



Unnatural Benefit and Rabbinic Prohibitions

One who performs *kiddushin* with *orlah*, with *kilei kerem*, with an ox that must be stoned... she is not betrothed”

Kiddushin (2:9)

The above *Mishnah* provides a list of different objects that one cannot perform *kiddushin* with, since they are objects that one is prohibited to derive benefit from (*issurei hana'ah*). The seeming explanation for this is that since one cannot derive benefit from these objects, they have no monetary value.

The *Gemara* in *Pesachim* (24b) states that one does not receive lashes for deriving benefit from an *issur hana'ah* in an unnatural way. An example of this brought by the *Gemara* is placing the fat of a *Shor Haniskal* upon one's wound. *Tosafot* on our *Mishnah* (*Kiddushin* 56b) quotes this *Gemara* and asks why our *Mishnah* states that one cannot perform *Kiddushin* with an *issur hana'ah*, since the woman may still derive benefit from it in an unnatural manner. *Tosafot* answers that either we are discussing a case where the unnatural benefit derived is not worth a *peruta* or that it is worth a *peruta* but the woman does not have in mind that benefit and therefore the *Kiddushin* is invalid. Nevertheless, essentially in a situation where the benefit was worth a *perutah* and the woman had her mind upon it, she would be *mekkudeshet*.

The *Ritva* on the other hand, explains that although the *Gemara* in *Pesachim* says that one does not receive lashes for unnatural benefit, it is still prohibited on a rabbinic level. To answer *Tosafot's* question, he quotes a different *Gemara* in *Pesachim* (7a) which says that one cannot perform *Kiddushin* with a rabbinic prohibition (*chametz* that is only *derabanan*.) and he explains that since the Rabbis prohibited unnatural benefit, it is not considered to be money and therefore one cannot perform *Kiddushin* with it. Since *Tosafot* cannot argue with the *Gemara* and would agree that one cannot perform *Kiddushin* with rabbinic prohibitions, it would seem that he must hold that unnatural benefit is not prohibited at all even on a rabbinic level.

There is a third opinion about unnatural benefit. The *Rambam* in *Hilchot Ma'achlot Assurot* (8:16) writes that

any *issur hana'ah* that is edible, even though it is forbidden *mideoraita* to derive benefit from it, one does not receive lashes unless one eats it. The *Magid Mishnah* explains the *Rambam* based on the above-mentioned *Gemara* in *Pesachim* (24b) that one does not receive lashes for unnatural benefit and that the only way to naturally benefit from food is by eating it. He states that according to the *Rambam*, unnatural benefit is prohibited even *mideoraita*, just that one does not receive lashes for it; a similar case to eating less than the required amount of a prohibited food (*chatzi shiur*).

As mentioned above, the *Gemara* in *Pesachim* (7a) says that one cannot perform *kiddushin* with rabbinic prohibitions and the reason that the *Ritva* provided was that since the Rabbis prohibited an object, it is objectively not considered money. *Rashi* in *Pesachim*, on the other hand gives a different explanation. He says that the reason that *kiddushin* does not work here is because everyone that performs *kiddushin* does so with consent of the Rabbis (*ada'ata de'rabbanan mekadesh*) and that if someone transgresses their will, they have the power to uproot their *kiddushin* (*Afke'inh*). According to *Rashi*, a rabbinic prohibition is objectively considered money, only that one cannot perform *kiddushin* with it because of the *halacha* of *afke'inh*.

Perhaps the dispute of *Rashi* and *Ritva* can be explained based on the *chakirah* in how to understand rabbinic prohibitions. The *Achronim* (See *Atvan Deoraita*, *Klal* 10 for a discussion) have a discussion about whether rabbinic prohibitions occur on the object itself (*issur cheftza*) like biblical prohibitions or whether they do not occur on the object but are just a general prohibition of not transgressing the will of the Rabbis (*lo tassur*). According to the *Ritva*, it would seem that rabbinic prohibitions occur on the object itself, since he says that rabbinic prohibitions are objectively not considered money like Biblical prohibitions. On the other hand, according to *Rashi*, it would seem that Rabbinic prohibitions do not affect the object itself but they are just a prohibition of not transgressing the will of the Rabbis, since he says that they are objectively considered money, only that *Kiddushin* does not work because of *afke'inh*.

Revision Questions

קידושין א' י' ג' ג'

- What three things are promised to those who perform one *mitzvah*? (א' י'):
- What three things keep a person away from sin? (א' י'):
- Complete the following phrase: (ב' א')
האיש מקדש __ ובשלו
- 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' ב')
- If someone told his *shaliach* 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 *shaliach* 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? (ג' א')
- 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*? (ג' א')
- Can *kidushin* be performed on the condition that he will give her a sum of money? (ג' ב')
- What is the difference if he stipulated as a condition in *kidushin* the he “has 200 *zuz*” and he “will show her 200 *zuz*”? (ג' ב')
- What case is brought that is similar to the previous question? (ג' ב')

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Next Week's Mishnayot...

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	שבת קודש
3 rd January כ"ג שבט	4 th January כ"ד שבט	5 th January כ"ה שבט	6 th January כ"ו שבט	7 th January כ"ז שבט	8 th February כ"ח שבט	9 th February כ"ט שבט
Kiddushin 3:4-5	Kiddushin 3:6-7	Kiddushin 3:8-9	Kiddushin 3:10-11	Kiddushin 3:12-13	Kiddushin 4:1-2	Kiddushin 4:3-5

