

**YESHIVAT HAR ETZION**  
**ISRAEL KOSCHITZKY VIRTUAL BEIT MIDRASH (VBM)**  
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**Deracheha: Women and Mitzvot**

**Marriage I: Kiddushin**

WHAT IS KIDDUSHIN AND HOW DOES IT WORK? WHAT ROLE DOES A WOMAN PLAY IN IT? IS IT A MITZVA?

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**Deracheha focuses on halachic education. A few pieces, like this one, give more emphasis to the ideas underlying the halachot. We hope you find this presentation thoughtful—and thought-provoking.**

## **Marriage**

The process of creating a Jewish marriage has two stages. The first is *kiddushin*, loosely translated as legally binding betrothal. The second, *nissuin* (marriage), is the subject of the third installment of this series.

Rambam outlines the development of this process at the outset of his Laws of Marriage:

### Rambam, Laws of Marriage 1:1-2

Prior to the giving of the Torah, a man would encounter a woman in the marketplace. If he and she would want that he marry her (*lisa*, from the same verb root as *nissuin*), he would bring her into his home and have relations with her in private and she would be his wife. Since the Torah was given, Israel were commanded that if a man wants to marry a woman, he make a *kinyan* of her first before witnesses, and afterwards she will be his wife ...

Rambam refers to *kiddushin* as a *kinyan*, usually translated as acquisition, and as a Torah innovation. In contrast, he describes *nissuin* as predating the Torah.

This passage raises some fundamental questions about *kiddushin*: What is *kiddushin*, and what is it for? In what sense is it a *kinyan*? What is a woman's role in all this?

We explore these questions here, leaving *nissuin* and the workings of the wedding ceremony for later installments of this series. To begin, we'll take a step back to explore the broader concept of marriage.

In a sense, marriage dates back to Creation. God notes that Adam should not be alone, and ultimately creates a match for him. (See more [here](#).) After Adam recognizes Chava as his own flesh and bone, the Torah informs us that their union sets the precedent for couples to come:

#### Bereishit 2:18-24

And the Lord God said, "It is not good for the Adam to be alone. I will make him a helpmate corresponding to him... And the Lord God built up the rib that he had taken [*lakach*] from the Adam into a woman and he brought her to the Adam. And the Adam said, "This time is bone of my bone and flesh of my flesh. This will be called woman [*isha*], for from man [*ish*] this was taken [*lukacha*]. Therefore, a man leaves his father and his mother and cleaves to his wife, and they become one flesh.

These verses describe, even prescribe, the formation of a strong bond between man and woman. By cleaving to each other, the couple are no longer lonely. They become "one flesh," a suggestive phrase often taken to refer to one of three aspects of their bond:

I. A midrash connects the phrase to sexual relations:

#### Midrash Aggada Bereishit 2:24

And they become one flesh. In the [physical] place that they become one flesh.

II. Rashi views the couple's progeny as the realization of their becoming "one."

#### Rashi Bereishit 2:24

One flesh - The offspring is formed through the two of them, and there their flesh becomes one.

III. According to Ramban, "one flesh" refers to an emotional, even existential, unification of man and wife:

#### Ramban Bereishit 2:24

...For the female of Adam was bone of his bone and flesh of his flesh, and he cleaved to her, and she was in his bosom like his flesh. And he desired her to be with him always. And as this was with Adam, his nature was placed in his descendants, that the males among them would cleave to their wives, leave their fathers and mothers, and see their wives as though they are with them as one flesh.

Although Ramban writes from a male perspective, the connection that he describes would presumably be reciprocal. After all, both members of the couple participate in joining to become "as one flesh."

### **Aspirations for Marriage**

Our tradition regards all three elements—the sexual, the procreative, and the

emotional—as aspirations for marriage. For example, Tur opens *Even Ha-ezer*—the volume of his codification of Halacha dedicated to marital law—by describing the importance both of the marriage relationship per se, and of the framework it provides for bearing children:

#### Tur EH 1

May God's name be blessed, that He desires the good of His creations, for He knew that it is not good for man to be alone and, therefore, made him a helpmate corresponding to him. And further, for the intent of creating man is in order that he be fruitful and multiply and this is impossible without the helpmate. And therefore, He commanded him to cleave to the helpmate that He made for him. Therefore, a man is obligated to marry a woman in order to procreate...and whoever dwells without a wife, dwells without goodness...

Conversely, a midrash describes an attempt to completely separate the sexual and procreative aspects of marriage as a hallmark of the sinful antediluvian era.

#### Bereishit Rabba 23:2

Rav Azarya said in the name of Rav Yehuda bar Simon: Thus would the men of the generation of the flood do. One of them would marry two [women], one for procreation and one for sexual relations. The one who was for procreation would sit as though a widow during the life of her husband, and the one who was for relations, he would give her to drink a cup of roots [to induce sterility] so that she not give birth, and she would sit by him adorned like a prostitute.

According to this midrash, deliberately defining a woman's role within a marriage as solely sexual or solely maternal has deleterious effects on her, likening her life station to that of either a widow or prostitute.

The Tosefta invokes these same factors in decrying sexual relations outside the framework of marriage. Intimacy without a formalized connection and commitment between the couple can become a form of licentiousness. Furthermore, promiscuity can lead to questions about parentage, with potentially incestuous consequences for their offspring:

#### Tosefta Kiddushin (Lieberman) 1:4

...For it is said: "and the land be filled with depravity" [*Vayikra* 19:29] "it is depravity" [*Vayikra* 20:14]. Rabbi Lazer says: This is a single man who has relations with a single woman not for the purpose of marriage. Rabbi Lazer says: Whence that he is punished before God like one who has relations with a woman and her mother? It is said here "depravity" and it is said later: "And a man who takes a woman and her mother, it is depravity." Rabbi Lazer son of Yaakov says: Since he had relations with many women and it is not known with which of them he had relations, and she who received [for relations] many men, and it is not known from which of them she received [the seed that conceived]. The result is, this man marries his daughter and this one marries his sister. The result is, all of the world become *mamzerim* [offspring of forbidden relations who are very limited in whom they can marry]. Therefore, it is said: "and the land be filled with depravity."

This passage is quite even-handed in its condemnation of male and female

promiscuity. In practice, the questions of parentage it raises are almost always about paternity, because the identity of a child's mother is usually clear, whereas paternity can be murky or denied.

### **Asymmetry**

Rambam mentions concerns about establishing paternity, alongside the importance of emotional ties within a family, as a central rationale for the institution of Jewish marriage:

#### Maimonides, Guide to the Perplexed, Friedlander translation 3:49

The members of a family united by common descent from the same grandfather, or even from some more distant ancestor, have towards each other a certain feeling of love, help each other, and sympathize with each other. To effect this is one of the chief purposes of the Law. Professional harlots were therefore not tolerated in Israel (Deut. xxiii. 18), because their existence would disturb the above relationship between man and man. Their children are strangers to everybody; no one knows to what family they belong; nor does any person recognize them as relatives. And this is the greatest misfortune that can befall any child or father.

If promiscuity weakens the bonds of family and society by producing children of unknown paternity, then matrimony strengthens those bonds by ensuring that every child's parentage is known, because a woman's husband is readily identifiable. He is thus unquestionably subject to the responsibilities of paternity. Indeed, a man's presumed status as the father of his wife's children is given great halachic weight even in capital cases.<sup>1</sup> To ensure that clarity regarding paternity is maintained, a divorcee or widow must observe a mandatory waiting period from the end of her marriage before remarrying.<sup>2</sup>

This asymmetry between maternity and paternity may inform a fundamental asymmetry of marriage as described by Halacha and as reflected in *kiddushin*: According to Torah law, a man is permitted to marry multiple women, but a woman may marry only one man.<sup>3</sup>

### **Polygyny**

The Torah mentions a man married to more than one woman in a discussion of inheritance:

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<sup>1</sup>Chullin 11b

Rav Mari said: [The principle of relying on a majority] is derived from "one who strikes his father and his mother," for the Torah said to kill him. And should we be concerned that perhaps it is not his father? Rather no, because we say: follow the majority, and the majority of acts of relations are with the husband.

<sup>2</sup>Mishna Yevamot 4:10

Similarly, all other women are not betrothed and do not marry until they have three months' [wait].

Yevamot 42a

All the women, why? Rav Nachman said Shemuel said: Because the verse says, "to be for you a God and for your seed after you" To distinguish between the seed of the first and the seed of the second....

<sup>3</sup> This pattern has antecedents prior to the giving of the Torah. God supports Avraham forming a conjugal relationship with Hagar at Sara's behest, but intervenes to prevent Avimelech from touching Sara.

### Devarim 21:15

When a man has two wives, one beloved and one hated, and they, the beloved and the hated, bear him sons, and the firstborn son is the hated's.

The framing here is negative, with one wife loved and the other hated (a recurring motif in narrative sections of Tanach as well). This framing may subtly suggest that bigamy or polygamy, while permissible, is not encouraged. Nevertheless, according to the Talmud, a man is permitted to marry as many women as he can support.

### Yevamot 65a

Rav said: A man may marry several wives in addition to his wife, as long as he has [enough] to support them.

Whether out of idealism, cultural norms, or financial constraints, monogamy seems to have been prevalent in many Jewish communities throughout history. In early medieval Ashkenaz, Rabbeinu Gershom made monogamy the law.

### Shulchan Aruch EH 1:10

Rabbeinu Gershom pronounced a ban against one who marries in addition to his [first] wife.

Maharam Padua suggests that this decree was intended to ensure that women would be supported by their husbands.<sup>4</sup>

In practice, it has become customary in many Sefardi communities to stipulate in the marriage contract that the husband is not permitted to marry a second wife. However, this does not have exactly the same force as Rabbeinu Gershom's decree does for Ashkenazim.<sup>5</sup>

## **No Polyandry**

As a matter of Torah law, it is impossible for a married woman to marry a second man:

### Kiddushin 7a

A woman is not eligible for [marriage] to two [men]...

This can be seen as a corollary of a Torah prohibition against relations between a married woman and a man other than her husband. Known as the prohibition of *eishet ish* (lit. the wife of a man), it appears multiple times in the Torah:

### Vayikra 18:20

And to the wife of your fellow do not give your relations for seed to defile her.

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<sup>4</sup> Maharam Padua 14

Because they were concerned and looked out for the daughters of Israel in our being in exile, that [a man] would have many wives and sire many children and would not be able to suffice [to support] them.

<sup>5</sup> Responsa *Yabi'a Omer* EH 5:1

The words of all the later authorities that we saw above, a cohort of prophets, and their king at the head of them is our master Beit Yosef in a responsum, that they wrote that in the diasporas of Spain and in the Maghreb and all of the East they did not accept upon themselves the ban of Rabbeinu Gershom, and how much more so here where it is explicitly thus in the *ketuba* [that he undertakes not to marry an additional wife].

### Vayikra 20:10

And a man who commits adultery with a married woman [*eishet ish*], who commits adultery with the wife of his neighbor, the adulterer and the adulteress shall surely die.

A married woman commits exclusively to her husband. She and other men are prohibited to each other.

Non-Jews—men and women—are also subject to the prohibition of *eishet ish*.<sup>6</sup> But, as Rambam suggested, there is a key point of difference between Jews and non-Jews regarding the process of entering into marriage. The Talmud Yerushalmi explains that the prohibition takes effect for non-Jews only with marriage and relations, not with *kiddushin* (also known as *eirusin*).<sup>7</sup>

### Talmud Yerushalmi Kiddushin 1:1

With [regard to] non-Jews, Rabbi Abbahu in the name of Rabbi Elazar: It is written: “Behold you will die on account of this woman whom you have taken, for she is married to a husband [*be’ulat ba’al*]” [*Bereishit* 20:3]. They [non-Jews] are liable for the *be’ulot* [women who have had relations with a husband], and they are not liable for the *arusot* [women after *eirusin*, halachic betrothal].

## **Eishet Ish**

Specifically for Jewish women, it is *eirusin/kiddushin* that initiates the status of *eishet ish*, and the concomitant serious halachic prohibition of other sexual partners. Indeed, the Torah teaches that if a man rapes a young woman who is completely single, he faces a civil penalty and must offer to marry her, without the option of initiating divorce. If, however, he rapes a woman who is *me’oreset* (betrothed), he is subject to the death penalty:

### Devarim 22:26

If the man finds the betrothed young woman [*ha-na’ara ha-me’orasa*] in a field, and the man takes hold of her and lies with her, then solely the man that lay with her dies. And to the young woman you will not do anything. The young woman has no capital sin for as when a man arises against his neighbor and murders him, so is the matter here.

The stakes of *kiddushin* are thus far higher than for what we’d colloquially call ‘engagement.’ *Kiddushin* brings with it the status of *eishet ish*, which remains in place until death or halachic divorce.

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<sup>6</sup> This is based on a verse that we explored earlier, “a man leaves his father and his mother and cleaves to his wife” (*Bereishit* 2:24)

*Sanhedrin* 57b

[Would you] say a daughter of No’ach [non-Jewish woman] who commits adultery shall not be killed, for it is written “Therefore, a **man** leaves” and not “a woman”? He said to him: Thus said Rav Yehuda, “And they were as one flesh” [the Torah] went back and combined them.

<sup>7</sup> This term is derived from the biblical root *aras*. See, for example, *Shemot* 22:15, *Devarim* 20:7, *Hoshea* 2:21. The verbal root in rabbinic and modern Hebrew has shifted from the biblical *aleph-reish-sin* to *aleph-reish-samech*.

### Rambam, Laws of Marriage 1:3

[A woman who is] *mekudeshet*, even though she did not have relations and did not enter her husband's household, behold she is an *eishet ish* and anyone aside from her husband who has relations with her is liable for death by Beit Din, and if [her husband] wanted to divorce her, she would need a *get* [halachic bill of divorce].

As though to hint at the gravity of *kiddushin*, the Torah verse from which we learn about it is also the verse that introduces divorce:<sup>8</sup>

### Devarim 24:1

If a man takes a woman and has relations with her, and it will be that if she does not find favor in his eyes, for he found in her a matter of *erva* [sexual misconduct], then he writes her a bill of severance and places it in her hand and sends her out of his house.

This has especially critical implications for the woman, who from *kiddushin* forward will need her husband to give her a *get* (halachic bill of divorce) in order to lift the prohibition of *eishet ish* and allow her to remarry. (We plan a more detailed discussion of divorce, and of steps that can be taken to help prevent halachic complications in pursuing it, in a future piece in this series.)

*Kiddushin* thus forms a strong halachic bond between the couple **before** they set up a joint household and ongoing sexual relationship. The man is the *ish* with respect to whom the woman has the status of an *eishet ish* and, in this sense, she is already considered his wife:

### Rashi Sanhedrin 53a s.v. Bein min ha-eirusin

For since he has betrothed her, she is his wife, for it is written "When a man takes a woman." From the time of taking, she is called his wife, and this taking is *kiddushin*.

*Kiddushin* has halachic implications, albeit less extreme, for the man as well. From the time of *kiddushin*, relations with any of the betrothed woman's family members covered by the laws of *arayot*, prohibited sexual relationships, are forbidden under that set of laws:<sup>9</sup>

### She'iltot of Rav Achai 95

All of these *arayot* [forbidden sexual relationships] of relatives, [the prohibitions] apply to them through *kiddushin*. It makes no difference whether from *eirusin* or from *nissuin*. While *kiddushin* carries great halachic weight, in particular for the woman, it is only the first stage of a process meant to culminate in *nissuin*. *Kiddushin* thus entails a degree of halachic commitment, from both parties, to move

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<sup>8</sup> Rashi *Kiddushin* 4b

When a man takes a woman and has relations with her - And the verse required a *get* [halachic bill of divorce] to remove her from this taking, as the conclusion of the verse writes, "And it will be if she does not find..."

<sup>9</sup> *Kiddushin* 65a

Rava raised an objection to Rav Nachman: One who says to a woman: "I have betrothed you [*kidashtich*]," and she says: "You did not betroth me [*lo kidashtani*]" He is prohibited regarding her relatives...

on to *nissuin*, with its attendant obligations on each of them.<sup>10</sup>

Tosafot explain that, as of *kiddushin*, a man has already taken upon himself to fulfill the central obligations to his wife that will take effect from the time of *nissuin*: providing her with food, clothing, and marital relations.<sup>11</sup>

#### Tosafot Ketubot 56b

For there is no *kiddushin* where she has no [claim] on him for food, clothing, and *ona*.

According to some opinions, *kiddushin* is the first stage of a larger mitzva that is only completed through *nissuin* (sometimes called *chuppa*).

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<sup>10</sup>According to Rashi, neither side can delay more than thirty days from *kiddushin* without agreement, and if the *chatan* delays at that point, then he must provide a food allowance for the *kalla*, though there are different opinions. In practice this would be subject to a number of factors in addition to what the couple has agreed upon.

#### Ketubot 57a

Mishna: We give a virgin twelve months from when the *chatan* called her to make ready to marry to provide for herself and just as we give to the woman, thus we give to the man to provide for himself. And for a widow thirty days. If the time has come and they did not marry, they [the women] eat from his [property] and eat *teruma* [if he is a *kohen*].

#### Ketubot 57b

An adult woman who has had over twelve months of adulthood [from age twelve] and is *mekudeshet*, we give her thirty days like a widow.

#### Rashi ad loc.

We give her thirty days - from the time of *eirusin*.

#### Tur EH 56

If twelve months have passed in her majority and afterwards she is betrothed, we give her only thirty days as with a widow. And Rashi explained from the time of *kiddushin* and Ramah explained from the time of calling her to marry, and so wrote my master my father [Rabbeinu Asher].

<sup>11</sup> *Shemot* 21:10

If he takes another for himself, her food and clothing and sexual [rights] he will not decrease.

#### Nedarim 15b

Behold he is subjugated to her on a Torah level, as it is written "her food, clothing, and sexual [rights], he will not decrease."

If a man were to stipulate that *kiddushin* were contingent on his not fulfilling the mitzva to provide food and clothes for his wife, the *kiddushin* could take effect with her agreement, since those are financial arrangements that she can waive. However, according to many halachic authorities, if a man stipulates that *kiddushin* are contingent on his not being bound by the mitzva to have relations with his wife once married, known as *ona*, the *kiddushin* are not considered to take effect:

#### Ketubot 56a

For it was taught in a baraita, one who says to a woman: behold you are *mekudeshet* to me on condition that you don't have a claim on me for food, clothing, and sexual rights, behold this one is *mekudeshet* and his condition is nullified, the words of Rabbi Meir. Rabbi Yehuda says: Regarding a financial matter, his condition stands.

#### Rambam, Laws of Marriage 6:10

...For example, he was *mekadesh* a woman on the condition that she not have a claim on him for food, clothing, and *ona* [the mitzva to have relations], that they say to him: regarding clothing and food your condition stands, because it is a condition on a monetary matter, but regarding *ona*, your condition is nullified, for the Torah obligated you in *ona* and behold this [woman] is *mekudeshet* and you are obligated in sexual relations with her and you do not have the power to exempt yourself through your condition.



### Ramban Ketubot 7b

For *chuppa* and *kiddushin* are not done simultaneously, and half of the mitzva is done at *kiddushin*.

Accepted practice is now for *kiddushin* and *nissuin* to be conducted on the same day. (We'll discuss how these stages are conducted in practice in our upcoming piece on the wedding ceremony.) We'll return to the question of whether *kiddushin* is a mitzva at the end of this piece.

### **Sanctity**

The binding nature of *kiddushin* is not merely a matter of prohibition. The term "*kiddushin*" is linguistically related to *kedusha*, sanctity. Our sages' preference for this terminology speaks to the sacred nature of the commitment and bond that the couple form.

In our tradition, prohibitions often play a role in helping to distinguish the sacred from the mundane. The Talmud compares the prohibition of *eshet ish* engendered by *kiddushin* with the prohibition of taking personal benefit from something that has become *hekdes*, sanctified to God:

### Kiddushin 2b

What is the language of our sages? That he prohibited her to everyone [else] like *hekdes* [something sanctified to God and thus prohibited for personal use].

Tosafot expand on the parallel to *hekdes*, emphasizing *kiddushin* as an act of sanctification:

### Tosafot Kiddushin 2b s.v. "That he prohibited her to everyone like *hekdes*"

And [the formula recited by the *chatan*] "behold you are *mekudeshet* to me" means "to be mine, sanctified always for me," as (*Nedarim* 48a) "Behold these are sanctified to Heaven" [means] to belong to Heaven. And the simple meaning of the expression "*mekudeshet* to me" is "set aside for me and available to me."...

Sanctification here signifies a woman's exclusive relationship with her husband.

Another Talmudic passage suggests that a woman attains a type of *kedushat ha-guf*, **inherent** sanctity, through *kiddushin*, and that that is why a *get* would be necessary to dissolve the relationship even at this stage.

### Nedarim 29a

Rav Himnuna said to him: If he said to a woman, 'Today you are my wife and tomorrow you are not my wife,' can she go out [of the marriage] without a *get* [halachic bill of divorce]? Rava said to him...*kedushat ha-guf* [inherent sanctity] is not undone with nothing...

Rabbanit Dr. Chana Friedman elaborates on the sacred aspect of *kiddushin*:<sup>12</sup>

Rabbanit Dr. Chana Friedman, "Bridal Reflections." Geluya 11.5.20

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<sup>12</sup> Available here: <https://gluya.org/bridal-reflections/>

The groom...sanctifies [mekadesh] her to him by transforming her into someone significant and exclusive, while inviting God as witness and partner to the intimacy being built between them. From this point, the connection between the groom and the bride is not conceived merely as a convenient arrangement between the sexes, as a basis for responsible and stable parenting for the sake of future generations. Throwing in the term *kiddushin* leads to other, sanctified, places; just as Shabbat is the sacred time and Yerushalayim is the sacred place, marriage is the sacred relationship between people.

## The Procedure

We've seen that *kiddushin* changes a woman's halachic status, with implications for both her and her betrother, and entails a degree of sanctification as well. A formal halachic procedure, in the presence of witnesses,<sup>13</sup> is necessary for all this to take effect.

This procedure is sometimes called a *kinyan*, a term that generally refers either to an actual acquisition, or to a symbolic transfer between parties that effects a halachic change in status. A mishna describes the most common method of enacting the *kinyan* of *kiddushin*, through a transfer of money or an object with clear monetary value, whose benefits the woman can enjoy upon receiving it. This is known as *kiddushei kesef*, *kiddushin* through money. Nowadays, this is effected with a ring (which we'll discuss in our upcoming piece on the wedding ceremony).

How would acquisition and monetary transfer apply to betrothal? To understand what this means, we'll first look at the source for the use of money and at its function, and then turn to the matter of *kinyan* and *kiddushin* in general.

In a few places, the Talmud derives the possibility of effecting *kiddushin* with money by interpreting the verse regarding *kiddushin*, and its use of the verb "to take," in light of another verse that employs the same verb. Efron takes Avraham's money in order to transfer his field to Avraham,<sup>14</sup> and this establishes that money can be used for *kiddushin*:

### Kiddushin 11b

...*Kiddushin* of a woman, for it is written, "When a man takes a woman and has relations with her," and we derive [the meaning of] "taking" [with regard to *kiddushin*

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<sup>13</sup>*Kiddushin* 65b

Rav Yitzchak son of Shemuel son of Marta said in the name of Rav: One who is *mekadesh* with [only] one witness, we are not concerned that his *kiddushin* [may be valid], and even if both of them [*chatan* and *kalla*] agree.

The continuation of the passage teaches us that we derive the requirement for two witnesses from the use of the word "*davar*," matter, in the context of needing two witnesses for monetary matters as well as when describing grounds for divorce.

Kiddushin 65b

...Rav Kahana said: We are not concerned for his *kiddushin*...Rav Ashi said to Rav Kahana: what is your opinion? That you derived [a verbal analogy based on the use of the word] "*davar*" [matter, here and the use of] "*davar*" regarding financial laws.

<sup>14</sup>

Bereishit 23:13

And he spoke to Efron in the hearing of the people of the land saying: Even if you would please hear me, I give the money for the field, take it from me, and I will bury my dead there.

by drawing a verbal analogy with the word] “taking” from the field of Efron. And we learn in the Mishna: “Beit Hillel say with a *peruta* [coin of minimum value] or with [something] of equivalent value to a *peruta*.”

Ramban emphatically maintains that this derivation is meant only to establish the use of money for *kiddushin*, and not to compare a woman to a field.<sup>15</sup>

#### Ramban Kiddushin 3a

For we do not derive [the halacha regarding] a woman from [that of] a field at all. Rather, we derive that the “taking” written regarding a woman is a term [referring to] money, and a woman was never compared to a field at all...

Now that we’ve seen how the use of money (or an object of monetary value) has been established as effective for *kiddushin*, we can explore how it functions in *kiddushin*, starting with whether it is meant to reflect any aspect of a woman’s value. The mishna presents a telling debate between Beit Hillel and Beit Shammai about the minimum value of the money or object used to effect *kiddushei kesef*:

#### Mishna Eiduyot 4:7

The woman becomes betrothed [is *mitkadeshet*] with a *dinar* or with the equivalent value of a *dinar*, according to Beit Shammai, and Beit Hillel say with a *peruta* or the equivalent value of a *peruta*.

A *peruta* is the minimum monetary amount recognized by Halacha, and its value equals just above half a percent (1/192) of the value of a *dinar*. Beit Shammai’s position setting a *dinar* as the minimum may reflect a concern with using a trivial amount for *kiddushin*, lest a woman be unwilling to accept it or lest it give the impression of devaluing the woman herself:

#### Kiddushin 11a, 12a

What is the rationale of Beit Shammai? Rabbi Zeira said: For a woman is particular about herself and does not become betrothed [*mitkadeshet*] through less than a *dinar*...Rava said: That is the rationale of Beit Shammai, that the daughters of Israel not be as though free for the taking.

At the same time, Beit Hillel seems not to be worried about these issues.<sup>16</sup> A comment

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<sup>15</sup> The reference to this derivation at the beginning of the tractate does seem more strongly to imply a comparison, though this formulation is not necessarily authoritative:

#### Kiddushin 2a

Taking is called *kinyan* for it is written: “the field on which Avraham made a *kinyan*,” or alternatively “they will make a *kinyan* on fields with money,” and the Mishna teaches “the woman undergoes a *kinyan*.”

#### Kiddushin 3a

To exclude *chalifin* [a *kinyan* that works through symbolic barter]. It would have occurred to you that I might say, since we learn “taking”-“taking” from Efron’s field, just as a field can undergo *kinyan chalifin*, so a woman can undergo *kinyan chalifin*. This teaches us that it is not so.

#### Rashi Kiddushin 3b

Whence do we [derive] money? - Here is the essential [derivation] and above, tangentially it takes it up to explain the mishna’s language of *kinyan*.

<sup>16</sup> Though Rashi does seem to think a similar issue could be in play regarding a woman’s rejection of *kiddushin* through *chalifin*, a *kinyan* that works through symbolic barter, which can be done with less than a *peruta*:

by Rabbeinu Tam (in a related discussion) helps to explain why this would be the case. He argues that setting the minimum amount for *kiddushin* as equivalent to Halacha's minimum monetary value simply reflects that Halacha requires use of something that it formally recognizes as money:

#### Tosafot Kiddushin 3a

...For the matter doesn't depend on [her being] particular but rather this is the reason, because it derived "taking" - "taking" from Efron's field, for "*kessef*" [money] is written regarding it, and with less than the value of a *peruta* it is not called money...

Taz puts this even more clearly, asserting that the money or object used in *kiddushin* does not in any way reflect a woman's value:

#### Taz CM 190:1

This is simple, that concerning a woman he makes a *kinyan* of her solely by means of giving, and not in the sense of valuation of what she is worth.

### **Kinyan**

We've seen that the *kinyan* of *kiddushin* is achieved through the transfer of an item of at least a minimum monetary value, but that the stipulated minimum amount does **not** reflect a woman's value.

Still, halachic sources often describe *kiddushin* as a *kinyan* of the **woman** being betrothed. For example, Taz cited above states, "he makes a *kinyan* of her." The first mishna of *Kiddushin* employs similar language and lists three potential methods of *kinyan kiddushin*. (The second and third methods—via contract<sup>17</sup> or via relations—are not in practice today.<sup>18</sup> The latter is actually rabbinically prohibited.<sup>19</sup>)

#### Mishna Kiddushin 1:1

The woman undergoes *kinyan* in three ways and has *kinyan* for herself in two ways. She undergoes *kinyan* through money, through contract, or through relations...And

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#### Rashi Kiddushin 3b s.v. *La maknia nafshah*

For it is disrespectful to her, therefore the laws of *chalifin* were nullified for *kiddushin*.

#### <sup>17</sup> Kiddushin 5a

Scripture said "and she went out [of the marriage] and became [married to another man]. It compares becoming [married] to going out [of a marriage]. Just as going out is through a contract, so becoming is also through a contract.

#### Shulchan Aruch EH 32:1

How [does one do *kiddushin*] with a contract? He writes for her on paper or on a shard, even if they are not worth a *peruta*, "behold you are *mekudeshet* to me," and he gives it to her before witnesses. And he needs to write it specifically for the woman being *mekudeshet*, as with a *get* [halachic bill of divorce]. And if he wrote it not specifically for her, she is not *mekudeshet*. And he writes it only with her consent.

#### <sup>18</sup> Rambam, Laws of Marriage 3:21

...All of Israel have been accustomed to do *kiddushin* with money or with a monetary equivalent...

#### <sup>19</sup> Yevamot 52a

For Rav would give lashes to one who did *kiddushin* through relations.

#### Rashi ad loc.

To one who did *kiddushin* through relations - on account of licentiousness.

has *kinyan* for herself through a *get* [halachic bill of divorce] or through the death of the husband...

What does *kinyan* mean here?

Some halachic authorities do seem to take *kinyan* to mean acquisition, and consider the woman herself subject to a sort of acquisition through *kiddushin*.<sup>20</sup> Others, like Rashba, state conclusively that *kiddushin* does **not** entail acquisition of a woman like an object:

Rashba Kiddushin 3a

... For her person is certainly not acquired by him [the husband].

Following the view that *kiddushin* does not entail acquisition of a woman's person by the man betrothing her, we still need to explain what it means to say that a 'woman undergoes a *kinyan*.' One possibility is to focus on the primary halachic impact of *kiddushin*, namely, that the woman becomes prohibited sexually to other men. We can do that in one of two ways:

**I. Halachic Shift** Ramban formulates the *kinyan* of *kiddushin* as a "*kinyan issur*," acquisition of a prohibition. Here, the *kinyan* is not of an object, but of a halachic shift specific to the couple. The man acquires a prohibition of the woman to others, and the *kinyan* is a formal halachic process for creating her shift in status to *eishet ish*:

Ramban Kiddushin 16a

...The *kinyan issur* [acquisition of prohibition] is not undone without a *get* [halachic bill of divorce],

This formulation of the *kinyan* involved in *kiddushin* is a bit abstract. It reads the language of "the woman undergoes a *kinyan*" as something like "the woman undergoes a *kinyan* of her being prohibited sexually to others as an *eishet ish*."

Rabbinic Court Advocate Batsheva Sherman articulates a similar conception of *kiddushin*, highlighting the change in status:<sup>21</sup>

Batsheva Sherman, "Marriage in Halakhic Judaism," Jewish Women's Archive

Those who hold that the wife is not her husband's property argue thus.... The acquisition here is not one of money or property, but one of religious and personal status, i.e., it is a contract whose purpose is to bring about a change in religious or

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<sup>20</sup> Tosafot Ha-Rosh *Ketubot* 2a

Since the woman is the monetary *kinyan* of the man, like his bondsman and his ox and his donkey. Rosh here draws from a Talmudic passage permitting a woman betrothed to a *kohen* to eat *teruma*, though this passage can be understood as describing the process of effecting the relationship and not the nature of the bond between a betrothed couple.

*Ketubot* 57b

As a matter of Torah law, a daughter of an Israelite [non-*kohen*] betrothed [to a *kohen*] eats *teruma*, for it is written, "And a *kohen* when he makes a *kinyan* on a person, a *kinyan* of his money. This one [the betrothed woman] is also the *kinyan* of his money."

Shita Mekubetzet *Ketubot* 57b

This one also is the *kinyan* of his money, for he made a *kinyan* on her with the money of *kiddushin*.

<sup>21</sup> Available here: <https://jwa.org/encyclopedia/article/marriage>

personal status.

**II. Conjugal Rights** Alternatively, Rav Naftali Zvi Yehuda Berlin (Netziv) formulates *kinyan kiddushin* more concretely and positively, as the man's acquisition of conjugal rights. (Earlier authorities, including Rambam,<sup>22</sup> suggest something like this as well.)

Responsa Meishiv Davar 4:35

...It is a clear matter and primarily understood that the meaning of "when a man takes a woman" is for what the verse concludes "and has relations with her," or "and he sleeps with her" and nothing more. From this we learned that for this specific element she is acquired to him...but she is not obligated to have relations with him...

Here, the mishna would be understood as "a woman undergoes a *kinyan* of the exclusive halachic rights to have relations with her." However, as we'll see at the end of this piece, completing *kiddushin* alone does not suffice to permit a man and woman to each other.

Netziv is also careful to clarify that following *kiddushin* and *nissuin*, a woman's consent is still required for relations with her husband.

According to either of these ways of understanding *kinyan kiddushin*, the woman herself is not acquired. Rather, the transition to *ishet ish* takes effect, with its corresponding prohibition, and she cedes real, important rights to her betrother.

**Roles in Kiddushin**  
**The monetary transfer**

Especially if the monetary transfer is largely symbolic, it is not obvious which member of the couple should be the one to perform it. The Talmud considers the possibility of the woman giving the money or object to effect *kiddushin*, but derives from the verse "when a man takes a woman" that it is the man who must do it.

Kiddushin 4b

I might have said that where she gives to him and betroths [*mekadeshet*] him, it is [valid] *kiddushin*. God [in his capacity of author of the Torah] wrote "when he takes" and not "when she takes."

A similar logic seems to inform the Talmud's discussion of the statement that accompanies *kiddushin*, usually phrased as "behold you are *mekudeshet* to me."

Kiddushin 5b

Our rabbis taught [in a baraita]: How [does one do *kiddushin*] with money? He gave her money or the equivalent of money and said to her, "behold you are *mekudeshet*

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<sup>22</sup> In his Laws of Vows, Rambam compares a husband's rights to sleep with his wife to the rights of someone who has rights to usufruct, "*ba'al peirot*."

Rambam, Laws of Vows 12:9

A woman who said to her husband, 'the benefit of relations with me is prohibited to you [as a vow].' He does not need to nullify [the vow], for to what is this similar? To one who prohibits [through a vow] usufruct of his fellow to the usufruct's owner...

to me,” “behold you are *me’oreset* to me,” “behold you are for me a wife”—behold she is *mekudeshet*...And if you want, say: If he gave and he said [the statement], she is *mekudeshet*. If she gave and she said, she is not *mekudeshet*. If he gave and she said, it is a case of doubt.

Here, too, the Talmud considers but does not embrace the possibility of the woman making the statement. If the statement functions as a revelation of intent, it could make sense for either party to make it. However, this statement, like the giving of the ring, may be an essential part of the *kiddushin* process, with the man thus mandated to act:

#### Tosafot Rid Kiddushin 5b

Perhaps one can say that it is different here, for it is written “When a man takes,” that the man should perform the entire “taking,” both the giving and the speaking.

A Talmudic passage explains the reasoning for this textual reading in psychological terms, based on the assumption that the man is the pursuer in a typical heterosexual relationship. A man’s more active role in *kiddushin* may reflect that pattern:

#### Kiddushin 2b

For it was taught in a baraita: Rabbi Shimon says: Why did the Torah say, “when a man takes a woman” and did not write “when a woman is taken unto a man?” Because the way of a man is to pursue a woman and it is not the way of a woman to pursue a man. A parable—to a man who has lost something. Who chases whom? One who has lost something pursues what he lost.

Rashi explains that the parable refers to the creation of Chava from Adam’s rib.

#### Rashi ad loc.

Loss - one of his ribs.

Indeed, the verb “to take” appears both in the verse concerning *kiddushin* and in the Torah’s account of the creation of Chava.

On this reading, man’s pursuit of woman begins at creation, and finds expression in his taking the more active role in the *kiddushin* procedure. But his action is not sufficient without a woman’s consent.

#### Levush Ketubot 8:8

The Torah said, granted that the man must perform the act of *kiddushin*, for it is written “when [a man] takes.” But we need her willing consent, meaning that his deed along with her willingness enact the *kiddushin*.

### **Consent**

The use of the language of *kinyan* to describe betrothal remains quite jarring. It is tempered somewhat by the halacha – derived from that language – that a woman’s consent is necessary for *kiddushin* to take effect.

#### Kiddushin 2b

If [the mishna] had taught “[he] effects a *kinyan*” [“*koneh*”], I would have thought,

even against her will. It teaches “the woman undergoes *kinyan*” [*ha-isha nikneit*], for in accordance with her will, yes, against her will, no.

According to the Talmud, the mishna deliberately avoids using the active voice “the man effects a *kinyan*,” because that language could mislead us into thinking that only **his** action is necessary.

Precedent for requiring a woman’s consent to *kiddushin* appears in the Torah. The daughters of Tzelofchad were expressly permitted to marry whomever they wished, even though the preference was for them to marry within their father’s tribe.<sup>23</sup>

#### Bemidbar 36:6

This is the matter that God commanded the daughters of Tzelofchad saying: they should become wives to [those] who are good in their eyes, but they should become wives to the family of their father’s tribe.

There are different ways to understand what role a woman’s consent plays in *kiddushin*. Some authorities describe it formalistically, in terms of how she can make herself eligible to be affected by a *kinyan* process, either passively<sup>24</sup> or actively.<sup>25</sup>

Meiri argues that the need for a woman’s consent to *kiddushin* should go without saying. It requires clarification only because the Torah assigns the primary action of *kiddushin* to the man, which might give a different impression.

#### Me’iri Kiddushin 2a

For the woman is not *mitkadesh* against her will, and even though the language of Scripture does not explicitly prove this, for behold “when [a man] takes” implies even against her will...In any case this [the need for consent] does not require a verse, for if so [that *kiddushin* could take effect against a woman’s will], you would not have left a daughter to Avraham Avinu [who dwells with her husband].

To Meiri, it is clear that Jewish women over the generations simply would not have stood for forced marriage.

In one of his comments, however, Rashi infers the requirement of a woman’s consent from a verse in the Torah, specifically, from the way it describes remarriage after “a man takes a woman”:

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<sup>23</sup>*Bava Batra* 120a

Rav Yehuda said Shemuel said: The daughters of Tzelofchad were permitted to marry [men from] any of the tribes, for it says, “become wives to [those] who are good in their eyes.” But what interpretation do I assign to “but they should become wives to the family of their father’s tribe”? The verse offered them good advice, that they only marry those fitting for them.

<sup>24</sup>*Ran Nedarim* 30a

Since she agrees to the man’s *kiddushin*, she nullifies her cognizance and her will and equates herself with respect to the husband to an ownerless item, and the husband brings her into his domain.

<sup>25</sup>

Rashi Kiddushin 44a

*Kiddushin* that is from her cognizance (consent) - for we require the cognizance of the *makneh* [the one offering the object of the *kinyan*].



### Rashi Kiddushin 44a

*Kiddushin* in general - And she went and became [the wife] of a different man (*Devarim* 24:2), it implies with her consent.

The independent derivation of the need for a woman's consent to *kiddushin* suggests that this requirement is not something to take for granted, nor is it simply the standard consent required for any *kinyan*. Rather, consent may be a critical element of *kiddushin* itself, specific to it. In that case, though a man's role is more active, the respective roles of man and woman would each be considered essential to *kiddushin*.

### How can we understand the *kinyan* aspect of *kiddushin* today?

*Many of us conceive of marriage as an equal partnership between a man and a woman. Yet Halacha, as a matter of Torah law, defines marriage asymmetrically. The man effects a *kinyan* on the woman; in doing so, he must give and speak, while she receives and consents.*

*We've also seen that the *kinyan* aspect of *kiddushin* is not a standard acquisition, but rather can be understood as *kinyan issur* (establishing a prohibition) or as a *kinyan* of sexual rights of husband to wife. The object transferred during *kiddushin* does not reflect the woman's value, and that act of *kiddushin* can be understood as a sort of sanctification for which the woman's consent is crucial.*

*It may not sit well to think of marriage, and even of marital commitment, in terms related to binding acquisition, albeit unusual or limited in scope, especially since a woman cannot release those bonds herself. Yet forming this strong, high-stakes commitment seems to be the point of *kiddushin*, with the prohibition directly responsible for its sanctity. With all its complexity, *kiddushin* is the framework the Torah created for beginning the marriage process. It has formed the basis for Jewish families for millennia.*

*Rabbanit Dr. Chana Friedman recalls how, in approaching her own wedding, she chose to follow, willingly and consciously, in the footsteps of our foremothers:*

### Rabbanit Dr. Chana Friedman, "Bridal Reflections." Geluya 11.5.20

I decided that if, until now, I have chosen in my life to accept the tradition that I received and to find my personal path within it, I will also continue to do so during my wedding ceremony. With this choice, I invited to my *chuppa* more than Halacha and custom. I sought also to invite to my wedding the women of previous generations who accompanied and guided me on my path. I felt that they are wiser than me in many senses, that their shared life experience is greater than mine, and that in following my husband into the unknown, I can also rely on them a bit. In certain places, I will interpret things in a new way, in other places I might even rebel, but at the same time, I chose also to listen, to allow the sum of their experiences, feelings, and insights to speak to me.

*Even for women (and men) who have reservations about the process and its implications, *kiddushin* can be uniquely compelling. We derive meaning from within boundaries and by making commitments. The weight and complexity of *kiddushin* are inextricably linked with its exceptional pull and power.*

Hoshea, comparing the relationship of the Jewish people and God to *kiddushin*,

presents some of the values to which a couple undertaking *kiddushin* can aspire, seemingly very much dependent on the depth of a couple's relationship:

Hoshea 2:21-22

And I will betroth you to me forever, and I will betroth you to me with justice and with law and with lovingkindness and with mercy. And I will betroth you to me with faith and you will know God.

*Kiddushin* is Jews' unique way of establishing a sacred and halachically binding commitment between a couple, before they enter the covenantal marriage of *nissuin*.

## **The Limits of Kiddushin**

*Kiddushin* is only the first stage in the creation of a Jewish marriage. With *kiddushin*, a woman attains the halachic status of *eishet ish*. But *kiddushin* alone do not suffice to permit a man and woman to each other.

Minor Tractate Kalla 1:1

A *kalla* without a *beracha* is prohibited to her husband like a *nidda*, just as a *nidda* who has not immersed is prohibited to her husband, so a *kalla* without a *beracha* is prohibited to her husband. *Beracha* here might refer to *chuppa* more generally.

Rashi interprets this passage as meaning that a couple need both *chuppa* and *sheva berachot* to be permitted even to be secluded together:-

Rashi Ketubot 7b

He has prohibited to us betrothed women [*arusot*]-Rabbinically, for they decreed against seclusion with a single woman and they didn't even permit a betrothed woman until she enters the *chuppa* and with a *beracha*, as I explained, a *kalla* without a *beracha* is prohibited to her husband like a *nidda*.

Though Rashi calls this halacha a rabbinic decree, some early authorities even compare it to the prohibition of *eishet ish*:

Shita Mekubetzet Ketubot 7b

...Since transfer to the *chuppa* is required...she is like another man's betrothed, and is prohibited to him like the law of *eishet ish*, so explained Rav Aharon Halevi and Rashba.

Even had they done *kiddushin* via relations, the couple would not be permitted to each other again prior to *nissuin*.<sup>26</sup> We discuss how this halacha is expressed in birkat eirusin, as well as the question of whether *kiddushin* is a mitzva, in the next installment of this series.

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<sup>26</sup>Rambam, Laws of Marriage 10:1-2

...Even if he was *mekadesh* her with relations, it is prohibited for him to have relations with her a second time in her father's home...When the betrothed woman has entered the *chuppa*, behold she is permitted to him to have relations with her.