

**YESHIVAT HAR ETZION  
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**TALMUDIC METHODOLOGY**  
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**SHIUR #04: DOES *KIDDUSHEI KESSEF* REQUIRE THE  
DELIVERY OF BENEFIT?**

The *gemara* describes an interesting mechanism known as *matana al menat le-hachazir*, whereby one person transfers ownership to another ON THE CONDITION that the item is subsequently returned. Unlike the case of a borrowed item, this situation entails full legal transfer contingent upon a secondary and subsequent return of the item. Prior to returning the item, the recipient attains full legal ownership. If he fails to return the item, the process is retroactively invalidated; since the condition of return was not met, the original transfer is disqualified. Although the Ketzot Ha-Choshen (*Choshen Mishpat* 241:4) suggests an alternate reading of *matana al menat le-hachazir*, most *Rishonim* assert that it provides a complete *kinyan* to the recipient conditioned upon ultimate return of that object to its original owner.

Despite the efficacy of *matana al menat le-hachazir*, the *gemara* in *Kiddushin* (6b) disqualifies this process for *kiddushin*. A man cannot transfer money to woman as a *matana al menat le-hachazir* and thereby affect a legal *kiddushin*. Assuming *matana al menat le-hachazir* constitutes a complete transfer, its failure to affect *kiddushin* is surprising. In fact, Tosafot (6b s.v. *hivar*) impute the failure to a Rabbinic decree – since a *matana al menat le-hachazir* process RESEMBLES *chalipin*, it is invalidated so that people will not mistakenly attempt *chalipin kiddushin*. Accordingly, *matana al menat le-hachazir* SHOULD operate for *kiddushin*, but it is disqualified Rabbinically to prevent misuse of *chalipin* for *kiddushin*.

However, most *Rishonim* (Ramban, Rashba, Rambam) assume that despite the fact that *matana al menat le-hachazir* is a complete transfer, it is fundamentally flawed for *kiddushin* purposes. Since there is no enduring *hana'ah* (benefit), *kiddushin* cannot be established. For a *kiddushin* to succeed, a woman must receive *kesef* AS WELL AS lasting benefit. In this case of *matana al menat le-hachazir* although she has legally acquired the

money, she is compelled to return it and therefore maintains no long lasting *hana'ah*. *Kiddushin* is different from classic monetary transactions in this respect; typically, money transfers even without enduring *hana'ah* constitute “*kinyan kesef*” necessary to accomplish sale of land. Inasmuch as *kiddushin* is not merely a monetary process, it requires an element BEYOND *kesef*. Marrying a woman demands the delivery of enduring *hana'ah*.

Having established that many *Rishonim* require *hana'ah* delivery for successful *kiddushin*, an interesting question emerges about the relationship between this added requirement and the delivery of *kesef*. Is *hana'ah* an ADDITIONAL AND INDEPENDENT element, or does it qualify the TYPE OF *KESEF* necessary? Put differently, does marriage demand a separate condition that enduring *hana'ah* be delivered, or does *kiddushin* require a superior form of *kesef* MEASURED by its ability to deliver long lasting *hana'ah*? This question can be investigated by examining several cases in which the absence of enduring *hana'ah* is not based on an internal limitation.

For example, R. Elchanan Wasserman (*Kovetz Shiurim, Kiddushin, siman 3*) discusses a situation in which a man used land as *kesef* (following most *Rishonim*, who differ with the Ittur and approve of land as *kesef kiddushin*). When *yovel* commences, the land is returned to the original owner, the husband. Is this *kiddushin* disqualified for the same reason as a *matana al menat le-hachazir*, since ultimately the woman is not left with any enduring *hana'ah*? Alternatively, one could argue that the stripping of *hana'ah* is not internal but extrinsic. The delivered *kesef* provided *hana'ah* that was subsequently dissolved by a different and unrelated mechanism.

It seems that R. Elchanan's question hinges upon the relationship between *hana'ah* and *kesef*. If *hana'ah* entails a completely autonomous element, its absence would scuttle the *kiddushin* regardless of the source of its elimination. However, if *hana'ah* merely defines the type of *kesef* necessary, perhaps this situation would be valid. In contrast to *matana al menat le-hachazir*, this *kesef* is clearly a *hana'ah* deliverer. A *matana al menat le-hachazir* is basically programmed to boomerang back to the husband, and therefore cannot be considered a *hana'ah* deliverer; Land, however, is a final and absolute delivery that is susceptible to cancellation by *yovel*, and it can certainly be considered “*hana'ah* capable” *kesef*.

A parallel situation is raised in a responsum of the Rosh (cited by the Rema, *Even Ha-Ezer, siman 29*). He describes a case in which the money had originally been acquired by the husband from the intended wife through a prior unrelated *matana al menat le-hachazir*. The man currently owns the money but is obligated to return it to the woman. What would happen, the Rosh questions, if the man UNCONDITIONALLY delivers this money as *kesef kiddushin* to the woman? His *kiddushin* transfer is unqualified and does not require a return, and it can therefore be considered *hana'ah*-delivering money. However, she must return the money to the husband so that he can subsequently return it to her and fulfill the original condition of his ownership. An external factor, unrelated to the integral *kiddushin* process, forces her to relinquish the money. Just as R. Elchanan's question focused on *yovel* as an EXTERNAL factor compelling the woman to relinquish the money, the Rosh describes a prior condition forcing her to relinquish the money. Presumably, the logic of this case would be similar to the previously described analysis of Rav Elchanan's situation. If enduring *hana'ah* is a separate requirement for *kiddushin*, its absence would invalidate *kiddushin* regardless of the reason that the *hana'ah* is terminated. However, if the sole function of *hana'ah* is to define the money as "superior," perhaps extrinsic cancellation of *hana'ah* would not ruin the grade or caliber of "*hana'ah* money."

A reverse case would involve a scenario in which the woman receives INTERIM *hana'ah* by possessing the *matana al menat le-hachazir* until its ultimate return. If she received a large sum of cash to be returned as a *matana al menat le-hachazir*, she still may benefit from the temporary possession. For example, her possession of the large sum, even for a short period, may project wealth and allow her to leverage financial options. In fact, the Ramban and Rashba claim that if this temporary benefit is sufficiently valued (and the husband intends this interim benefit as *kiddushin* money), it can serve as *kesef kiddushin*. After all, the man has delivered actual money (which is to be returned) and he has delivered *hana'ah*; both conditions have been met.

However, the Beit Yosef (*Even Ha-ezer siman 29*) cites a position in the name of Rabbenu Yerucham claiming that the interim benefit CANNOT serve as *kiddushin* money. Presumably, this position does not require money and *hana'ah* as SEPARATE elements, but rather requires superior money, characterized as money which delivers benefit. The interim *hana'ah* of temporary possession of money is not DELIVERED by the money itself, but is

incidental. The primary *hana'ah* that money delivers is its inherent value, and this value must be returned. Whatever peripheral *hana'ah* accrues from time-limited possession of the money is incidental and does not define the *kesef* as a *hana'ah*-deliverer. Without superior *kesef* that delivers *hana'ah*, *kiddushin* fails. Perhaps the debate about whether *hana'ah* is a separate entity or one which qualifies *kesef* influences whether peripheral *hana'ah* validates *kiddushin*.