

YESHIVAT HAR ETZION
ISRAEL KOSCHITZKY VIRTUAL BEIT MIDRASH (VBM)

TALMUDIC METHODOLOGY
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This week's *shiurim* are dedicated in memory of Israel Koschitzky *zt"l*, whose
yahrzeit falls on the 19th of Kislev. May the worldwide dissemination of Torah
through the VBM be a fitting tribute to a man whose lifetime achievements
exemplified the love of *Eretz Yisrael* and *Torat Yisrael*.

**MARRYING A WOMAN BY ACCEPTING HER GIFT (ADAM
CHASHUV)**

The *gemara* in *Kiddushin* stipulates an odd form of *kiddushin*. Although the functional role of *amira* (verbally declaring the *kiddushin* process) is debated, all agree that the delivery of money (or monetary equivalent) is absolutely vital and central to the *kiddushin* ceremony. The Torah describes *kiddushin* with the phrase "*ki yikach*," which evokes association with the process by which Avraham acquired land in Chevron to bury Sarah. This association dictates that *kiddushin* revolves around the delivery of money. However, the *gemara* in *Kiddushin* (7a) describes a situation in which a WOMAN delivered money TO THE HUSBAND in order to affect the *kiddushin*. Even though the male typically drives the *kiddushin* process, the woman's delivery is valid if the male recipient is an "*adam chashuv*" (an important person). By accepting her "gift," the male recipient has delivered BENEFIT to the woman. She is FLATTERED by his interest in her, as demonstrated by his accepting her gift. This pleasure or benefit serves as the *kessef kiddushin* – delivered from male to female!

Although this sounds odd, Halakha typically recognizes benefit delivered by receiving a gift. For example, the Rosh in *Berakhot* discusses the *berakha* recited by someone who receives a gift. Typically, *She-Hechyanu* is recited when purchasing special items. An alternate *berakha* – known as *Ha-Tov Ve-Hameitiv* – is recited when acquiring something which both yields personal benefit as well as delivers benefit to others. The Rosh claims that a receiver of a gift should recite *Ha-Tov Ve-Hameitiv*, since he benefits and his receipt of the gift delivers benefit to the gift-giver. A similar *gemara* in *Bava Metzia* (47a) appears to utilize this "benefit" (*hana'ah*) as a tool for processing

chalipin kinyan. *Chalipin* is an exchange whereby the acquirer proffers an item to the seller IN EXCHANGE for the item he is acquiring. Presumably, the purchaser should furnish HIS item in exchange for the item he is acquiring – and indeed Rav claims that *chalipin* must be performed with the items of the purchaser (*keilav shel koneh*). However, Levi claims that the SELLER may deliver items to the purchaser to affect the *chalipin* EXCHANGE, thereby transferring ownership of the purchase item from the seller to owner. As the *gemara* explains, by accepting the item of the seller, the purchaser has delivered benefit to the seller. The benefit he delivers to the seller by accepting his gift is the EXCHANGE for the item he wishes to purchase.

However, even though this “benefit of receiving a gift” is recognized by Halakha and applied in various cases, in the scenario of *Kiddushin*, it is only applied in the case of a man who is AN IMPORTANT person and who “agrees” to accept the woman's offer of a gift. Why is *kiddushin* only be affected if the receipt of the gift was performed by an important person?

Several *Rishonim* raise this question, including the Ramban. One of his answers suggests that unless the recipient is an important person, the benefit of receiving the gift is not significant enough. Although this “insignificant *hana'ah*” may be halakhically recognized, it is insufficient to generate *kiddushin*. As the Ran claims, the benefit derived from an average person's receipt of a gift is not valued above a *shava perutah*, the minimum *shiur* for *kiddushin*. If an important person receives the woman's gift, however, he has delivered benefit VALUED MORE THAN a *peruta* and *kiddushin* can be affected. The extra requirement of “receipt by an important person” was necessary to “bump” the value of the benefit above the minimum monetary value necessary for *kiddushin*.

The Rashba's comments regarding this question may suggest otherwise. In his view, the *adam chashhuv* is uniquely necessary for *kiddushin* so that the benefit will be considered significant, rather than trivial. Apparently, the difference between “receipt by average people” and “receipt by important people” is not merely quantitative, but categorical. *Kiddushin* requires “*hana'ah rabati*,” superior *hana'ah*, and not just common *hana'ah*. This position is reminiscent of a comment by the Yad Rama (6b) explaining why a man cannot marry a woman by erasing a debt. Even though he has delivered *hana'ah* of significant sums, since this is uncommon (or intangible, as she does not feel as that she is receiving anything), she cannot be married

through this *hana'ah* delivery. Evidently the standards for *kiddushin* are higher than typical transactions. Typically, *hana'ah* can serve as a stand-in for actual currency. However, *kiddushin* demands that the husband deliver superior *hana'ah* to the woman.

Perhaps this higher standard reflects the reality that *kiddushin* entails more than just financial acquisition. The husband is also creating a personal relationship of marriage through the *kiddushin* process. This personal relationship of *ishut* can only be triggered if superior benefit is delivered. Several other *halachot* suggest that the *kiddushin* process is held to higher standards, possibly explained by the fact that it aims to develop a personal relationship that extends beyond financial realities. For example, it appears that the Rambam (*Ishut* 4:1) fundamentally disqualifies “coerced” weddings. This is puzzling, since coerced sales are halakhically valid (although morally abhorrent). By coercing the seller, I can garner his acquiescence. At some stage, facing my unrelenting pressure, he WILLS the sale – to release himself from the barrage of pressure. I have coerced or manufactured his willing interest in the sale. Yet the Rambam claims that coerced marriages (*talyuhu ve-kaddish*) are fundamentally flawed. Possibly the same dynamic explains the difference between *kiddushin* and typical financial sales. Since *kiddushin* establishes a personal factor, a superior level of compliance is required – one which must be voluntary and not coerced. As many articulate, *kiddushin* requires *ratzon ha-isha*, and not just *da'at*, her voluntary interest and not just her legal compliance. The latter can be coerced, while the former cannot. Just as a superior level of compliance is necessary for *kiddushin*, a higher form of *hana'ah* is similarly required.

Perhaps the unique *kiddushin* requirement of *adam chashuv* can be explained differently. Perhaps commonplace benefit cannot be delivered as *kesef kiddushin*. Since the Torah demands an ACT of marriage, ACTUAL *kesef* must be delivered. Certain forms of *hana'ah* are so universally regarded and so valuable that they are considered *kesef* equivalent. Just as foodstuffs and items (*shaveh kesef*) are considered *kesef* equivalents, certain types of *hana'ah* can be similarly designated as virtual *kesef*. However, benefits may only be *kesef* equivalents if they are generally accepted “services.” If the benefit is something that is objectively valued and universally paid for, it is defined as a service, with a specific price tag and a *kesef* equivalent. If it is personal and capricious, it MAY benefit me, but it cannot be considered a universally valued service and a *kesef* equivalent. *Adam chashuv* may be

necessary to convert the “benefit” of receiving a gift into a service rather than just a halakhically approved benefit. In general, monetary acquisitions can be triggered by delivering benefit; *kiddushin* can only be enabled if actual services are delivered.

This appears to be Rashi's view. Commenting upon the scenario of *adam chashuv*, he claims that by accepting the gift, the man is marrying the woman “by saving her the money she would otherwise pay to hire someone to lobby him to accept her gift.” By accepting her gift, he saves her the money she would have spent facilitating this gift. Apparently, the *adam chashuv* scenario is only operative if the *adam chashuv* is universally regarded as such and people regularly pay for the service of persuading him to accept a gift. Evidently, Rashi felt that mere “benefit” of receiving a gift – although highly valuable – would not affect a *kiddushin*. Only service-*hana'ah* can be viewed as *kesef* equivalent and only important people deliver a “service” by accepting her gift. The unique *adam chashuv* requirement of *kiddushin* was necessary to upgrade the benefit into service-benefit.