



Kiddushin with Issur Hanaah

The *Mishnah* (2:9) lists a number of objects from which one is prohibited from deriving benefit (*issurei hanaah*). The *Mishnah* teaches that if one attempted to perform *kiddushin* with one of these items it would not work. We shall try to understand why.

The *Mishneh LeMelech* (*Issur Hanaah* 5:1) uses the following case to probe why *kiddushin* cannot be performed with an *issur hanaah*. He asks whether an *issur hanaah* could be used for *kiddushin* for a woman who was dangerously unwell. In that context that *issur hanaah* is permitted to her. He explains that the answer depends on how we understand our *Mishnah*. If we say that an *issur hanaah* normally would not work, because he needs to give her something that she can benefit from, in this case it should work because she is allowed. If however, the reason is because it has no monetary value, then even in this case, it is not considered as if he gave her anything. Finally, if we say that it would not work since would be deriving benefit for an *issur hanaah* through the process of *kiddushin*, then it would similarly not work in this case.

The *Mishneh Lemelech* (s.v. *ve'raiti*) proves that *Rashi* maintains the first understanding based on his explanation of the end of the *Mishnah*. The *Mishnah* explains that if the man sold the *issur hanaah* and then used the money for *kiddushin*, it would work. *Rashi* explains that this is because the money from the sale does not adopt the *issur hanaah* and has monetary value. *Rashi* however adds that even though he is still not allowed to derive benefit from it, she can. The *Mishneh Lemelech* understands that *Rashi's* position is that it has not monetary value for him since it is rabbinically prohibited for him to derive any benefit. Consequently, for him it is not considered as if his giving her anything. Nevertheless, the *kiddushin* would work since she received something that she can benefit from. It follows then that *Rashi* would maintain that in the case where she is dangerously ill, since she could derive benefit from the *issur hanaah*, she would be *mekudeshet*. Furthermore, we can prove from *Rashi* that the reason why he cannot use an *issur hanaah* for *kiddushin* cannot be because he derives

benefits through the process, otherwise even the money that was derived from the sale of the *issur hanaah* would similarly not be able to be used.

The *Mishneh LeMelech* explains that the *Ran* also maintains this position. He explains that the money from sale can be used, even though he cannot derive benefit, because she is allowed to and it came into her possession because of him. He proves this from the case of *kiddushin* with *gezel* – a robbed object. *Kiddushin* would work with *gezel* according to the opinion that in a case of *gezeila* (robbery) the victim gives up hope of retrieving it (*yi'ush*). The object is not considered the property of the robber because *yi'ush* alone is not enough to change the ownership. It requires *shinui reshut*, a change in possession also. Nevertheless, *shinui reshut* occurs when he gives it to her and it is then an object she can benefit from. Consequently, since it came into her possession because of him, *kiddushin* would work.

The *Mishneh Lemelech* (s.v. *shuv*) however notes that the *Ritvah* disagrees. He argues that *kiddushin* would not work with an *issur hanaah* for this woman who is dangerously ill. He explains that for *kiddushin* to work he needs to give her something of monetary value. Even though it has value to her, since it is an *issur hanaah*, he would not be able to sell it to her. Consequently, it has no monetary value. (If however, he say he was being *makesh* with the benefit she would derive from it rather than the object itself, it would indeed work.) We find therefore that the *Ritva* maintains the second understanding.

What would the *Ritva* do with the proof of the *Ran* above? The *Mishneh Lemelech* explains there is a difference between the two cases. In the case of an *issur hanaah*, even after he gives it to her, it remains forbidden to him. In the case of *gezel* however, due to the *shinui reshut*, it came into her possession through him. The issue in the case of *gezel* was that due to the lack of *shinui reshut* it did not belong to him. Once she however acquired it, he did too.

Revision Questions

קידושין ב' - ג' - ה'

- If someone told a woman that he was betrothing her with a cup of wine and it was found to be honey, is the *kidushin* valid? Would *Rabbi Shimon* agree? (ב' בי)
- If someone told his slave to betroth someone in a certain place and he went and did it in another place, is the *kidushin* valid? (ב' ד')
- If someone told his slave to betroth someone who was currently in a certain place, and he went and did it in another place, is the *kidushin* valid? (ב' ד')
- What is the law if *kidushin* was performed: (ב' ה')
 - On the condition that has no *mumim* and she had *mumim*?
 - With no conditions and it was found that she had *mumim*? To which *mumim* does this apply?
- Can a man perform *kidushin* with an item of value less than a *prutah*? (ב' ו')
- Does it help if he sends her gifts later of a much higher value? (ב' ו')
- Can a man perform *kidushin* to two women with one *prutah*? (ב' ו')
- What is the law regarding a case where a man attempts to *mekadesh* a mother and daughter at the same time? (ב' ז')
- What is the law regarding a case where a man attempts to *mekadesh* a group of women, two of which are sisters? (ב' ז')
- Can a person perform *kidushin* with:
 - *Matanot kehuna*?
 - *Ma'aser sheni*?
 - *Hekdesh*? (ב' ח')
 - *Orlah*?
 - *Basar be'chalav*?
 - The money made from selling *kil'ei kerem*? (ב' ט')
 - *Trumah*?
 - *Mei Chatat*? (ב' י')
- What is the law regarding the case where a person sends a *shaliach* to perform *kidushin*, and the *shaliach* marries the woman himself? (ב' יא')
- What is the law regarding the case where a person is *mekadesh* a woman on the condition that it takes effect in thirty days, and in that time another person performs *kidushin*? (ב' יא')
- Can *kidushin* be performed on the condition that he will give her a sum of money? (ב' יב')
- What is the difference if he stipulated as a condition in *kidushin* the he "has 200 *zuz*" and he "will show her 200 *zuz*"? (ב' יב')
- What case is brought that is similar to the previous question? (ב' יג')
- According to *R' Meir*, what qualifies as a satisfactory condition? (ב' יד')
- What is the law regarding a case where a man says "when I married you I thought you were *bat Kohen*" and she is really a *bat Levi*? (ב' יה')
- Can a person *mekadesh* a married woman now, in case her current husband dies? (ב' יה')

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28 July כ"ב תמוז	29 July כ"ג תמוז	30 July כ"ד תמוז	31 July כ"ה תמוז	1 August כ"ו תמוז	2 August כ"ז תמוז	3 August כ"ח תמוז
Kidushin 3:6-7	Kidushin 3:8-9	Kidushin 3:10-11	Kidushin 3:12-13	Kidushin 4:1-2	Kidushin 4:3-4	Kidushin 4:5-6

