

Laws of Marriage Chapter 6 (Auto Translated)

English

Auto Translated

Shiur Overview

Summary of Shiur on Rambam Hilchos Ishus Chapter 6 — Conditions in Kiddushin

Introduction and General Discussion

The Value of Learning Rambam

[Digression: Learning Rambam versus Gemara]

For someone who has only half an hour of time, he can better utilize his time with other parts of Torah (like Rambam or Mishnayos) instead of a blatt Gemara, because Gemara requires "tremendous time and effort." Rambam can fulfill both — it's serious enough for lomdim, and it gives a "very serious view of what the halacha is." There's also discussion of the deficiency in yeshivos that don't learn Kitzur Shulchan Aruch with bochurim — a bochur can leave yeshiva without basic knowledge in practical halacha. Even a ben Torah who learns three sederim of Gemara a day would be better off if he took down one seder for Rambam and one seder for Kitzur Shulchan Aruch.

Location in Rambam — Chapter 6 of Hilchos Ishus

We're holding in **Chapter 6 of Hilchos Ishus** (which deals with kiddushin). The previous shiurim learned **the laws of kesef kiddushin** — mitzvah ba'aveirah, gezel, mekadesh b'malveh, mekadesh b'hana'ah. **Today we begin a new sugya: tenai b'kiddushin — mekadesh al tenai.** Chapter 6 goes into mekadesh al tenai in general, and even mentions things that aren't specifically by kiddushin. Chapter 7 goes deeper into matters of tenai and "al menas," more focused on kiddushin.

General Introduction to the Topic of Tenai'im

Chiddush 1: First time Rambam deals with tenai in detail. This is the first time in Rambam where he expands on the topic of tenai. According to the principle that "the first time something is mentioned in Torah, there is the *ikar ohr shebo*" (a principle from Polish rebbes), this is the main place for tenai-halachos.

Chiddush 2: Dispute whether tenai is only by gittin and kiddushin or by all kinyanim. The Rambam holds that **tenai is a matter by every type of kinyan**, not just by gittin and kiddushin. But there were **Geonim** who held that the special laws of tenai (like tenai kaful, tenai kodem l'ma'aseh, etc.) are only a din by gittin and kiddushin. The reason of the Geonim: by day-to-day deals it would be impractical if every tenai had to conform to all the laws of tenai.

Chiddush 3: Tenai by mitzvos and avodas Hashem — a different geder than tenai by kinyanim. The tenai we're learning here is **between two people** — a chalos and a kinyan (like kiddushin). But when we talk about "davening al tenai" or "bracha al tenai" — with whom is one making the tenai? With the Ribbono Shel Olam? This is perhaps more a **giluy milsa** (a clarification of intent) than a formal tenai. This is perhaps connected to the Rambam's discussion of **matneh al mah she'kasuv b'Torah** — because we have a "relationship" with Hashem, a question arises whether one can make tenai'im in this.

Chiddush 4: Tenai as a close cousin of mekach ta'us. Tenai is practically a "close cousin" of mekach ta'us. By mekach ta'us it's that "when I was mekadesh, I understood that such and such." Tenai is when something isn't so obvious, and one needs to explicitly make it as a tenai.

Chiddush 5: Tenai by kiddushin vs. nisuin.

All examples of tenai are by **kiddushin**, not by **nisuin**. There's a question whether nisuin al tenai is even relevant. The principle of **ein adam oseh be'ilaso be'ilas zenus** — that chuppah and kiddushin and living together nullifies the tenai. It's "very strange" that a person should live with his wife on a tenai. Originally when kiddushin was a year before the wedding (nisuin), kiddushin was a "lesser thing" — more like a deal/shidduch, which made sense to have conditions. Today, when kiddushin and nisuin are together, it's different. Many of the expectations that a couple wants to stipulate (like where they'll live) belong in the **kesubah**, not in the kiddushin. Chazal didn't put things into the kiddushin — kiddushin is a chalos, and the conditions are more about the agreement/ratzon, not about practical arrangements.

The Source of the Word "Tenai"

The word "tenai" doesn't appear in the Torah. By Bnei Gad and Bnei Reuven the concept of a tenai appears, but not the word itself — "tenai" is a Mishnaic word. It's brought up whether "tenai" has a connection to "tana" (a tana of Mishnayos) — the conclusion is that "tana" and "tenai" are two different things, although in Aramaic "shna" means change, and "Mishnah" becomes "masnisin." An interesting sevara: "tenai" can be connected to "shinui" — if a change happens (the tenai isn't fulfilled), there should be a change in the chalos (the kinyan shouldn't take effect). A pasuk in Hoshea "hisnu ahavim" may have the same root, but we remain with "eini yodei'a."

Halacha 1 — Hamekadesh al Tenai: Basic Law

The Rambam's words: "Hamekadesh al tenai, im niskayeim hatenai mekudeshes, v'im lo niskayeim einah mekudeshes... bein shehayah hatenai min ha'ish bein shehayah min ha'ishah."

Explanation: One who is mekadesh a woman with a tenai — if the tenai is fulfilled, she's mekudeshes; if not, not. No difference whether

the tenai comes from the man or from the woman.

Chiddushim:

1. Tenai doesn't break the ma'aseh, but the agreement: The tenai doesn't break the ma'aseh of giving a ring — the tenai breaks the **agreement** that one wants to become mekadesh with this. Tenai has to do with the **ratzon**, not with the ma'aseh.

2. Both sides are equal in da'as: Although the man is the mekadesh (active) and the woman is the mekabel, regarding **da'as** — da'as koneh and da'as makneh — they're completely equal. Therefore it makes no difference whether the tenai comes from the man or from the woman.

3. [Digression: Whether a woman doesn't want to be "nikneh":] The claim that today's kallos don't want to be "nikneh" to the man — but it's never entirely true. It's a deal between two people who both must equally agree. "Kinyan" is just a way of looking at the chalos, not a description of the relationship between man and wife.

Halacha 1 (continued) — Four Things of Tenai

The Rambam's words: "V'chol tenai sheba'olam, bein b'kiddushin v'girushin, bein b'mekach u'memkar, bein b'she'ar dinei mamon, tzarich lihyos batenai arba'ah devarim. V'eilu hen: (1) sheyihyeh tenai kaful, (2) v'sheyihyeh hahen shelo kodem lalo, (3) v'sheyihyeh hatenai kodem lama'aseh, (4) v'sheyihyeh hatenai davar she'efshar l'kaymo."

Explanation: Every tenai in the world — whether in kiddushin/gittin, whether in buying and selling, whether in other monetary laws — must have four things: (1) kaful — one must spell out both sides (if yes, thus; if no, thus). (2) Hen kodem lalo — one must first say the positive side, then the negative. (3) Tenai kodem lama'aseh — one must first spell out the tenai, then do the ma'aseh. (4) Efshar l'kaymo — the tenai must be something that's possible to fulfill.

Chiddushim:

1. The Rambam moves from kiddushin to general tenai: The Rambam uses the occasion of tenai b'kiddushin to lay down **general tenai rules for all matters** — because it's a shame to talk about tenai only by kiddushin if there are so many halachos. He's learning it now also for the future, whenever a tenai will be relevant.

2. The Rambam lists only ishush and mamon: The Rambam says "kiddushin v'girushin" and "mekach u'memkar" and "she'ar dinei mamon" — for now only ishush and mamon, not other matters.

Halacha 2 — If the Tenai Lacks One of Them

The Rambam's words: "V'im chaser hatenai echad mehen, harei hatenai batel, v'cha'ilu ein sham tenai klal, ela tihyeh zo mekudeshes o megoreshes miyad, v'yiskayeim hamekach o hamatanah miyad, v'cha'ilu lo hisnah klal hoil v'chaser hatenai echad min ha'arba'ah."

Explanation: If one of the four rules of tenai is missing, the tenai is nullified, but the ma'aseh (kiddushin, gittin, mekach, matanah) remains in force — as if there was no tenai at all.

Chiddushim:

1. Basic question: Why does the ma'aseh remain in force when the tenai is invalid? If a person made kiddushin with a tenai, and the tenai is invalid (for example without tenai kaful), the person's ratzon was only al tenai — he didn't want it without the tenai! Why don't we say that ratzon is lacking, and therefore the ma'aseh shouldn't take effect?

2. First answer — ratzon vs. tenai: Ratzon in kiddushin means the essential ratzon to be man and wife — that's the foundation of the chalos. A tenai is a further, added thing — conditions that one adds on top of an existing ratzon. When two people want to get married, the essential ratzon is there; the tenai (for example "if you give me money") is an addition. If the tenai is invalid, the essential ratzon remains intact.

3. Analogy from contract law: A mashal of a house sale with a "rider" (added condition). If the rider is poorly written, the court says: you didn't write it clearly — you lose the rider, but the basic contract remains. So too here: a tenai is a special addition to the normal order. If one made it "wrong," one loses the tenai, but the normal ma'aseh remains.

4. The foundation: Tenai is not a din in da'as/ratzon, but a din in chalos: Tenai is not a "giluy da'as" of what the person wants — because then we wouldn't need special laws of tenai'im. Tenai is a formal limiting mechanism on the chalos. Therefore, when the formal mechanism is invalid, the chalos remains without limitation.

5. The matter of devarim shebalev: The principle of devarim shebalev einam devarim — a person can't later say "I really didn't want." Even when both sides say they only agreed al tenai, that's devarim shebalev. A tenai that was said out loud is more than devarim shebalev — he did something — but if it's not formally valid, it doesn't help.

6. Ratzon doesn't mean "second thoughts": Ratzon in halacha doesn't mean that one didn't have regret or fear. Ratzon is lacking only when there was ones (coercion). "Second thoughts" is not a lack of ratzon — "that's every couple, one dies with that."

7. Chazal's motivation for the rules of tenai: Tenai'im can make everything "floppy" and open — one wants to come to a "davar hagomer." Chazal therefore limited it through the four rules (learned from tenai Bnei Gad and Bnei Reuven), so it shouldn't be hefker, and a person should know that when he makes a ma'aseh, he's obligating himself.

Halacha 3 — Example of a Valid Tenai

The Rambam's words: "Keitzad? Ha'omer l'ishah: im titni li masayim zuz harei at mekudeshes li b'dinar zeh, v'im lo sitni li lo tihiy mekudeshes, v'achar shehistnah tenai zeh nasan lah hadinar — harei

hatenai kayam v'harei zo mekudeshes al tenai. V'im nasnah lo masayim zuz tihyeh mekudeshes, v'im lo nasnah einah mekudeshes."

Explanation: An example of a valid tenai where all four rules are fulfilled: tenai kaful (hen v'lav), hen kodem lalo, tenai kodem lama'aseh (he says the tenai before he gives the dinar), and davar she'efshar l'kaymo.

Chiddushim:

1. **Rambam's understanding of "tenai kodem lama'aseh":** The Rambam's language "v'achar shehistnah tenai zeh nasan lah hadinar" implies that "tenai kodem lama'aseh" means one must say out the tenai before the doing of the ma'aseh (the giving of the dinar), not just that the tenai should stand in the language before the ma'aseh. There's a dispute in the meforshim about this.

2. **"Tihyeh mekudeshes" — when does the chalos enter?** The language "tihyeh mekudeshes" — she only becomes mekudeshes when the tenai is fulfilled (when she gives him the two hundred zuz). The chalos is "completed" when the tenai happens.

Halacha 3 (continued) — Example of Invalid Tenai: Ma'aseh Kodem L'Tenai

The Rambam's words: "Aval im amar lah harei at mekudeshes li b'dinar zeh, v'nasan hadinar b'yadah, v'amar im titni li masayim zuz v'im lo sitni lo tihiy mekudeshes — harei hatenai batel, mipnei shehikdim hama'aseh."

Explanation: When he first gave the dinar (ma'aseh) and afterwards said the tenai, the tenai is nullified because ma'aseh was kodem l'tenai, and she's mekudeshes without tenai.

Chiddushim:

1. **Toch kedei dibur doesn't help by tenai:** The Rambam says that even toch kedei dibur (the rule that one can retract toch kedei dibur) doesn't help here. The rule "kol toch kedei dibur k'dibur dami" — which helps in other matters (for example one said "mored hatal" by mistake and

fixes it toch kedei dibur) — but by tenai in kiddushin it doesn't help. One can't be chozer from kiddushin toch kedei dibur, and so too one can't add a tenai toch kedei dibur after the ma'aseh.

Halacha 3 (continued) — Example of Invalid Tenai: Tenai She'eino Kaful

The Rambam's words: "V'chen im amar lah im titni li masayim zuz harei at mekudeshes li b'dinar zeh v'achar kach nasan hadinar l'yadah harei hatenai batel mipnei shelo kafal tenao sheharei lo amar lah v'im lo sitni lo tihiy mekudeshes, v'harei zo mekudeshes miyad v'einah tzrichah liten lo klum."

Explanation: When one makes a tenai but doesn't say both sides (hen v'lav), the tenai is nullified and the kiddushin is valid without any tenai.

Chiddushim:

1. **What "kaful" means by tenai'im:** Literally both sides — the yes and the no. People often say "bisnai kaful u'mechupal" and mean something similar to "shevuah v'hoda'ah kefilah u'mechupeles," but the true meaning is that one must explicitly say both sides.

Halacha 3 (continued) — Example of Invalid Tenai: Lav Kodem L'Hen

The Rambam's words: "V'chen im amar lah im lo sitni li masayim zuz lo tihiy mekudeshes li v'im titni li masayim zuz harei at mekudeshes li b'dinar zeh v'achar kach nasan hadinar l'yadah harei hatenai batel mipnei shehikdim lav l'hen v'harei zo mekudeshes miyad v'einah tzrichah liten klum."

Explanation: When one starts with the negative side before the positive, the tenai is nullified.

Chiddushim:

1. **The hardest case to understand in sevara:** What's the difference which way one

says it? The explanation: one starts from a situation where no one is mekudash to anyone — that's the status quo. Only when one says "harei at mekudeshes" does something begin. Therefore one must begin with the hen (positive) — that which creates a new reality — and only then say the lav. Beginning with "im lav" hangs in the air, because there's nothing yet that one can negate.

2. The Rambam doesn't give any explanation for the din of hen kodem lalo, while he explains other dinim. This is lacking.

Halacha 4 — Example of Invalid Tenai: Davar She'i Efshar L'kaymo

The Rambam's words: "Im amar lah im ta'ali larakia o terdi lasehom... v'im lo sa'ali larakia v'lo terdi lasehom lo tihi mekudeshes, harei hatenai batel v'harei hi mekudeshes miyad, shehadavar yadu'a she'i efshar lah l'kayeim tenai zeh v'ein zeh ela k'maflig b'davarim derech sechok v'hisul."

Explanation: A tenai that's impossible to fulfill is considered joking, the tenai is nullified, and the kiddushin is valid.

Chiddushim:

1. The Rambam's explanation here is different from all other cases: By the other cases (not kaful, lav kodem l'hen, ma'aseh kodem l'tenai) the tenai is nullified because a formal requirement is missing. Here however the tenai is nullified from a completely different reason: "derech sechok v'hisul" — it's clear he doesn't mean it seriously. This is more like an umdena that he doesn't mean it.

2. The sechok v'hisul is only on the tenai, not on the kiddushin: The man does want to be mekadash — he's just joking with the tenai, not with the kiddushin itself. Therefore the tenai is nullified but the kiddushin remains.

3. Comparison with previous halachos: In a previous case where a woman throws back the ring — there the sechok is on the entire kiddushin, therefore it's not kiddushin at all.

Here the sechok is only on the tenai, therefore the kiddushin remains in force.

Halacha 8 — Tenai to Do Something the Torah Forbade

The Rambam's words: "Harei shehistnah b'davar she'efshar la'asoso ela shehaTorah asrah oso, k'gon she'amar l'ishah im tochli chelev v'dam harei at mekudeshes li... harei hatenai kayam, v'im avrah v'achlah tihiyeh mekudeshes o megoreshes, v'im lo achlah einah mekudeshes v'einah megoreshes. V'ein omrim bazeh harei hisnah al mah she'kasuv baTorah, sheharei b'yadah shelo sochal v'lo tiskadesh v'lo tisgaresh."

Explanation: When the tenai is to do something that's physically possible but forbidden min haTorah (like eating chelev v'dam or pork), the tenai is valid. It's not like "matneh al mah she'kasuv baTorah," because it's in her hand not to eat and not to become mekudeshes.

Chiddushim:

1. The difference between "i efshar" and "asur": By "i efshar" (like going up to heaven) everyone knows it's joking, therefore the tenai is nullified. By "asur" (like eating pork) — although for frum people it's "out of the question" — it's still physically possible, therefore it's not "derech sechok v'hisul" and the tenai remains valid.

2. The Rambam's sevara — "b'yadah": The key is "b'yadah" — it's in her hand. Something that's forbidden doesn't yet mean "not b'yadah." She can indeed eat (although she may not), and she can also not eat and not become mekudeshes.

3. Question: What if the person is so frum that for him eating pork is literally like going up to heaven — isn't it also "joking"? [The answer isn't elaborated.]

4. Difference between "matneh al mah she'kasuv baTorah" and this case: The Rambam says explicitly "v'ein omrim bazeh harei hisnah al mah she'kasuv baTorah" — because the principle of matneh al mah she'kasuv baTorah applies when one wants to nullify a din Torah

through a tenai, not when one makes a tenai to do an aveirah.

5. Da'as hamatneh — a second sevara: Sometimes a person makes a tenai like "im tochli chazir harei zeh gitaich" and he **really means** that she shouldn't do it. That's his way of saying "I don't really want to divorce you." He uses the tenai as a mechanism — if she eats pork, she's guilty, and the get takes effect. Or, he puts it in her hands — "it's in your court now." The fact that he really wants her not to do it makes the tenai legitimate in his da'as, even if it's an issur.

6. Ma'asin lema'aseh kasuv baTorah — the Rambam's third sevara: The Torah only opposes someone who **rebels against it** — but here he's not going against the Torah, on the contrary, he's saying "don't do it, no problem." This is a **very interesting step by the Rambam**, because he's doing a "Tosafos-type" thing here — he brings in a lomdishe question (ma'asin lema'aseh kasuv baTorah) in the Rambam's style, which isn't typical for him. The Rambam uses this as a bridge to connect the halacha of "i efshar because the Torah forbade it" with the next halacha of **matneh al mah she'kasuv baTorah**, which is really a different type of reality.

[Digression: Joke about Rosh Hashanah]

A story of a Polish tzaddik who made a joke on Rosh Hashanah. When he was asked how one can make jokes on Yom Noraim, he answered that in Shulchan Aruch it says one must be mesame'ach (make happy) a chasan — and on Rosh Hashanah, when "oleh" (it goes up), he certainly means it seriously. (That itself is also a joke.)

Halacha 9 — Matneh Al Mah She'kasuv BaTorah

The Rambam's words: "K'gon shekidesh o geiresh o nasan matanah o machar bisnai — shehu rotzeh bisnao sheyizkeh atzmo b'davar shelo zikasah lo Torah, o yiftor atzmo bisnao midavar shechiyevah oso bo haTorah — she'omrin lo tenacha batel, u'kvar niskaymu ma'asecha, v'ein atah

niftar midavar shechiyevah oscha bo haTorah, v'lo tizkeh b'davar shemana'ah oscha mimenu. Keitzad? K'gon shekidesh ishah al tenai she'ein lah alav she'er kesus v'onah — b'ches v'she'ar tenao kayam, aval b'onah tenao batel, shehaTorah chiyevah oscha b'onah."

Explanation: When one makes a kinyan (kiddushin, gittin, matanah, mechirah) with a tenai that wants to exempt him from an obligation that the Torah places on him, or wants to give him a right that the Torah didn't give him — the tenai is nullified and the ma'aseh stands. By she'er v'ches (monetary things) one can indeed make a tenai because it's davar shebemamon, but by onah the tenai is nullified.

Chiddushim:

1. The sharp difference between Halacha 8 and Halacha 9 — two types of "tenai":

- In Halacha 8 the tenai is an **outside condition** — a foreign thing (like eating pork) is used as a condition for the chalos of the get/kiddushin. The tenai determines **whether** the kinyan takes effect.

- In Halacha 9 the tenai is an **inside deal** — he wants to change **what the kinyan means**, what are the consequences of the kinyan. He wants kiddushin not to mean she'er kesus v'onah. This is "matneh al mah she'kasuv baTorah" — he wants to circumvent the definition of the kinyan itself.

The word "tenai" here is a **shem mushal** — it means something completely different than a tenai in Halacha 8.

2. The Rambam's art of putting together:

The Rambam intentionally put together the two halachos in one category, although they're fundamentally different. He sought a way to connect "i efshar because the Torah forbade it" (Halacha 8) with "matneh al mah she'kasuv baTorah" (Halacha 9) through the lomdishe question of "ma'asin lema'aseh kasuv baTorah."

3. The meaning of "she'omrin lo tenacha batel": The Rambam's language "she'omrin lo" is different from the regular tenai batel (like by

missing the four things). Here it's not that the tenai technically falls apart — rather **the Chachamim throw it at him**: "You have no right at all to make such a tenai. It's not your arena." The tenai is declared irrelevant, and the ma'aseh remains standing.

4. Why one can't circumvent the Torah's deal: A mashal: It's like someone who's born and says "al menas that I may steal that person's things" — it makes no sense. So too, someone who got married and wants to be exempt from she'er kesus v'onah — there's no such thing. The obligations "jump up" on him automatically through the kinyan.

5. The difference between davat shebemamon and not davat shebemamon: By davat shebemamon (like she'er v'ches) one can indeed make a tenai al mah she'kasuv baTorah — because she can undertake "I'll support myself." But by onah, which is not davat shebemamon, the tenai is nullified. Kiddushin is also not davat shebemamon.

6. Why one can't make a tenai on onah — three shitos:

- **Rashi's shitah:** Onah is "tza'ar haguf" — a davat shebeguf, not a davat shebemamon. Therefore one can't make a tenai on it, even with agreement.

- **Chiddush (sevara #2):** Onah is not just one of the three obligations — onah is the **essence** of being man and wife. Before Matan Torah "adam pogesh ishah" — the bi'ah relationship — was the essence of connection between man and wife. After Matan Torah came kinyan (kiddushin), but the kinyan is only a **preparation** for the essence — for being man and wife together. Two people who do onah together — that's what "man and wife" means. One can't make a tenai that one should be man and wife without onah, because that's like saying "we'll be partners without being partners." The difference: onah doesn't just mean the right to do bi'ah, but an **obligation** with specific parameters (how often, etc.). One can call him to beis din if he hasn't fulfilled onah for four weeks — he's a mored mitashmish. The

parameters (how often, etc.) are an **added** definition on the essence, like by davening — there's an obligation to daven, and how often is a detail.

- **Chiddush (sevara #3):** What one says at the time of kiddushin can't remove an obligation that comes up **afterwards** — onah is an obligation that arises from living together, not from the kiddushin-ma'aseh itself. There are other ways not to do onah (like mechilah afterwards), but the tenai at the time of kiddushin is not the mechanism that can remove it. The tenai at the time of kiddushin speaks about the ma'aseh kiddushin — it can't cause an obligation that "keeps coming up" not to arise.

7. Question: Onah is "bein adam l'chaveiro": Onah is an obligation "bein adam l'chaveiro" (mored l'chaveiro), not "mored laMakom" — if so, why shouldn't one be able to make a tenai? By shemiras Shabbos one understands — that's bein adam laMakom, one can't make a tenai. But onah? The answer: Chazal understood that onah is **more similar to shemiras Shabbos** — it has an element that goes beyond just monetary relationships.

8. [Digression: Onah and mechilah:] Mechilah by onah is indeed possible (later in the halachos), but that's a different mechanism than tenai at the time of kiddushin. The difference: mechilah is when she says with clear da'as "I'm mochel" — that's a conscious decision. A tenai at the time of kiddushin is a different thing — he's trying through the ma'aseh kiddushin to remove the obligation. "In certain communities" people talk themselves into that one can get married "al menas she'ein lach alai onah" — and clearly: ****tenacha batel, it's**

tenacha batel, it's demanded of you. If someone truly can't — that's an ones, which is a different topic.

9. Question on davat shebemamon: If the Torah says one is obligated in she'er, the Torah also wants one to be obligated — why can one make a tenai there? By she'er kesus it's money that he owes her, and she can say "I don't want" — but the difference isn't entirely clear.

10. The difference between Halacha 8 and Halacha 9 in the force of the Torah: In Halacha 8 (tenai of eating pork) the Torah's kedushah isn't relevant — one can use an issur as a tenai because it's only an external condition. But in Halacha 9 the reason why one can't — **not because of kedushas haTorah**, but because **that's how the kinyan comes** — you can't circumvent what kiddushin is. Kedushas haTorah is not the issue — the issue is that one can't change the definition of a kinyan.

Halacha — Example of Yefas To'ar: "Hamekadesh Yefas To'ar Al Menas Sheyis'amer Bah"

The Rambam's words: "V'chen hamekadesh yefas to'ar al menas sheyis'amer bah — tenao batel, sheharei haTorah mana'ah oso mehishtabed bah achar sheniv'alah, v'lo mipnei tenao yizkeh b'davar shemana'ah Torah, ela tenao batel, v'chen kol kayotzei bazeh."

Explanation: One who is mekadesh a yefas to'ar (a woman captured in war) with a tenai that he'll be able to be mis'amer in her (treat her like a maidservant) — the tenai is nullified. The Torah forbade it after he was with her, and no tenai can permit what the Torah forbade.

Chiddushim:

1. Question on the Rambam's example: Why does the Rambam bring specifically the example of yefas to'ar? He could have brought a simpler example (like "al menas she'eino tzarich lishmor Shabbos"). Moreover, by yefas to'ar there's essentially **coercion** — he captures her. By a normal tenai we say the woman agrees because she entered into it — but there it's clear that a tenai isn't relevant, because the Torah wants to protect her. With whom did he make the tenai? She didn't agree!

2. Chiddush — a "secret" in the Rambam's example: Perhaps the Rambam wants to hint that **every woman has a certain aspect of yefas to'ar** — i.e., by onah there are things the

woman can't nullify, because the Torah protects her, just like by yefas to'ar.

3. Analogy — "bal tosif" with agreement: If someone gives another person a slap, he violates chavalah. But if the other person **wants** to get hit (like in military training), that's not "bal tosif" — because "bal tosif" means hitting a person shelo b'yosher. With agreement it's a different thing. **However** — that doesn't mean a tenai at the time of kiddushin can undo the entire order of man-wife relationship. The order of kiddushin must remain intact.

4. "She'arah kesusah v'onasah lo yigra" — against whom is the mitzvah written: The Torah wrote the mitzvah of she'er kesus v'onah specifically against the people who have the custom not to give. One can't say "by us it's not the custom" — that's exactly why the Torah wrote it.

5. The difference between money-things and body-things: Money-things are always "negotiable" — even if it's not fair, if one signed, it's valid. But body-things (like hitting) — even if one agreed, it doesn't work. The Achiezer is mentioned that a person doesn't belong to himself — "chovel b'chaveiro" is a sugya that limits what one can be mochel. A mashal of a sophisticated company that makes someone sign on paper that they may steal from him — take money and not give insurance coverage. In secular courts it may stick, but the Torah doesn't allow such a thing.

Halacha — Hisnah Al Ha'ishah Shetibael L'Aviha: Davar She'eino B'yadah

The Rambam's words: "Hisnah al ha'ishah bish'as kiddushin o bish'as girushin shetibael l'aviha v'la'achiha o livno v'chayotzei bazeh — harei zeh k'mi shehistnah aleha sheta'aleh larakia o shetereid lasehom, u'senao batel. She'ein b'yadah sheya'avru acheirim v'yavo'u al ha'ervah. V'nimtza shehistnah b'davar she'eino b'yadah l'kaymo."

Explanation: When one makes a tenai that she should have bi'ah with her father/brother/son (arayos), this is like a tenai to go up to heaven — the tenai is nullified. The reason is because it's not in her hand that others should violate arayos.

Chiddushim:

1. The fundamental difference between an issur one can do oneself vs. an issur that requires a second person:

Eating pork (issur) is "b'yadah l'kaymo" — she can eat by herself, therefore the tenai is valid (even though it's an issur). But bi'ah with her father requires the father's participation — "it takes two to tango" — and because the second person must do an issur, it's like impossible.

2. A broad analysis of four categories of tenai'im — what's "doable" and what's not:

- **(a) One can't (physically impossible):** Like crossing the sea without a ship, going up to heaven — batel.

- **(b) One may not (issur) but one can by oneself:** Like eating pork — the tenai is valid, because it's "doable."

- **(c) A second person must agree (but no issur):** Like "sheyiten li ploni chatzeiro" or "sheyasi bito livni" — the tenai is valid, because one can convince the second person, pay him, influence him. "Figure it out" — that's a normal difficulty.

- **(d) A second person must do an issur:** Like bi'ah with arayos — this is batel. When both elements come together (a second person + issur), it's classified as "davar she'eino b'yadah."

3. The chiddush that "a second person must do" alone is not a problem: The Rambam brings explicitly: if the tenai is that ploni should give his courtyard, or be meshadech his daughter — the tenai is valid. The reason: "sheharei efshar b'yadah l'kaymo" — she can give "mamon harbeh ad sheyiten lo chatzeiro." Everything has a price ("price tag"), and because there's no aveirah, one can work it out.

4. A question about "davar mufrach b'yoser" without issur: Perhaps also

something that's not technically an issur but is "davar mufrach b'yoser" — like embarrassing oneself in a crazy way (walking naked with a garbage can on one's head) — would also be classified as "sheta'aleh larakia." But there was doubt about this rule, because all the Rambam's examples are truly impossible things, not just "mufrach."

General Rule from the Rambam — "Sim Devarim Eilu L'neged Einecha Tamid"

The Rambam's words: "Sim eilu hadevarim shel tena'in l'neged einecha tamid, v'chol makom she'atah shome'a hamekadesh al tenai kach v'chach, o hanosen get al tenai kach v'chach, o hamocher o hanosen al tenai, teda shehatenai yesh bo arba'ah devarim eilu shebeiarnu... v'im chaser echad mehen ein kan tenai."

Explanation: The Rambam rules that everywhere he writes "al tenai" — in kiddushin, gittin, mechirah, matanah — he means a tenai with all four rules (tenai kaful, hen kodem lalo, tenai kodem lama'aseh, davar she'efshar l'kaymo). One doesn't need to repeat it every time.

Chiddushim:

1. Parallel to Hilchos Ishus Chapters 1-2:

This is the same style as in the first two chapters of Hilchos Ishus, where the Rambam sets up rules and says that when he writes later "kiddushin" he means with all the details.

Halacha 14 — Dispute: "Yesh Miktzas Geonim Acharonim"

The Rambam's words: "Yesh miktzas geonim acharonim she'amru she'ein adam tzarich lichpol tenao ela b'gittin u'vkiddushin bilvad, aval b'dinei mamon eino tzarich lichpol... v'ein ra'ui lismoch al davar zeh."

Explanation: Certain later Geonim hold that the four laws of tenai (kefilas hatenai, hen kodem lalo, etc.) are only relevant by gittin and

kiddushin, but not by dinei mamonos. The Rambam holds that one should not rely on this.

Chiddushim:

1. The Rambam's proof from Bnei Gad and Bnei Reuven:

The Rambam reveals that the source of all four laws of tenai is from the pesukim of Bnei Gad and Bnei Reuven (Bamidbar 32), where Moshe Rabbeinu made a tenai with them about inheriting the land — "im ya'avru... v'im lo ya'avru." There we see kefilas hatenai, hen kodem lalo, etc. The Rambam's conclusion: **"U'senai zeh lo hayah b'gittin v'lo b'kiddushin"** — the original tenai from which we derive the laws was about a matter of money/inheritance, not kiddushin. This is a proof that the laws are relevant also by mamon.

2. The possible answer for the Geonim:

Bnei Gad and Bnei Reuven is different because it was a "davar gadol" — a fateful matter of the inheritance of Klal Yisrael — and therefore it was done with full seriousness. But that doesn't mean every regular monetary tenai must be so. The Geonim's distinction: gittin and kiddushin (eshes ish) is a "one-time thing" where full formality is needed, but dinei mamonos between two people can have lighter tenai'im.

3. The Ra'avad's sevara (Hilchos Zechiyah U'Matanah Chapter 3):

The Ra'avad brings a deeper sevara for the distinction. By a **sale or gift** — the person has something that belongs to him, he wants to sell it only on certain conditions. That makes sense — he means it seriously, he really only wants it this way. Why should we say the tenai is nullified and the kinyan remains? But by **kiddushin** — who told him to say "harei at mekudeshes" at all? He wants to get married! It's not like he has merchandise he only wants to give away on condition. He put himself into this, and therefore when he doesn't say the tenai correctly, we think he doesn't mean it seriously — he's saying "just talking" (similar to "im ta'ali larakia" which the Rambam himself said). The Ra'avad's foundation: the laws of tenai'im by kiddushin are not simply "drashas hakasuv" but an umdena

that the person doesn't mean it seriously when he doesn't say it correctly.

4. The Ra'avad's explanation of Bnei Gad and Bnei Reuven:

The Ra'avad explains that Bnei Gad and Bnei Reuven is also not a regular monetary tenai. It's not like a person who has something and sells it on condition. Both sides — the Jews and Bnei Gad — didn't have simple ownership of the land. It was a tenai on a "davar shelo ba la'olam." Therefore it's similar to kiddushin — it's not a natural situation where a tenai makes sense, and therefore strong formality is needed.

5. The Maggid Mishneh's shitah (Hilchos Ishus Chapter 6 Halacha 14):

The Maggid Mishneh is not satisfied with the Ra'avad's sevara. He brings a completely different reason for the Geonim's shitah: they hold that **all laws of tenai are only shitas Rabbi Meir**, and the Chachamim disagree. The question is only how we pasken. The Rambam assumed it's stam Mishnayos like Rabbi Meir, but the others (Ramban, Rashba, etc.) hold we don't pasken like Rabbi Meir at all.

6. Proof from "al menas" in Mishnayos:

A great proof for the shitah that it's only Rabbi Meir: in thousands of Mishnayos it says "al menas" by tenai'im, and never does it say with all the laws of tenai'im (kefilah, hen kodem lalo, etc.). This implies one doesn't need it — it's only Rabbi Meir's shitah.

7. The Rambam's answer to the proof from Mishnayos:

The Rambam would answer that in the Mishnayos we assume one already knows from elsewhere (from the siman "eilu hadevarim") that there must be four rules. Also mentioned is the answer of "kol ha'omer al menas k'omer me'achshav" (which will soon be discussed).

8. "Rabosai horu" — the Rambam's language in Hilchos Zechiyah U'Matanah:

In Hilchos Zechiyah U'Matanah Chapter 3 the Rambam writes "rabosai horu" (instead of "miktzas geonim acharonim" like here). "Rabosai" apparently means the Rif. The Rambam is "already from yesterday angry at his

teachers" (by malveh — "davar she'ein ra'ui lishmoa"). In Hilchos Ishus the Rambam's language is stronger against the shitah ("v'ein ra'ui lismoch al davar zeh"), whereas in Hilchos Zechiyah U'Matanah he says more mildly "v'ein l'davar zeh ra'ayah" — he understands the sevara but he lacks a proof.

9. A general note about the Rambam's writing style: The Rambam had no problem that something should appear only once (like the laws of tenai) and it should change "the entire everything else" — all tenai'im in all monetary matters. That was his way of writing, although whether that's also the Mishnah's way is still a question.

Halacha 15 — When Does She Become Mekudeshes by Tenai (Without "Me'achshav")

The Rambam's words: "Hamekadesh al tenai, k'sheyiskayeim hatenai tihyeh mekudeshes mish'ah sheniskayeim hatenai, lo mish'ah sheniskadshah. Keitzad? Ha'omer l'ishah im eten lach masayim zuz bashanah zo harei at mekudeshes li b'dinar zeh v'im lo eten lach lo tihiy mekudeshes, v'nasan hadinar l'yadah b'Nisan v'nasan lah hamasayim zuz shehistnah imah b'Elul — harei zo mekudeshes me'Elul. L'fichach im kidshah sheini kodem sheyiskayeim hatenai shel rishon — harei zo mekudeshes l'sheini. V'chen hadin b'gittin u'vemamonos — bish'ah sheyiskayeim hatenai hu sheyihyeh get o yiskayeim hamekach o hamatanah."

Explanation: By a regular tenai (without "me'achshav"), the kiddushin takes effect only when the tenai is fulfilled — not from when one originally said "harei at mekudeshes." Therefore, if a second man was mekadesh her before the fulfillment of the first one's tenai, she's mekudeshes to the second, because at the time of the ma'aseh she wasn't yet an eshes ish. The same law applies by gittin and mamonos.

Chiddushim:

1. Practical question: Does one need witnesses at the time of kiyum hatenai? This remains open.

2. What happens with the first kiddushin after the second was mekadesh: The first kiddushin is "nothing" — she's mekudeshes only to the second, because at the time of kiyum hatenai of the first she's already an eshes ish from the second. She needs only a get from the second, not from both.

Halacha 16 — "Me'achshav": Tenai with Retroactive Effect

The Rambam's words: "Bameh devarim amurim? Beshehayah sham tenai v'lo amar me'achshav. Aval im amar lah harei at mekudeshes li me'achshav b'dinar zeh im eten lach masayim zuz, u'l'achar zman nasan lah hamasayim — harei zo mekudeshes l'mafrei'a mish'as hakiddushin... af al pi shelo na'aseh hatenai ela achar zman merubeh. L'fichach im kidshah acher kodem sheye'aseh hatenai — einah mekudeshes [l'sheini]."

Explanation: When one says "me'achshav" — "you are mekudeshes to me from now if I will give you two hundred zuz" — then, when the tenai is later fulfilled, it works retroactively from the time of kiddushin. Therefore, if a second man was mekadesh her before the kiyum hatenai, she's not mekudeshes to the second, because it turns out retroactively that she was already mekudeshes from the beginning.

Halacha 17 — "Me'achshav" Doesn't Need All the Laws of Tenai'im

The Rambam's words: "Kol ha'omer me'achshav eino tzarich lichpol tenao... ela af al pi shehikdim hama'aseh lisnao — tenao kayam. Aval tzarich lehisanos b'davar she'efshar l'kaymo, v'im hisnah b'davar she'i efshar l'kaymo — harei zeh k'maflig b'davarim v'ein sham tenai."

Explanation: By "me'achshav" two of the four rules of tenai fall away: (1) one doesn't need kefel

tenai (hen v'lav), (2) one doesn't need tenai kodem lama'aseh. But davar she'efshar l'kaymo — must be, because if not he's "k'maflig b'davarim." [Hen kodem lalo is also not mentioned as a separate requirement.]

Chiddushim:

1. Sevara why "me'achshav" doesn't need kefel tenai and tenai kodem lama'aseh:

The rules that give "seriousness" to the language (kefel, tenai kodem lama'aseh) are only needed when the ma'aseh depends on later. But when one says "me'achshav," the ma'aseh already happened — the tenai is just an added condition on an already-completed ma'aseh. Therefore one doesn't need to pay so much attention to formal details. **However** davar she'i efshar l'kaymo remains a problem, because that's not a question of formality but of foolishness — an impossible tenai is foolishness, and foolishness remains foolishness regardless of language.

2. **This is a chiddush of the Geonim**, not explicit in Gemara. Their proof: in many Mishnayos it says "al menas" without mentioning all the laws of tenai'im — this shows that by "me'achshav"/"al menas" one doesn't need all the rules. **Tosafos disagrees** — according to other Tosafos one does need all four tenai'im even by me'achshav. The **Maggid Mishneh** rules: "Kabalas haGeonim Torah hi."

Halacha 18 — "Al Menas" = "Me'achshav"

The Rambam's words: "V'chol ha'omer al menas — harei zeh k'omer me'achshav."

Explanation: The language "al menas" has the same law as "me'achshav" — it works retroactively, and one doesn't need kefel tenai etc.

Chiddushim:

1. **Language analysis of "al menas" versus "im"/"bisnai":** When one says "im" or "bisnai" that you will give me — simply, I'm mekadesh you **when** you will give me, i.e. the kiddushin depends on later. But "al menas" means: I'm mekadesh you **now**, on account of / with the

condition that... — this implies the ma'aseh kiddushin happens now, just with an added condition.

2. **This is the foundation for the Geonim's proof:** Because in Mishnayos it says "al menas" without all the laws of tenai'im, and "al menas" = "me'achshav," therefore by me'achshav one doesn't need all the rules.

Halacha 18 (continued) — Example of "Al Menas" with Explanation

The Rambam's words: "Keitzad? Ha'omer l'ishah harei at mekudeshes li [al menas sheyitnu li masayim zuz], o harei zeh gitaich, o harei chatzer zo nesunah lecha b'matanah — harei tenao kayam... v'niskadshah ha'ishah o nishgarshah, v'zachah zeh bechatzer, v'hem yitnu hamasayim zuz. V'im lo nasnu — lo tihyeh zo mekudeshes v'lo tishgareh v'lo yizkeh zeh bechatzer. V'af al pi shelo kafal tenao, v'af al pi shehikdim hama'aseh lastenai... sheharei k'sheyiskayeim hatenai yizkeh zeh bechatzer v'siskadesh zo v'sishgareh zo mish'ah rishonah shebah na'aseh hama'aseh, k'ilu lo hayah sham tenai klal."

Explanation: The Rambam brings a practical example of how "al menas" works: one doesn't need kefel tenai, one doesn't need tenai kodem lama'aseh, and when the tenai is fulfilled, it works retroactively from the time of ma'aseh.

Chiddushim:

1. **The Rambam's language "v'hem yitnu":** The Rambam's first language sounds like a lechatchilah instruction: "they should indeed give" — because by "al menas" there's an element of agreement/commitment, not just a technical condition. But this is rejected — it's simply a tenai, if not she's not mekudeshes.

2. **The Rambam's main explanation why "me'achshav" doesn't need all the rules — the deeper distinction:** The key sentence is "k'ilu lo hayah sham tenai klal." The

Rambam distinguishes between two types of tenai'im:

(a) Regular tenai (without me'achshav): Here the tenai creates a **new, complicated type of ma'aseh** — a kiddushin that takes effect only later, when the tenai is fulfilled. There's no kiddushin until then, there's no "son-in-law" until then. This is a completely different type of chalos kedushah. **For such a complicated ma'aseh one needs all the laws of tenai'im** — kefel, tenai kodem lama'aseh, etc.

(b) "Me'achshav"-tenai: Here the kiddushin is a **full, normal kiddushin** that happens now. The tenai is just an added condition that can retroactively annul it. But essentially, when the tenai is fulfilled, it turns out it was "k'ilu lo hayah sham tenai klal" — one hundred percent kiddushin from the beginning. **For such a simple ma'aseh one doesn't need all the formal rules.**

This is the Rambam's deep explanation why "me'achshav" has different laws — it's not just a

technical kula, but a fundamental distinction in the nature of the ma'aseh.

3. Why one needs kefel (mishneh tenai) by tenai sheniskayeim later: Because one begins a ma'aseh kinyan now that should finish only later — a "heavy thing" — one needs a stronger, more serious form of tenai (kefel, hen kodem lalo, etc.). The foundation is that such a complicated situation brings a concern that the matneh doesn't mean it seriously — he's just doing so. Therefore we require the full four tenai'im to prove his da'as is serious.

4. A question that remains open: "Why this makes a difference one must think" — the deeper logical reason why the distinction between the two types of tenai should lead to different laws (kefel or not) remains something that needs further study. But "this is apparently the halacha."

Conclusion: With this we conclude the shiur on Chapter 6 of Hilchos Ishus — tenai b'kiddushin.

| Full Transcript

Shiur in Hilchos Ishus Chapter 6 — Conditions in Kiddushin

Introduction: The Value of Different Types of Torah Learning

R' Yitzchak: Good, how are you? There's a big... today. Did you hear that there's a big dispute about today's shiurim that are for "Kol"? I mean, baruch Hashem our shiur is not yet for "Kol". There's certainly no doubt that one fulfills the mitzvah of Talmud Torah if one learns.

R' Yoel Asher: I don't know what the word is "for Kol". I mean the word is that if it's made... specifically for amei ha'aretz. Our shiur, an am ha'aretz can't keep up, so one must already be a talmid chacham to come learn. Because of that, our shiur is all talmidei chachamim. So it has its own din.

R' Yitzchak: But today everyone is a talmid chacham. True, true.

R' Yoel Asher: Except whoever doesn't want to be. No.

R' Yitzchak: If not, one can ask chat. I mean there's no... one doesn't need to ask chat. It says that if someone doesn't understand a Gemara, he doesn't need to ask chat to make him a "funny video". He can ask him, "Explain to me the basic lomdus". He should explain. Understand? Okay.

Or he can ask us. No, I agree. No, I'm just saying, because I always think that one should make the shiur more like talking in the middle. It's very important. When there's a chavrusa, a "real life" chavrusa, you also talk in the middle. And we're simply making a chavrusa, almost where we don't talk politics.

R' Yoel Asher: Ah, we won't turn off the mic, I guess. They should stop turning off the mic. "Hot mics", it should be "hot mics".

R' Yitzchak: No, they should give, yes, for the... the shiurim.

R' Yoel Asher: All the "Kol" shiurim.

R' Yitzchak: They basically do the talking separate from the learning, and afterwards they forget the learning.

R' Yoel Asher: They need to do both.

Digression: Learning Rambam vs. Gemara — What's Better for Someone with Limited Time?

R' Yoel Asher: Um... no, I want... it's a very... the topic is a very, very complicated topic, because there are two parts. There's the part of what proper learning means, and then there's the other part of what it means to bring close people who can't learn on such a high level, who are important people, who are people who are excellent in other parts of the world.

I actually hold that someone who has only half an hour and has only a little focus, can much better utilize his time than a blatt Gemara. He should learn other parts of the Torah, perhaps even also the Rambam, but here I have a bias, and he can be much more successful. Gemara takes tremendous time and tremendous effort to get something out of it. But that's a longer conversation.

R' Yitzchak: Anyway, this is what I wanted to get to. This is all an advertisement.

R' Yoel Asher: I mean, a Rambam is easier for someone who isn't a lamdan, but it doesn't necessarily have to be a Rambam. I mean there's something of a certain pride in this, because baruch Hashem it used to be very comfortable to learn Chumash, Mishnah, "le'olam haba yirtze lemishnah, hayotze min hagemara". That's what the Gemara said, what's wrong with learning Mishnayos?

If you learn Mishnayos, you have great knowledge in Torah she'be'al peh, and there's more chance that you'll actually finish Mishnayos completely well, you should know that you have some knowledge in all of Mishnayos. The Gemara is very, very difficult, one must be truly a gaon to finish Shas and have knowledge in Shas. Rambam one can yes, more easily.

R' Yitzchak: So on the contrary, I hold that Rambam can fulfill both, because both Rambam is something that all lomdim learn, it's serious, it's not Kitzur Shulchan Aruch. Kitzur Shulchan Aruch is actually, I mean by the way, I already heard, R' Shaul Alter said a talk, I had to speak with my children's yeshiva ketana.

Every yeshiva ketana, there's no excuse that one doesn't learn with bochurim Kitzur Shulchan Aruch the whole thing. A bochur can leave four years in yeshiva, he doesn't know which side to tie the straps, because he forgot the rebbe in cheder, at that time he just didn't listen, or the rebbe already taught it, and he goes to yeshiva and they teach him Gemara Tosafos, and basically, he becomes an am ha'aretz, he comes to shul, he doesn't know from which side to open the siddur, it makes no sense.

But the Kitzur Shulchan Aruch is actually like instructions, like the Derech Chaim, it's good to learn with children. Rambam, when one learns Rambam, one actually can't use everything lemaaseh, because there are minhagim, there are other halachos, but you get the view, the very serious view of what the halacha is.

R' Yoel Asher: Rambam isn't instead of Kitzur Shulchan Aruch, if anything it's instead of the Gemara, or at least one seder of Gemara. Let's go differently, not talk about the baal habayis who has only half an hour or three quarters of an hour. And it's not just the hour, it's also how much space does he have in his mind to take in interesting and weird and complicated things, information.

But also the ben Torah who learns two sedarim a day Gemara or three sedarim a day Gemara, if he would take away from one seder Gemara, he should take away for Rambam, and one seder Gemara for Kitzur Shulchan Aruch, it would simply acquire much, much more for him. But let's go further, let's see inside.

R' Yitzchak: Ah, good, I wanted to get to this, that the conclusion of the whole politics that there was a whole week between Rav Stefensky and Rav Gifter, is that one should come to our Rambam shiur.

R' Yoel Asher: Okay, that's already, that's already a bit uncertain.

R' Yitzchak: Already, says the holy Rambam. Very good, let's go learn, say the introduction to what we're going to learn.

Location in Rambam: Hilchos Ishus Chapter 6 — Conditions in Kiddushin

R' Yoel Asher: Okay, we're holding at the sixth chapter in Hilchos Kiddushin. The section is Hilchos Ishus, because after kiddushin one goes to girushin. But we're holding at the part that's on the way, it's like shofar, sukkah and lulav. But there it's interesting.

R' Yitzchak: Because it's all in the seventh month.

R' Yoel Asher: Here it's squeezed under one section, it works with approximately the same thing, it's a type of kinyan, there are conditions in it, etc. So we're holding in the middle of kiddushin, and we've learned various important things. For example, in the recent shiurim we learned with what one can be mekadesh, which means all mitzvah ba'aveirah or theft, because it's not yours, and from there one came to the great sugya called mekadesh bemilveh. Or later there was mekadesh behana'ah by something that has value. That's what we learned yesterday.

Today we're going to begin a new sugya, which is called making conditions in the kiddushin. So in short...

R' Yitzchak: The real conversation was all dinei kesef kiddushin. All kidshas kesef? What does "yours" mean? Various complicated Choshen Mishpat questions. Now we're not learning about that anymore, we're going to learn more generally about the concept of kiddushin, but about what. It's not about the kesef, it can be kidshas tenai, kidshas shtar also has tenai, and so on.

R' Yoel Asher: Right, I hear. The sixth chapter is going to learn about the topic called tena'im, tenai bekiddushin, but a bit more. I mean this is the first time that the Rambam mentions the topic of tenai, he expands on it. Like the rule, such a thing that appears the first time in the

Torah, there is the main light in it, like we saw regarding Shabbos from the Polish rebbes.

So he goes into mekadesh al tenai in general, and he already also mentions even things that aren't specifically by kiddushin. And in the next chapter he goes further into matters of tenai and al menas, and more focused on kiddushin, with more halachos that come out from this by kiddushin. I mean it was in the topic of tenai, a condition in the kinyan.

Discussion: Is Tenai Only by Gittin and Kiddushin or by All Kinyanim?

R' Yitzchak: Yes. Let's... So I mean it's not just... First of all, it's actually a closer thing, soon one needs to see which other things can have a tenai that one can. Second, apparently the halachos of tenai and the Gemara are in Maseches Kiddushin, or the main halachos, I don't know. There's actually a dispute, yes, the Rambam is going to say that the halachos of tena'im are by all tena'im, and there were Geonim who held that it's...

R' Yoel Asher: A special din in kiddushin.

R' Yitzchak: He talks about this, yes?

R' Yoel Asher: The Rambam talks about this. The Rambam brings later those who say that tenai only works by gittin and kiddushin, not by other things. The Rambam argues with them. But lemaaseh there is tenai, and very much... They even brought tenai into avodas Hashem, like one can daven al tenai and make a beracha al tenai. They stretched tenai very much.

But the Rambam seems to hold that tenai is a concept in every type of kinyan. But there are those who argue with him, like that there are stringencies, that the various halachos of the tenai that we're going to learn make it very difficult for a person to make a tenai, because they need to match very well. This is only a place where one needs to be extremely, extremely careful, like kiddushin and girushin. But on the other hand, everyday people make deals all day long, if every time with a tenai they would need to run to a rav and check a Rambam if it's written well. Because that's what they argued with the Rambam about. Yes.

Discussion: Tenai by Mitzvos and Avodas Hashem — A Different Category?

R' Yitzchak: Do you mean that the...

R' Yoel Asher: No, it's very interesting to me. It doesn't really come in here, but the topic that I asked, how everything... They bring tena'im into other places, like eating afikoman al tenai, and I daven al tenai, that every time I say the yud-kei-vav-kei together with Adnus.

R' Yitzchak: Yes, but now that's called a tenai, now it's more like a giluy milsa.

R' Yoel Asher: But there's such a thing that... ah, I don't know what to ask about. If it's Rosh Chodesh, I remember something about a calculation of ya'aleh veyavo, I don't know what. If it's now still after Maariv... Many times it's just a safek, not really a tenai.

R' Yitzchak: Okay, let's...

R' Yoel Asher: I remember for example regarding kiddush. I'm making Havdalah now, but if my wife hasn't yet heard Havdalah, I shouldn't be yotzei with this Havdalah, and so because I can. Such types of tena'im. You actually need...

R' Yitzchak: You actually bring a good question. I know they certainly talk about this, today's lomdim or earlier ones. And what we're learning is tena'im between two people.

R' Yoel Asher: Because the tena'im is a chalus and a kinyan.

R' Yitzchak: Right.

R' Yoel Asher: But the tena'im is between two people.

R' Yitzchak: Both things. But the kinyan that the kiddushin will take effect if you do such and such. Kiddushin is still a thing, although there's something of a certain, we talked yesterday, or in the previous shiur about this, there's a certain mitzvah in it, but it's still a thing that happens between two people, a matter between people. On this there's a halacha that one can make a tenai.

But then, for example, someone makes a tenai that his davening is a davening, with whom is he making the tenai? With the Almighty? Maybe.

R' Yoel Asher: That's why the Rambam is going to go into saying about the matter of masneh al mah shekasuv baTorah, perhaps because this thing bothered him. Because we have a relationship with the Almighty.

R' Yitzchak: Can one make tena'im in this? It's perhaps the same sugya, but yes, one needs to think about this. And you also asked why is it practical? I don't know how practical. Perhaps sometimes someone will make a kiddushin al tenai. It's like a funny thing to make al tenai. But you can't, you can make.

Discussion: Tenai as a Close Cousin of Mekach Ta'us

R' Yoel Asher: I mean it's not such a funny thing, because if you think about it, practically, tenai is a close cousin of what's called mekach ta'us. When I was mekadesh it was because I understood that such and such. Tenai is a bit when something isn't so obvious, that one needs to explicitly make it al tenai. Why not?

R' Yitzchak: The Rambam talks about mekach ta'us.

R' Yoel Asher: Just like us. Because if there isn't a reason why a custom developed that one doesn't do it, people would have done it all the time. There are very many times, one wants to live specifically in a certain area, but one knows that one doesn't do kiddushin al tenai or girushin al tenai.

Discussion: Tenai by Kiddushin vs. Nisuin

R' Yitzchak: Ah, the tena'im of kiddushin are usually not... one can't make tena'im after the wedding, right? The tena'im are what goes before the wedding.

R' Yoel Asher: Before the wedding. Ah, one can't make a tenai, but one can be mekadesh. Yes, mekadesh al daas,

R' Yitzchak: Al tenai. Yes, but one can't make a tenai that if ten years after the wedding you don't agree with me, the kiddushin becomes void. I don't believe one can make such a tenai.

R' Yoel Asher: One needs to see, there's an "al menas" that takes effect immediately, and there are tena'im that can yes happen later.

R' Yitzchak: But I'm saying, all these tena'im are in kiddushin, not in nisuin. Is there even a discussion if there's such a thing as nisuin al tenai.

R' Yoel Asher: It's not clear to me. You mean to say that chuppah and kiddushin and living together is mevatel the tenai, because "ein adam oseh beilaso beilas zenus" and the like?

R' Yitzchak: It's a sugya by itself. But most of the Gemara's that you'll go learn about tenai is, "if you give me two hundred zuz" then, or from now, whatever, you'll be mekudeshes. But it's not that you'll be my wife. It's very strange that a person should live with

R' Yoel Asher: His wife al tenai.

R' Yitzchak: It was the dispute later in the... certain rabbis wanted to propose that one should make kiddushin al tenai, it will solve agunos, and other rabbis argued that there's no such rule "ein tenai benisuin". I don't know if

R' Yoel Asher: It's correct in lomdus,

R' Yitzchak: But it's very weird to say about this. Understand? The tena'im here, the examples at least, are usually not things that happen after the wedding. And I think, you say it's not the custom to make tena'im, maybe it's mainly because we don't make kiddushin. Shidduchim al tenai would make sense. Again, on this too they try to stop, they say it's terrible to stop a shidduch, and the like. But that means, kiddushin is a certain deal, and every deal comes with tena'im.

The Historical Context of Kiddushin

R' Yoel Asher: I mean you're saying an interesting thing. But you're also saying on a very practical level, that when one makes kiddushin al tenai, kiddushin would be much cheaper, which wouldn't be a final thing. It would still be a step that's actually in further things, they stopped using it.

R' Yitzchak: I'm saying that it's, originally when kiddushin was a year before the wedding, it was a lesser thing.

Tena'im Belong in the Kesuba, Not in the Kiddushin

R' Yoel Asher: Today it's kiddushin. But I'm saying an interesting thing, that many of the things you said should have been put into the kesubah, not into the kiddushin. You understand? The Chachamim also had things, their expectations that they wanted from the couple. They could have made every kiddushin be al tenai. When one says "harei at mekudeshes li k'das Moshe v'Yisrael," it's al tenai that one will do to Yisrael, that one will arouse all these things. One must. But it's a mitzvah. So very often, a couple wants to stipulate something, that's a good thing that should be put into the kesubah. What is right between the two of them, there's for example an expectation that one will live near the kallah's side, it's more in the kesubah,

R' Yitzchak: Not in the kiddushin.

R' Yoel Asher: So one can see that Chazal didn't put things into the kiddushin.

R' Yitzchak: And we're going to talk soon about the dream and the kesubah, whether yes, "al menas she'ein lecha alai she'er kesus v'onah" is indeed a tenai.

R' Yoel Asher: Here he's going to say, sometimes, sometimes, sometimes,

R' Yitzchak: We've already talked enough. This is better politics than the previous politics. This is also politics. Learning is something else. It only becomes politics if

R' Yoel Asher: The world is already invested in this. Because politics has to be something that people can shout about.

R' Yitzchak: That one was mekadesh al tenai, and you weren't.

R' Yoel Asher: If the world holds strongly with the shiur, and the world gets really pumped up, then it's politics. But this is between us.

Halacha 1: One Who Is Mekadesh Al Tenai

R' Yoel Asher: So, the Rambam says like this: **"One who is mekadesh al tenai".**

R' Yitzchak: I remembered that they haven't fought about this in a long time. Okay,

Discussion: The Source of the Word "Tenai"

R' Yoel Asher: "One who is mekadesh al tenai". "One who is mekadesh al tenai". Yes. The word "tenai" itself doesn't appear in the Torah, it's true. For example, Bnei Gad and Bnei Reuven didn't themselves call it tenai. They said, we will do thus, and Moshe Rabbeinu agrees. The word "tenai" is a Mishnaic word, yes,

R' Yitzchak: If I remember. Perhaps it's even a...

R' Yoel Asher: It's a word that carries within it a whole complex thing, but we understand the word. "Tenai" means what one calls a condition. Tenai is something clearer than a condition. Tenai is in the chalus. The chalus will only happen. Yes, I mean that it's in a condition. Every country can have conditions.

R' Yitzchak: I don't know if it translates as condition or something like that. Yes, but most words that we call aren't in the Torah. In the Torah there are stories, not definitional words.

R' Yoel Asher: So, Bnei Gad and Bnei Reuven had a tenai laid down for them, but it doesn't have the word tenai.

R' Yitzchak: Yes, exactly. That means, in general... "Tenai" is the noun, right? "Al tenai". But "hisnah", there are verbs, right?

R' Yoel Asher: He gives a tenai like the matter of Mishnayos. No,

R' Yitzchak: It doesn't make any sense.

R' Yoel Asher: "Al tenai".

R' Yitzchak: But it's a mistake. That could be. Then it means to repeat.

R' Yoel Asher: "Tenai", I learned, I'm not called tenai.

R' Yitzchak: In the Gemara it says many times. Yes, it doesn't make any sense. "Tenai" means two tena'im. That's not a tenai. A tana and a tenai are two different things. Yes? In any case, someone will say that it has some connection, I don't know. I don't know. You understand what I'm saying? Like hisnah, yes? You understand what I'm saying?

R' Yoel Asher: Far. Masneh al mah shekasuv baTorah, hisnah, masneh...

R' Yitzchak: Right. It's all things of... In short, I don't know. Tenai. It already feels like Chachamim, yes. But not a change?

R' Yoel Asher: If one makes a change, there should be a change in the chalus, as it were.

R' Yitzchak: It's true that in Aramaic, "shana" becomes like change.

R' Yoel Asher: But "mishnah" becomes "masnisa". One can hear like if a change happens, that's indeed al menas generally. But one will conduct oneself according to what we agreed upon. And if a change happens, there should be a change in the chalus. Or then the chalus shouldn't happen. Then the kinyan shouldn't happen.

R' Yitzchak: Interesting, there's a verse in Hoshea, "hisnu ahavim".

R' Yoel Asher: I don't know what that verse means,

R' Yitzchak: So... ah, ah, I have the same root. I don't know. No. Hoshea has many interesting... "Hisnu ahavim" can mean like "Hashem he'emarta v'Hashem he'emircha",

R' Yoel Asher: The two ways. Like if you will love me, like "ish tevach v'chaloach", it can be in a tenai.

R' Yitzchak: Like the Gemara brings from Bnei Gad, there's perhaps you could even say "v'hayah im shamo", such a sort of tenai, im v'im, but the language tenai doesn't appear.

The Rambam's Language: One Who Is Mekadesh Al Tenai

R' Yitzchak: Okay, the Rambam says, mekadesh al tenai. Mekadesh al tenai,

R' Yoel Asher: One is mekadesh a woman al tenai, he adds a tenai. He doesn't say the language, because later the Rambam will come up with what al menas means, that al menas has a power word which is a better tenai 2.0, something a better tenai. The first statement is very general,

R' Yitzchak: Without saying the exact language.

R' Yoel Asher: Very general statement is simply this.

R' Yitzchak: The Rambam says that the tenai works,

R' Yoel Asher: And if the tenai is fulfilled she is mekudeshes, and if it's not fulfilled she is not mekudeshes. The Rambam says, no difference who. It's simple, we know that the man is the mekadesh, the man does something active, and the woman is basically the mekabel. But she must agree. But regarding tenai, no difference. Tenai has to do, it seems, tenai has to do with the ratzon, with the... not so strongly with the ma'aseh. And... interesting, the ratzon, I agree to the shidduch, and she agrees to the shidduch, al tenai al zeh of this and that. **Whether the tenai was from the man, whether it was from the woman.** It's translated, the tenai doesn't break the ma'aseh of giving a ring, the tenai breaks the agreement that we want to become mekadesh with this.

Discussion: Tenai Breaks the Agreement, Not the Ma'aseh

R' Yitzchak: Also by the person it doesn't break the ma'aseh, he will give you a ring. Right, we are often people, for example when one spoke that someone claimed that today no kallah becomes mekudeshes because she doesn't want to become nikneh to the man, but it's never entirely true. Like we spoke yesterday, the form of the kedushah must be that I am mekadesh you etc. But it's a deal of two people, they both must equally agree, except if a father is mekadesh his daughter, because then she is truly an object. But even then, the father is the da'as. There's always da'as koneh and da'as makneh, it's not... You understand, regarding the da'as they certainly have entirely equally.

R' Yoel Asher: I mean that it's not a true claim that the woman doesn't want to become nikneh, because it's only because she has a certain feeling. That being nikneh has a certain form of life. But if she has chosen one of the others, as the Rambam says, harei at rusi etc. and one knows that she means kiddushin, it's good. So

find some nicer language that you like better, because it's not... Yes,

R' Yitzchak: In short. Okay, at rusi isn't good that we learned it.

R' Yoel Asher: But all these languages, if both know that one means kiddushin, it's still good. So... So that one has a view, the minute one calls it a kinyan, one comes with the idea that the wife is going to get hit. But if one says no, kinyan is a way how one looked at the chalus, but the "v'hayah adam ohev es ishto k'gufo," whatever, has nothing to do with it.

R' Yitzchak: Okay, nonsense. Torah. Soft walls is certainly nonsense, it's simple that it's good. It's good to explain it a... The Rambam says, I hold... First, one says that a tenai works. That means, the tenai works on kiddushin. If it works on kiddushin, then the kiddushin will work according to it.

Four Things of Every Tenai

R' Yoel Asher: Now the Rambam says, the tena'im will have tena'im. The tena'im will themselves have conditions how they are a good tenai. The Rambam says, **"And every tenai in the world"** - here the Rambam goes beyond kiddushin, and since we mention tena'im here, he will say it. But it's a pity to speak about tenai only by kiddushin if there are so many halachos, he will now learn it also for the future, whenever a tenai will be relevant. **"And every tenai in the world, whether in kiddushin and divorce, whether in buying and selling, whether in other monetary laws"** - for now he only enumerated ishush and money - **"must have in the tenai four things"**.

The Rambam says, **"And these are the four things of every tenai"**. These are the four things, the four tena'im, the four rules of tena'im.

Double Tenai

The first is **"that the tenai should be double"**. The tenai should be double. I mean, what does "that the tenai should be double" mean? One should say, "I give you the thing if the tenai will be, and if not, not." So that's double. It

has both sides, one accounts for both sides of what will happen, if so and if so.

The Positive Before the Negative

The second is **"and that its positive should precede its negative"**. First one should say, "If you will give me such and such, you will become mekudeshes," and afterwards, "and if not, not." If one begins with the negative, that's not a way of doing business, it's not a tenai.

Tenai Before Ma'aseh

"And that the tenai should precede the ma'aseh". The way how one says it, how one accounts for it, one should say first the tenai. One should say like this: "I am now going to give kiddushin on the tenai," not "I am now going to give kiddushin on the tenai." One should account for the tenai before one accounts for or before one does the ma'aseh.

A Thing That Is Possible to Fulfill

And the fourth thing is **"and that the tenai should be a thing that is possible to fulfill"**. The tenai should not be "al menas that you will fly in the sky," but it's something a thing that is doable, that is possible to fulfill.

If the Tenai Lacks One of Them

The Rambam says, **"And if the tenai lacks one of them"**, if the tenai lacks one of the four matters,

Laws of Ishus Chapter 6 - The 4 Rules of Tena'im

Halacha 2 (Continued) - The Law of a Tenai That Lacks One of the Four

R' Yoel Asher: The way how one says it, how one accounts for it, one should say first the tenai. One should say like this: I am now going to give kiddushin on the tenai, not I am now going to give kiddushin on the tenai. One should account for the tenai before one accounts for, or before one does the ma'aseh.

And the fourth thing is: and that the tenai should be a thing that is possible to fulfill. The tenai should not be al menas that I will make a tenai that you will fly in the sky, but it's something a thing that is doable, that is possible to fulfill.

The Rambam, **and if the tenai lacks one of them, behold the tenai is void, and as if there is no tenai at all**, if the tenai lacks one of the four matters, behold the tenai is void, and as if there is no tenai at all, the tenai is entirely void.

What happens now? The kinyan remains, the thing that one did, the chalus remains, and as if there is no tenai at all, **but this one will be mekudeshes or divorced immediately, immediately. And the sale or gift will be fulfilled immediately**, if it's a sale or a gift that one made on it a tenai, and it's not good with the four rules of tena'im, the sale happens and the tenai becomes void, and as if he didn't make a tenai at all since the tenai lacked one of the four.

Discussion: Why Does the Ma'aseh Remain Valid When the Tenai Is Invalid?

R' Yitzchak: Isn't that a funny halacha?

R' Yoel Asher: No, it seems to me a very good...

R' Yitzchak: I really like the halacha.

R' Yoel Asher: Because tenai could have made everything be now very floppy and open, even after doing a contract, something that is called a davar hagomer. One must indeed... The matter is indeed to come to be gomer, yes, in business, in kiddushin divorce, one wants, people should be able to do things, not remain open.

Adding a tenai left it very open. So Chazal closed it so it shouldn't be hefker, it should indeed be a moment when a person opens his eyes and says, I am now going to do something that will obligate me, that will be mekadash me. So they found the tenai of Bnei Gad and Bnei Reuven, and they learned into it everything that one learns out from there.

R' Yitzchak: I meant to ask about the last point. That means, let's say there are tena'im in how one must make a tenai, it must be kosher. But I'm asking something else. A person made a kiddushin with a tenai that... I don't know, let's say even al menas shetaaleh larakia, yes? It's perhaps not an example. A tenai that something that she will give him a thousand dollars, he didn't say it correctly, he said without double, okay?

It's a halacha that it doesn't work. So in practice, does the person want the kiddushin or not? Why doesn't one say? Certainly he doesn't want. The halacha should be that by this person it doesn't work, not that it works yes.

R' Yoel Asher: Not with this, because the ma'aseh wasn't a good ma'aseh, it wasn't a good chalus, but there is no ratzon. According to the Torah, there was no ratzon, I even said it in the tenai.

R' Yitzchak: Right. I'm asking a question, why when one says "lacking" is "as if he didn't make a tenai" and it happens yes? It should be that lacking is... it doesn't happen. You're saying a very good explanation, because as if he doesn't want you, he only wants you al tenai. It seems something that tenai is not simply I only want al tenai.

R' Yoel Asher: It's something a formal thing. So about this I think like this, if it wasn't well enough made, again, if the woman doesn't have a ratzon to become mekudeshes, and now she still says, I still don't have a ratzon, then I didn't have a ratzon, and now I don't have a ratzon, and because of this I put in that I only agree conditionally, let's say that I will be able to live near my father, so it won't be so bitter to live with the man.

So that's apparently a normal case of kedushah, where there was no da'as, no ratzon. But we're speaking here when she already, meanwhile she already agreed, there was already ratzon, there were ups and downs. And now she says, I even said, but what I said wasn't strong enough to void the ma'aseh, and ratzon was enough ratzon.

R' Yitzchak: No, ratzon doesn't work in the world.

R' Yoel Asher: A person can't always say, I really didn't want, that means in devarim shebalev. But writing in a tenai is certainly more than devarim shebalev, it indeed did something.

R' Yitzchak: So that's what I'm asking you, what is the meaning that if the tenai doesn't work? As if, one looks at a tenai as a limitation on the chalus. Chalus you made.

R' Yoel Asher: But say first al menas... It limits the ma'aseh. But they indeed said that it's a law in the da'as, but it limits the ma'aseh.

R' Yitzchak: It's interesting. No, it's not a law in the da'as. I'm not trying any revelation, because then one would already need laws of tena'im.

R' Yoel Asher: It's indeed simple. I can ask it like this: for example, every time there's an umdena and it's clear that the woman wouldn't have wanted al da'as zeh, or the man wouldn't have wanted al da'as zeh, the kedushah is void, it's a mistake. Why shouldn't every tenai be, an unsuccessful tenai should be as strong as an umdena and it's clear?

Apparently the word is that the ratzon always means do you really want to be that one's husband, do you really want to take her for a wife. That's that they agreed to live in the same area, and that... It's translated they agreed to be a husband and wife. Yes, one can say they agreed to do what men and women do together. How, which institution will they go send their children? That's a thing that one can put into a tenai. The kedoshim want them, they want it limited by a tenai.

R' Yitzchak: You're already thinking further of details of their ratzon. I mean that one must think more like this in a learning way.

R' Yoel Asher: That ratzon means the essential thing that the two people want to have a wedding, that they are marrying each other. That means ratzon. Tenai is perhaps much a further thing, that one can make a paper with tena'im, conditions. And here it's already indeed only... One can't say that if it's not a good tenai, he initially didn't have ratzon.

It's indeed yes there was ratzon, the two agree to be a couple. It's indeed only that they put in, let's say, all sorts of things that the Rambam will bring, if you will give me money. It means, he's desperate for money, he now found a good way to extract money, but besides that they want to have a wedding these two people.

R' Yitzchak: I hear, I don't know. So this is the desperate marriage counselor a bit. Nu, very good, a Jew needs to be a marriage counselor.

R' Yoel Asher: Who should write a kesubah (marriage contract) if he's not a marriage counselor?

R' Yitzchak: No, a kesubah is different. It's more like... Of course, again, the marriage counseling topic is a legitimate topic, but something I feel that one needs to understand here. I'm sure someone has asked this question, or am I basically wrong, or something is interesting here. Yes.

R' Yoel Asher: Even if it's chalutah (a weak argument) and it doesn't hurt to look at it this way, for example as I said that they don't want the kedushah (sanctity) to be open. Because of this they limited it.

R' Yitzchak: But this is an explanation for why there are all these... Let's say, the Rambam says four conditions, three of them are laws of nusach (text), right? Which nusach one must say. The fourth is something like a general rule about what kind of condition one can make. But this I understand, that it must be, you can't just say I wanted and I meant, it must be clear, there's a contract, there's an order how it must be. All these, this I understand, this is not in dispute for me.

What I want to understand is just this thing. That is, when it doesn't work, why shouldn't one say that...

R' Yoel Asher: That as if one goes back to the points of kiddushin (betrothal), one needs to do it fresh now...

R' Yitzchak: No, I think, when one simply makes that I make a contract with you, and I put in a condition, and the condition is invalid. I mean that's how he had it today too, right? Imagine therefore I make a contract with you, I don't know, I want to buy your house. With the condition that... Yes, people make such things all the time, yes, one buys houses. With the condition that the other one buys me his house, and he puts in what's called a rider. What has some name in the contract? He puts this into the contract.

Now, let's say a court comes, but it says that you wrote the rider wrong, then the kinyan

(acquisition) will be valid, right? One doesn't say that you didn't want it. That's how I think it goes. Because the whole... I mean that... I hear, do you understand it this way? Imagine that a person says he made the condition, he dreamed that you bought. But I'm not responsible for your dreams, you didn't write it in clearly. Now you must sell me the house, even without the condition. That's how it goes, no?

Something like this is how one looks at it here. A condition is like a special permission. You add to the normal order a condition. If you did it wrong, you don't have the condition, but the normal order you did do. You ask a question from ratzon (will). One must say the answer that ratzon helps as much as it's stated clearly, and it doesn't become merely devarim shebalev (matters in the heart). You wanted, next time do better. Give me a get (divorce), I mean...

R' Yoel Asher: I mean... This is the big question, because if it's a matter of devarim shebalev, even if both say we only agreed to the match through this, it's still devarim shebalev. But if the matter is that it does turn, one can when say that the Rambam would when one can actually write, if both say that they only... There was no other ratzon, it's a law that happened.

We haven't yet had such a halachah, if both remember a year later and say that really there was no ratzon. Because ratzon is only that it was us, there were compulsions there. Ratzon doesn't mean that I really had fear, and I really had second thoughts. That's every couple, with that one dies.

Halachah 3 – Example of a Valid Condition

R' Yitzchak: That's not the point. The Rambam says examples.

R' Yoel Asher: "How so? If one says to a woman, 'If you give me two hundred zuz, behold you are betrothed to me with this dinar.'" If you will give me two hundred zuz later, you will now be betrothed with this dinar. And he says it with the correct words. First he says the "if," the condition, and afterwards he says the action, and afterwards he says the "if

not," **"and if you don't give me, you will not be betrothed. And after he made this condition, he gave her the dinar."** He made the condition, he gave her.

R' Yitzchak: This is the Rambam's interpretation of "condition before action," right? There's a dispute among the commentators about this regarding "condition before action," one must say. It seems from the Rambam that one must...

R' Yoel Asher: Say the language before doing the action.

R' Yitzchak: Not doing the action.

R' Yoel Asher: **"And after he made this condition, he gave her the dinar, behold the condition is valid and behold she is betrothed conditionally."** And what happens? **"And if she gave him two hundred zuz, she will be betrothed."** I mean the word "will be" one needs to emphasize here, she becomes betrothed then.

R' Yitzchak: Okay, we'll see soon.

R' Yoel Asher: **"And if she didn't give, she is not betrothed."** But here it looks like "will be betrothed" – she will become betrothed then when he receives the two hundred zuz.

R' Yitzchak: When she gives him the two hundred zuz.

R' Yoel Asher: The chalut (taking effect) is completed when the condition happens. And like what you asked earlier, whether one can do something that should break ten years of marriage, apparently according to how it looks above, no.

R' Yitzchak: No, there are others, there are different types of conditions. Okay. But... That is... So this is an example, I need to come to write to you, this is an example of a valid condition, valid is a funny condition somehow, let's call it.

R' Yoel Asher: Yes? Perhaps an example of the four rules of conditions.

R' Yitzchak: Okay, everything is already...

R' Yoel Asher: Because it's organized.

Halachah 3 (continued) – Example of an Invalid Condition (Action Before Condition)

R' Yitzchak: Afterwards, the Rambam gives examples of things that are not...

R' Yoel Asher: What doesn't work? **"But if he said to her 'Behold you are betrothed to me with this dinar,' and gave the dinar into her hand,"** and only afterwards did he make the condition, so the action was before the condition. **"And said 'If you give me two hundred zuz, and if you don't give, you will not be betrothed' – behold the condition is void, because he preceded the action and gave into her hand."**

The Rambam says, and even though here it doesn't help even the rule that we know from... from toch kedei dibur (within the time of speaking), that if within toch kedei dibur if one retracts, one can still retract, but this doesn't help here.

R' Yitzchak: That is a rule, there's a rule, kol toch kedei dibur kedibur dami (all within the time of speaking is like speaking) from something else. Yes.

R' Yoel Asher: Understand? If one said by mistake morid hatal (brings down the dew), and one said within toch kedei dibur morid hageshem (brings down the rain), or one said "Behold you are betrothed to me" not well, and one fixed it within toch kedei dibur, it helps. But by a condition, toch kedei dibur doesn't help.

R' Yitzchak: By kiddushin it doesn't help. That is, one cannot retract from the kiddushin, but the same thing is regarding a condition.

Laws of Marriage Chapter 6 - Conditions in Kiddushin (continued)

Halachah 4: A Condition That Is Not Doubled

R' Yoel Asher: But this doesn't help here.

R' Yitzchak: That is, there's a rule, kol toch kedei dibur chadpah mekadesh megaresh megadef, and something else, yes?

R' Yoel Asher: I don't remember. That is, if one said by mistake morid hatal, and one said within toch kedei dibur morid hageshem, or one said "Behold you are betrothed to me" not well, and one fixed it within toch kedei dibur, it helps. But by a condition, toch kedei dibur doesn't help.

R' Yitzchak: By kiddushin it doesn't help. That is, one cannot retract from the kiddushin, even regarding a condition, even in terms of retraction. Simply to say "Behold you are betrothed" and afterwards he didn't mean it, that's also only within toch kedei dibur.

R' Yoel Asher: No, but here the point is that it's called still "afterwards." Toch kedei dibur we would look at as both happening at once. What did the person say? He said the good one, he also said "morid hatal," because it was within toch kedei dibur. But here it doesn't help. It must be the action before. Even if it was within toch kedei dibur, it was close, it was right after, but it was still after.

This is what he says, yes? When the problem is a hefsek (interruption), toch kedei dibur helps, because toch kedei dibur means not enough of a long hefsek. Here the point isn't a hefsek, here the point is that the action must be before.

R' Yitzchak: I think that there are ways... Nu, where does it say toch kedei dibur? The Rambam brings in here toch kedei dibur, I don't know entirely, I understand why, but it's not now

R' Yoel Asher: In this halachah here. Toch kedei dibur is a measure in tumah (impurity),

R' Yitzchak: It's not only about hefsek. It can help to change what you said, because it's still in the middle. But regarding these things it doesn't work.

R' Yoel Asher: Okay, very good.

Example: A Condition That Is Not Doubled

R' Yoel Asher: We say further. "**And similarly if he said to her,**" now he's going to say what happens, he's going to bring an example of the not good regarding the problem of it wasn't a doubled condition. "**And similarly if he said to her 'If you give me two hundred zuz, behold you are betrothed to me with this**

dinar' and afterwards gave the dinar into her hand, behold the condition is void because he didn't double his condition," he didn't make the doubling, he didn't say if yes - yes, if not - not. "**For he didn't say to her 'And if you don't give, you will not be betrothed,' and behold she is betrothed immediately and she doesn't need to give him anything.**"

Often one uses the phrase "I hereby declare this with a doubled and redoubled condition." People think that doubled means like when one says "an oath and admission doubled and redoubled." But the doubling here means very literally, that it has the two sides, it covers the yes and the no.

Halachah 5: Preceded "If Not" to "If"

R' Yoel Asher: "**And similarly if he said to her 'If you don't give me two hundred zuz, you will not be betrothed to me,'"** he began with the "if not" - not, began with the negative. "**And if you give me two hundred zuz"** then yes, "**behold you are betrothed to me with this dinar,**" so it was "if not" before "if." "**And afterwards he gave the dinar into her hand, behold the condition is void because he preceded 'if not' to 'if' and behold she is betrothed immediately and she doesn't need to give anything.**"

R' Yitzchak: Right, the Rambam says a whole section about the same thing, the law of what happens when one makes a condition and it doesn't work, right? Apparently,

R' Yoel Asher: This is the example of...

R' Yitzchak: Apparently,

R' Yoel Asher: All of these one can also understand logically. For example, the last one can certainly be understood logically, the "if you ascend to heaven." I mean that all of them can be understood logically. Why?

R' Yitzchak: It makes it clearer,

Discussion: Why Is "If Not" Before "If" a Problem?

R' Yoel Asher: The first three. I mean that it makes it clearer, but one can also understand. Okay, whatever. This is a deficiency in the type of

simple. But just one does, the person doesn't do any kinyan here, he comes with some fear, he has some fear, he's a person who's desperate to get money, he's not mekadesh. Ah, no, but one says yes, the kiddushin is kiddushin, and the condition is void. Something, I don't know, that coming with the "if not" first is some big problem. The others one can hear, because one didn't clearly exclude, one just threw it in like a recommendation.

R' Yitzchak: It's actually the hardest to understand practically, what's the difference which way one says it.

R' Yoel Asher: But he begins with... No one is betrothed to anyone. You begin with something that is...

R' Yitzchak: What isn't?

R' Yoel Asher: No one is betrothed to anyone. I mean to say, all bachelors are not betrothed to all girls. You haven't said anything yet. Nothing begins before "Behold you are betrothed." If the condition happens, then something begins to happen, and afterwards one can say not. Not before hangs in the air.

Halachah 6: Something Impossible to Fulfill

R' Yoel Asher: Okay, let's go further. And similarly if he said to her, the last thing is "something impossible to fulfill." The Rambam says thus: **"If he said to her,"** you should be betrothed to me, **"if you ascend to heaven,"** you will go up to the sky, **"or descend to the depths."**

R' Yitzchak: Was it a thing for the Rambam to make both options, either to heaven or into the depths? Why does the man want his wife in heaven and the depths?

R' Yoel Asher: The Rambam says that every Jew can be like Moshe Rabbeinu or like Yeravam ben Nevat.

R' Yitzchak: No, you're just not standing here. Heaven and depths, I don't know.

R' Yoel Asher: In short, or **"if you ascend to heaven,"** he makes it like the Torah says, it's not "something impossible to fulfill," go to heaven

take the Torah. **"If you ascend to heaven"** is such a thing, **"or descend to the depths."** One needs to know where is the heaven. I haven't yet found the heaven which is the lower waters that were placed. Go in the great air. Okay. **"Or descend to the depths."** Then, **"and if you don't ascend to heaven and don't descend to the depths, you will not be betrothed."** One made a condition before the action, one said well, **"you will not be betrothed."** What is the law? **"Behold the condition is void and behold she is betrothed immediately."**

R' Yitzchak: Why?

The Logic: By Way of Mockery and Frivolity

R' Yoel Asher: **"For the matter is known that it's impossible for her to fulfill this condition."** **"And this is only like one who speaks by way of mockery and frivolity"** - here he's the most explanatory. Everyone knows that the condition cannot be fulfilled, therefore it's only made in jest. It's very interesting, here he wants to say that it's not a law in the condition, but it's something different from all others, yes? That if not, it's not because one didn't make each condition, but because one made mockery. It's a different thing.

R' Yitzchak: It's more like umdena (assessment of intent),

R' Yoel Asher: That he doesn't mean it seriously.

R' Yitzchak: I just talked. There's a proof, there was a Polish tzaddik, I don't remember who, R' Shaul told it, that he was on Rosh Hashanah he made a joke. And the people had complaints against him, he says, what does it mean on Rosh Hashanah he makes jokes? Rosh Hashanah, Yom Noraim (Days of Awe), he said, I don't understand, there is in Shulchan Aruch, in simple laws, at the time I'm crying. It doesn't say there, and if one ascends on Rosh Hashanah, certainly he means it seriously. That's also a joke.

R' Yoel Asher: I heard it from Yankl Miller, also a fine one may he have a complete recovery. Already,

Discussion: By Way of Mockery and Frivolity - On the Condition or On the Kiddushin?

R' Yitzchak: There's an addition from there. Until here we've learned. It's interesting that here the Rambam explains, because we lack an explanation on the "if" before "if not" more. The other things are simply more or less.

R' Yoel Asher: Yes. Okay, the umdena alkiyah is also exactly... It fits very well. For example, the Rambam already said that if she says a nusach, she throws her hands. It's the same kind of thing. But then it doesn't mean kiddushin. Here the mockery means something, but he does mean it yes.

R' Yitzchak: Right? But it's the opposite, this goes to my earlier question, that he wants to betroth her, he wants to make a joke on the side.

R' Yoel Asher: Not on the whole kiddushin was by way of mockery and frivolity. I can say if it's through mockery and frivolity, because he must have known. Here this isn't a very good question, because we did have that if it's some frivolity... Then it's not kedushah, because it's frivolity. Let's think like which...

R' Yitzchak: What do you mean from him, that halachah that you brought.

R' Yoel Asher: Yes, no, but there it was because she acquired the ring, because say throwing is the hands. Did we have simply so when he says like... Are you crazy? I'm going to have a wedding with you? Yes,

R' Yitzchak: No. And they had such a story of the person who takes the other's money, and the other says why didn't he take the nicer thing?

R' Yoel Asher: No, and it's also a matter of ownership. But let's see like the woman herself... Who do you mean? Like the woman says something... Ah, the woman doesn't say it here. It means, we did have when the woman says things that show she doesn't want.

R' Yitzchak: Right, you're right that then it's a bit of a different case? Not sure. Ah, the examples are from the Gemara. It says in the Gemara other examples. "On condition that you cross the great

sea on your feet," "on condition that you swallow a cane of a hundred cubits," in short, various matters. Ah... eh... I don't know why, that's how it looks. You ask a question, perhaps one does know clearly that he's making mockery also with the kiddushin, but a different topic.

R' Yoel Asher: Further, the Rambam says,

R' Yitzchak: I know why, he had a wedding, now that he's a groom one must mock the groom the bride,

R' Yoel Asher: He makes a joke. I can hear, if they're so matched and one must take all kiddushin, one can hear that they're actually ready for kiddushin, and he threw in a joke.

R' Yitzchak: So let me make it a bit clearer regarding kiddushin. But let's say, we're now learning hilchos tena'im (laws of conditions). We learned hilchos da'as b'kiddushin (laws of intent in betrothal) last night. There are all these questions there. It could be that in reality the two questions meet. In reality, but in the lands there are two different lands. Now we're learning about the tena'im. What the tena'im mean. Learning the kiddushin,

R' Yoel Asher: Learning last night.

Halacha 7: A Condition to Do Something the Torah Forbade

R' Yoel Asher: Okay, the next thing is like this. The Rambam says, from here we come to the next question. He said, if one makes a condition to do something that one cannot do, like running in the sky. There are other things one cannot do. Doing things that one may not do. I cannot do it not as a human being, but as a Jew.

If one made a condition regarding something possible to do, but the Rambam doesn't say the words, **that is possible to do but the Torah forbade it.** Possible to do means the person is capable, his hands can go do it. But the Torah forbade it. **For example, if he said to a woman, if you eat chelev or**

blood, behold you are betrothed to me with this dinar. And if you don't eat, you will not be betrothed. He said it well. **Or if you eat pig meat, behold this is your get. And if you don't eat, it will not be a get. And after he made the condition he gave the dinar or the get into her hand, is the condition valid?** Yes, the condition is valid, because this is not called a *davar she'i efshar l'kaymo* (something impossible to fulfill).

The Rambam says, when is it a *davar she'i efshar l'kaymo* that makes it into mockery and jest? It's when it's obviously, everyone knows that it's impossible to fulfill. But not so when it's possible, just not permitted. For people it's completely out of the question, but it still doesn't make it into a *derech sechok v'hisul* (way of mockery and jest).

R' Yitzchak: The Rambam explains why.

R' Yoel Asher: The condition is valid, and if she transgressed and ate she will be betrothed or divorced, and if she didn't eat she is not betrothed and not divorced.

We don't say that the *kiddushin* is... that the condition automatically becomes void and the *kiddushin* is a *kiddushin*.

R' Yitzchak: The Rambam explains why.

R' Yoel Asher: And we don't say in this case that he made a condition against what is written in the Torah.

R' Yitzchak: We're going to learn in a minute about a principle that one who makes a condition against what is written in the Torah, his condition is void.

The Reasoning: It Is in Her Hands Not to Eat

R' Yoel Asher: The Rambam says that this is not true here, **because it is in her hands not to eat and not to be betrothed and not to be divorced.** It's in her hands. Something that is forbidden doesn't yet mean not in her hands.

R' Yitzchak: It's still in her hands. I mean there are two details, or three. One is, if you know better than me, I'm telling you, I'm thinking out loud here, I haven't looked in the commentaries. One thing is, there's a question of what means

possible, which we learned. When he says an impossible thing, he means to pay attention, he's speaking in jest. Eating pig? It's not jest. It's not maintained, one may not, but he doesn't mean jest. That's one thing. One could perhaps say, if he's very pious that for him

R' Yoel Asher: It's certainly jest, go on.

Rambam Hilchos Ishus Chapter 6 – Conditions of Davar She'i Efshar L'kaymo and Matneh Al Mah Shekasuv BaTorah

Halacha 8 (Continued) – Second and Third Reasons Why the Condition Is Valid

Second Point: Da'as HaMisneh (Intent of the One Making the Condition)

R' Yoel Asher: No, the pious person has fear of the *kiddushin* just as strongly.

R' Yitzchak: It doesn't help. Very good. Say that, the second point. The second point is, sometimes a person makes a condition, and he means that it shouldn't be, right? It could be, it could be that he says actually, he gives you an example, **if you eat pig behold this is your get.** That's a way of saying, I don't really want to divorce you. You know what? It was a condition, it passed, no problem. He was taking revenge, you know? He's taking revenge, that you eat pig, and you become divorced from me, no problem. He can withstand it.

R' Yoel Asher: Or he wants her to make the decision like... It's in your court now.

R' Yitzchak: He makes it tragic. Yes. Where, can you test and pig? I'm not a magician, can you test and pig? Yes. In short, presumably he's still...

R' Yoel Asher: Yes, one doesn't have to call it eating pig.

R' Yitzchak: One can call it something else, but yes. Tell me, so that's the second reason why also in the person's mind. As if it makes sense that a person should if the whole problem of *davar she'i efshar l'kayem* is in the person's mind, it still makes sense.

R' Yoel Asher: Because he says...

R' Yitzchak: I really want this not to happen, it's not a problem.

Third Point: Matneh L'ma'aseh Kasuv BaTorah (Making a Condition Regarding an Act Written in the Torah)

R' Yitzchak: Third is the learning question of matneh l'ma'aseh kasuv baTorah. The Rambam says, that's not what it means! The Torah opposes one who rebels against it, but he's not going against the Torah, on the contrary, he says like this, don't do it, no problem.

R' Yoel Asher: This last thing is very interesting, because this is not always typical of the Rambam, because here he does a Tosafos type of thing. He says, what I just said, do you remember something of the language matneh l'ma'aseh kasuv baTorah? The Rambam perhaps said meanwhile...

R' Yitzchak: He would say it now.

R' Yoel Asher: He wants yes, in hilchos tena'im he wants to nicely discuss conditions, he also wants to tell us about the law that he's now going to tell us about matneh al mah shekasuv baTorah, and he brought it in very nicely with such a...

R' Yitzchak: Because they connect, the Rambam put something together in one category.

R' Yoel Asher: I efshar with the law of i efshar because the Torah forbade, with the next law of matneh al mah shekasuv baTorah, which is actually a law in a different kind of situation.

R' Yitzchak: Like the Rambam is going to say.

The Rambam's Question: Why Isn't This Matneh Al Mah Shekasuv BaTorah?

R' Yoel Asher: The Rambam says, the law that I just said, that even a condition that is a forbidden thing, even though one may not do it, it's still a condition, a legitimate condition that will or won't make a chalus (taking effect), the Rambam asks, why shouldn't we say that **he made a condition against what is written in the Torah?** How so? What does it mean? How so?

We know, whoever learned Gemara... Interesting, because the Rambam hasn't

mentioned it yet. It's not so typical of the Rambam, because the Rambam usually lays out all the laws. This is an interesting way.

But why is there indeed a law that **anyone who makes a condition against what is written in the Torah**, one makes a condition against something that stands in the Torah...

R' Yitzchak: His condition is void.

R' Yoel Asher: Except for davar sheb'mamon (monetary matters)? We know that only by davar sheb'mamon does every condition work even against what is written in the Torah, but not davar sheb'mamon the condition becomes void.

R' Yitzchak: And kiddushin is not davar sheb'mamon. Learn what you're saying, learn the next halacha. 9. Yes? The Rambam... statement, how so?

Halacha 9 – Matneh Al Mah Shekasuv BaTorah

The Rambam's Words

R' Yoel Asher: What can one say? What kind of law did one say? The Rambam says, there we speak like this, **for example if he betrothed...**

R' Yitzchak: One gave kiddushin or divorce.

R' Yoel Asher: He still says the law here, which is not just he asks a question and an answer, that was his way. He's going to say, how so, yes. Yes. For example? For example.

One gave kiddushin or divorce or a gift or a condition in a sale with a condition. **That he wants through his condition to acquire for himself something that the Torah didn't grant him.** He makes a condition that normally the Torah didn't give him that right.

For example, let's say by a gift. Let me make a quick example, afterwards we'll see inside with examples. A person gives someone a gift, but he says on condition, he can always come into your house to use the gift. There's value in the thing. Something that he doesn't normally have the right. Or whatever, perhaps not a good example. But something that the Torah didn't yet automatically give him the right. It's not inherent

in every gift the right. The Torah didn't give him. Or the Torah directly prevented it.

Or he exempts himself through his condition from something that the Torah obligated him in, that's what we call matneh al mah shekasuv baTorah, and therefore it's void.

Why? **Because we say to him, your condition is void, and your actions have already taken effect,** the kiddushin was indeed a kiddushin, you did the act of kiddushin, so it happened. **And you are not exempt from what the Torah obligated you in, and you will not acquire what it prevented you from.**

When we say your condition is void, we mean to say that it was a good kinyan (acquisition), and what you wanted to limit from the kinyan, which would have said that although normally you become obligated automatically through the kinyan, you become obligated automatically to conduct yourself with me like one who is betrothed or divorced or one who gave a gift and the like, the condition becomes void and the act remains.

Discussion: The Difference Between "Outside Condition" and "Inside Deal"

R' Yitzchak: I want to say in Yiddish what the Rambam says. Matneh al mah shekasuv baTorah doesn't mean he makes a kind of condition that one may not do.

R' Yoel Asher: An outside condition.

R' Yitzchak: He makes a kind of deal that the Torah is against.

R' Yoel Asher: Right? Not an outside condition, but an inside deal.

R' Yitzchak: What is there? The topic of matneh al mah shekasuv baTorah is whether one can, part one can yes, part one cannot, but the topic is basically whether one can change the deal against the Torah's deal. The Torah said, when one has a wedding, one becomes obligated and exempt thus and so, you want to be exempt differently. Then it's a question.

What we spoke about earlier about a condition, what is the thing that one must do on a

condition? It's basically a different kind. The word tenai is even a borrowed term here.

R' Yoel Asher: It means something else here. Here one takes a foreign thing, eating pig is a foreign thing, and one makes it here as a condition. They want to change what the kinyan means.

R' Yitzchak: What the kinyan means. As if matneh al mah shekasuv baTorah would be like this... It doesn't say so exactly, which is simple. One says, behold you are betrothed to me on condition that you may sleep with another man, you won't be an eshes ish (married woman). No.

R' Yoel Asher: It's interesting, because the word there doesn't fit so well al mah shekasuv baTorah. Here it's very good. Here it's like... How strong is the Torah? One could say that the Torah is like something that one cannot do in reality. I tell you no, reality is reality. The Torah, you certainly may not eat chelev, but one can use it as a condition.

Here, the reason why one cannot is not because of the sanctity of the Torah, but because that's how the kinyan comes, because you cannot outsmart, you cannot circumvent what kiddushin is. I don't know what the sanctity of the Torah comes in.

R' Yitzchak: Actually, one can yes circumvent the sanctity of the Torah. That's not the topic. The topic is more like... I mean that the Rambam together sought a way to say all the laws, and he together decided to put them in this order. But truly, the question doesn't begin. The two conditions are different words.

The same, here he wants to change the deal. There's like a laws, there's a deal. In the Torah it says a shomer chinam (unpaid guardian) is obligated thus, a shomer sachar (paid guardian) thus. I want to be a shomer chinam thus. He changes what the Torah said. The condition of kiddushin is a completely different thing. You say behold this is your get on condition that, or you're going perhaps pig. But the Rambam wants to take together the two things, therefore he says...

R' Yoel Asher: No, he says the language "al mah shekasuv baTorah" is interesting, because the main word from it is a condition that something should be different than it belongs, than it should be, than the Torah requires. One who wants to make a partnership different than...

R' Yitzchak: The definition of the word partnership. How so, the Rambam gives the examples, yes?

How So – The Rambam's Example of She'er Kesus V'Onah

R' Yoel Asher: So the Rambam, how so...

R' Yitzchak: That means, which matneh al mah shekasuv baTorah doesn't work.

R' Yoel Asher: Yes? I still want to understand his language what he said. When we say there tenai batel (condition is void), he says something like other words, **"that we say to him your condition is void"**, not like always that if it doesn't match with the four things of a condition, the condition falls apart. But this is something such, the Sages tell him that we wave you off. What you said is irrelevant. Because you basically have no right...

R' Yitzchak: There's no way that you can make this condition. If he says I don't want, I didn't know there's such a law, he starts a... He wants to be a husband, but he wants to be exempt from she'er kesus v'onah. There's no such thing. Right?

Okay, we'll remember about the kingdom of kesubos. The people who say that in certain communities one marries on condition that you don't have onah upon me. It cannot be, there's a tenai batel. Ah, there's a law in onah that he can be mochel (forgive), and if mochel one can later. That she can always come back and say that I do want, and one can do nothing. One cannot say, you knew? It doesn't help, because the Torah says this. Do you understand it like that? Anyway, it doesn't come in to you.

R' Yoel Asher: Just politics. That the Rambam puts in...

R' Yitzchak: I mean you're asking about the lengthy language, he tries to explain what the

word al mah shekasuv baTorah means. You cannot change, the Torah wants that a husband should be obligated in she'er kesus v'onah, you cannot remove that because you...

R' Yoel Asher: Made a condition, and the obligation keeps coming up. Nothing was held, two minutes ago you said something. There's an obligation that jumps...

R' Yitzchak: All the time up on you.

R' Yoel Asher: By the pig, it's not pig. Certainly the Torah says...

R' Yitzchak: And that says the betrothed no agreement, I mean you had a wedding, yes? A wedding had a Jew, the rabbi comes to him and he says, gentlemen, are you willing to live. I said no, burst, one cannot say. I'll say that I'm born on condition that I may steal someone's things. It doesn't make sense. That's the idea.

R' Yoel Asher: Sometimes people unfortunately convince themselves, it's an important point this, I'm unfortunately, I cannot, others are thus, your condition is void, it's demanded of you. Go on.

R' Yitzchak: If he cannot it's an ones (unavoidable circumstance), I don't know about other topics.

R' Yoel Asher: Okay, how so? Yes, for example, **such as one who betrothed a woman on condition that she doesn't have upon him she'er kesus v'onah.** Later in hilchos ishus we're going to learn the mitzvah in the Torah, that a husband is obligated to give to his wife she'er kesus v'onah. She'er is food, kesus is other expenses like clothing or a dwelling, and onah is being with the wife physically, intimacy we call it. So like this, he betrothed his wife, and being betrothed with a wife means that one will indeed have she'er kesus v'onah. He made this itself as a condition, we're not going, we're going to have a wedding, but not be obligated with what married people are obligated.

We tell him like this, we're going to divide the matter, **in kesus and she'er your condition is valid**, bread you indeed won't have to give, because she can undertake, I'll support myself, I

don't need your money. Money things a person can take out differently. **But in onah**, the thing that you say that we also won't have onah, on that **your condition is void**. Why? **Because the Torah obligated you in onah**. The Torah obligated such a thing, a couple,

R' Yitzchak: That a husband and wife must indeed do onah.

R' Yoel Asher: He must basically, the husband must give to the wife onah, that's how it looks here. **"Because the Torah obligated you in onah"**, she must receive, she must agree.

R' Yitzchak: The Torah obligated you in onah, therefore **"and behold she is betrothed and you are obligated in her onah, and it is not in your power to exempt yourself with your condition"**.

R' Yoel Asher: Your words don't help, but on **davar shebemamon** (monetary matters) it helps, so **she'er kesus** (food and clothing), but on **onah** (conjugal rights) it doesn't help, one must still provide onah. It's very interesting, because the Torah gives onah because we want him to satisfy the wife. In this way it's the same as **she'er kesus**, and not like the Torah wants us to keep **Shabbos**. It's a **din** (law) that you should make her satisfied. And if you say **"harei ani ke'ilu hitkabalta"** (I am as if I received), that you stand on your head and that gives me pleasure.

R' Yitzchak: We're going to learn later, there is such a thing as **mechilah** (forgiveness), meaning onah yes, but the obligation is real. The other **meforshim** (commentators) say because it's a **davar shebegufo** (matter of the body). **Rashi** says such a **lashon** (expression) **"tza'ar hagufo"** (pain of the body). **Gufo** (body) means that it's not... It's interesting. In other words, if we understand a bit **lamdanically**, I mean we talked about this once in **Kesubos** that we learned the **halachah**. Usually one thinks that the topic of **matneh al mah shekasuv baTorah** (making a condition contrary to what is written in the Torah) is like

you said before, how holy is a word of Hashem, how serious it is, how strongly you go against the Torah. A Jew cannot go against the Torah. Here already **mamon** (money) is the simple meaning, the Torah obligates that if there is... usually,

R' Yoel Asher: There are no **sefarim** where there is a question. The Torah says that a woman must be protected. The Torah takes responsibility for the women, gives her **she'er kesus**. And if she is **mochel** (forgives), there must be some reason why she is **mochel**. Meaning, we're talking here after the **Chachamim** (Sages) said that she must be agreeable, and there's no concern of abuse. Again, the **Rambam** doesn't need to appear here.

R' Yitzchak: If there is that she has

R' Yoel Asher: Not truly agreed to be **mochel**. She didn't truly mean to be **mochel**. We're talking here that she is **mochel** with clear mind. Why?

R' Yitzchak: Presumably she has some calculation.

Innovation: Onah is the Essence of Being Man and Wife

R' Yoel Asher: But it could be that I think that onah is something more. We started with how it was before **matan Torah** (giving of the Torah) and after **matan Torah**. All these things are the preparation for after **matan Torah**. What was after **matan Torah** is that a man is **bo'el** (has relations with) a woman. Essentially the marriage of being a man and woman together is the onah. You can't make a... It's like we're going to be partners without being partners. A man and woman are two people who do onah together. Essentially, before **matan Torah** it came to be that there should also be a **kinyan** (acquisition), but a **kinyan** is a preparation to being a man and wife. What does being a man and wife mean if not with onah?

R' Yitzchak: That's not enough, because that's true, he may, or she may, he may. But the question is more that onah means that he is obligated. They can call him to **beis din**, he hasn't done onah for four weeks, he is a **mored mitashmish** (one who rebels from relations),

R' Yoel Asher: And so on. I mean here perhaps the word lies in the word four weeks. That onah is very strong in how many times, the Rambam had to say later, perhaps that's an addition. But onah means that we two can be bo'el, can do it once a year. That wouldn't have been called a family or against onah.

R' Yitzchak: No, the obligation of onah certainly means according to the parameters that one can learn. Okay,

R' Yoel Asher: The parameters are an added thing.

R' Yitzchak: I don't mean added,

R' Yoel Asher: I mean it's a definition of how much one must do it, or like everything, how often must one daven. But I'm saying here something that a man and wife means two people who do onah together.

R' Yitzchak: He is obligated to give.

R' Yoel Asher: He is obligated to give, and she is also obligated to be available for him.

R' Yitzchak: No, that's a different topic. No,

R' Yoel Asher: That's deeper than onah. That means adam pogesh ishah (man meets woman).

R' Yitzchak: That's true, but that's not... The kiddushin is a preparation for this. The condition that we're talking about here is not about now. The condition that we're talking about, we're talking here specifically about the obligation that the Torah says "ve'onasah lo yigra" (her conjugal rights he shall not diminish). A man can have four other wives, right? He can have a plan. He has here a wife on she'er kesus ve'onasah? What do we learn from the pasuk? What is a difference? Is there a difference? Is there a difference? Is there something different? Is there something different? Everyone understands that a person cannot make a condition that he is exempt from shemiras Shabbos (keeping Shabbos). Right?

R' Yoel Asher: Right, that's certain.

R' Yitzchak: Now, the Chachamim understood that onah is more similar to shemiras Shabbos.

R' Yoel Asher: That's how you look at it, I look at it that onah must still be something between the couple.

R' Yitzchak: Certainly it's for the wife. For example, she can be mochel.

R' Yoel Asher: But she can be mochel, and she is also obligated to it.

R' Yitzchak: That she is obligated

R' Yoel Asher: Is an external thing?

R' Yitzchak: Yes, yes. That means, I agree with you that that she is obligated is also the essence of kiddushin, because otherwise she's called moredet (rebellious). That is what is written moredet. You don't want to live with me, go in peace, don't take your kesubah. But...

R' Yoel Asher: Mored (rebellious husband) also exactly,

R' Yitzchak: Okay. Mored if he doesn't fulfill onah, the same thing. But that's not... But what's written here is more, it's actually interesting, because Rashi says something different that this is tza'ar gufah (pain of her body) and she cannot be mochel, although she can be mochel. One must understand that then it's not

R' Yoel Asher: The topic of Torah,

R' Yitzchak: Then the topic is that a body... So says Rashi.

Innovation: The Condition at the Time of Kiddushin Cannot Remove an Obligation That Arises Afterward

R' Yoel Asher: What I said is essentially a third thing, one could ask that by onah it shouldn't help for the reason, because this is the adam pogesh ishah in general what that means.

R' Yitzchak: He doesn't say that,

R' Yoel Asher: The Rambam doesn't say it.

R' Yitzchak: It's a nice sevara (logical argument). And also in Rashi's sevara that it's a tza'ar haguf is also not the same thing as davar shebemamon versus mah shekasuv baTorah. That means, one must understand, why specifically by davar shebemamon may one? When the Torah says that one is obligated in she'er, the Torah also presumably wants there to

be an obligation. Why can you be smarter? The answer is, in practice, it's money that he owes her, and she can say I don't want, and in these situations it makes sense for us to do differently, and something is different. It's not entirely clear to him why it's different. One needs something better...

R' Yoel Asher: I can hear, but when the person is not going to do the mitzvah of onah now, there's no way that he shouldn't do onah because that's what he said at kiddushin. He can not do onah if she is mochel. As if saying it at the kiddushin won't exempt him. That the two of them come together afterward, there can't be a condition at the kiddushin that would cause there not to be the mitzvah of onah. There are other ways how not to do onah, that she will say to be mochel, or discuss otherwise. But that because at the time of kiddushin one said it, won't remove an obligation that keeps coming upon you, which is a different kind of thing.

R' Yitzchak: Why? That's the question. You admit that onah is an obligation bein adam lechaveiro (between man and his fellow), it's not bein adam laMakom (between man and God). Certainly, it makes yichudim (unifications) in the upper worlds etc.,

R' Yoel Asher: But that's the bein adam lechaveiro that makes yichudim.

R' Yitzchak: That's a third part,

R' Yoel Asher: That's a third part.

R' Yitzchak: There is such an obligation, there is an obligation. Something, it could be that you are right, that perhaps he brings that there is a mitzvah of peru urevu (be fruitful and multiply). If it's something complicated, which includes very many things. There is perhaps a humanistic part of it, a fundamental part. But there's also a mitzvah of peru urevu, there's also a mitzvah. It's part of the seder ha'olam (order of the world), it's more basic. It's important, it's important for many reasons. I don't know, one must understand better. In any case, yes, this is the topic of matneh al mah shekasuv baTorah.

Halachah: Example of Yefas To'ar – "One Who Betroths a Yefas To'ar on Condition That He May Abuse Her"

R' Yoel Asher: Yes, the Rambam says further, another example. Vechen (and likewise), we have a din of yefas to'ar (beautiful captive woman) in Parshas Ki Seitzei. **Hamekadesh yefas to'ar** (one who betroths a yefas to'ar), someone who met her in a war, and there is a halachah there of various things that one may not do and what one must do with a yefas to'ar. There is the halachah **lo sis'amer bah** (you shall not abuse her), one may not humiliate her, sell her after one has lived with her. In short, there are things that one may not be mis'amer (abuse), meaning torment her, be cruel to her. If one cannot, I cannot humiliate her, I cannot humiliate her, I cannot humiliate her. So what does one say? So also, this also means a condition on what is written in the Torah. What happens here? It's not a condition at all. It's not like the condition nullifies the act. She is still mekudeshes (betrothed) because he gave her kiddushin. And what he said that he will be able to be mis'amer to her, he spoke falsely, **ve'ein lo lehis'amer bah, sheharei haTorah mana'ah oso mehishtabed bah achar sheniv'alah** (and he has no right to abuse her, for the Torah prevented him from enslaving her after he had relations with her). The Torah prevents that he may not make her into a maidservant after he has been bo'el her. After he has been bo'el her, he must treat her like a wife, not like a maidservant. It doesn't help, **velo mipnei tena'o yizkeh bedavar shemana'ah Torah, ela tena'o batel, vechen kol kayotze bazeh** (and not because of his condition will he merit something the Torah prevented, rather his condition is void, and likewise all similar cases).

Discussion: Why Does the Rambam Bring Specifically This Example of Yefas To'ar?

R' Yitzchak: The Rambam's example is very strange,

R' Yoel Asher: I don't know the examples, but he gives a certain thought.

R' Yitzchak: The first example is exactly the halachah that's in the Mishnah. But the second

example is a very clear example, but the Rambam could have said, vechen hamekadash al menas she'eino tzarich lishmor Shabbos. I don't know, on the contrary, mitzvah of,

R' Yoel Asher: I don't know.

R' Yitzchak: He asks why is there a question? This has nothing to do with kiddushin, this has apparently to do with what... I mean, perhaps there's a secret here. Yefas to'ar, I'm thinking everything now outside, yefas to'ar is essentially rape, right? He captures her. So, certainly it's not relevant. When one makes a condition, you say, the woman agrees because she entered into this. Very good. But there it's simple that a condition isn't relevant, because the Torah wants to protect her. It says, "lo sis'amer bah achar" (you shall not abuse her afterward), if you have been bo'el her and you don't want her, send her out, don't leave her as a maidservant afterward. He says, "I made a condition." What do you mean you made a condition? With whom did you make the condition?

R' Yoel Asher: It's a very interesting question, because for example, let me ask you... No,

Innovation: Perhaps Every Woman is an Aspect of Yefas To'ar Regarding Onah

R' Yitzchak: I just want to ask for a second. So I will think that it could be that the Rambam wants to say a secret that every woman is a certain aspect of yefas to'ar. And regarding onah, there are things that the woman cannot nullify. I thought this,

R' Yoel Asher: That we're protecting the woman here. But I thought it this way. What happens for example when we two say, if I give you a slap now, am I transgressing "bal tosif" (do not add). If you tell me, "I'm now in the mood to receive a slap," am I apparently not transgressing "bal tosif." And on this there's no agreement that destroys the Torah, because that's not a slap. A slap is something that hurts the other person. Someone who is crazy, he likes to receive slaps... "harchek min haki'ur" (distance from ugliness) speaks in hints. If someone wants to receive a slap, it's not clear. Let's say another example. When one goes into the military, I have friends

who stumbled and went into the military, at first they torture people, they force them to do things, they give slaps, to learn that if you are captured... Will someone say that one transgresses "bal tosif"? But one may because of a war situation? That's not "bal tosif." "Bal tosif" means hitting a person unjustly. If there is some agreement... Doesn't mean to say that a condition that I may hit you, because you're going into the... Here there must be an order that the kiddushin should allow the order. That's the point. A man and woman, yes?

Rambam Hilchos Ishus Chapter 6 – A Condition That is Not in Her Power to Fulfill and the Nature of Things That Are Possible to Fulfill

Halachah 7 – A Condition That She Be Bo'el to Her Father: Something Not in Her Power

R' Yoel Asher: Will someone say that one transgresses bal tosif, but one may not in a war situation? That's not bal tosif. Bal tosif means hitting a person unjustly, if there is some agreement. So al menas shelo yis'amer bah (on condition that he not abuse her), doesn't mean to say al menas that I may hit you, because that goes into the... Here it won't be that the kiddushin should allow. Sorry, that's the point. Meaning, a man and woman, yes? A man met a yefas to'ar for some reason. Meaning, if she says so simply I agree, it's obvious that she is an anusah (forced), they're forcing her, just like onesim (forces) someone to be mekadash. We're not talking about that, we're talking like a yefas to'ar

R' Yitzchak: Agrees that you should agree. Yes, in short, you mean to say perhaps that basically not everything is negotiable? That's the meaning. Here Rashi says tza'ar hagufo.

R' Yoel Asher: No, I'm saying, when two people say that you shouldn't transgress bal tosif, it is negotiable, because perhaps...

R' Yitzchak: There is a dispute here among the Acharonim. For example, the Achiezer said that a person can sell himself organs, something like

that. It's not clear that a person belongs to himself. There is something like chovel bachaveiro (one who injures his fellow). In short, this is the sugya, this is not something that... Or as you say,

R' Yoel Asher: Regarding onah... If she willingly goes to work for her husband, she won't have the maidservant,

R' Yitzchak: But she goes to work for her husband. Shelo sis'amer bah (that he not abuse her). Yes, exactly. That's the thing. But there are things that mean yes, because when she says that she wants, she has a choice, she wants to marry you. There is a rule of a girl. Let's say, may I say politics? If there is a Gerrer girl, okay, we tell her you have a choice, she agrees, because in Gerer that's the custom. It's not true. She has a choice, she wants to marry a Litvak chas veshalom (God forbid), with him she should marry. That means, al zeh amrah Torah ve'onasah lo yigra (about this the Torah said her conjugal rights shall not be diminished), because you can't say, by us it's not the custom. That's actually the problem. Against the people who have this custom the Torah wrote the mitzvah.

R' Yoel Asher: Bad people abuse yefas to'ar, the Torah wants to uproot this. Bad people don't do she'er for their wife, and they marry. Meaning, can you let a second man do theirs. And the Torah said, no, you must give.

R' Yitzchak: What will you do here? She knew beforehand that she has a bad one. She agreed. She didn't agree? For money? No problem. Because money is always negotiable. Even the truth is that money also has situations that aren't right.

R' Yoel Asher: I have a very good example: When a more sophisticated company for example that is sophisticated wants to steal, he makes him sign on a bunch of papers that say a condition that you will let me steal to take my money once a month and not give me the insurance coverage that I need. A condition, and what can one do? I signed a condition, and in court it can hold. And the Torah doesn't let such a thing happen.

R' Yitzchak: It could be that on money matters the Torah will say, no problem. Because that's a boundary,

R' Yoel Asher: It's a boundary.

R' Yitzchak: In practice, money, let's say, that's the boundary. Everything that is money, one hundred percent money, remains. It's actually not just, the company says lies, but you signed, you do get something from it, it's not for free, no problem. But if you signed with a company that they may come hit you, presumably that, even the court holds that it doesn't work. Thing.

The Rambam's Language: He Made a Condition on the Woman That She Be Bo'el to Her Father

R' Yoel Asher: He says further such matters of... he makes a continuation. Now, we spoke earlier about how one of the conditions is that the condition must be something that can be fulfilled, and not a mana of coins to the moon.

R' Yitzchak: And the other one said that there is a prohibition.

R' Yoel Asher: A prohibition, and it still means that it's doable.

R' Yitzchak: The Rambam says, there's a fence in this that a prohibition is doable. That the prohibition one must do oneself. If a second person must do it,

R' Yoel Asher: It doesn't help. This halacha is a contradiction with the Sfas Emes of "lo yuchlu la'alos bahar." Yes? There is something... it cannot go up the mountain. It's the first one. Okay. Okay. **If he made a condition on the woman at the time of kiddushin or at the time of divorce, he made a condition on a woman that she should have relations with her father or with her brother**

R' Yitzchak: Or with her son and the like. That she should do a prohibition,

R' Yoel Asher: Yes? Because at that moment one becomes betrothed regarding all these things, to her father, her father, certainly, it's arayos (forbidden relations). **Then this is like one who made a condition on her that she should ascend to the heavens or descend**

to the depths, and his condition is void. Why? Why is this different from when one says on condition that she should go eat pork? The Rambam says a very beautiful chiddush (novel insight): "For it is not in her power that others should transgress and come upon the forbidden relation." Even if she can seduce her father, but the father must also... there is such an expression, "it takes two to tango," no? **"And come upon the forbidden relation, and it turns out that he made a condition on something that is not in her power to fulfill."** Eating pork is in her power to fulfill, she can eat it herself.

R' Yitzchak: Yes,

Discussion: The Distinction Between a Prohibition Within Her Power and a Prohibition Not Within Her Power

R' Yoel Asher: But something that is still dependent on another person, for another reason it is a matter not dependent on her power.

R' Yitzchak: But let's understand, every thing... he's going to say,

R' Yoel Asher: Because if this is only on an ervah (forbidden relation), it doesn't mean that every thing that I need to be able to effect on that person.

R' Yitzchak: He's going to say,

Halacha 8 – But If He Made a Condition on Her That So-and-So Should Give Me His Courtyard

R' Yoel Asher: But if he made a condition on her that so-and-so should give me his courtyard, if that person should give me his courtyard, or that he should marry his daughter to my son, or that person should make a match with me, and the like, yes, his condition is valid, for it is possible in her power to fulfill it. Why? Seemingly, in the previous halacha I said that you cannot force that person. The Rambam says, to do a prohibition, or perhaps to do something that is crazy,

R' Yitzchak: Which is rejected by all people, you yourself can,

R' Yoel Asher: But you cannot make that person do it. But something that is "doable" but is very difficult, but every thing has a price, every thing has a "price tag." And we learned that davar shebemanon (monetary matters) conditions help. And she can give to so-and-so, she can give to so-and-so, much money until he gives him his courtyard, or until he marries his daughter to his son, for there is no transgression here.

R' Yitzchak: What? For money one can make matches too. There is an "amount" of money.

R' Yoel Asher: It's very difficult, because the Rambam in Hilchos Kiddushin is going to say that one who betroths for money, he does a prohibition. But not a transgression. And so all similar cases. The distinction is, that it's "doable," therefore the kiddushin is still in your control. A condition means that one puts it into the woman's... do you want me to marry you? Okay, "deliver" me the difficult things. A person can say, "deliver" me a difficult thing. It's a difficult thing,

R' Yitzchak: But it's a difficult thing. And part of the difficulty can be that the other person must agree. No problem, figure it out, bribe him too.

Discussion: The Four Categories of Conditions – What is Doable and What is Not

R' Yoel Asher: The Rambam is not going to say all kinds of things, he doesn't have to. It could be that the Rambam would also have said if he tells her to walk around in the street with a garbage can on her head, dressed in nakedness, things that are crazy, that everyone understands are crazy. It's not necessarily the prohibition of the Torah, because that is enough that it's davar she'i efshar lekamot (something impossible to fulfill). Like ascending to the heavens. Here he says that making the father have relations is like ascending to the heavens. Why? Because he wouldn't do it for any amount of money.

R' Yitzchak: There are two parts. No, even when yes, that's what I'm saying. There is here something interesting in learning that goes like this. Impossible things. Walking across the sea

without a ship is impossible. No human being except for Jesus can do it, he can only do it with a miracle. So one cannot. That means one cannot, therefore, void. There is a thing that one may not. One may not is not a problem, you can but one may not. There is a thing that plus either one may not. There is a third thing, yes, four types of things. One cannot, a problem. One may not, not a problem. After that there is, one can yes, but a second person must agree. You cannot, but the other person must do. That is not a problem, because that, figure out how to make the other person do. You can figure out, for money is just an example, right?

R' Yoel Asher: There are all ways that one can obtain, people do things for you,

R' Yitzchak: People buy your friendship. Part of being a person, in other words one can say that one of the things a person can do is make other people do things. Ma'aseh bechol yom (happens every day), that is influence, that's how it works. After that there is either that a second person must do it, and either that a second person must do a prohibition. When it comes to these two things, then one says one cannot. A second person doing a prohibition is like something that you yourself cannot do in reality. Although in reality it is possible.

R' Yoel Asher: You can hire anashim (people), non-Jews, thugs, to make that person have relations with someone. One can perhaps also give enough money,

R' Yitzchak: God forbid he should do it. But perhaps this goes back to that, because this is already insanity, for that won't happen.

R' Yoel Asher: No, the definition is not that one can physically do it.

R' Yitzchak: That's what I'm saying.

R' Yoel Asher: A bit more refined, it's something that is doable, not very difficult. Very difficult still means doable, but it's not doable,

R' Yitzchak: Because everyone understands why. Here everyone understands. Why? Because no one is going to be mevarer (clarify) the words. Either very difficult is not a problem, and either a

transgression is not a problem. But when it's either very difficult and either a transgression, not very difficult, either a second person. Let's say like this: a second person is not a problem, and a transgression is not a problem.

R' Yoel Asher: It could be that there's another davar mufrach (absurd thing), like I said, shaming someone in a crazy way. It's a transgression. A davar mufrach. A transgression. A davar mufrach beyoser (extremely absurd) stands on this. Davar mufrach beyoser,

R' Yitzchak: That is its price. But it's impossible. I don't understand such a rule of davar mufrach beyoser, only on a prohibition. Perhaps it is yes,

R' Yoel Asher: Because a prohibition is impossible. Something that is not relevant to do. I'm saying something that by the nature of people they don't do.

R' Yitzchak: I don't understand why. All these examples are going up to heaven. Literally things that are impossible, even if one wants very much one cannot. Anyways, I don't know. Until here are the details of possible things.

The Rambam's Principle: Place These Things Before Your Eyes Always

R' Yitzchak: The Rambam concludes,

R' Yoel Asher: As he has already done earlier,

R' Yitzchak: He returns to the general principles and the conditions, right?

R' Yoel Asher: He has a mussar sefer (ethical book). He says like this, "**Place these matters of conditions before your eyes always.**"

R' Yitzchak: So what?

R' Yoel Asher: "**And every place where you hear one who betroths on such and such a condition, or one who gives a get on such and such a condition, or one who sells or gives on condition, you should know that the condition has in it these four things that we explained, so that we should not need to explain them in every single place.**" So we shouldn't have to explain again everywhere. Always condition means the

condition that works with these four rules, **"and if one of them is missing there is no condition here."** This is the Rambam saying his halacha also with kaful umechufal (doubled and redoubled),

R' Yitzchak: With the hen hen lav lav (yes yes no no). Ah, very good. This is the same... ah, it's also a condition before the act. This is very similar to the first two chapters in Hilchos Ishus, this is mentioned. That is, he says here the rule, says when it's going to stand on condition, it means on condition that the details of this stand.

Beginning of a New Topic: There Are Some Later Geonim

R' Yoel Asher: The Rambam now says such a revealing statement, you should know, the halacha that I have just ruled, that the four laws of conditions are relevant to all conditions across the board of ishush (marriage) and kinyanim (acquisitions) and so forth, the Rambam says, but there are others who hold differently. **"There are some later Geonim,"** there are from the later Geonim,

R' Yitzchak: A portion, not all, who is this?

R' Yoel Asher: When he says later Geonim he means just to say

The Dispute of the Later Geonim Regarding the Laws of Conditions — Whether Doubling the Condition is Only Relevant to Gittin and Kiddushin

Halacha 14 (Continued) — The Position of the Later Geonim: Doubling the Condition Only in Gittin and Kiddushin

R' Yoel Asher: The Rambam now says such a revealing statement, you should know, the halacha that I have just ruled, that the four laws of conditions are relevant to all conditions across the board of ishush and kinyanim and so forth, the Rambam says, but there are others who hold differently. **"There are some later Geonim,"** there are from the later Geonim,

R' Yitzchak: A portion, not all, **"who said that a person need not double his condition except in gittin and kiddushin alone,**

R' Yoel Asher: but in monetary laws he need not double." The Rambam says, **"and it is not proper to rely on this matter,"** it's not proper to rely on this, one should not make kinyanim with weak conditions. Why? Because the Rambam says that he holds **"that the doubling of the condition with the other four things from the condition of the children of Reuven and the children of Gad the Sages learned them."**

The Rambam's Proof from the Children of Gad and the Children of Reuven

Now the Rambam reveals that the four laws that you learned, one learns from the children of Gad and the children of Reuven. The children of Reuven and the children of Gad, and half the tribe of Menashe, came to Moshe Rabbeinu and

R' Yitzchak: Said that they want

R' Yoel Asher: To make a deal with the Jewish people, that we should be different, we should not have to enter into Eretz Yisrael and there receive an inheritance, but receive an inheritance here, and in honor of this we want to have different arrangements of not just going to war at the beginning and going home, and the like.

So Moshe Rabbeinu made a deal with them, and one learns from how it is written there the condition, that there it says hen (yes) before lav (no), and it says kaful (doubled), it says if they cross over they will inherit, if not not, and so forth. From there we learned it.

The Rambam says, the place where one learned it, **"the Sages learned them"** from the verses **"if the children of Gad will cross over"** etc. **"and if they will not cross over,"** he says, **"and this condition was not in gittin and not in kiddushin,"** where was the condition?

R' Yitzchak: On a matter of money, a matter of inheritance.

Discussion: How Can One Answer the Proof from the Children of Gad and the Children of Reuven?

R' Yoel Asher: The other answer is very simple. I have the answer of the others, I don't know if they answer, because I would have answered it

for them. That the word is certainly that when one does a great thing, when Klal Yisrael holds up a fateful thing of where will be the inheritance of Klal Yisrael, is indeed a major major thing, that certainly we will do that the condition should be with tremendous seriousness.

There is here an issue of how strongly one should let things loose when people make kinyanim. They say that gittin vekiddushin is a matter of eshes ish (a married woman), it's a unique thing, one should do it with the whole thing. But monetary laws should be made easier, it's between two people they can make easier conditions. The children of Gad and the children of Reuven is a very serious thing.

The word is not gittin vekiddushin versus... I mean it's not even dependent on the learning, according to the way I understood it.

The Rambam in Hilchos Zechiya Umatana — "My Teachers Ruled"

R' Yitzchak: So in short, you're saying that one can understand that the children of Gad and the children of Reuven are different. The holy Ra'avad here says indeed what? That he holds... I saw the section, ah, so the Ra'avad says that he holds yes that there is a reason in this, and one should look in Hilchos Sefer Kinyan where he explains. And this is in Hilchos Zechiya Umatana chapter 3. And there stands the language...

R' Yoel Asher: There the Rambam says the same thing as here.

R' Yitzchak: No, look what the Rambam says. There he says a bit differently. Here it says some later Geonim, and the Rif also says so. I don't know why, so it says here. He doesn't bring there the Rif, he brings other shields with other people. Here the Rambam says, **my teachers ruled**. Yes? Remember, the Rambam was already yesterday angry at his teachers, who say about a loan davar she'ein ra'ui lishmo'a (something not proper to hear). Here he says, my teachers. My teachers means seemingly the Rif.

R' Yoel Asher: What said Geonim acharonim (later Geonim), could he also have meant the same Rif? Okay.

R' Yitzchak: It's the same halacha. **That one need not double the condition on everything, except in gittin and kiddushin.** That is, there is that it makes a distinction. Certain conditions, the other two conditions are yes relevant to others, but only the two are not relevant. What? **To double and to place the hen before the lav.**

And there is no proof for this matter, the Rambam says that you have no proof. And here he said a strong one. It appears that in Hilchos Ishus the Rambam is more angry at this reasoning. He says it doesn't make sense, because the children of Gad and the children of Reuven was not kiddushin. After that the Rambam here explains...

R' Yoel Asher: I said proof proof to rely on this matter, it's something however.

R' Yitzchak: I'm saying that the Rambam in Hilchos Ishus is more upset with the...

R' Yoel Asher: Much more. And here it looks like he understands their reasoning, but he just lacks a proof. In the Gemara. Aha.

R' Yitzchak: It looks much stronger.

The Ra'avad's Reasoning — Distinction Between Kiddushin and Sale

The Ra'avad in Hilchos Zechiya Umatana Chapter 3

And the Ra'avad is the opposite, also in inheritance from his father a gift he explains the reasoning. And the reasoning that he says is, basically the reasoning that I asked, why is the law of a void condition that the act is valid?

The Ra'avad says that here there is a distinction between kiddushin and sale. The Ra'avad says, a sale... the Ra'avad says like this,

R' Yoel Asher: When there is a sale or a gift, and the person says a condition, even if he didn't say it with all the laws of conditions, but he says a condition, he sells it if one does the condition, or he gives the gift if one does the condition, so why should one tell him that the kinyan happened and the condition becomes void? Why should the condition become void?

But gittin vekiddushin, we're talking here about two people who

R' Yitzchak: They want to make gittin vekiddushin.

R' Yoel Asher: Yes, they are indeed a couple making a get, or they are matched with a match, and they are in this, and he wants to do the gittin vekiddushin.

R' Yitzchak: Wait, you inserted into

R' Yoel Asher: The Ra'avad a condition of a match. That's not what he says. What he says is,

The Ra'avad's Foundation: By Kiddushin There is No Reason to Say "Harei At Mekudeshes"

R' Yitzchak: A sale, a person to whom it belongs, he may want to sell only in such a manner, that makes a lot of sense, he doesn't want, only if you give me the condition do I want.

Kiddushin, who told him at all to say "harei at mekudeshes" (behold you are betrothed)? Where does this even come in? Ah, you want to betroth, but what? You want to make a condition, make it well. It's not because of the match, there is no reason at all that he should begin to say that he wants to betroth.

Unlike the condition of sale, he wants to make money, but he holds that he's going to make money only this way. It makes sense to say a condition in sale when you don't truly hold by that sale, that is, you hold with a condition.

But kiddushin, who tells you at all to put in the effort and all that? You got two three sets, do you want to have a wedding? Why? Who told you at all to say "harei at mekudeshes"? Because you want to have a wedding. So when I do so,

R' Yoel Asher: One can attribute to him various conditions, and if not, we think that he doesn't mean it seriously.

The Laws of Conditions are an Umdena That the Person Doesn't Mean It Seriously

R' Yitzchak: That is what the Ra'avad learns, that all these laws of conditions are not very literal from Scripture, it's more, because if the person doesn't say so, we think, as the Rambam

himself said by the topic of "if you ascend to the heavens," that he doesn't mean it seriously, he's just talking nonsense.

The Ra'avad's Explanation of the Children of Gad and the Children of Reuven

And the Ra'avad says, if so, what is Bnei Gad and Bnei Reuven? Bnei Gad and Bnei Reuven is not like someone who sold an inheritance, it's all a tenai (condition) between people on a davat shelo ba l'olam (something that hasn't yet come into existence). Moshe Rabbeinu says, if they go and fulfill the tenai, they will be given the place. But it's not a thing that the Jews can say, meaning,

R' Yoel Asher: Give it to us only on the condition. They essentially have such a right.

R' Yitzchak: It's not like a regular davat shebemamon (monetary matter) where one can make conditions. It's more like if not, he would have said, it would be given anyway to the Jews. Here a tenai is made as if if Bnei Gad won't do "ya'avru chalutzim" (pass over armed), their land that they had already conquered will be taken.

It's a bit unclear, it needs a much stronger [explanation], it's not available for the Jews that they should distribute it, both sides. Therefore one needs a strong tenai, but actually for a different reason, not because it's kiddushin, but because it's similar, because it's the same sevara (logical reasoning), because it's not simple, it's not a case where a person has something and he sells it only on this condition. This is the Ra'avad's sevara.

The Maggid Mishneh — The Opinion of the Geonim That It's Only the Opinion of Rabbi Meir

The Maggid Mishneh here, by him he's not happy with this sevara. Here in Sefer Nashim Hilchot Ishut Chapter 6, the Maggid Mishneh says that the reason why the Geonim said this is different, he doesn't say the Ra'avad's sevara, he says that in general they hold that all these laws are only the opinion of Rabbi Meir.

Halacha 14 — It's a Doubt Whether We Rule Like Rabbi Meir

Here in the laws, Halacha 14, he says that it's a doubt, and the reason is because we hold that in the Gemara it says that it's a dispute. Rabbi Meir holds that one needs all these conditions, and the Chachamim hold that one doesn't need them. The question is how do we rule? The Rambam assumed that it's *stam mishnayot* (anonymous Mishnah), like Rabbi Meir, but he says that we don't rule [that way].

Proof from "Al Menat" in the Mishnayot

And one sees a great proof for this, the Rambam will have another answer for this, such a great proof for this is that thousands of mishnayot say "al menat" (on condition that), it never says with all the *mishpatei hatenai'im* (laws of conditions). So it's implied that the answer is that this is only for the laws of *kiddushin*, a special law. No, it's only the opinion of Rabbi Meir, we don't rule like Rabbi Meir at all. Good day. This is the opinion of the Ramban, the Rashba, and so on.

The Maggid Mishneh's Question on the Raavad

Says the holy Rabbi Elimelech, the Maggid Mishneh was always a student of the Jews, he always goes with them, and they actually hold that one doesn't need to. And he says that what the Raavad says, that he said there the correct reason there, is not such a good *tenai*, because in practice, there it's implied that *tenai kodem l'maaseh* (condition before the act) one does need, even by *mamon* (monetary matters). Unlike this which is not enough, because according to the Raavad's *sevara* it needs to be even on *tenai kodem l'maaseh*, even if the *maaseh kodem* (act first) is *tenai*.

Okay, one needs to think about this more in detail, one needs to figure out what the explanation is.

The Rambam's Answer to the Proof from "Al Menat" in the Mishnayot

R' Yoel Asher: And the Rambam's answer would probably have been that in all these mishnayot they reckon as if it already comes to the *siman elu hadevarim* (these are the things), that the Mishnah already said somewhere that

there need to be four principles in this. And this is one answer.

R' Yitzchak: There's another answer, like *kol ha'omer al menat* (whoever says "on condition that"), which we'll soon say. Yes.

R' Yoel Asher: And the Rambam, right,

A General Note About the Rambam's Writing Style

R' Yitzchak: The Rambam didn't have a problem, I don't know if this is one of the greatest novelties, but the Rambam, it could be that it's a general thing, that the Rambam didn't have a problem that there should be something that appears only once and it changes everything else.

R' Yoel Asher: One needs to remember this.

R' Yitzchak: This was his way of writing. Whether it was the Mishnah's way of writing is another question.

Anyway, and the Rambam says, here we go back, as if he says, this is a *chiddush* (novelty) of the Acharonim. The Rif was the Rambam's rabbi, very good.

R' Yoel Asher: Not a direct rabbi,

R' Yitzchak: But yes, they already learned. But the *gedolei harishonim* (great early authorities), *hageonim harishonim* (the early Geonim), the earlier generation, didn't say so. So the Rambam goes with them,

R' Yoel Asher: Also as an authority for his...

Halacha 15 — When Does She Become Mekudeshet (Betrothed) with a Tenai

Says the Rambam thus, now one needs to learn, the Rambam relates to another question, when does the *kiddushin* happen and when does the *tenai* happen?

Says the Rambam thus, **hamekadesh al tenai, k'sheyitkayem hatenai, tihiyeh mekudeshet mi'sha'ah shenitkayem hatenai** (one who betroths conditionally, when the condition is fulfilled, she will be betrothed from the time the condition is fulfilled). From when does she become *mekudeshet*? From when the *tenai* happens, not from when he originally

said "harei at mekudeshet" (behold you are betrothed). **Lo mi'sha'ah shenitkadesh** (not from the time she was betrothed). The Rambam is very careful about the language the whole time. **V'natan lah hama'tayim zuz shehetna imah b'Elul** (and he gave her the two hundred zuz that he stipulated with her in Elul).

Kiddushin Al Tenai: When Does the Kiddushin Take Effect?

Halacha 7 (Continued) — Regular Tenai: The Kiddushin Takes Effect at Kiyum Hatenai

R' Yoel Asher: From when the tenai happens, not from when he originally said harei at mekudeshet. **Lo mi'sha'ah shenitkadesh**.

Says the Rambam thus: **Keitzad? Ha'omer l'isha im eten lach ma'tayim zuz bashana zo harei at mekudeshet li b'dinar zeh v'im lo eten lach lo tihyi mekudeshet** (How so? One who says to a woman, if I give you two hundred zuz this year, behold you are betrothed to me with this dinar, and if I don't give you, you will not be betrothed). The Rambam is very careful about the language the whole time. **V'natan hadinar l'yadah b'Nisan v'natan lah hama'tayim zuz shehetna imah b'Elul** (and he gave the dinar into her hand in Nisan and gave her the two hundred zuz that he stipulated with her in Elul), from when is she mekudeshet? **From Elul.**

So, do there need to be witnesses when one fulfills the tenai? I don't know.

Lifichach im kidshah sheni (therefore if a second one betrothed her), says the Rambam, a very great practical difference will emerge. A second person came and was mekadesh her kodem sheyitkayem hatenai shel rishon (before the condition of the first was fulfilled). Normally when someone gives kiddushin after a first kiddushin, it's worthless, because she's an eishet ish (married woman). But here she wasn't yet an eishet ish, because the tenai hasn't yet happened. And we discussed when does one become mekudeshet? When the tenai happens. **Harei zo**

mekudeshet me'Elul. Harei zo mekudeshet l'sheni (behold she is betrothed from Elul. Behold she is betrothed to the second), because for the second one she wasn't yet mekudeshet. Does she need to have a get (divorce) from both? **V'chen hadin b'gittin** (and so is the law regarding divorces).

R' Yitzchak: Not from both, only from the second. Not something both. The first is nothing.

R' Yoel Asher: The first... ah, if there will be a tenai... if there will already be after the get, the first kiddushin can be ended. I don't know.

R' Yitzchak: Why should she receive a get? She was betrothed to the other one. She's very happy.

R' Yoel Asher: V'chen hadin b'gittin uv'mamonot — b'sha'ah sheyitkayem hatenai hu sheyihyeh get o yitkayem hamekach o hamatana (and so is the law regarding divorces and monetary matters — at the time the condition is fulfilled is when there will be a divorce or the sale or gift will be established). Then, the same thing.

R' Yitzchak: Just as by kiddushin, so too by gittin and also by monetary laws.

R' Yoel Asher: When the tenai happens, then the kiddushin happens.

R' Yitzchak: The divorce, or the sale, or the gift. Anyway, this is the normal, meaning when one uses

R' Yoel Asher: The word "al tenai," or when one makes the tenai with not other words.

Halacha 8 — "Me'achshav": The Kiddushin Works Retroactively

R' Yitzchak: But if one makes it with other words,

R' Yoel Asher: Says the Rambam, **bameh devarim amurim?** (In what case is this said?) The law that was said that it happens when the tenai happens, bameh devarim amurim? **B'shehaya sham tenai v'lo amar me'achshav. Aval im amar lah harei at mekudeshet li me'achshav b'dinar zeh im eten lach ma'tayim zuz** (when there was a condition and he didn't say "from now." But if he

said to her, behold you are betrothed to me from now with this dinar if I give you two hundred zuz), I want to become mekadesh, you will become mekudeshet from now on condition that later you will do something. **Ul'achar zman natan lah hama'tayim, harei zo mekudeshet l'mafrei'a mi'sha'at hakiddushin** (and after some time he gave her the two hundred, behold she is betrothed retroactively from the time of the kiddushin). It turns out this one is mekudeshet from when he said the harei at mekudeshet.

R' Yitzchak: Not from when the tenai happened, **af al pi shelo na'asah hatenai ela achar zman merubeh. Lifichach** (even though the condition wasn't fulfilled until after a long time. Therefore),

R' Yoel Asher: What will be the law? **Im kidshah acher kodem sheyei'aseh hatenai einah mekudeshet** (if another one betrothed her before the condition was fulfilled, she is not betrothed), because the tenai will still happen. One doesn't need to know. Later when one finds out, it turns out that that one wasn't mekudeshet to the second. **V'chen hadin b'gittin uv'mamonot** (and so is the law regarding divorces and monetary matters), it's the same thing.

Halacha 9 — "Me'achshav" Doesn't Need All the Mishpatei Hatenai'im

R' Yoel Asher: Now, one will learn a great loophole. We asked earlier many details that one needs to make on a tenai, all these things that are in the Rambam. All these things were actually when it's a regular old tenai.

R' Yitzchak: But when one makes such a kind of tenai with the new language of "me'achshav," it makes a difference. It means that it becomes already now.

R' Yoel Asher: So then, **kol ha'omer me'achshav einu tzarich lichpol tena'o** (whoever says "from now" doesn't need to double his condition).

R' Yitzchak: One doesn't need two of the four conditions. One doesn't need to make a kefel

tenai (double condition), and one doesn't need to write the tenai kodem l'maaseh (condition before the act). **Ela af al pi shehikdim hama'aseh litna'o — tena'o kayam** (rather, even though he preceded the act to his condition — his condition stands). But the other two principles of tenai do work.

R' Yoel Asher: Aval tzarich lehitantot b'davar she'efshar l'kaymo (but one needs to stipulate something that's possible to fulfill). It needs to be specifically a tenai al davar she'efshar l'kaymo (condition on something possible to fulfill). **V'im hitna b'davar she'i efshar l'kaymo** (and if he stipulated something impossible to fulfill),

R' Yitzchak: then further **harei zeh k'maflig b'davarim v'ein sham tenai** (behold this is like one who speaks nonsense and there is no condition). He doesn't tell us al hen kodem l'lav (the positive before the negative).

R' Yoel Asher: I think it's still part of that. Ah, this is in "eino tzarich lichpol tena'o." Yes.

Discussion: Why "Me'achshav" Doesn't Need All the Principles

So he says, things that give seriousness to the language, one doesn't need to be careful about when one says "me'achshav." But things that are simple, because if not you're k'maflig b'davarim (like one speaking nonsense), it's a matter of foolishness. A matter of foolishness is relevant, no difference what you say. If it's foolishness, it remains foolishness. But the things that have to do with because you made it for later,

R' Yitzchak: means that you need to be very well taken out.

R' Yoel Asher: Once when one says "me'achshav," it seems that because the chalut (taking effect) will already happen me'achshav, one doesn't need to give such attention to the details of the conditions.

What's the sevara? This is also a chiddush, by the way, from the Geonim. It doesn't say in the Gemara explicitly. And the proof that they brought is what we spoke about a second ago, that so many mishnayot say "al menat,"

R' Yitzchak: And it never says that one needs to do all the conditions. So they said, that kodem me'achshav one doesn't need to do all the conditions. And on this Tosafot argues, and other Tosafot say that one does need.

R' Yoel Asher: So by me'achshav one should have the four conditions.

R' Yitzchak: And says the holy Maggid Mishneh, kabalat hageonim Torah hi (the tradition of the Geonim is Torah). Well, anyway, this is their proof. Tosafot wasn't sure that it's a good proof.

Halacha 10 — "Al Menat" Is Like "Me'achshav"

R' Yoel Asher: Says the Rambam another law, **v'chol ha'omer al menat**

R' Yoel Asher: harei zeh k'omer me'achshav (behold this is like one who says "from now"). Now, a new thing. There's a way of saying conditionally by saying "al menat." What's the connection? Menat is the same word as tenai? I don't know. Menat is a portion? Okay. Al menat, when one says al menat, harei zeh k'omer me'achshav. Al menat is a kind of way of saying conditionally, but it's a way that one understands from it that it's me'achshav. I am mekadesh, when someone says I am mekadesh al menat,

R' Yitzchak: he means I am mekadesh now, me'achshav, al menat. It's very different. I say, harei at mekudeshet li v'... titni li (and you will give me).

R' Yoel Asher: Simply, then you will give. Or al tenai can also stand with this language.

R' Yitzchak: But al menat simply,

R' Yoel Asher: I am mekadesh you now al menat, on account of... but it makes sense.

R' Yitzchak: Automatically, because he would it on the other laws of maaseh. If it's maaseh, and on this, truly,

R' Yoel Asher: On this law is built the previous law, because in the mishnayot it usually says al menat,

R' Yitzchak: And automatically through this all the mishpatei hatenai'im don't need to appear.

Discussion: What Is the Difference Between "Al Menat" and "Im"?

What is actually the depth,

R' Yoel Asher: Does al menat bring something more than the word tenai itself? Yes,

R' Yitzchak: Because I do it now al menat. Every tenai one means that. No, usually one says, I give you kiddushin, if... It doesn't say, one even says al tenai, you know, the language of the verse is, one speaks kiddushin li. How was the language? Im, right? Im. It was always a language of im. Or v'... that I am mekadesh and you will give me. Simply, I am mekadesh you when you will give me. It makes sense in my head.

If I am mekadesh you, but conditionally... I mean the language al menat is for us the same language as conditionally, but al menat, that I am mekadesh you now, with that it's like a condition that you will give me, but it's now, you understand? It makes sense.

Example of "Al Menat"

Keitzad? The Rambam gives examples. Keitzad?

R' Yoel Asher: Says the Mishnah, keitzad, **ha'omer l'isha harei at mekudeshet li** (one who says to a woman, behold you are betrothed to me), or **harei zeh gitich** (behold this is your divorce), or **harei chatzer zo netunah lach b'matana, harei tena'o kayam** (behold this courtyard is given to you as a gift, behold his condition stands), harei tena'o kayam, what happens is **v'nitkadeshet ha'isha o nitgarshet, v'zacha zeh b'chatzer v'hem yitnu hama'tayim zuz. V'im lo natnu** (and the woman became betrothed or divorced, and this one acquired the courtyard and they will give the two hundred zuz. And if they didn't give),

R' Yitzchak: lo tihyeh zo mekudeshet (this one will not be betrothed).

R' Yoel Asher: Interesting, the beginning the Rambam says like lechatchila (ideally) as if one can learn that as if this is the right thing to do, because it's something like an agreement. And one says al menat, do it actually, because it's

again. Because one understood that it was an agreement that you're going to give the two hundred. The first language of the Rambam is also such a language that lechatchila

R' Yitzchak: one should do so.

R' Yoel Asher: Zacha zeh v'hem yitnu, they should actually give. Because there's also here such a matter of that they undertook something. There was something such

R' Yitzchak: A matter of not taking themselves.

R' Yoel Asher: Girls should continue going with.

R' Yitzchak: No, no, that's not the meaning. The meaning is,

R' Yoel Asher: I understand,

R' Yitzchak: Would be a tenai... if not, she's not now mekudeshet,

R' Yoel Asher: v'lo titgaresh v'lo yizke zeh b'chatzer (and she will not be divorced and this one will not acquire the courtyard). Says the Rambam, v'af al pi shelo kafal tena'o, v'af al pi shehikdim hama'aseh litna'o, v'natan hakiddushin haget b'yadah (and even though he didn't double his condition, and even though he preceded the act to his condition, and gave the kiddushin, the get into her hand) before the tenai v'hechezik zeh b'chatzer (and this one took possession of the courtyard), and only afterwards completed his condition. Why?

R' Yitzchak: Why does the Rambam say?

R' Yoel Asher: Sheharei k'sheyitkayem hatenai, yizke zeh b'chatzer v'titkadesh zo v'titgaresh zo, mi'sha'ah rishona sheba na'asah hama'aseh, k'ilu lo haya sham tenai klal (for behold when the condition is fulfilled, this one will acquire the courtyard and this one will be betrothed and this one will be divorced, from the first moment when the act was done, as if there was no condition at all).

Discussion: The Rambam's Explanation Why "Me'achshav" Doesn't Need All the Principles

R' Yitzchak: So here the Rambam is explaining regarding tenai kodem l'maaseh perhaps mainly.

Why? Me'achshav doesn't need to have it. Why does one need to take tenai kodem l'maaseh? Why? Because that means that when the maaseh happened there was already a tenai. But this is only on when the maaseh happens when there exists a tenai.

If the maaseh happens already now, simply that it happens already now after the tenai, you can forget about the tenai. The tenai is only backwards on the maaseh that already happened. It already did the maaseh, I add a tenai, but afterwards it goes back to the maaseh earlier.

If I need that the maaseh should happen with the tenai, at the time of the tenai, I need to have that it shouldn't have happened then as if. You need to have the tenai, it makes sense what I'm saying, or not? It doesn't make such sense.

R' Yoel Asher: It appears from his words. K'ilu lo haya sham tenai klal.

R' Yitzchak: Perhaps this is the reason why one doesn't need all the principles, all because when nitkayem the tenai when it's me'achshav, there was already one hundred percent kiddushin earlier, not something a conditional kiddushin that one needs that it should happen later when one does that. This is the Rambam's explanation on the difference of me'achshav and you don't understand that it will be a true explanation?

R' Yoel Asher: I went through the last words, k'ilu lo haya sham tenai klal,

R' Yitzchak: I'm not so understood, it's explaining... again. What he says is that there are two types of conditions.

There's a tenai where the tenai adds a whole maaseh, it adds that the kiddushin will become when one does the tenai. There's a tenai that doesn't add anything, it's more like they thought earlier, naively. He says that I want the kiddushin, conditionally this happens, but the kiddushin I make now. Kiddushin is a proper kiddushin, it's an original kiddushin. The tenai is only added to this.

A tenai that happens later is not only a conditional kiddushin if it happened, you make a whole new type of maaseh. You make that the

kedusha should happen at a time, you can like it asks before, there's no witnesses, there's no... it happened later, it's a whole complicated type of kedusha. That complicated type of kedusha needs many laws of conditions, something like this perhaps one can say. Understand?

In other words, when the tenai doesn't happen, there's no kedusha by both, yes? When the tenai does happen, it looks very different me'achshav. This the Rambam says, it looks very different me'achshav than... than... than...

R' Yoel Asher: It's not something that one still needs to wait afterwards and see how it turns out.

R' Yitzchak: Not only wait, it's something a different type of thing.

End of Chapter 6 — Difference Between a Tenai That Was Fulfilled Me'achshav and a Tenai That Was Fulfilled Later

A Tenai That Was Fulfilled Later — Kiddushin Al Tenai

R' Yitzchak: It happens later, it's a completely complicated type of kiddushin. That complicated type of kiddushin requires many laws of conditions (tenayim), something like that one could say. Do you understand?

In other words, when the condition (tenai) doesn't happen, there is no kiddushin by either one, yes? When the condition does happen, it looks very different now, this is what the Rambam says, it looks very different now than later.

Why? Because now, what did he see? A normal kiddushin. The condition, the condition of the king, there is a kiddushin.

R' Yoel Asher: It's not something that one needs to still wait afterwards and see how it turns out.

R' Yitzchak: It's something of a different type of thing. Which is not the case by the condition that happens later, by the if for example, right? Then even after the condition happens, there has occurred here a kiddushin al tenai (conditional kiddushin).

Why? Because the kiddushin happened with this condition. It's not a normal kiddushin that the condition only fulfilled. Something like that...

Explanation of the Distinction — The Need for Doubling the Condition

One can think what's the practical difference, or why therefore does it need to be doubled, something has to do with his intent (daas), according to what the Rambam perhaps thought, perhaps automatically he thinks, he doesn't mean it seriously, unless he does it this way.

R' Yoel Asher: That because you want to do such a difficult thing that something should begin now and it should end later, it needs to be with a stronger...

R' Yitzchak: It begins now, one has now given the act of acquisition (maaseh kinyan), you mean. Yes, in short, why this makes a difference one needs to think, but this is apparently the... the law (halacha).

Until here is chapter six of Hilchos Ishus.