

**YESHIVAT HAR ETZION
ISRAEL KOSCHITZKY VIRTUAL BEIT MIDRASH (VBM)**

TALMUDIC METHODOLOGY

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Dedicated with respect and love
In memory of Rabbi Abraham Halbfinger, z"l and
In memory of Bracha Halbfinger Tal, z"l
By Marcy and Tsvi Lieber

In memory of our beloved father and grandfather
Mr. Berel Weiner (Dov Ber ben Aharon z"l).
May the learning of these shiurim provide an aliya for his neshama.

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USING LAND AS *KESSEF KIDDUSHIN*

The first *mishna* in *Kiddushin* discusses the three methods by which a man can wed a woman – *kessef*, *shetar*, and *bi'ah*. The *mishna* further cites a debate between Beit Shammai and Beit Hillel about the requisite value of any money used; Beit Hillel opt for the standard *peruta*, while Beit Shammai demand a higher value of a *dinar* (a gold coin). They agree, however, that ACTUAL currency is not necessary. *Kiddushin* can be affected by delivering the VALUE of these respective currencies, “*shaveh kessef*.”

Is it possible to marry a woman by transferring land or land-based properties? Would this be considered equivalent to *kessef* and therefore an effective form of *kiddushin*?

Intuitively, land appears to be a satisfactory substitute for *kessef* in the context of *kiddushin*. Typically, land has greater value and is certainly a more valuable and coveted asset, and it should generate *kiddushin* similar to portable objects or money itself. However, a well-known statement of the Ba'al Ha-Ittur rejects this position. Based on a *gemara* in *Gittin* (10a) that appears to compare the process of executing a *get* to the process of *kiddushin*, he rules that this comparison does not ONLY apply to the *shetarot* (contracts) involved in *kiddushin* and *gittin*. ALL forms of *kiddushin* are invalid if performed with land or land-attached items. Just as *kiddushin* contract must be drafted upon portable items, similarly MONEY for *kiddushin* must be currency or other

portable items. The *Ittur* is unclear about the REASON for this odd disqualification. Is land disqualified for *kiddushin* simply because *kiddushin* is compared to a *gef*? Or is it that the comparison to *gef* introduces the disqualification of land, but this rule actually reveals a deeper understanding of the role of *kessef* in *kiddushin*?

One approach toward understanding the *Ittur* may stem from an interesting debate between Rava and R. Yosef about what types of valuables or *shaveh kessef* may be used for *kiddushin*. R. Yosef rules (at least according to one explanation in *Kiddushin* 7b) that only items assigned a distinct price may be used in place of currency for *kiddushin*. Even if the value of the item is exorbitant and even if the husband claims he is only utilizing a small fraction of the total value, the item is invalid for *kiddushin* UNLESS it has been assessed and assigned a definite price tag. R. Yosef reasons that valuables cannot be used in and of themselves for *kiddushin*; they can only be used as a STAND-IN for currency. Since they can be easily sold for currency, they can be considered virtual currency. However, they must have clearly defined value to be considered virtual currency.

Perhaps the *Ittur* was developing a parallel reasoning. Indeed, valuables may be used in place of currency, but only valuables that can be virtually converted to currency. Land may not be convertible to currency, in part because its sale – although financially rewarding – is geographically limited. Unlike portable items, which can be transferred to market and therefore represent potential currency, land cannot be relocated and must be sold within its own precincts. Even though it possesses inherent value, it cannot be construed as potential currency. Perhaps the *Ittur* maintained that in order to view valuables as potential currency, portability, and its resultant ease of sale is required, just as R. Yosef required price-tagging to invest valuables with the status of potential currency.

A second possibility toward explaining the *Ittur* involves the PROCESS of DELIVERING money to the woman. Must the money be delivered actively and directly to the woman, or is it sufficient that the husband's money ends up in the woman's possession? This is an important question about the very nature of *kiddushin* through *kessef*. Does *kiddushei kessef* function as an exchange of value (referred to by many as "*kessef pira'on*")? From this perspective, even though a woman does not possess finite monetary value, an act resembling a down payment can acquire her as part of the *kiddushin*

ceremony. If *kessef* operates in this fashion, DIRECT DELIVERY may not be necessary. As long as value was exchanged between husband and wife, initial payment has been rendered and the *kiddushin* results.

However, some view the function of *kessef* in *kiddushin* in more symbolic terms. The Taz (in his famous comments in *Choshen Mishpat* 190) articulated that the concept of PAYMENT is irrelevant to a wife. Instead, the money operates more SYMBOLICALLY. The money is exchanged to symbolically demonstrate the change in halakhic status from unmarried to married. Many refer to this function of *kessef* as "*kessef kinyan*" a phrase that captures the abstract symbolism behind *kessef* of *kiddushin*. If *kessef* functions this way, perhaps the ACT of delivery IS important. The essence of the *kessef* is not significant, but rather the symbolism of placing coinage or equivalent into the hands of the woman. Accordingly, it would be insufficient to merely ENABLE delivery of money to a woman; DIRECT delivery would be necessary. (The question of whether indirect delivery is sufficient is hotly debated; see the Beit Shmuel, *Even Ha-Ezer* 27:3, and the Avnei Miluim in 30:1.)

If direct delivery is required, perhaps *kiddushin* through land is disqualified precisely because it cannot be physically delivered. The *kinyan* process upon land involves abstract activities upon the land, but not a direct delivery. In the absence of this direct delivery, the symbolic form of *kessef kiddushin* cannot occur and *kiddushin* is disqualified. In fact, the Meiri (comments to *Kiddushin* 7b) articulates this concern in considering the disqualification of land for *kiddushin* purposes. Even though he cites the equation between *kiddushin* and *gittin*, it appears that he pivots the disqualification of land as *kiddushei kessef* based on the lack of active, physical delivery.

SUMMARY: Intriguingly and unexpectedly, the Ittur disqualifies land or land-attached assets for use as *kiddushei kessef*. The *gemara* in *Gittin* does equate *get* and *kiddushin*, but that association can easily be delimited as comparing the two respective contracts or *shetarot*. The Ittur extended this equation to include *kessef* delivered as *kiddushin*; just as a *get* cannot be crafted upon land or land-attached items, land similarly cannot be employed for *kiddushei kessef*.

There are two possible strategies toward understanding this disqualification. Perhaps the land itself is unsuited for *kessef* because only items that can EASILY be sold and converted to currency can serve as virtual currency. Since land is not portable, its pool of buyers is limited and it does not lend itself to facile sale and conversion to currency. Alternatively, the flaw may pertain to the ACT of *kiddushin*. Since the Torah describes the process of *kiddushin* as “*Ki yikach*,” the husband must ACTIVELY deliver the money. Land cannot be deposited directly in her HAND and is unsuited for the ACT of *kiddushin*.

An interesting by-product of this dispute concerns *kiddushin* money transferred indirectly to a woman. The *gemara* in *Gittin* (24a) is quite clear that a husband cannot place a *get* on the ground and instruct the woman to lift it and thereby acquire the *get*. This case, known as “*teli gitteich mei-al ha-karka*,” does not include a physical and direct delivery and violates the requirement of “*ve-natan be-yada*” (direct delivery). Does *kiddushin* require a similar direct delivery of money from the man to the woman? Did the Ittur disqualify land because it does not allow direct delivery? If this were true, he would also disqualify placing *kiddushin* money on the ground and instructing the woman to lift it. If, however, land is disqualified because it cannot be rendered as virtual *kessef*, perhaps *kiddushin* DOES NOT require an act of direct delivery and a man CAN indeed place money on the ground rather than directly depositing the money into the hands of the woman.