

## Part 1: Kiddushin and Get

### A. "A Woman is Acquired": The Rabbinic Metaphor of Marriage

I will be master of what is my own.  
She is my goods, my chattels; she is my house,  
My household stuff, my field, my barn,  
My horse, my ox, my ass, my anything...  
(William Shakespeare, *The Taming of the Shrew*, III. ii. 229-32)

#### 1. Selections from Mishnah Kiddushin

1:1

A woman is acquired (נקנית) in three ways, and acquires herself in two ways. She is acquired by money, by document, or by sexual intercourse.

By money—the House of Shammai say: by a *dinar*, or by the equivalent of a *dinar*; and the House of Hillel say: by a *p'rutah*, or by the equivalent of a *p'rutah*. And how much is a *p'rutah*? One eighth of an Italian *issar*.

And she acquires herself by a divorce document, or by death of the husband.

The levirate widow is acquired by sexual intercourse. And she acquires herself by *halitzah*, or by death of the levir.

1:2-5

An Israelite slave is acquired (נקנה) by money or by document (1:2)...

A Canaanite slave is acquired (נקנה) by money or by document or by taking possession (1:3)...

A large animal is acquired (נקנית) by delivery, and a small animal by lifting it up (1:4)...

Items that can be mortgaged [i.e., real-estate] are acquired (נקיין) by money or by document or by taking possession, and those that cannot be mortgaged [i.e., moveable objects] are only acquired by drawing them [towards oneself] (1:5)...

2:1

The man betroths (מקדש) by himself, and through his agent.

The woman is betrothed (מתקדשת) by herself, and through her agent.

The man betroths his daughter when she is a *na'arah* (between the age of 12 and 12 ½) by himself, and through his agent.

#### 2. Tosefta Kiddushin 1:1

A woman is acquired in three ways...by money, by document, and by sexual intercourse.

By money how (*is the acquisition effected*)? He gave her money [or the equivalent of money], (*and*) he said to her "Behold, you are betrothed (מקודשת) to me," [or] "Behold, you are betrothed (מאורסת) to me," [or] "Behold, you are a wife to me" – behold, she is betrothed (מקודשת).

#### 3. Babylonian Talmud Kiddushin 2a-b

[2a] What differentiates this (*passage*) here (*m. Kiddushin 1:1*), such that it teaches "a woman is acquired," and what differentiates (*the passage*) there (*m. Kiddushin 2:1*), such that it teaches "a man betroths?"

...

[2b] In the former (*mishnah; 1:1*) he taught the language of the Torah and in the latter (*mishnah; 2:1*) he taught the language of our rabbis.

And what is (*the meaning of*) the language of our rabbis? He forbids her to all like that which is sanctified to the Divine (כהקדש).

#### 4. *Tosefta Kiddushin 1:1 (part 2)*

But if she gave money to him, or the equivalent of money, and/or she said to him, “Behold, I am betrothed (מאורסת) to you,” [or] “Behold, I am betrothed (מאורסת) to you,” [or] “Behold, I am a wife to you” – behold, she is not betrothed.

#### 5. *Babylonian Talmud Kiddushin 4b and 5b*

[4b] And if the Merciful One had written only “she goes forth for nothing” [Exodus 21:11], I might have said, where she gives (to him) and betroths him, it is (*valid*) betrothal, (*thus*) the Merciful One wrote “when he [a man] takes (*a woman*)” and not “when she [a woman] takes (*a man*)” [Deut. 24:1].

[5b] Shmu’el said: Regarding betrothal, if he gave her money or the equivalent of money, (*and*) he said to her “Behold, you are betrothed (מקודשת) to me,” [or] “Behold, you are betrothed (מאורסת) to me,” [or] “Behold, you are a wife to me” – behold, she is betrothed (מקודשת);

[but if he said] “Behold, I am your man,” [or] “Behold, I am your husband,” [or] “Behold, I am your betrothed” – there is no room for doubt here [there is no binding betrothal].

### **B: “Permitted to Any Man”: Jewish Divorce**

#### 1. *Mishnah Gittin 9:3*

The essence (*substantive language*) of the [divorce] document: “Behold you are permitted to any man.”

Rabbi Yehudah says: “This should be for you, from me, a writ of divorce, a letter of dismissal, a document of release, to go to marry any man you desire.”

[The essence of the document of manumission: “Behold you are a free woman, behold you belong to yourself.”]

#### 2a. *Mishnah Yevamot 14:1*

The man who divorces is not like the woman who is divorced; the woman goes out (*of the marriage*) whether she desires it or not, but the man sends out (*his wife*) only if he desires it.

#### 2b. *Tosefta Bava Batra 11:5*

One writes a divorce document for a man without the knowledge/consent of the wife, but one only writes (*it*) with the knowledge/consent of the man.

[(One writes a document of manumission) for the master without the knowledge/consent of the slave, but one only writes (*it*) with the knowledge/consent of the master.]

## Part 2 – Creating New Models of Jewish Marriage

“I’m pretty sure there’s not one perfect solution, certainly not one that’s perfect for everybody. For some, a more traditional kiddushin might be important, and perhaps folks’ll be happy to see some ways to do that give the bride more of a role in the ceremony. For others, discarding the notion of acquisition altogether is important, and they’re looking for a meaningful substitution. And other folks might want to have their cake (a halakhically binding ceremony) and eat it too (that is also feminist).”

(Rabbi Danya Ruttenberg, “The Kiddushin Variations,”  
<http://alternativestokiddushin.wordpress.com/about/>)

### 1. Double-Ring Ceremonies

a. Rabbi Isaac Klein, *A Guide to Jewish Religious Practice*, 396

“Some authorities object to this practice...especially if the formula used by the bride is the same as the one used by the groom. Legally, however, there can be no objection. Once the traditional formula has been recited the betrothal is binding, and whatever is added is of no legal significance.”

b. Dr. Rachel Adler, B’rit Ahuvim (Lover’s Covenant) – *Engendering Judaism: An Inclusive Theology and Ethics* (The Jewish Publication Society, 1998), 191

“According to classical halakhah, no *kiddushin* is effected, because equal exchanges cancel each other out...

From an ethical perspective, the double-ring ceremony is a dubious amelioration. The problem with marital *kinyan* is not simply that it is a unilateral act, but that it commodifies human beings. The groom’s commodification and acquisition of the bride is not rectified by the bride’s retaliation in kind.”

### 2. Reconsidering/Reinterpreting – and Mutualizing – the Meaning of Kiddushin

a. Ben Dreyfus, “Mah Rabu Blog” (on-line at [mahrabu.blogspot.com/2010/06/wedding-part-2.html](http://mahrabu.blogspot.com/2010/06/wedding-part-2.html))

“It certainly has problematic aspects. But the bottom-line essence of kiddushin as marital exclusivity is uncontroversial to us and to most people. In fact, we thought it was so important that it should be multiplied by two, so that **both** partners are subject to kiddushin, and both partners have a requirement of monogamy at the level of a Torah commandment. Thus, even though kiddushin is a unilateral act, having two acts of kiddushin means that there is not a difference between the status of the two partners the way there is in classical kiddushin.”

b. Rabbi David Greenstein, “Equality and Sanctity: Rethinking Jewish Marriage in Theory and in Ceremony,” *G’vanim* 5, no. 1 (2009) (on-line at: <http://ajrsem.org/uploads/docs/greenstein69.pdf>)

“For Dr. Adler the dichotomy is absolute. Either marriage is based on an ownership model or on a covenant model. The former entails unilateral control by one party over the other. The latter entails mutuality. But this opposition is too brittle. I suggest that it is necessary to imagine a model of marriage that entails mutuality and that acknowledges that this mutuality entails mutual feelings of ownership and being owned. For the essential validity of ownership claims in interpersonal relationships does not stem from an equation between ownership and control. On the contrary, the abiding power and deep truth of the element of ownership in passionate relationships stems precisely from the impossibility of enforcing that ownership claim except to the degree that the loved one

cooperates and accepts his or her role as the one who acquires or who allows himself/herself to be acquired.” (19)

### 3. Alternatives to (Unilateral) Kiddushin

#### a. Adler, *Engendering Judaism*

“...partnership law, *hilkhot shutafut*, forms the legal basis for the contractual aspects of the *b’rit ahuvim*. The model of partnership reflects the undeniable fact that marriage is not only a social but an economic institution...”

Partnership law embodies other desirable values as well. In halakhah, it mediates between the partners’ needs for autonomy and their needs for interdependence. A partnership is formed by mutual agreement, and each party has the power to terminate it... the partnership is regarded as a kind of property in which the partners have invested. Consequently, each partner acquires legal obligations for maintaining the partnership and its projects.” (192)

“There is, however..., a form of *kinyan* that was used in ancient times exclusively for partnership acquisition: symbolically pooling resources in a bag and lifting it together. This gesture could not possibly be mistaken for an acquisition of *kiddushin*... each partner places an object of some value in a bag provided for this purpose, perhaps specially designed or decorated. These may be objects that are especially eloquent of their owners’ personalities... Along with these chosen objects, or instead of them, each partner may put the other’s wedding ring into the bag. In this way, the rings are acquired specifically as tokens of partnership.” (196)

“Like the business partnerships that provide its contractual structure, the *b’rit ahuvim* may be dissolved at the initiative of either partner. This procedure should be conducted by a court of three learned Jews... the court should draw up a document in Hebrew, also translated into the vernacular, attesting to the termination of the *b’rit ahuvim*, the distribution of its assets, and arrangements for any continuing obligations. The document should be signed by two witnesses.” (199)

#### b. Greenstein, “Equality and Sanctity”

“The halakhic formula which speaks of unilateral acquisition must be avoided. In fact, the new formula should purposely subvert the halakhic requirement that the groom make a unilateral declaration of *qinyan*, so as to avoid the problem of requiring a get should the marriage be dissolved...” (26)

“The preferable formula need not be created out of nothing. It has been given to us by the halakhic authorities! In a marriage between a woman and a man, as each person gives a ring to their beloved, the bride should say – *harei ani mitqadesh l’kha*... And the groom should say – *harei ani mitqadesh lakh*... – I hereby sanctify myself to you with this ring according to the religious tradition of Moses and Israel.

This formula expresses precisely the modern theory of marriage. The groom is not changing the bride’s status by his act of giving her the ring. Rather, the gift of the ring is declared by this formula to exemplify a gift of self, rather than a *qinyan*/acquisition of the other. Thus each is creating a change of status to themselves and dedicating that changed status to the other, rather than presuming to effect a change upon the partner through the gift of the ring...

The advantages are enormous. The halakhah cannot claim to recognize this marriage. Therefore, ending the marriage can now be accomplished through a mutual process of divorce, rather than through the unilateral method of tradition with its invitation to abuse...

There is one more blessing that this approach bestows. This approach is equally applicable to marriages between men and women and between same-sex couples... this approach recognizes that gender roles are not determinative in defining a sacred relationship. The modern theory of marriage affirms that kiddushin can be established through declarations of the deepest sense of love and commitment. This ceremony declares and celebrates that fact.” (27)

c. Dreyfus, “Mah Rabu Blog” ([mahrabu.blogspot.com/2010/07/wedding-part-3.html](http://mahrabu.blogspot.com/2010/07/wedding-part-3.html))

“Our *sh'tarot* [betrothal documents] included two conditions: ‘on the condition that you accept this document of your own free will and without coercion’ and ‘on the condition that you consecrate or consecrated me to you and that your kiddushin remain in effect’.

The first condition emphasizes that the active participation of both partners is necessary for each act of kiddushin to go into effect; neither participant is passive.

The second condition ensures that the two acts of kiddushin are dependent on each other. Each kiddushin goes into effect only if the other one does. The use of both future and past tense means that the two *sh'tarot* can have identical texts and can be given in any order; there is no significance to the order. I honestly don't remember which order we gave them in...Thus we gave each other *sh'tarot* sequentially, but the two acts of kiddushin went into effect simultaneously, only after both *sh'tarot* had been given.

The mutual dependence also means that if someone thinks that one of the kiddushins is not valid (for whatever reason), then they must also hold that the other kiddushin is not valid. This is a feature, not a bug, since it means that, at least in theory, no one should require non-egalitarian divorce proceedings, since anyone who would require this probably also holds that one (and therefore both) of the kiddushins was not valid in the first place...

The dependence on the other kiddushin remaining in effect means that a single *get* (given by either party to the other, to terminate either kiddushin) terminates both kiddushins.”