

YESHIVAT HAR ETZION
ISRAEL KOSCHITZKY VIRTUAL BEIT MIDRASH (VBM)

TALMUDIC METHODOLOGY
By: Rav Moshe Taragin

COMPARING *KIDDUSHIN* AND *HEKDESH*

The first *mishna* in Tractate *Kiddushin* asserts that a woman may be acquired by three different methods – *kesef*, *shetar*, and *biah*. By using the term "*nikneit*" (acquired), this *mishna* articulates *kiddushin*, the act of marriage, as a financial transaction. Intriguingly, the first *mishna* of the second chapter employs a very different language to describe this process - one which is more familiar in common jargon. The *mishna* describes a man being "*mekadesh*" a woman and allows that process to be delegated to an intermediary *shaliach*.

The *gemara* (2b) comments upon this alternate language by asserting an association between *kiddushin* and *hekdesh* - the designation of an item as belonging to the *Mikdash*. As the *gemara* explains: "a man installs deterrence upon his wife, prohibiting her from marrying other men." This preclusion – clearly unrelated to any financial element- evokes a parallel to *hekdesh*.

A simple reading of this *gemara* and the *mishna*'s choice of syntax suggests that the equivalence of *kiddushin* and *hekdesh* is merely linguistic. Aware that purely financial terminology could not fully capture all the dimensions of *kiddushin*, *Chazal* employed language from a Halakhic realm which similar to *kiddushin*, also transcends pure finances. When a person is "*makdish*" an animal, he clearly designates Halakhic status that cannot be considered purely financial. Adding this language to the Torah's purely financial terminology affirms the extra-financial nature of *kiddushin*.

However, several commentators understood this equivalence literally, imparting actual *hekdesh*- type *halakhot* to the process of *kiddushin*. Evidently, they believed that the two processes exhibit structural similarity.

The *gemara* in the beginning of Tractate *Nedarim* establishes the mechanism of "*yadayim*" as a valid generator of a *neder*, a vow. If a person

makes a vow in abbreviated language, even if he does not complete the requisite sentence structure, his vow is considered a valid *neder*. The *gemara* (6b) queries whether similar "partial" language would affect *kiddushin*. Many *Rishonim* wonder why this is even considered a possibility; after all, the efficacy of *yadayim* is only realized for a *neder* because of specific *gezeirot ha-katuv* (textual commands) that allow it. The Torah's description of *kiddushin* in *Parashat Ki Teitzei* does not imply validity for *yadayim*.

In answering this question, Tosafot claim that *kiddushin* may allow for the use of *yadayim*, despite the absence of independent textual mandate, because *kiddushin* is a derivative of *hekdesh*. Whether this logic is causative or reflective is unclear. Do *hekdesh* and *kiddushin* share inherent similarities, thus allowing common employment of *yadayim*, or does the affiliation to *hekdesh* alone dictate the allowance of *yadayim*? Either way, Tosafot was willing to read the *hekdesh* association as more than just a linguistic trope.

A similar logic is adopted by a Tosafot in *Kiddushin* (8a). The *gemara* addresses the phenomenon of "*hitpashtut*," whereby *hekdesh* status assigned to a part of an animal permeates the entire animal and creates COMPLETE *hekdesh* status. The *gemara* considers applying this dynamic to *kiddushin*; if a man marries "half" a woman, perhaps the partial status should pervade the entire woman, as well. Tosafot question this application; after all, the *hitpashtut* allowance for *hekdesh* is derived from a special textual inclusion. In fact, the *gemara* in Tractate *Temura* questions whether we can even extend the *hitpashtut* theory to birds designated as *hekdesh* since their *korban* profile is slightly different from an actual animal. How can the *gemara* even consider applying *hitpashtut* to *kiddushin* without clear textual mandate if it may not even apply to all *korbanot*?

Once again, Tosafot claim that the comparison to *hekdesh* allows liberal application of *hekdesh* phenomena to *kiddushin*. If *hitpashtut* operates for *hekdesh*, it should automatically operate for *kiddushin*. This position echoes the stance of Tosafot in *Nedarim*; the comparison between *kiddushin* and *hekdesh* is REAL and allows for application of *hekdesh* type rules to the process of *kiddushin*.

The Chelkat Mechokeik (R. Moshe ben R. Yitzchak Yehuda Lima, 17th century Lithuanian Rabbi) applies the *hekdesh* comparison in an interesting fashion. In his comments to the *Shulchan Arukh*, *Even Ha-ezer*, Siman 27, the

Beit Yosef claims that *kiddushin* must be articulated in the future tense; the husband must declare "you WILL be my wife" or some linguistic equivalent. He cannot assign *kiddushin* status by declaring a "present state," such as "this IS your *kiddushin* money," but must instead claim "this SHOULD BE your *kiddushin* money." This rule of the Beit Yosef is based upon both a *gemara* in *Gittin* (32a), which states this rule regarding *gittin*, as well as the reality that many rules of *gittin* apply equally to *kiddushin*. In his comments on this Beit Yosef, the Chelkat Mechokeik argues that assigning *kiddushin* status by employing a current tense would, in fact, succeed since *kiddushin* is also comparable to *hekdes*, which can be designated by claiming "this animal IS *hekdes*." If the present tense phraseology can assign *hekdes* status to an animal, it can also apply *kiddushin* status to money. This represents an additional application of the *hekdes* comparison to *kiddushin*.

The Avnei Miluim does counter the argument of the Chelkat Mechokeik by questioning the nature of the structural analogy. Even if we accept the premise of Tosafot and parallel the *halakhot* of *kiddushin* and *hekdes*, the function of the verbal declaration regarding each is different. The verbal announcement of *hekdes* designates status to the animal (or other item being dedicated). In contrast, the verbal declaration of *kiddushin* aims to confer status upon the woman. By assigning current *kiddushin* status to the money, can effective *kiddushin* be realized?

Ultimately, the response to the Avnei Miluim's question may be a redefinition of the role of the verbal declaration of *kiddushin*. Perhaps its function is similar to the verbal declaration of *hekdes* in that it assigns status to the money (similar to assigning status to the animal), rather than the woman. This option questions the overall role of the verbal declaration of *kiddushin*, an issue beyond the context of this *shiur*.