R' Yitzchak: So apparently it should be intention. He means, when I give you a glass of wine, I don't mean the glass, I mean the wine. When I give you a glass of water, I mean both.

R' Yoel Asher: The opposite, **behold she is mekudeshes with it**, with the cup, **and not with what is inside it**, not the wine that is inside.

R' Yitzchak: I don't know. Ah, sorry, the opposite, wine is bo velo bemah shetocho.

R' Yoel Asher: I also thought that by water, water is worth nothing, one goes on the cup.

R' Yitzchak: No, one goes on both according to the Rambam.

R' Yoel Asher: So says the Rambam.

R' Yitzchak: What's the explanation? And by the wine, I don't know. He doesn't explain. This is a Gemara that the Rambam learned this way. Learned this way. Meaning,

R' Yoel Asher: When I learned the Gemara, if I remember correctly, one said simply, if it's water, the main thing is the cup,

R' Yitzchak: Because water isn't worth anything. I think that Rashi and others have a dispute in the explanation. Yes. Again, what is the opinion of the Rambam? Water is bo uvemah shetocho, wine is bo velo bemah shetocho, and oil, it seems the Rambam held that wine also isn't worth so much.

R' Yoel Asher: Wine is certainly worth more than water.

R' Yitzchak: Not as much as oil.

R' Yoel Asher: Good, but why should it be weaker than water?

R' Yitzchak: Because wine one drinks right away. So he says, one doesn't keep it. So he says

an explanation, I don't know.

R' Yoel Asher: When one gives a cup of wine, you mean to give the drink. But he says exactly the opposite.

R' Yitzchak: The opposite, you mean that you should drink it, but you're not giving it. I don't know. Because the wine is important, it doesn't become nullified. Therefore, if it doesn't become nullified it's an extra thing. He says bekos, he doesn't say wine. **And if it was full of oil**,

R' Yoel Asher: Then **behold she is mekudeshes with what is inside it**, with the oil, **and not with it**, not with the cup. **Therefore, if the oil didn't have a shaveh prutah**, if the oil itself wasn't worth a shaveh prutah, **behold she is mekudeshes in doubt** that perhaps in another place it's

R' Yitzchak: Worth a shaveh prutah.

R' Yoel Asher: **And if the oil had a shaveh prutah, behold she is certainly mekudeshes and we don't pay attention to the cup**. Interesting that he doesn't say the same thing about the cup, the question is whether the cup is worth a shaveh prutah. He understood simply that the cup is always worth a shaveh prutah? Why? One should have said with water, yes? Harei zo mekudeshes bo if it has a shaveh prutah.

R' Yitzchak: A regular cup is always worth a shaveh prutah, no? I don't know. A cup? Not a plastic cup. A becher?

R' Yoel Asher: A cup of earthenware? I don't know.

R' Yitzchak: Perhaps. The Rambam's explanation is this. In the Gemara it wasn't stated which is what. The Rambam explained it this way. And the Maggid Mishneh explains, water is not important and it is nullified, therefore he means both. Wine is not important and not nullified, therefore he means bo. Oil is so important and one doesn't drink it, therefore it's simply a thing that is one, but one means the oil. Why should one mean further bo uvemah shetocho? He makes this distinction. He says that Rashi indeed explained differently. I don't

know, it's hard to understand a bit the Rambam's explanation.

R' Yoel Asher: Well, we have finished with this the fifth chapter of hilchos kiddushin.

R' Yitzchak: Hilchos ishus, yes.