

Kiddushin Hadadiyim - Reciprocal Kiddushin: An Egalitarian Jewish Wedding Ceremony and Ketubah Template

Includes Research Analysis

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Table of Contents

Letter to Readers	1
What is an Aguna?	5
What is Reciprocal Kiddushin - Kiddushin Hadadiyim?	5
Reciprocal Kiddushin Ceremony Template	6
Reciprocal Kiddushin Ketubah Template	8
Ketubah W/English Translation	10
Research Analysis	14
D'oraita or D'rabbanan?	14
Some Relevant History	14
The Rabbis	18
Talmudic Proof Text for Kiddushin	27
Talmudic Proof text for Gett	30
Historical Evolution	36
Solutions	41
Adopt, Adapt, or Develop	45
Glossary	46

Letter to Readers

Shalom Aleikhem,

Traditional ideas of gender within Jewish society have oppressed and restricted people throughout history, with women being by far the largest and most tragically affected victims.¹ The strong bias towards men as the pillars of society and women as “others” prevalent in talmudic discussion has influenced religious thought and halakhic rulings throughout the centuries. It has also affected how Torah is interpreted. This negative perspective is often subconscious, and bias against women is unfortunately still inculcated in many observant men from childhood.² Many observant girls and women are taught to accept this perspective as the will of God.³ This leads to a distortion of reality and a willful blindness on how halakhic rulings adversely affect the lives of the people who are asked to follow them.⁴ It is way past time for halakhic leaders to acknowledge that the rabbinic marriage and divorce system, created with an outdated view of gender relationships,⁵ is the direct cause for today’s lack of social justice concerning divorce. The inability, or lack of desire, to view this system as a social construct has affected, and continues to affect halakhic rulings to the detriment of women.

Faced with the question of how to facilitate a Jewish wedding with integrity, I did some research on the institution of Jewish marriage then compiled an *iggun* free wedding ceremony template with an accompanying Ketubah. See pp 6 -13. It is no secret that the systemic imbalance of power inherent in halakhic wedding and divorce has, over time, given rise to a serious violation of basic human rights: the alarming phenomenon of divorce-abuse against women.⁶ Though this complex issue has been addressed by

¹ Amongst them non binary people and men who do not fit the stereotype of a “religious man”.

² Men, who from early childhood say daily baruch she lo asani isha and are immersed in the study of talmud without learning that talmudic views are time conditioned, are often, unbeknownst to them, brainwashed in the way they learn to think about women.

³ To question this balance of power is to fall from the “elevated spiritual level” that women are theoretically endowed with and to risk depravity.

⁴ Some of the dvar Torahs I have heard over the years from well meaning men are outlandish in the biased perception of women.

⁵ Gender relations intersect with all other influences on social relations – age, ethnicity, race, religion, etc. – to determine the position and identity of people in a social group. Since gender relations are a social construct, they can be transformed over time to become more equitable. (European Institute for Gender Equality)

⁶ Though men can also be subject to gett refusal there are loopholes like heter m’eah rabbanim to fall back on and though there is a ban in criminal law against polygamy in Israel the State will waive the ban for a man who wants to remarry without a gett. It is almost always, but not invariably women who suffer from *iggun*, especially long term *iggun*, and the halakhic consequences for a woman are much harsher (ie any future children are considered *mumzerim* and prohibited from marrying born Jews)

numerous Jewish scholars in the 20th and 21st centuries, sadly on the ground progress seems to be minimal. Nearly all the modern attempts at finding solutions for *iggun*⁷ focus on repairing the damage done after the fact or ameliorating the damage through the use of semi effective clauses, addendums or prenuptial agreements. See ‘Solutions’ p 43.

The seeking of justice is a major principle in the Torah and an essential message of the prophets.⁸ In the book of Devarim, we read “You shall appoint magistrates and officials for your tribes, in all the settlements that Adonai your God is giving you, and they shall govern the people with due justice. You shall not judge unfairly: you shall show no partiality; you shall not take bribes, for bribes blind the eyes of the discerning and upset the plea of the just. Justice, justice shall you pursue, that you may thrive and occupy the land that Adonai your God is giving you.”⁹

Where is this justice today for women who are, or were, chained to bad marriages? Each time a woman is disempowered by halakhah, taking away her choice to act in her or her children’s best interest, social injustice prevails. When a beth din applies its authority and refuses to grant a woman a *gett*, or commands a woman to go back to her abusive husband, human injustice prevails. If a man holds to his male privilege and refuses to attend a beth din at the request of his wife, social justice is perverted.¹⁰ Or if a beth din refuses to grant a woman a *gett* because her husband is not “willing”, social justice is perverted. Defense of biased rulings is often cached in what is “best” for Judaism at large but in reality is it?

In the words of the late Rabbi Jonathon Sacks zt”l:¹¹ “Halakhah is the application of an unchanging Torah to a changing world. Halakhah changes so that the Torah should not change.” adding “Halakhah aims at creating an ideal society, but it must always be workable within a real society.”¹² The Jewish marriage and divorce laws are not working today and have not for a very long time. How long can we hold the delusion that the continued sanctioning of this antiquated and inequitable system is in line with Torah values and ideals?

⁷ The state of being an agunah.

⁸ The word *tzedek* occurs 68 times in the Tanakh.

⁹ Devarim 16:18-20

¹⁰ Assumed unearned privileges based on the societal status of being born male.

¹¹ English Orthodox rabbi, philosopher, theologian, and author. Sacks served as the Chief Rabbi of the United Hebrew Congregations of the Commonwealth from 1991 to 2013.

¹² Rabbi Jonathan Sacks, *Crisis and Covenant* p. 154, 156 (Manchester, EN:Manchester Univ Press, 1992)

In the words of Rabbi Dr. Eliezer Berkovits,¹³ “In struggling with the problems of the day, Halakhah must once again reveal itself as the wisdom of the feasible, giving priority of the ethical.... Alas, those who have the authority to impose Laws of the Torah do not care to understand the nature of the confrontation with the Zeitgeist. They take the easy way out. They do not search for the Word that was intended for this hour, for this generation. If they have the authority, they impose the Word meant for yesterday and thus miss hearing the Word that the eternal validity of the Torah was planning for today.”¹⁴ I feel strongly that it is the responsibility of modern day halakhists to creatively apply rules and tools at their disposal in order to innovatively figure out ‘how to get there’. It is not an easy task, but one that must be taken on if justice is to be served. In the meantime however Jewish couples want to get married.

The *iggun* situation today is dire and calls for drastic measures.¹⁵ We, Jewish men and women, have an obligation, as individuals and as members of Jewish society to prevent the perversion of justice even if the perversion of justice is inadvertent. In the past, halakhic change has been initiated through the action of the people. See ‘Historical Evolution’ p 38. We, the people, need to let “those who have the authority to impose Laws of the Torah” know that we will no longer use traditional kiddushin because it does not serve our or our children’s best interest. The abuse has gone on long enough. We cannot wait any longer for the halakhah to catch up.

It is my hope that couples and wedding officiants will use my template.¹⁶ May we see, *b’mehera b’yamenu*,¹⁷ the obviation of the heartbreaking *iggun* situation in the Jewish world. “And let the pleasantness of Adonai Eloheinu be upon us, and the work of our hands Hashem will establish for us, and the work of our hands Hashem will establish.”¹⁸

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¹³ (1908-1992) European-born Orthodox rabbi, theologian, philosopher and author. Berkowitz served as a rabbi in England and Boston before assuming the chairmanship of the Philosophy Department of the Hebrew Theological College in Skokie, IL.

¹⁴ I found this in the Faith and Freedom Haggadah, p.40 (Compiled and Edited by Dr. Reuven Mohl, Urim Publications, 2019) but it can also be found in his Not in Heaven, pp. 178-9

¹⁵ sha’at hadkhak

¹⁶ I currently work with couples, even if I can’t officiate at the wedding due to distance, to prepare for their wedding day including pre-marital spiritual counseling and the designing of a custom tailored wedding ceremony using this as my template.

¹⁷ quickly in our day; בְּמַהֲרָה בְּיָמֵינוּ

¹⁸ Tehillim 90:17

What is an Aguna?

Susan Weiss explains it well, “A Jewish woman who seeks a divorce from her husband often pays for her freedom in order to persuade her husband to “exercise” his free will to give her a get. She may give up her right to child support, marital property, and even the custody of her children to release herself from the bonds of a recalcitrant spouse and a failed marriage. Under the worst of circumstances, such coercion may not resolve the woman’s situation and she will eventually grow old, embittered and repressed by halakhah. A woman thus handicapped by the system and her recalcitrant husband is called a mesorevet get (a woman denied a Jewish divorce), though the popular literature often refers to such a woman as an agunah.”¹⁹

What is Reciprocal Kiddushin - Kiddushin Hadadiyim?

Kiddushin Hadadiyim is a reconceptualization and adaptation of the mishnaic term kiddushin used to refer to an egalitarian Jewish wedding ceremony and its accompanying Ketubah. It offers an alternate system, in accordance with the laws of the Torah, which exemplifies a traditional talmudic partnership that befits the modern social reality of marriage and obviates iggun.

Kiddushin Hadadiyim: The mutual act of two people designating each other as partners for the sake of expressing love and holiness, and entering together into a marriage covenant.

I hope that, b’ezrat HaShem, my attempt to formulate this ceremony and ketubah template will effectively build on the work of those who have come before me. For the ceremony I have used, as a base, the talmudic partnership model first presented brilliantly by Rabbi Adler in her book *Engendering Judaism*. I borrowed much of the beautiful language used in Rabbi Amitai Adler’s *Brit Ahuvim*, but I have taken the Ketubah in a different direction. I am grateful to him for sharing his work with me.

I have provided an analysis of my research on page 14 for those who are interested in the exploratory process I went through. The ceremony below has both Hebrew and English and the Ketubah with English translation immediately follows the Hebrew version. If my attempt does nothing more than inspire someone to address this disturbing phenomenon in a more effective way, I will be happy.

¹⁹ Divorce: The Halakhic Perspective: Jewish Women’s Archive

Reciprocal Kiddushin Ceremony Template

(basic template - some parts can be personalized)

1. Introduction by officiant
2. Formal greeting of the couple

ברוכים הבאים, מי אדיר, מי בן שים

The officiant says: O most glorious and blessed One, Hashem, grant Your blessings to this bride _____ and this groom _____.

3. The officiant gives a short talk about chupa, love, tradition etc.

(Optional) If desired, the bride at this point circles around the groom (or both circle) seven times symbolizing completeness and perfection while the officiant sings Ana Bekhoah.²⁰

4. Hitkasherut/Mutual binding together

The officiant says:

הנה הכלה הזו, _____, והחתן הזה, _____, באו לפנינו כדי לקבוע אחד בשני כשותפים ייחודיים, כפי שלימדו חכמינו: "וקנה לך חבר כיצד מלמד שיקנה האדם חבר לעצמו שיאכל עמו וישתה עמו ויקרא עמו וישנה עמו וישן עמו ויגלה לו כל סתרו סתר תורה וסתר דרך ארץ"
(אבות דרבי נתן ח"ג')

לכן הם מציעים לקדש זה לזו וזו לזה, בברית נישואין.

Behold, this bride, _____, and this bridegroom, _____, have come before us to designate one another as unique partners, as our Sages taught: "Acquire for yourself a friend. What is this 'friend?'" With this language we are taught that a person should acquire a partner for themselves, with whom they shall eat and drink, with whom they shall read, with whom they shall teach, with whom they shall sleep, and to whom they shall reveal all their secrets: secrets of Torah and secrets of the mundane."

(Avot D'Rabbi Natan 8:3)

Therefore, they propose to sanctify each other in a covenant of marriage.

[*A cup of wine is poured and someone says Kiddush* - It is traditional to fulfill celebratory mitzvot over wine.]

²⁰ Circling is a beautiful Ashkenazi custom with kabbalistic interpretations. Ana Bakhoah is a kabbalistic prayer based on the 42-letter "Name".

After the bride and groom sip from the wine the officiant continues:

על מנת ליזום ולהוציא לפועל את קידושין הדדיים האלה, שניכם יכולים כעת להטיל את ערבונותיכם לתוך כיס זה, ויחד, תרימו את הכיס.

In order to initiate and set into motion these Reciprocal Kiddushin, you may both now place a pledge of property into this pouch,²¹ and together, raise the pouch.²²

The bride and groom place the rings, coins or Jewelry in the bag, raise it up together, and after a moment, set it back down. They then each place the ring on the finger of the other or exchange coins or jewelry and say to each other:

זוהי הערבות שלי לך/לך _____ אהובי/אהובתי

This is my pledge to you _____ my love

(Optional) If desired, the bridegroom and bride wrap themselves together into one tallit.²³ If the ceremony is during the day Lehitatef b'Tzitzit and Shehechyanu are generally recited while at night only Shehechyanu is recited - if they wish to exchange tallitot or other new gifts this is the time and Shehechyanu can be recited.

5. Ketubah

[The Ketubah is read aloud by someone in language of choice. The prevalent Sephardic custom is to read only the first and last few lines while the prevalent Ashkenazi custom is to read the entire Ketubah.]

Officiant then asks the couple:

האם רצונכם, שניכם, לקחת על עצמכם את התנאים המוזכרים בכתובה הזו כחווה הדדי בין שניכם ולהקים יחד משק בית בקרב ישראל לשם הבעת אהבה וקדושה בברית נישואין?

Is it the wish of both of you to take upon yourselves the terms mentioned in this Ketubah as a mutual contract between the two of you, and to establish together a household amongst Israel for the sake of expressing love and holiness in a marriage covenant?

They answer: yes

²¹ Talmud Bavli Ketubot 10:4; The reframing of this legal part of the ceremony to reflect the talmudic concept of partnership law (as opposed to property law) was first suggested by Rabbi Rachel Adler in chapter 5 of her book, Engendering Judaism, 1998.

²² Talmud Bavli Baba Batra 84b

²³ In this beautiful Sephardic custom the groom wears a newly purchased *Tallit* that is usually a gift from the bride or the bride's mother.

[The two witnesses (and the bride and groom if desired) sign the Ketubah. After the ketubah is signed, the witnesses hold up the signed ketubah up so that everyone can see it.]

(optional) Bride: Behold, this is your ketubah _____! זו הַכְּתוּבָה שְׁלִי! _____

Groom: Behold, this is your ketubah _____! זו הַכְּתוּבָה שְׁלִי! _____

6. Nissuin/Sheva Brachot

The officiant says: We will now bestow on ____ & _____ seven blessings. These seven beautiful blessings are recorded in the Talmud. They encompass a mixture of public and private joy and resonate with echoes of creation and Gan Eden- a longing for national redemption mingles with the redemptive power of personal love.

7. Breaking of the Glass²⁴/Mazal Tov

Reciprocal Kiddushin Ketubah Template

כְּתוּבָה עֲבוּר קִדּוּשִׁין הַדְּדִיִּים בֵּין _____ וְ _____
בְּסִימָן טוֹב, וּבְמִזֵּל טוֹב, בְּשַׁעַת בְּרָכָה וְהַצְלָחָה

These paragraphs are mandatory

בראשון בשבת _____ ימים לחדש _____ שנת חמשת אלפים ושבע מאות _____ לבריאת העולם למנין שאנו מונין פה ב _____, אנו עדים איך בפני קהל קדוש, באו החתן _____, והכלה _____ להתאחד ולהידבק זה לזו וזו לזה בברית נישואין, ומתוך כך לקיים בית נאמן בישראל. הכלה _____ והחתן _____ קדשו זו לזה וזה לזו בקידושין הדדיים, כלומר הם קבעו זה את זה כשותפים וכרתו יחד ברית נישואין. בפני עדים נאמנים וישרים, הוכיחו את הסכמתם לשותפות זו על ידי הטלת ערבונותיהם לתוך כיס אחד המבצע קנין הדדי על ידי שניהם בגין התחייבותם על מנת ליצור התחייבויות הדדיות ביניהם. בנוסף, הסכימו בפני עדים לחיובי ותנאי השותפות הזאת.

ואלה החיובים בהם הכלה _____, והחתן _____, בעלי ברית נישואין זו חייבו על עצמם:

²⁴ Interestingly, although this custom is almost universally practiced today it developed in the late middle ages in Franco-Germany.

החתן והכלה מקדישים את עצמם זה לזו וזו לזה, ולא יקחו עוד אחר על פני הזולת: לא בקישור לבבות, ולא בקרוב בשר.

החתן והכלה מקבלים על עצמם לשתף פעולה בקיום בית נאמן בישראל ומשפחה שלימה: כלומר, לשמור אחד על השני, בין על בריאות הגוף בין על בריאות הנשמה; לדאג כל אחד מדי יום ביומו לשמחת השני; לעזור אחד לשני, לרחם אחד על השני, ולפרנס אחד את השני לפי הצורך; ולזכור שניהם תמיד איזו מתנה ואיזו ברכה יש להם בנס אהבתם.

והחתן והכלה מקבלים על עצמם שאם יהיו להם ילדים, יגדלו אותם באהבה ובביטחון ובכבוד, בדרכי תורה והלכה על פי מסורת אבותינו ואמותינו, שיהיו יראי שמים, רודפי שלום, ואוהבי צדק וחסד, ויקיימו בהם דברי חכמינו: הַיּוֹ מִתְּלַמְּדֵיךָ שֶׁל אֶהְרֹן, אוֹהֵב שְׁלוֹם וְרוֹדֵף שְׁלוֹם, אוֹהֵב אֶת הַבְּרִיּוֹת וּמְקַרְבֵּן לַתּוֹרָה: (אבות א: יב)

The following beautiful paragraph is optional and can be adapted or replaced by personalized sentiments. It is taken from R Adlers' Brit Ahuvim.

והחתן והכלה מקבלים על עצמם לחיות ביחד כדרך עם ישראל: לעבוד את ה' אלהינו, ולעשות הישר בעיניו: לבנות ביתם כמקום חסד וצדקה, שלום ושמחה, אהבה ורעות, ועל כולם ללמוד וללמד בו, ויקיימו בהם דברי חכמינו: הַפֶּךָ בָּהּ וְהַפֶּךָ בָּהּ, דְּכֹלֵא בָּהּ. וּבָהּ תִּתְחַזֵּי, וְסִיב וּבְלָהּ בָּהּ, וּמִנֵּה לֹא תִזְוַע, שְׂאִין לָךְ מִדָּה טוֹבָה הִמְנָה: (אבות ה: כב)

These final paragraphs are mandatory

הכלה _____, והחתן _____ מצהירים את התנאים האלה:

קידושין אלה הן קידושין הדדיים, חוזה דו צדדי בין הכלה לחתן לשם הבעת אהבה וקדושה כברית נישואין. במקרה, ח"ו, וירצו או יצטרכו החתן והכלה לבטל שותפות זו, היא תבוטל באחת מהדרכים הבאות:

א) על ידי הסכמה בין שניהם בשטר ובחתימת ידיהם, בפני בית דין צדק המסכים לפסוק לפי חוזה נישואין זה; או על ידי הצהרת רצונו של אחד מהם, בשטר ובחתימת ידו/ידיה בפני בית דין צדק המסכים לפסוק לפי חוזה נישואין זה.

ב) אם בית דין צדק המסכים לפסוק לפי חוזה נישואין זה אינו זמין בקלות, שותפות זו תבוטל על ידי הסכמה בין שניהם בשטר ובחתימת ידיהם וידי שני עדים יהודים בין נשים בין גברים; או על ידי הצהרת רצונו של אחד מהם, בשטר ובחתימת ידו/ידיה וידי שני עדים יהודים בין נשים בין גברים.

בכל המקרים הללו זה יהווה את גט כריתות, וקידושין הדדיים האלה ייחשבו כעקורים ומבוטלים מבחינה הלכתית.

ולהעיד על כל הנ"ל, הכלה _____, והחתן _____, ועדי שטר זה, מחברים את חתימתם. ויהי רצון מלפני הבורא יתברך, שיקוים בבעלי ברית נישואין זו מה שכתוב בכתבי קודשנו: שְׂמִינֵי כְּחוֹתֶם עַל-לִבְךָ, כְּחוֹתֶם עַל-זְרוּעֶךָ--כִּי-עֲזָה כְּמֹת אֶהְבֶּה, קִשָּׁה כְּשֹׂאֵל קִנְיָה: רְשָׁפֶיהָ--רְשָׁפֵי, אִשׁ שְׁלֵהּ בְּתִיָּה. (שיר השירים ח: ו-ז) והכל שריר וקיים.

_____ (החתן) _____ (הכלה) _____

עדים :

Ketubah W/English Translation

These paragraphs are mandatory

בראשון בשבת _____ ימים לחדש _____ שנת חמשת אלפים ושבע מאות
ו_____ לבריאת העולם למנין שאנו מונין פה ב _____, _____, אנו עדים איך בפני
קהל קדוש, באו החתן _____, והכלה _____ להתאחד ולהידבק זה לזו
וזו לזה בברית נישואין, ומתוך כך לקיים בית נאמן בישראל. הכלה _____
והחתן _____ קדשו זו לזה וזה לזו בקידושין הדדיים, כלומר הם קבעו זה את זה
כשותפים וכתנו יחד ברית נישואין. בפני עדים נאמנים וישרים, הוכיחו את הסכמתם
לשותפות זו על ידי הטלת ערבונותיהם לתוך כיס אחד המבצע קנין הדדי על ידי שניהם בגין
התחייבותם על מנת ליצור התחייבויות הדדיות ביניהם. בנוסף, הסכימו בפני עדים לחיובי
ותנאי השותפות הזאת.

On the first day of the week, the twenty-first day of the month of _____ in the year five
thousand seven hundred and _____ since the creation of the world, according to the
date which we reckon here in (city) _____, (state/country) _____ we hereby testify that
in front of faithful and righteous witnesses, and in front of a holy community, the groom
_____ and the bride _____ came to unite together and to cling to
each other in a covenant of marriage and together to establish a steadfast Jewish home.
The bride _____ and the groom _____ mutually sanctified each other
in reciprocal kiddushin, meaning they designated each other as partners and entered
together into a marriage covenant. They signified their consent to the partnership by the
raising up of their guarantees in a small pouch effecting a mutual kinyan by both of them
in respect of their own undertaking in order to create mutual obligations between them.
In addition, they agreed before witnesses on the terms and conditions of this
partnership.

ואלה החיובים בהם הכלה _____, והחתן _____, בעלי
ברית נישואין זו חייבו על עצמם :

And these are the obligations that the bride _____, and the groom
_____, the holders of this marriage covenant have taken upon themselves:

החתן והכלה מקדישים את עצמם זה לזו וזו לזה, ולא יקחו עוד אחר על פני הזולת: לא
בקישור לבבות, ולא בקרוב בשר.

The bride and groom sanctify themselves, each one to the other, and will not take another lover either emotionally nor physically.

החתן והכלה מקבלים על עצמם לשתף פעולה בקיום בית נאמן בישראל ומשפחה שלימה: כלומר, לשמור אחד על השני, בין על בריאות הגוף בין על בריאות הנשמה; לדאג כל אחד מדי יום ביומו לשמחת השני; לעזור אחד לשני, לרחם אחד על השני, ולפרנס אחד את השני לפי הצורך; ולזכור שניהם תמיד איזו מתנה ואיזו ברכה יש להם בנס אהבתם.

The bride and groom obligate themselves to cooperate in establishing a steadfast Jewish home and family: that is, to safeguard one another, both in health of body and in health of soul; to mutually care for each other and ensure each other's happiness; to help one another, to have compassion for one another and to support each other financially as needed; and to both always remember what a gift and what a blessing they have in the miracle of their love.

והחתן והכלה מקבלים על עצמם שאם יהיו להם ילדים, יגדלו אותם באהבה ובביטחון ובכבוד, בדרכי תורה והלכה על פי מסורת אבותינו ואמותינו, שיהיו יראי שמים, רודפי שלום, ואוהבי צדק וחסד, ויקיימו בהם דברי חכמינו: הָיוּ מְתַלְמֵדֵי שֶׁל אֶהֱרֹן, אוֹהֵב שְׁלוֹם וְרוֹדֵף שְׁלוֹם, אוֹהֵב אֶת הַבְּרִיּוֹת וּמְקַרְבֵּן לַתּוֹרָה: (אבות א: יב)

The bride and groom receive upon themselves that, if they will have children, they will raise them with love and security and honor in the ways of the Torah so that they will be *yirei shomaim*, peace-seekers, and lovers of justice and kindness, as keeping with the words of our sages: Be of the disciples of Aaron, loving peace and pursuing peace, loving humankind and drawing them close to the Torah.

The following beautiful paragraph is optional and can be adapted or replaced by personalized sentiments. It is taken from R Adlers' Brit Ahuvim.

והחתן והכלה מקבלים על עצמם לחיות ביחד כדרך עם ישראל: לעבוד את ה' אלהינו, ולעשות הישר בעיניו: לבנות ביתם כמקום חסד וצדקה, שלום ושמחה, אהבה ורעות, ועל כולם ללמוד וללמד בו, ויקיימו בהם דברי חכמינו: הִפְדָּךְ בָּהּ וְהִפְדָּךְ בָּהּ, דְּכִלְאֵי בָהּ. וּבָהּ תִּתְחַזֵּי, וְסִיב וּבְלָהּ בָּהּ, וּמִנָּה לֹא תִזוּעַ, שְׂאִין לָךְ מִדָּה טוֹבָה הֵימָנָה: (אבות ה: כב)

The bride and groom receive upon themselves to live together in the manner of Israel: To be involved in *avodat HaShem* and to act in accordance to what is upright in His eyes: To cause their home to be a place of grace and charity, peace and happiness, love and partnership, and for everyone to study and teach within it, as keeping with the words of our sages: Turn it over, and [again] turn it over, for all is therein. And look into it; And become gray and old therein; And do not move away from it, for you have no better portion than it (Pirkei Avot 5:22).

These final paragraphs are mandatory

הכלה _____, והחתן _____ מצהירים את התנאים האלה:

The bride, _____ and the groom _____ declare these terms:

קידושין אלה הן קידושין הדדיים, חוזה דו צדדי בין הכלה לחתן לשם הבעת אהבה וקדושה כברית נישואין. במקרה, ח"ו, וירצו או יצטרכו החתן והכלה לבטל שותפות זו, היא תבוטל באחת מהדרכים הבאות:

א) על ידי הסכמה בין שניהם בשטר ובחתימת ידיהם, בפני בית דין צדק המסכים לפסוק לפי חוזה נישואין זה; או על ידי הצהרת רצונו של אחד מהם, בשטר ובחתימת ידו/ידיה בפני בית דין צדק המסכים לפסוק לפי חוזה נישואין זה.
ב) אם בית דין צדק המסכים לפסוק לפי חוזה נישואין זה אינו זמין בקלות, שותפות זו תבוטל על ידי הסכמה בין שניהם בשטר ובחתימת ידיהם וידי שני עדים יהודים בין נשים בין גברים; או על ידי הצהרת רצונו של אחד מהם, בשטר ובחתימת ידו/ידיה וידי שני עדים יהודים בין נשים בין גברים.

These kiddushin are reciprocal kiddushin, a bilateral contract between the bride and the groom for the sake of expressing love and holiness as a marriage covenant. In the event, *chas ve shalom*, that the bride and groom wish or need to cancel this partnership,²⁵ it will be canceled in one of the following ways:²⁶

- a) By agreement between the two of them with a bill of agreement signed by both of them before a righteous *Beth Din* which agrees to adjudicate according to this marriage contract; or by declaring the will of one of them,²⁷ in a bill signed by him/her before a righteous *Beth Din* which agrees to adjudicate according to this marriage contract.²⁸
- b) If a righteous *Beth Din* which agrees to adjudicate according to this marriage contract is not easily available, this partnership will be canceled by agreement between the two of them with a bill of agreement signed by both of them and by two Jewish witnesses of any gender; or by declaring the will of one of them, in a bill signed by him/her and by two Jewish witnesses of any gender.

²⁵ The presumption concerning a modern Jewish marriage is that both parties intend to love and respect each other and to maintain the partnership for life. If however the expectations with which one entered into the marriage contract, including but not restricted to the criteria delineated in this Ketubah, are not met to an intolerable degree, one's partner changes or reveals themselves to be in essence a different person than the person they chose to marry, or a loss of respect ensues on either or both sides causing the partnership/marriage to be unsustainable canceling the partnership is necessitated.

²⁶ Talmud Bavli Baba Metzia 31b:15-32a

²⁷ Kiddushin Hadadiyim are based on talmudic partnership law where either party has the power to dissolve the partnership. Especially when children are involved, a healthy post divorce relationship supports the principles of *shalom bayit* much more than a hostile home environment forced on one of the partners.

²⁸ Because property division, spousal maintenance, child custody and child support are a part of the modern civil dissolution process in the United States they fall under the doctrine of *דינא דמלכותא דינא*, "the law of the land is the law" and it is not necessary to address them in the Ketubah.

בכל המקרים הללו זה יהווה את גט כריתות, וקידושין הדדיים האלה ייחשבו כעקורים ומבוטלים מבחינה הלכתית.

In all cases this will form and constitute the Gett Kritut and these reciprocal Kiddushin will be considered uprooted and halakhically revoked.

ולהעיד על כל הנ"ל, הכלה _____, והחתן _____, ועדי שטר זה, מחברים את חתימתם. ויהי רצון מלפני הבורא יתברך, שיקוים בבעלי ברית נישואין זו מה שכתוב בכתבי קודשינו: שִׁמְנֵי כַּחֲתָם עַל-לֶבָד, כַּחֲתָם עַל-זְרוּעָד--כִּי-עֲזָה כַּמֵּוֹת אֶהְבֶּה, קֶשֶׁה כְּשֶׂאֹל קִנְיָה: רְשָׁפֶיהָ--רֶשֶׁפִי, אֵשׁ שֶׁלֶהֲבַתָּהּ. (שיר השירים ח:ו-ז) והכל שריר וקיים.

And as attestation of all that is written above, the bride, _____ and the groom _____ and the witnesses of this contract hereby affix their signatures. And may it be before the Blessed Creator, that the owners of this covenant of marriage will fulfill that which is written in our holy writings: Let me be a seal upon your heart, Like the seal upon your hand. For love is fierce as death, Passion is mighty as Sheol; Its darts are darts of fire, A blazing flame: Vast floods cannot quench love, Nor rivers drown it (Shir Hashirim 8:6-7.) And thus all is in order and in force.

Research Analysis

What follows are some of my findings. This is not meant to be an exhaustive investigation of all the sources nor a scholarly paper as I am not a scholar.²⁹ I am a truth seeker however. I learned enough in my research to convince me that the marriage and divorce system set up by the rabbis was based on an agenda that incorporated sociological and cultural mores. Additionally, though it has been firmly entrenched in halakhah since talmudic times, it lacks the direct connection to the Torah that is required, especially in this sha'at hadkhak to continue to make the rabbinic wedding formula binding for today's Jewish weddings.³⁰

D'oraita or D'rabbanan?

When I began to research the Jewish institution of marriage and divorce, the first task I set for myself was to determine which, if any, parts of the traditional Jewish wedding ceremony may be considered d'oraita. To my surprise, my conclusion was none.³¹ In biblical antiquity it appears that Jewish marriage and divorce did not have any mandatory set criteria. Generally it seems a couple was considered married when they started living together. Perhaps there would be a family or public celebration and often gifts would be given to the bride, or the father of the bride by the prospective groom. Marriage was a social institution, not a legal institution. I did not find any references to marriage in the Torah or even Nach that parallel or even truly hint, in my opinion, to a biblical origin of the rabbinic system.

Some Relevant History

Archaeological evidence shows the use of wedding contracts in the region during the last few centuries BCE. According to findings of the Israel Exploration Society, in comparing different ethnic wedding contracts from the first few centuries BCE, usually the "value of the dowry was given in marriage documents in order to provide for its return in the event of divorce or death." The contracts were agreements between families and noted which customs were to be followed. Referring to the Edomite clay document from 157 BCE found

²⁹ My footnotes are meant to help the less knowledgeable reader and to quote sources as needed. I have not included a bibliography as this is simply a summary of my findings.

³⁰ A difficult circumstance that calls for lenient ruling.

³¹ How to get past the issue of safek d'oraita lehumra I leave to the halakhists.

in Maresha, which was written in Aramaic with a few Greek words thrown in, we find the following:³²

“The exact signification of the word *nomos* in the Maresha document is unclear. It may have meant either law or custom, but 'custom' seems the more probable. The reconstruction [Greek words] seems the most likely among the suggestions brought above (to be compared with [more Greek words] in the Antinoopolis ketubba), and would constitute a reference to the custom which will govern the marriage terms. The use of the term *nomos* in the Edomite marriage contract from Maresha, as well as the term 'Greek custom' in a Greek contract discovered in the Cave of Letters, seem to indicate that the phrase 'ke dat moshe veyehuda' is not the product of internal Jewish development, but that similar phrases existed for the non-Jewish communities of Palestine in the Second Temple period.”³³ adding, “ The resemblance between the marriage contracts found in Israel (the Maresha document and the Jewish ketubbot discovered in the Judaeian Desert) and the Demotic ones found in Egypt indicates that different ethnic groups that inhabited Palestine and Egypt were influenced by the Aramaic common law.”³⁴

We can see from this the influence that Aramaic common law had on the inhabitants of the region during the Hellenistic period. This is relevant as the content of the Mishnah was an ongoing process which began well before R. Yehuda redacted it in the second century CE.

Also of interest are the Aramaic Papyri from Elephantine, in which we see a common text on how the marriage was affected.³⁵ We also see that either party had the right to divorce! Specifics of a bride price and conditions concerning divorce were written in the wedding contracts. Concerning the contract of the second marriage of Mibtachiah, one of the Jews of Elephantine and Assuan in 440 BCE according to Hayyim Schauss in 'The Lifetime of a Jew throughout the Ages of Jewish History' we read:³⁶

³² In the excavation held at the Hellenistic city of Maresha, in the Shephelah, seven inscribed pottery sherds were discovered in one of the subterranean cavities (underground system No. 84, Locus 30) in the summer of 1993. Maresha was the capital of Idumea during the Second Temple period. These sherds were found in a fill containing sherds dated to the Persian and Hellenistic periods.

³³ See 31. A.S. Hunt and C.C. Edgar: *Select Papyri I: Private Affairs*, London ? New York, 1932, pp. 2-5.

³⁴ An Aramaic Ostrakon of an Edomite Marriage Contract from Maresha, Dated 176 B.C.E.

Author(s): Esther Eshel and Amos Kloner. Source: *Israel Exploration Journal* , 1996, Vol. 46, No. 1/2 (1996), pp. 1-22

³⁵ <http://www.attalus.org/egypt/mibtachiah.html>

³⁶ Union of American Hebrew Congregations, 1950, page 139; Taken from the Hanukkah supplement of *L'havin et hatefilla*.

“Most of the business documents which were unearthed in Elephantine and Assuan belonged to the family of a well-to-do Jewish soldier named Machseiah, the son of Yedaniah. In the documents, his daughter, Mibtachiah, married and received a valuable piece of property as dowry from her father³⁷. Her first husband died and she remarried, this time a non-Jew, an Egyptian by the name of As-Hor, who was called "the architect of the king." In the documents of his sons, As-Hor bears the Jewish name Nathan. Apparently he became a proselyte to the Jewish faith, and his sons bore Jewish names.

We are concerned with the marriage contract of Mibtachiah and As-Hor. It began with a declaration of marriage by AsHor to Mibtachiah's father. **"I came to thy house for thee to give me thy daughter, Mibtachiah, to wife; she is my wife and I am her husband from this day and forever"** (see p. 130). Following this declaration of betrothal, all terms of the marriage contract were written in detail. **As-Hor paid Machseiah, the father, five shekels, Persian standard, as a mohar for his daughter. Besides, Mibtachiah received a gift of 651/2 shekels from As-Hor.** From this we gather that the mohar which fathers received for their daughters was then merely a nominal payment, the formality of a lingering custom of olden times... **She had her own property which she could bequeath as she pleased, and she had the right to pronounce a sentence of divorce against As-Hor, even as he had the right to pronounce it against her.** All she had to do was to appear before the court of the community and declare that she had developed an aversion to As-Hor. We do not know to what degree the equality of rights enjoyed by Jewish women of Elephantine was due to Jewish or to Persian-Babylonian law... At the conclusion of Mibtachiah's marriage contract, the name of the scribe appeared. He was Nathan, the son of Ananiah, who had written the deed at the dictation of As-Hor. The names of three witnesses appeared on this remarkable document, which was written about the time Nehemiah was rebuilding the walls of Jerusalem.”

In the contract of the third marriage of Mibtachiah, in 440 BCE we read,

“On the 2[5]th of Tishri, that is the 6th day of the month Epiphi, [year . . . of] Kin[g Artaxerx]es, said Ashor son of [Seho], builder to the king, to Mah[seiah, A]ramean of Syene, of the detachment of Varizata, as follows: **"I have [co]me to your house that you might give me your daughter Mipht(ah)iah in marriage. She is my wife and I am her husband from this day for ever.** I have given you as the bride-price of your daughter Miphtahiah (a sum of) 5 shekels, royal weight. It has been received by you and your heart is content therewith."

21 If at some future date Ananiah should arise in an/the assembly and declare, "I divorce my wife Yehoyishma'; 22 she shall not be a wife to me," he shall become liable

³⁷ in 459 BCE

for divorce money. He shall forfeit her bride price, he must surrender to her all that she brought into his house. Her dowry of cash 23 and clothing, worth karsh seven, sh[ekels eight, and hallurs 5] of silver, and the rest of the goods listed (above) 24a-b he must hand over to her on one day and in a single act, and she may [leave him for where]ver [she will]....
24c **If, on the other hand, Yehoyishma' should divorce her husband 25 Ananiah and say to him, "I divorce you, I will not be wife to you," she shall become liable for divorce money.** 26 She shall sit by the scales and weigh out to her husband Ananiah 7 shekels and 2 R and shall leave him with the balance of her 27 cash, goods, and pos[sessions, worth karsh 7; shekels 5+]3, and hallurs 5; and the rest of her goods, 28 which are listed (above), he shall hand over to her on one day and in a single act, and she shall depart for her father's house."

In the marriage contract of an emancipated former slave girl in 420 BCE we see the same wording concerning how the marriage was affected:

"On (the first day of) the month of Tishri, that is Epiphi, the year 4 of King Darius, in the fortress Elephantine, said Ananiah son of Haggai, 2 an Aramean of the fortress Elephantine, [of] the detachment of [Iddin]-Nabu, to Zakkur son of Me[shullam, an Arame]an of Syene, of the same detachment, as follows: 3 **I have come to your [hous]e and asked you for your sister the woman Yehoyishma' (as she is called) in marriage, and you have given her 4 to me. She is my wife and I am [her] husband from this day to eternity. I have paid to you as the bride price of your sister Yehoyishma' 5 1 karsh of silver; you have received it [and have been satisfied therewi]th.** Your sister Yehoyishma' has brought into my house a cash sum 6a of two karsh, (two) 2 shekels, and 5 hallurs of silver, . . . 21 **If at some future date Ananiah should arise in an/the assembly and declare, "I divorce my wife Yehoyishma'; 22 she shall not be a wife to me," he shall become liable for divorce money.** He shall forfeit her bride price, he must surrender to her all that she brought into his house. Her dowry of cash 23 and clothing, worth karsh seven, sh[ekels eight, and hallurs 5] of silver, and the rest of the goods listed (above) 24a-b he must hand over to her on one day and in a single act, and she may [leave him for where]ver [she will].... 24c **If, on the other hand, Yehoyishma' should divorce her husband 25 Ananiah and say to him, "I divorce you, I will not be wife to you," she shall become liable for divorce money.** 26 She shall sit by the scales and weigh out to her husband Ananiah 7 shekels and 2 R and shall leave him with the balance of her 27 cash, goods, and pos[sessions, worth karsh 7; shekels 5+]3, and hallurs 5; and the rest of her goods, 28 which are listed (above), he shall hand over to her on one day and in a single act, and she shall depart for her father's house... 33 **However, Yeh[oyishma'] is not permitted [to] acquire a husband other [than] Anani. Should she do so, 34 that shall constitute a divorce, and [the provisions for divorcement] shall be applied to [her]... And [Anani] likewise [may] no[t ta]ke any woman [other than his wife**

Yehoyishma'] 37 in marriage. Should he do [so, that shall constitute a divorce, and the provisions for di]vorcement [shall be applied to him].”

Though the Jews of Assuan had different customs than those who returned to Israel under the Cyrus declaration, it is clear from these contracts that at least in Assuan there was no unilateral “acquisition” of the woman akin to the rabbinic system.³⁸ Marriage was a negotiated partnership involving a statement of intention by the groom and an agreement on conditions and payment of a bridal price which was actually paid, unlike in the talmudic model where the “ketubah money” is held as an outstanding debt. And there was a shared right to grant a divorce! Is it not unconscionable that a Jewish woman 2500 years ago had more rights than Jewish women today?

The Rabbis

The Rabbis, faced with building Jewish society, wanted to create standards of all kinds for their communities.³⁹ They set up intricate legal systems including one for Jewish wedding and divorce laws. They were concerned about preventing adultery and therefore their system needed to include the specifics of what determined a woman’s status as married or single. This status of a woman is discussed and argued all over the Talmud. Under this new system, women who were “acquired” through the enactment of a legal formula with two witnesses observing, were considered married according to halakhah.⁴⁰

Kiddushin, Erusin, Kinyan, and Nisuin

The rabbinic marriage ceremony is comprised of two parts: *erusin*, also referred to as *kiddushin*, and *nisuin*, today commonly referred to as *sheva brakhot*.⁴¹ *Erusin* is accomplished through the act of *Kinyan*, a talmudic term for legal acquisition, and is achieved by the man stating the words, “behold, you are mekudeshet to me” accompanied by the giving and receiving of something of value, usually a ring, coin or piece of jewelry.⁴²

³⁸ “They had autonomy, their own religious community, their own Jewish court, and a temple in which sacrifices were offered to the God of Israel.” From ‘The Lifetime of a Jew throughout the Ages of Jewish History’, by Hayyim Schauss; Union of American Hebrew Congregations, 1950, page 139

³⁹ Referring to the Sages of the mishnaic and talmudic periods.

⁴⁰ This is referred to in the Gemara as *Kinyan*. *Kinyan* is a legal term meaning property or acquisition. An act of *kinyan* is a formal procedure to render an agreement legally binding. It does not in of itself however require that the act of *kinyan* is unilateral and it is used in other contexts in a mutual agreement to reflect mutual contractual responsibility.

⁴¹ *Erusin* is generally translated as betrothed; Some equate *Erusin* with *mohar* since it was money, or value given or paid. *Nisuin* is translated as the actual marriage; consisting of *sheva brakhot*.

⁴² According to Rambam this is derived from the Torah; MT *Hilkhot Ishut* 1:1

Kinyan comes from the root ק-נ-ה and the ring, coin or jewelry is the money the bride is being 'acquired' with.⁴³ Many people argue whether *Kinyan*, in this case, denotes ownership or something less distasteful, but in the end it doesn't really matter as it is obvious from the many discussions in the Talmud that a woman's autonomy was severely limited by this unilateral contractual transaction.⁴⁴ Since the transaction was unilateral it could only be severed unilaterally by a man coming before a beth din and agreeing to issue what they termed a *gett*.⁴⁵

Though the word *Kiddushin* sounds much like *kedusha*, the Rabbis created the Aramaic-Hebrew styled term specifically for weddings, deriving its meaning from the Hebrew *hekdesh* הקדש.⁴⁶ The root of the then new word is k-d-s/ קדש which holds special meaning for Jews. In addition to *kedusha* קדושה, There are many other meaningful words derived from this root. To name a few: *kiddush*⁴⁷ קידוש; *kaddish*⁴⁸ קדיש;; and *mikdash*⁴⁹ מקדש. This root appears all over the Torah, often referring to the sanctity of HaShem.

I have read many articles connoting *kiddushin* with *kedusha*, which is a beautiful concept, but one that is simply not compatible with the realities of the concept of *kiddushin* as it was designed by the Rabbis and continues today.⁵⁰ Interestingly, Prof. Michael Satlow suggests that, "the real origin of the term *kiddushin* is to be found in Greek. The process of "handing over" the bride to the groom in Greek marriages is called *ekdosis* ("giving away").⁵¹ Others, such as Professor Shamma Friedman from the Academy of the Hebrew Language, suggest that the etymology of 'kiddushin' might be traced back through the Hebrew word *kedeishah* (ritual prostitute) from the Akkadian term *qadistu* (woman of special status). This actually fits with the 'to be set aside/forbidden' meaning the Rabbis derived from *hekdesh*.

The rabbinic system appears to me to be completely man made, heavily influenced by the surrounding cultures as well as the Rabbis' social, political and economic agendas, including their time-conditioned perspectives on the nature of women and marriage.⁵² The

⁴³ "to purchase, acquire via money/value; obtain; capture"

⁴⁴ As we see throughout the Talmud's discussions concerning women.

⁴⁵ Today both the Conservative and Orthodox movements require *gett* in order to dissolve a marriage.

⁴⁶ *Kiddushin* 2b2: And what is the reason that betrothal is called *kiddushin*, literally, consecration, in the language of the Sages?

⁴⁷ blessing over Shabbat/Chag wine

⁴⁸ Aramaic prayers of praise/ mourners prayer (12th/13th century on)

⁴⁹ Temple

⁵⁰ According to the Tosafists, on *Kiddushin* 2b, the plain meaning of *kiddushin* relates to *kiddush* in the sense of "designating" or "preparing" something - as in *Shemot* 19:10, *Bamidbar* 11:18.

⁵¹ Michael Satlow, *Jewish Marriage in Antiquity* (Princeton: Princeton University Press, 2001), 76-77.

⁵² Even the terms were made up: *Erusin*, *Nisuin*, *Kinyan*, *Gett*: none of these appear in Torah.

traditional view is that rabbinic marriage combines two stages of biblical marriage which were performed at different times.⁵³ It is unclear to me whether this was always or ever the case. If it was the case I would view it as a social cultural practice, with no bearing on today's marriage, that reflected the realities that most women married young and extended families lived together. When reading or discussing these issues it is important to understand that from the perspective of the Rabbis world view, the notion of women needing, or even desiring, personal and economic autonomy or fulfillment outside the role of service to a husband did not exist. See for instance these discussions in the Talmud Bavli.

<p>The Gemara answers: There is a difference between a man and a woman in this regard, for it is amenable to her to be with any man, flawed though he may be, as taught by Reish Lakish: As Reish Lakish said that women say: It is better to dwell together as two [tan du] than to dwell alone as if a widow. Women will prefer any marriage to remaining single. Similarly, Abaye said that women say: One whose husband is small as an ant, nevertheless places her seat among the noblewomen, as she considers herself important by virtue of the mere fact that she is married. (Koren-Steinsaltz)</p>	<p>איהי בכל דהו ניהא לה, כדריש לקיש. דאמר ריש לקיש: "טב למיתב טן דו מלמיתב ארמלו", אביי אמר: דשומשמןא גברא כורסניה ביי חראתא רמי לה.</p> <p>Talmud Bavli Ketubot 75a</p> <p>See also TB Yevamot 118b:16 Reish Lakish said: There is a popular idiom among women: It is better to sit as two [tan du] than to sit lonely as a widow, i.e., a woman prefers the companionship of any husband over being alone. See also TB Bava Kama 111a</p>
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Many talmudic discussions and rulings reflect the general theme that women, like slaves and minors, are inferior to adult men. Among other things, it was believed that women lack the capacity to think and act responsibly and are easily swayed by others. The ruling that forbids "killer wives" to remarry, or that women cannot drink wine unless they are with their husbands (and only then a small amount) lest they be led to sexual licentiousness are two of the more "humorous" ones.⁵⁴ Others are disturbing, like the story of the 'turned over table' where we see that a husband has the halakhic right to have relations with his wife in

⁵³ In the first stage the woman, though married, still lived in her father's house. In the second stage she went to live with her husband (This is apparently backed by Friedman in his "Jewish Marriage in Palestine" I have only read Moshe Gil's review in The Jewish Quarterly Review, New Series, Vol. 76, No. 2 (Oct., 1985), pp. 149-151 Published by: University of Pennsylvania Press). For instance, according to Rambam in Mishneh Torah Hilkhot Ishut 1:1 after Har Sinai the Torah instructed men to first "acquire a woman" then marry her later. He states that this is alluded to in Devarim 22:13

⁵⁴ In Talmud Bavli Tractate Yevamot 64B; a 'killer' or 'fatal wife' is defined as a woman who has lost two husbands. No such ruling applies to men who have lost two wives. For the "humorous" ones see the baraita in Ketubot 65a

any way he likes even against her wishes.⁵⁵ There are also outrageous passages that blame women for the faults of men, as in the discussion of the Tosefta concerning the reasons for the destruction of the first temple.⁵⁶

Unfortunately, in many Jewish religious societies today women are still routinely blamed for catastrophes as well as asked to take the blame for mens' transgressions. This happens when texts such as these are read with either conscious or unconscious biases, without taking into account the "Seat in Life" and without an understanding of how to apply Talmud and Torah to the real world and real people.⁵⁷ One can't really understand how and why the Rabbis and the latter authorities ruled unless they know the social, economic, and political factors of influence. When attempting to understand how the the issue of *iggun* could have been allowed to reach such an inhumane level it is important to take into consideration not only the cultural context of the mishnaic/talmudic understanding of women, marriage and divorce, but that of the latter authorities, who, as we will see, eventually made things worse.⁵⁸

Having been taught that the marriage and divorce ceremonies are Torah-based and therefore cannot be modernized, I found it rather shocking that the mishnaic-talmudic textual conversation does not seem to be actually sourced from the Torah. This includes the rabbinic concept of a man unilaterally acquiring a woman through the act of *Kinyan* as well as her having no divorce recourse. This despite, as we will see, the attempts of the Rabbis and latter authorities to permanently link the system to the Torah as an obligation.⁵⁹

Mishnaic Terms for Marriage

Nikneyt

In the first mishnah in Mishnah Kiddushin it is stated:

⁵⁵ Talmud Bavli Nedarim 20b

⁵⁶ Talmud Bavli Yoma 9b: 3-6; "They would stamp their feet on the ground and splash the perfume toward them and instill the evil inclination into them like venom of a viper [ke'eres bikhos]."

⁵⁷ From the German "Sitz im Leben"; referring to determining the context in which a text was written including when and where along with its function and purpose/inferred intent by the author in line with the understandings and mindset of the day. Unfortunately, most yeshivas focus on 'scholarly' study of Gemara and do not teach how to actually apply what is learned to the real world. The result is that young men are desensitized to the effects halakhah has on women, often quoting these outdated passages about 'women's nature' as if they are God given truths.

⁵⁸ *Iggun*: The state of being an agunah.

⁵⁹ According to Rambam in Mishneh Torah Hilkhhot Ishut 1:1 after Har Sinai the Torah instructed men to first "acquire a woman" then marry her later. He states that this is alluded to in Devarim 22:13

A woman is acquired by, i.e., becomes betrothed to, a man to be his wife **in three ways, and she acquires herself**, i.e., she terminates her marriage, **in two ways**. The mishna elaborates: **She is acquired through money, through a document, and through sexual intercourse**. With regard to a betrothal **through money**, there is a dispute between *tanna'im*: **Beit Shammai say** that she can be acquired **with one dinar or with** anything that is **worth one dinar**. **And Beit Hillel say:** She can be acquired **with one peruta**⁶⁰, a small copper coin, **or with** anything that is **worth one peruta**. The mishna further clarifies: **And how much is** the value of **one peruta**, by the fixed value of silver? The mishna explains that it is **one-eighth of the Italian issar**, which is a small silver coin. **And a woman acquires herself through a bill of divorce**⁶¹ **or through the death of the husband**. **A woman whose husband, who had a brother, died childless [yevama], can be acquired** by the deceased husband's brother, the *yavam*, only **through intercourse**. **And she acquires herself**, i.e., she is released from her levirate bond, **through halitza or through the death of the yavam**. (Koren-Steinsaltz)

האשה נקנית בשלש דרכים, וקונה את עצמה בשתי דרכים. נקנית בכסף, בשטר, ובביאה. בכסף, בית שמאי אומרים, כדינר ובשנה דינר. ובית הלל אומרים, בפרוטה ובשנה פרוטה. וכמה היא פרוטה, אחד משמנה באסר האיטלקי. וקונה את עצמה בגט ובמיתת הבעל. היבמה נקנית בביאה. וקונה את עצמה בחליצה ובמיתת היבם:

Mishnah Kiddushin 1:1

This mishnah is pretty straightforward concerning how a woman is “acquired”. To be considered “acquired” a woman is obtained by either a payment of money, through a document or by sexual intercourse.⁶² The mishnah then goes on to discuss how to “acquire” a slave, a maidservant, a Canaanite slave, a large domesticated animal, property that serves as a guarantee, and movable property. The verb used throughout all these verses is ק-נ-ה with the recurring theme of ways to “acquire”: money, document, taking possession. It then goes on to discuss transactions involving barter before introducing the infamous ‘positive, time-bound mitzvot’ ruling which, as many have shown, is problematic in its random application.⁶³

Mekadesh

In the next mishnah of Mishnah Kiddushin the word *mekadesh* is introduced as an active act of a man ‘sanctifying’ a woman with a discussion ensuing about ways in which this action can be considered authentic and if a woman is considered ‘mekudeshet to a man’ under certain conditions.

⁶⁰ About 8 cents
⁶¹ This is the first time the word is seen
⁶² One might conclude by these options that all three were customary ways to achieve a ‘married state’ prior to the time the mishnayot were gathered.
⁶³ מצנות עשה שהזמן גרמה

<p>A man can mekadesh a woman by himself or by means of his agent. Similarly, a woman mitkadeshet by herself or by means of her agent. A man can mekadesh his daughter to a man when she is a young woman, either by himself or by means of his agent. In the case of one who says to a woman: hitkadshi to me with this date, and adds: hitkadshi to me with that one, then if one of the dates is worth one peruta she is mekudeshet, but if not, she is not mekudeshet. With this one, and with this one, and with this one, even if all of them together are worth one peruta she is mekudeshet, but if not, she is not mekudeshet. If she was eating them one by one as she received them, she is not mekudeshet unless one of them is worth one peruta.</p>	<p>הָאִישׁ מְקַדֵּשׁ בּוֹ וּבְשָׁלוּחוֹ. הָאִשָּׁה מִתְקַדְּשֶׁת בָּהּ וּבְשָׁלוּחָהּ. הָאִישׁ מְקַדֵּשׁ אֶת בִּתּוֹ כְּשֶׁהִיא נְעִרָה, בּוֹ וּבְשָׁלוּחוֹ. הָאוֹמֵר לְאִשָּׁה, הִתְקַדְּשִׁי לִי בְתַמְרָה זֹה, הִתְקַדְּשִׁי לִי בְזֵה, אִם יֵשׁ בְּאַחַת מֵהֶן שָׁנָה פְרוּטָה, מְקַדְּשֶׁת. וְאִם לֹא, אֵינָהּ מְקַדְּשֶׁת. בְּזוֹ וּבְזוֹ וּבְזוֹ, אִם יֵשׁ שָׁנָה פְרוּטָה בְּכֻלּוֹ, מְקַדְּשֶׁת. וְאִם לֹא, אֵינָהּ מְקַדְּשֶׁת. הִיְתָה אוֹכֶלֶת רֵאשׁוֹנָה רֵאשׁוֹנָה, אֵינָהּ מְקַדְּשֶׁת, עַד שֶׁיִּהְיֶה בְּאַחַת מֵהֶן שָׁנָה פְרוּטָה: Mishnah Kiddushin 2:1</p>
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Arey At Mekudeshet Li

In the third mishnah we see the first mention of the now famous, or infamous as the case may be, four words used in the modern ceremony without, however, any explanation of how the term came about to be used.

<p>With regard to one who says to a woman: You are hereby mekudeshet to me with this peruta on the condition that I will give you two hundred dinars, she is mekudeshet immediately and he shall give her the money...</p>	<p>הָאוֹמֵר לְאִשָּׁה, הֲרִי אֶתְּ מְקַדְּשֶׁת לִי עַל מְנָת שְׁאַתְּ לִי מָאתַיִם זֵזִי, הֲרִי זֶה מְקַדְּשֶׁת וְהוּא יִתֵּן... Mishnah Kiddushin 3:2</p>
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It is interesting to see the evolution of the system. For instance the parallel passage to Mishnah Kiddushin 2:1 from the Tosefta begins exactly like the Mishna but it then adds elements of the system not reported in the Mishna along with an expanded version of the words the groom says in the final system. Here, they make it clear that only the groom's words count.

<p>A wife is acquired in 3 ways and can acquire herself in 2 ways. She can be acquired with money, contract or sex. How so with money? He gave her money or something worth money, he said to her: "Behold you are betrothed to me", "Behold you are engaged to me", "Behold you are my wife", "Behold this one is betrothed". But if she gave him money or something worth money and said to him</p>	<p>הָאִשָּׁה נִקְנִית בְּשֵׁלשׁ דְּרָכִים וְקוֹנָה א"ע בְּשֵׁנַי דְּרָכִים נִקְנִית בְּכֶסֶף בְּשֵׁטֶר בְּבִיאַהּ. בְּכֶסֶף כִּיֵּצַד נִתֵּן לָהּ כֶּסֶף אוֹ שׁוֹה כֶּסֶף אָמַר לָהּ הֲרִי אֶתְּ מְקוּדְשֶׁת לִי הֲרִי אֶתְּ לִי לֹאִינְתוּ ה"ז מְקוּדְשֶׁת אֲבָל נִתְּנָה הִיא לוֹ כֶּסֶף אוֹ שׁוֹה כֶּסֶף וְאָמְרָה לוֹ הֲרִינִי מְאֹרְסָת לִךְ הֲרִינִי</p>
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"Behold I am engaged to you", "Behold I am betrothed to you", "Behold I am your wife" – she is not betrothed. Contract? One needs to say that the contract has to be worth a perutah—even if he wrote it on clay or bad paper, she is betrothed. With sex? All sex that is for the sake of betrothal—she is betrothed; if it is not for the sake of betrothal—she is not betrothed.

מקודשת לך הריני לך לאינתו אינה מקודשת
 ובשטר כיצד צ"ל בשטר שיש בו ש"פ והלא
 היא מקודשת בדבר שיש בו ש"פ אלא אפילו
 כתב על חרס ונתן לה על נייר ונתן לה ה"ז
 מקודשת ובביאה כל ביאה שהיא לשם קדושין
 מקודשת שאינה לשם קדושין אינה מקודשת.
 Tosefta Kiddushin 1:1

Mishnaic Terms for Divorce

Gett

We also see the appearance of the word *gett* in Mishna Kiddushin, which Jastrow defines as [*engraving*] a legal document. A quick search in the Responsa Project shows this word does not occur in Tanakh, but is used 136 times in the Mishnah.⁶⁴ In Mishnah Kiddushin 1:1 above it is used in conjunction with ק-נ-ה to denote 'purchases or acquires herself through' a *gett*. In 3:7 and 4:9 it is used with the verb 'to give'. Here we begin to see the unilateralism that the system later incorporated.

The etymology of the word *gett* seems to be unclear. Many sources suggest that it was an Akkadian word. According to Rav Baruch ha-Levi Epstein it derives from the Latin word *gestus* "action, gesture", which refers to any legal document.⁶⁵ This fits with the opinion of Rabbi Yechiel Yaakov Weinberg who proposed that the term came into usage when, after the Bar Kokhba revolt, the Romans decreed that all documents be processed in a Roman court.⁶⁶ This fits timewise.

Yisa

In Mishnah Yevamot 2:9, and again in 2:10, 3:1, and 3:2 we see yet another word connected to marriage resulting from the verb נ-ש-א. In biblical Hebrew this root usually means 'to lift' or 'to raise up' while in Nach it often translates 'to bear a burden'. According to BDB it also can mean 'lend on interest or usury, be a creditor' or 'vb. only Niph.Hiph. beguile, deceive'. How this came to mean marriage in the Mishna I did not find, but I did find the word mentioned in the document from the Israel Exploration Society quoted from above: "The literal meaning of the root נש"א (NS) is identical to the Hebrew נשא 'bore'. The

⁶⁴ From Bar Ilan digital library: Seder Nashim: 40 in Yevamot, 81 in Gittin, 6 in Kiddushin. Seder Nezikin: 3 in Bava Batra, 4 in Eduyot. Seder Taharot: 1 in Nida, 1 in Tavoil Yom.

⁶⁵ Lithuania (1860–1941); The word *gett* is not always used to refer to a divorce document.

⁶⁶ Poland/Germany (1884–1966); teacher of R Berkowitz; Seridei Eish 3:134

object of the verb is apparently the dowry which Arsinoe received from her father". So perhaps 'bore the dowry' evolved into got married? In Mishnah Yevamot 2:9 below the word *yisa* pretty clearly means 'to marry'.

<p>[If] a person brings a gett from overseas and states, "It was written before me and it was signed before me", he [the messenger] may not <i>yisa</i> his wife [the woman named in the divorce]. [If a person testified that a man is] "dead", or "I killed him", or "we killed him", he may not <i>yisa</i> his wife [the woman he is addressing]. Rabbi Yehudah says: [If he says] "I killed him" he may not tinase his wife; [but if he says] "we killed him" he may tinase his wife.</p>	<p>(ט) המביא גט ממדינת הים, ואמר בקפני נכתב ובקפני נחתם, לא ישא את אשתו. מת, הרגתיו, הרגנוהו, לא ישא את אשתו. רבי יהודה אומר, הרגתיו, לא תנשא אשתו. הרגנוהו, תנשא אשתו: Mishnah Yevamot 2:9</p>
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Erusin and Nisuin

If we look at Mishna Yevamot 6 we see the word *yisa* along with the word *erusin* and *nisuin* in a passage discussing who a Kohen may or may not marry.

<p>A High Priest may not <i>yisa</i> a widow, whether she is a widow from ha'erusin or a widow from nisuin.</p>	<p>כהן גדול לא ישא אלמנה, בין אלמנה מן הארוסין, בין אלמנה מן הנשואין Mishna Yevamot 6: 4,5</p>
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Mitkadesheth and Megaresh

In Mishna Eduyot in addition to the words *gett*, *nisuin* and *erusin* we also see the use of the words *mitkadesheth* and *megaresh* . The word *megaresh* from the root ג-ר-ש is used to mean divorce. The Academy of Hebrew Language defines *megaresh* as 'to send someone away forcibly.

<p>A woman is <i>mitkadesheth</i> by a denar or the value of a denar, according to the opinion of Beth Shammai. But Beth Hillel says: by a perutah or the value of a perutah. And how much is a perutah? One-eighth of an Italian issar. Beth Shammai says: one may dismiss his wife with an old <i>gett</i>, But Beth Hillel forbids it. What is an old <i>gett</i>? Whenever he was secluded with her after he has written it for her. One who divorces his wife and she [afterwards] spends a night with him at the [same] inn: Beth Shammai says: she does not require a second bill of</p>	<p>האשה מתקדשת בדינר ובשנה דינר, כדברי בית שמאי. ובית הלל אומרים, בפרוטה ובשנה פרוטה. וכמה היא פרוטה, אֶחָד משמנה באסר האיטלקי. בית שמאי אומרים, פוטר הוא את אשתו בגט ישן, ובית הלל אוסרין. אינהו גט ישן. כל שנתחד עמה אחר שכתבו לה. המגרש את אשתו ולנה עמו בפנדקי, בית שמאי אומרים, אינה צריכה ממנו גט שני. ובית</p>
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<p>divorcement from him. But Beth Hillel says: she requires a second bill of divorcement from him. When [does she require a second bill of divorcement]? When she was divorced after marriage. But if she was divorced after betrothal she does not require from him a second bill of divorcement, since he is not [yet] familiar with her.</p>	<p>הלל אומרם, צריכה ממנו גט שני. אימתי, בזמן שנתגרשה מן הגשואין. אבל אם נתגרשה מן הארוסין, אינה צריכה ממנו גט שני, מפני שאין לבו גס בה: See also: Mishna Gittin 8 Talmud Bavli Nedarim 5-6</p>
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We see the root ג-ר-ש in other places as well For example, in [Mishnah Moed Katan](#) we see this root as well as נ-ש-א. Note that this mishnah says one can take back his gerusha.

<p>One does not <i>nos'in</i> women on a holiday, neither virgins nor widows, nor does one enter into levirate marriage, because it is a joy for him. But he may take back his <i>gerushato</i>.</p>	<p>משנה: אין נושאין נשים במועד לא בתולות ולא אלמנות, ולא מייבמין מפני שמחה היא לו. אבל מחזיר את גרושתו. Mishnah Moed Katan 1:7</p>
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When the [Talmud Yerushalmi](#) comments on this mishna from Moed Katan it seems to try to fit it into the system. In addition, another verb ע-ל-ל is thrown into the mix to mean married. It translates as 'she entered', as in entered the house.

<p>Rebbi Ila, Rebbi Eleazar in the name of Rebbi Ḥanina: Because one does not mix one joy with another joy. Rebbi La understood it from the following: For they celebrated the initiation of the altar for seven days and the holiday for seven days. Rebbi Jacob bar Aḥa understood it from the following: finish the week of this one. Rebbi Abbahu in the name of Rebbi Eleazar: Because of the exertion. It was stated: But one may plan and marry on the eve of a holiday. This does not disagree with Rebbi Eleazar; this does not disagree with Rebbi Joḥanan. And even with Rebbi Ḥanina it does not disagree. Rebbi Abba said, when the bride enters the exertion leaves. "But he may take back his divorcee," because it is [no] joy for him. This you are saying after nisuin, but after erusin it is forbidden.</p>	<p>רבי אילא רבי לעזר בשם רבי חנינה. על שם שאין מערבין שמחה בשמחה. רבי לא שמע לה מן הדא כי חנופת המזבח עשו שבעת ימים והתג שבעת ימים: רבי יעקב בר אהא שמע לה מן הדא מלא שבוע זאת. רבי אבהו בשם רבי לעזר. מפני הטורח. תני אבל מתכנין הוא ונושא מערב הרגל. לית הדא פליגא על רבי לעזר. לית הדא פליגא על רבי יוחנן. ואפילו על רבי חנינה לית היא פליגא. אמר רבי בא. עלת כלתא נפקת טרחותא. אבל מחזיר הוא את גרושתו. מפני (ששמחה) [שאינה שמחה] היא לו. הדא דת אמר מן הגשואין. אבל מן הארוסין אסור. Talmud Yerushalmi Moed Katan 1:7,3-4</p>
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Talmudic Proof Text for Kiddushin

The Gemara, in the Talmud Bavli, commenting on Mishnah Kiddushin 1, focuses on providing a connection between the talmudic words ‘*nikneit*’, ‘*kinyan*’ and ‘*mekadesh*’ to the biblical word ‘*yikach*’ which is used in the Torah to denote marriage. The main thrust of their argument uses “when/if a man will/were to take a woman”⁶⁷ along with analogies to explain how the terminology of acquisition used in the mishnah corresponds to the verses in Devarim 24:1-4.

In order to support their interpretation they equivocated the second word “*yikah*” from the root ק-נ-ל ‘take’ as ‘purchase/acquire’. This is a huge stretch as the meaning of this root in all other places is “to take”.⁶⁸ The root for “acquire” or “purchase” is ק-נ-ה and it is this root that is used for “acquire/purchase” throughout the Mishnah, for instance when speaking about a slave being purchased and even when a woman “acquires” herself back via a *gett*.⁶⁹ Their attempts to prove that their system was sourced from Torah resulted in a lengthy, hard to follow, logic challenged discussion. Significant words used are: *nikneyt*, *kiha*, *yikah*, *kah*, *kinyan*, *hekadesh*

<p>3. The mishna teaches that a woman can be acquired in three ways. The Gemara asks: What is different here that this mishna teaches: A woman is acquired, using the language of acquisition, and what is different there, in the beginning of the next chapter (42a), which teaches: A man mekadesh, using the language of betrothal? The Gemara explains: In this mishna the <i>tanna</i> utilized the language of acquisition because he wanted to teach about betrothal through money, which is the standard means of exchange in an act of acquisition.</p> <p>4. The Gemara continues its explanation: And from where do we derive that betrothal is accomplished by means of giving money? It is derived by means of a verbal analogy between the term expressing taking stated with regard to betrothal and from the term expressing taking with regard to the field of Ephron. How so? It is written here, with regard to marriage: “When a man takes a woman” (Deuteronomy 24:1), and it is written there, concerning Abraham’s purchase of the field of the Cave of Machpelah from Ephron the Hittite: “I will give money for the field; take it from me” (Genesis 23:13). This verbal analogy teaches that just as Ephron’s field was acquired with money, so too, a woman can be acquired with money.</p> <p>5. And the taking of Ephron’s field is called an acquisition in the Torah, as it is written with regard to the same issue: “The field which Abraham acquired” (Genesis 25:10).</p> <p>2b1 Alternatively, it can be proven that purchasing a field with money is</p>	<p>3 האשה נקנית מאי שָׁנָא הָכָא דְתַנִּי הָאִשָּׁה נִקְנִית וּמֵאֵי שָׁנָא הֵתֵם דְתַנִּי הָאִישׁ מְקַדֵּשׁ מִשּׁוּם דְקָא בְעֵי לְמִיתְנֵי כְסָף</p> <p>4 וְכֶסֶף מְנָא לֵן גְּמַר קִיחָה קִיחָה מְשֻׁדָּה עֶפְרוֹן כְּתִיב הָכָא כִּי יִקַּח אִישׁ אִשָּׁה וְכְתִיב הֵתֵם נִתְתִי כְסָף הַשְּׂדֵה קַח מִמֶּנִּי</p> <p>5 וְקִיחָה אִיקְרִי קִנְיָן דְכְתִיב הַשְּׂדֵה אֲשֶׁר קָנָה אַבְרָהָם</p> <p>2b1 אֵי נָמִי שְׂדוֹת בְּכֶסֶף יִקְנוּ תַּנִּי הָאִשָּׁה נִקְנִית</p>
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⁶⁷ Devarim 24:1-4; See also TB Gittin 90a

⁶⁸ See Shoftim 21:23; Ruth 13:4; Ezra 9:1,2; Nehemiah 23:25

⁶⁹ Slave: Mishnah Kiddushin1:2,3; TB 22b:6; TY Kiddushin 1:3:1; Woman: Tractate Avadim 3:2; Mishnah Kiddushin1:1

<p>called an acquisition from the verse: “They shall acquire fields with money” (Jeremiah 32:44). Consequently, as the <i>tanna</i> wanted to teach that a woman can be betrothed with money, he taught: A woman is acquired.</p> <p>2. The Gemara asks: But let the mishna teach there, in the next chapter: A man acquires. The Gemara explains: Initially, the mishna taught using the language of the Torah, in which betrothal is called taking. And ultimately, in the next chapter, it taught using the language of the Sages. And what is the reason that betrothal is called <i>kiddushin</i>, literally, consecration, in the language of the Sages? The reason is that through betrothal the husband renders her forbidden to everyone like consecrated property. Therefore, this act is referred to as consecration.</p>	<p>2 וְנִתְּנֵי הֵתֵם הָאִישׁ קוּנְהָ מְעִיקְרָא תְּנֵי לִישָׁנָא דְּאוּרֵייתָא וּלְבִסּוּף תְּנֵי לִישָׁנָא דְּרַבְּנֵן וּמֵאֵי לִישָׁנָא דְּרַבְּנֵן דְּאָסֵר לָהּ אֶפְוֵלֵי עֲלָמָא כְּהַקְדָּשׁ Talmud Bavli Kiddushin 2a:3-2b:2</p>
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The Gemara goes on to analyze the mishnayot some more but we can already see from here that the Rabbis had to work hard to find support for connecting the concept of *kinyan* and *kiddushin* to the Torah.

It is interesting at this point to compare the Talmud Bavli above to the commentary on the same mishna (1:1) in the Talmud Yerushalmi which was codified about a hundred or two hundred years before the Bavli. No mention of Devarim 24 or use of the words *kihā*, *yikah*, *kah*, *kinyan*, or *hekdesh*.

<p>HALAKHAH: “A wife may be acquired in three ways,” etc. So is the Mishnah: Either by money, or by document, or by intercourse. Rabbi Ḥiyya stated as follows: Not only by all three together, but even by any one of them.</p> <p>By money, from where? “After he acquires,” this tells you that she is acquired by money. By marital relations, from where? “And has marital relations with her,” this tells you that she is acquired by intercourse. I would say, by both together. Money without intercourse and intercourse without money, from where? Rabbi Abbahu in the name of Rabbi Johanan, it is written: “If a man is found lying with a woman having had intercourse with her husband.” Think of it, even if he did only acquire her by intercourse, the one coming after him is [executed] by strangulation. Not only regular intercourse but even perverse. Rabbi Abbahu in the name of Rabbi Johanan, it is necessary to mention perverse intercourse for if it were regular, why mention her husband? As we have stated there: “If she was raped by two men, the first is stoned, the second strangled.”</p>	<p>הלכה: האשה נִקְנֵית בְּשֵׁלֶשׁ דְּרָכִים כּוּלֵי. כִּינֵי מִתְּנִיתָא. אוּ בְּכֶסֶף אוּ בְּשֵׁטֶר אוּ בְּבִיאָה. וְתַנֵּי רַבִּי חִיָּיָה כּוּן. לֹא סוּף דְּבָר בְּשֵׁלְשָׁתָן אַלָּא אֶפְוֵלוּ בְּאַחַד מֵהֶן. בְּכֶסֶף מְנִיין. כִּי יִקַּח. מִגִּיד שְׁנִקְנֵית בְּכֶסֶף. בְּבִיאָה מְנִיין. וּבְעֵלָה. מִגִּיד שְׁנִקְנֵית בְּבִיאָה. הֵייתִי אוֹמֵר. עַל יְדֵי זֶה וְעַל יְדֵי זֶה. כֶּסֶף בְּלֹא בִיאָה בִיאָה בְּלֹא כֶסֶף מְנִיין. רַבִּי אֶבְהוּ בְּשֵׁם רַבִּי יוֹחָנָן. כְּתִיב. כִּי יִמָּצֵא אִישׁ שׁוֹכֵב עִם אִשָּׁה בְּעוֹלָת בַּעַל. הִגַּע עֲצָמָהּ. אֶפְוֵלוּ לֹא קִנְיָה אֲלָא בְּבִיאָה אֲמָרָה תּוֹרָה. הֵבֵא אֶחָדוֹ בְּחֻנְקָה. לֹא סוּף דְּבָר בְּכַדְרָקָה אֲלָא אֶפְוֵלוּ שְׁלֹא כְּדָרְקָה. רַבִּי אֶבְהוּ בְּשֵׁם רַבִּי יוֹחָנָן. לֹא צָרִיכָה שְׁלֹא מְכַדְרָקָה. אִין תִּימַר מְכַדְרָקָה. לְמָה לִּיא בְּעֵלָה. אֶפְוֵלוּ אַחֵר. כִּי דְּתַנֵּינָן תַּמָּן. כָּאוּ עֲלֵיהֶ שְׁנַיִם. הֵרָאשׁוּן בְּסִקְלָה וְהַשֵּׁנִי</p>
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So we learned intercourse without money. Money without intercourse, from where? "She shall go free, without money." "If he did acquire another one." Since one was by money, so the other is by money.

By a document? "He shall write her a bill of divorce, hand it to her, and send her out of his house. If she left his house and went to be another man's." It brackets her being with her leaving. Since her leaving was by a document, so her being is by a document.

"And has marital relations with her," this tells you that she is acquired by intercourse. Would it not be an argument de minore ad majus? Since the sister-in-law, who cannot be acquired by money, can be acquired by intercourse, would it not be logical that this one, who may be acquired by money, should be acquired by intercourse? The Hebrew slave girl proves, who cannot be acquired by intercourse but is acquired by money. You likewise do not wonder that this one, who may be acquired by money, might not be acquired by intercourse. The verse says, "after he acquires," this tells you that she is acquired by money; "and has marital relations with her," this tells you that she is acquired by intercourse.

By a document. Since money which does not send out permits to enter, would it not be logical that a document which sends out should permit to enter? No. If you speak about money which eliminates dedication through redemption, what can you say about a document which does not eliminate dedication through redemption? The argument de minore ad majus is broken and you have to return to Scripture. Therefore, it was necessary to say: "He shall write her a bill of divorce, hand it to her, and send her out of his house. If she left his house and went to be another man's." It brackets her being with her leaving. Since her leaving was by a document, so her being is by a document.

בְּחֻק.

הָא לְמַדְנּוּ בִּיאָה בְּלֹא כֶסֶף. כֶּסֶף בְּלֹא בִיאָה מְנִיין. וְנִצְאָה חֲנָם אֵין כֶּסֶף. אַם אֶחָרֵת יִקַּח לוֹ. מַה זֶה בְּכֶסֶף אַף זֶה בְּכֶסֶף.

בְּשֵׁטֶר. וְכַתֵּב לוֹ סֵפֶר כְּרִיתוֹת וְנָתַן בְּיָדָהּ וְשִׁלְחָהּ מִבֵּיתוֹ וְנִצְאָה מִבֵּיתוֹ וְהִלְכָה וְהִיָּתְהָ לְאִישׁ אַחֵר. מִקִּישׁ הַנִּיָּתְהָ לִיצִיאָתָהּ. מַה יִּצִיאָתָהּ בְּשֵׁטֶר אַף הַנִּיָּתְהָ בְּשֵׁטֶר.

וּבְעֵלָהּ. מִגִּיד שֶׁהִיא נִקְנִית בְּבִיאָהּ. וְדִין הוּא. מָה אִם יִבְמָה שְׂאִינָה נִקְנִית בְּכֶסֶף נִקְנִית בְּבִיאָהּ. זֶה שֶׁהִיא נִקְנִית בְּכֶסֶף אֵינוֹ דִּין שִׁתְקַנָּה בְּבִיאָהּ. עֲבָרִיָּה תוֹכִיחַ. שֶׁהִיא נִקְנִית בְּכֶסֶף וְאֵינוֹ נִקְנִית בְּבִיאָהּ. אַף אִתָּה אֵל תַּתְמָה עַל זֶה שֶׁאַף עַל פִּי שֶׁהִיא נִקְנִית בְּכֶסֶף לֹא תִקְנָה בְּבִיאָהּ. תִּלְמוּד לֹא מִרְכָּה כִּי יִקַּח. מִגִּיד שֶׁהִיא נִקְנִית בְּכֶסֶף. וּבְעֵלָהּ. מִגִּיד שֶׁהִיא נִקְנִית בְּבִיאָהּ.

בְּשֵׁטֶר. מָה אִם הַכֶּסֶף שְׂאִינוֹ מוֹצִיא הָרִי הוּא מְכַנִּיס. שֵׁטֶר שֶׁהוּא מוֹצִיא אֵינוֹ דִּין שִׁיכְנִיס. לֹא. אִם אֶמְרָת בְּכֶסֶף שֶׁהוּא מוֹצִיא לְהַקְדִּישׁ יְדֵי פְדִיוֹנוֹ. תֹּאמַר בְּשֵׁטֶר שְׂאִינוֹ מוֹצִיא לְהַקְדִּישׁ יְדֵי פְדִיוֹנוֹ. נִשְׁבַּר קַל נְחוּמָר וְחִזְרָתָהּ לְמִקְרָא. לְפִיּוֹם כֵּן צָרָה מִימַר וְכַתֵּב לָהּ סֵפֶר כְּרִיתוֹת וְנָתַן בְּיָדָהּ וְשִׁלְחָהּ מִבֵּיתוֹ וְנִצְאָה מִבֵּיתוֹ וְהִלְכָה וְהִיָּתְהָ לְאִישׁ אַחֵר. הַקִּישׁ הַנִּיָּתְהָ לִיצִיאָתָהּ. מָה יִצִיאָתָהּ בְּשֵׁטֶר אַף הַנִּיָּתְהָ בְּשֵׁטֶר.

Talmud Yerushalmi Kiddushin 1:1

Talmudic Proof text for Gett

In addition to proving the connection between *Kinyan* and Torah the Rabbis needed a proof text to support the authority of a *gett*. In order to do this they interpreted the whole paragraph of the same text, Devarim 24:1-4, as prescriptive. “When a man takes a woman and becomes her husband, and it comes to pass, if she finds no favor in his eyes, because he has found some unseemly matter in her, he **shall** write her a scroll of severance and give it in her hand...”.⁷⁰ Because of this, they classified the procedure as a matter of prohibition⁷¹ and therefore viewed it as d'oraita.⁷² Not everyone agreed with this perspective though.⁷³

Amazing as it seems, this verse in Devarim stands alone as a proof text not only for most of the mishnaic and talmudic texts that speak about *Kinyan* and *Kiddushin* but for all the discussions pertaining to *gett*. All of them base their discussions (about when a man can divorce his wife, how he can divorce his wife etc) on the premise that a man **must** give her a scroll of dismissal called a *Shtar Kiritut*.⁷⁴ They treat the writing of the scroll as a halakhic mandate renaming it *gett*. In almost every article and blog I came across on the internet this interpretation is confidently stated as a biblical *Issura*. This interpretation is a far cry however, from how the words in Devarim seem to actually read!

<p>If a man should take a woman and master her (ie have sex, make wife) and she does not find favor in his eyes because he found in her “exposure of a thing” or “nakedness of a matter,” (ie something he did not realize that he doesn’t like⁷⁵) and (if) he writes for her a <i>sefer kiritut</i> and he gives it into her hand and he sends her from his house; and if she goes out from his house and she goes and she will be (is) to another man, and the latter man hates her and (if) he writes for her a <i>sefer kirtut</i> and he gives it into her hand and he sends her from his house; or, if the latter man, (that took her for a wife) dies; Then -the first husband, who sent her out, may not return to take her to be for him a wife...</p>	<p>כִּי־יִקַּח אִישׁ אִשָּׁה וּבַעֲלָהּ וְהָיָה אִם־לֹא תִמְצָא־תָנוּן בְּעֵינָיו כִּי־מִצָּא בָּהּ עֲרוּת דָּבָר וְכָתַב לָהּ סֵפֶר פְּרִיטָה וּנְתַן בְּיָדָהּ וְשָׁלְחָהּ מִבֵּיתוֹ: וַיֵּצֵאָהּ מִבֵּיתוֹ וְהִלְכָה וְהָיְתָה לְאִישׁ־אַחֵר: וְשָׁנְאָהּ הָאִישׁ הָאֵחָר וְכָתַב לָהּ סֵפֶר פְּרִיטָה וּנְתַן בְּיָדָהּ וְשָׁלְחָהּ מִבֵּיתוֹ אוֹ כִּי יָמוּת הָאִישׁ הָאֵחָר וְכָתַב אִשְׁר־לְקַחָהּ לוֹ לְאִשָּׁה: לֹא־יִוָּכַל בַּעֲלָהּ הָרִאשׁוֹן אֲשֶׁר־שָׁלְחָהּ לָשׁוּב לְקַחְתָּהּ לְהָיִת לוֹ לְאִשָּׁה ...</p> <p>Devarim 24:1-4</p>
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⁷⁰ Literally masters her- ie has sex with her

⁷¹ *Issura*; since a woman without a *gett* is forbidden to any other man

⁷² A halakhah from the Torah; This is why most authoritative rabbis don’t want to touch the subject.

⁷³ See Rashba on Gittin 88

⁷⁴ A letter stating that he has divorced her so that if she wanted to remarry the community she was in would have proof that she was available to marry (and not fear that she was still a married woman).

⁷⁵ The only other place we find this term (*ervat dvar*) is in the end of the prior chapter 23:15 when *ervat dvar* refers to something that would cause Hashem to turn away; וְלֹא־יָרָאָה בְּךָ עֲרוּת דָּבָר וְשָׁב

The first part of the verse (ki yikah ish isha ube`alah v`haiya `im lo...) is, as I mentioned, usually translated as when a man takes a woman and becomes her husband... he shall... But if Ki is translated as “if,” then all these sentences work together as a conditional paragraph.⁷⁶ In addition, the whole paragraph is descriptive in its grammar until the very last sentence which is prescriptive.⁷⁷ Looked at it in this way, the only halakhic part of the paragraph is the last sentence which disallows the woman to her first husband. Sociologically, this makes sense as it could be looked at as a protection for the woman. What woman in her right mind would want to return to a husband who had divorced her for some conceived flaw?⁷⁸ Also, when one reads the proof text as descriptive, it was not the Shtar Krittut that brought about the divorce. This was affected by the couple separating and no longer living together. If the man were to not give his wife the Shtar Krittut, they would still be divorced, though she might not be able to be remarried without proof.⁷⁹ Unlike today, in bygone days one could not pick up the telephone or send a fax or an email verifying with the local rabbi that someone in their community was no longer married.

In the verse immediately following, we find another use of Ki yikah ish isha that is also conditional and seems to connote “taking a woman” as the actual marriage.⁸⁰

If a man takes a new wife, then he is not to go out to the armed-forces...	<p style="text-align: center;">כִּי־יִקַּח אִישׁ אִשָּׁה חֲדָשָׁה לֹא יֵצֵא בַצֵּבָא ... Devarim 24:5</p>
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We see a similar if-then conditional grammatical structure a couple of chapters before.⁸¹ Here the first parts are all conditional and again only the last sentence is prescriptive. Many other verses that start with ki carry the same if-then condition.

If a man takes a woman and comes to her, and then hates her, and he makes up charges against her and defames her...and (then) they shall fine him a hundred [shekels of] silver and	<p style="text-align: center;">כִּי־יִקַּח אִישׁ אִשָּׁה וּבָא אֵלֶיהָ וְשָׂנְאָהּ: וְשָׂם לָהּ עֲלִילֹת דְּבָרִים וְהוֹצֵא עָלֶיהָ שֵׁם רָע... וְעָנְשׂוּ אֹתוֹ מֵאָה כֶּסֶף וְנִתְּנָה לְאָבִי הַנְּעֻרָה כִּי הוֹצִיא שֵׁם רָע</p>
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⁷⁶ כי ki has multiple possible meanings

⁷⁷ “then the first husband that sent her out cannot return to take her to be to him as a wife because she is defiled to him”.

⁷⁸ Since the words “she does not find favor in his eyes” comes right after his “mastering of her” some kind of sexual flaw is implied.

⁷⁹ This is very different from today’s situation where, if a man does not give his wife a gett they are still halakhically married.

⁸⁰ Devarim 24:5

⁸¹ Devarim 22:13

<p>give it to the girl's father; for [that householder] has defamed a virgin in Israel. Moreover, she shall remain his wife; he shall never have the right to divorce her.</p>	<p>עַל בְּתוּלַת יִשְׂרָאֵל וְלוֹ-תִהְיֶה לְאִשָּׁה לֹא-יוּכַל לְשַׁלְּחָהּ כָּל-יָמֶיהָ: Devarim 22:13</p>
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M'orashah

A few verses later we see another set of conditional sentences which this time includes the concept of a woman being *m'orashah* to a man.⁸²

<p>If a man is found lying with a beulat -baal (then) both of them—the man and the woman with whom he lay—shall die. Thus you will sweep away evil from Israel. In the case of a virgin who is <i>m'orashah</i> to a man —if another man comes upon her in town and lies with her...</p>	<p>כִּי-יִמָּצֵא אִישׁ שֹׁכֵב ׀ עִם-אִשָּׁה בְּעִלְת־בַּעַל וּמֵתוּ גַם-שְׁנֵיהֶם הָאִישׁ הַשֹּׁכֵב עִם-הָאִשָּׁה וְהָאִשָּׁה וּבְעֵרַת הָרַע מִיִּשְׂרָאֵל: כִּי יִהְיֶה נַעַר בְּתוּלָה מֵאִרְשָׁה לְאִישׁ וּמִצָּאָה אִישׁ בְּעִיר וְשֹׁכֵב עִמָּה... Devarim 22: 22-23</p>
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Since in these verses the virgin that is *m'orashah* to a man receives the same punishment as a beulat-baal we might infer that a virgin *m'orashah* has the status of a wife, at least as concerns adultery.⁸³ A few chapters before we had a verse that also uses א-ר-ש, that time describing an *erusha* that hasn't been 'taken'. This brings up a question of what *erash* means or is referring to.⁸⁴ According to Klein dictionary, "Among the many attempts to find the origin of this word the most probable is the one which connects it with Akka. ērishu (= bridegroom), irshitu (= betrothal), which, according to Haupt, derive from Akka. erēshu (= to desire). See אַרְשָׁת and cp. אַרְס. cp. also Arab. 'arus (= bridegroom). Derivatives: אַרְוִישִׁים, מֵאִרְשָׁה; [m.n. אַרְשָׁת expression; Back formation from אַרְשָׁת]"

<p>Is there anyone who has erash a woman, but who has not "taken her" ? Let him go back to his home, lest he die in battle and another take her."</p>	<p>וְיָמִי-הָאִישׁ אֲשֶׁר-אַרְשׁ אִשָּׁה וְלֹא לָקַחָהּ יָלַךְ וַיָּשָׁב לְבֵיתוֹ פֶּן-יָמוּת בַּמִּלְחָמָה וְאִישׁ אַחֵר יִקְחֶנָּה: Devarim 20:7</p>
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⁸² Devarim 22: 22-23

⁸³ Both words come from the same root ל-ע-ל to rule over, possess; One who is mastered by the master.

⁸⁴ See BT Sanhedrin 57a; Mishneh Torah Ishuth 1:1; Mishneh Torah Melakhim 9:7; Ritva Ketuboth 7b; YT Kiddushin 1:1; YT Sanhedrin 1:1.

In Shemot, right after speaking about ownership of property and animals, ש-ר-א is used to show that a man who lies with a woman who has not been *orasha* must ‘*mahor yimharena*’. These two verses are the only verses in Torah which use the root מ-ה-ר in this way.⁸⁵

<p>If a man were to seduce a virgin that has not been <i>orasha</i> and lies with her, he must <i>mahor yimharena</i> her to him as a wife. If her father refuses to give her to him, he must weigh out silver like a mohar for virgins.</p>	<p>וְכִי־יִפְתֶּה אִישׁ בְּתוּלָה אֲשֶׁר לֹא־אֲרָשָׁה וְשָׁכַב עִמָּה מִהָר יִמְהַרְנָה לוֹ לְאִשָּׁה: אִם־מָצָאן יִמָּצֵן אָבִיהָ לְתַתָּהּ לוֹ כֶּסֶף יִשְׁקֹל כְּמֹהַר הַבְּתוּלָת</p> <p>Shmot 22:15,16</p>
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Mohar

We see the word *mohar* used on its own in Bereishit in the story of Dina.⁸⁶ This is only indirectly relevant to our questions as it predated Har Sinai and was obviously at that time a local non-Israelite custom.⁸⁷ It seems from this verse in Shmot that the custom continued however, as the Torah states that a man is to pay the father a sum of money equal to that of a customary bridewealth.⁸⁸ One can, as is usually done, read these verses as prescriptive, as in the Torah is commanding the use of a bridewealth. It can also be viewed as a custom of the time that the Torah “tolerated” but set boundaries for since we know from the Dina story, and from non Jewish sources, that a bridewealth called *mohar* was customary in the region. This reading follows the logic presented by Rabbi Berkowitz concerning slavery and other outdated realities in the Torah. According to Rabbi Berkowitz they are a set of halakhot that were for the meantime “tolerated” as time conditioned reality, often with a positive correction, until the Torah’s authentic ideals can be implemented via halakhic change.⁸⁹

Following this logic, it was customary at that time among the people of the land, as well as the Israelites, to pay a father a bridewealth and in this case, because of the “seducing of a virgin” the Torah says that the man is fined the same amount (to compensate the father for his bad behavior with his daughter) even if he is not getting the woman for his wife. It seems from historical sources that the payment of a *mohar* might be what constituted the marriage, or more likely, it might be a payment prior to the marriage.⁹⁰ Whether the *mohar*

⁸⁵ Strong’s concordance calls it “A primitive root (perhaps rather the same as *mahar* through the idea of readiness in assent); to bargain (for a wife), i.e. To wed -- endow, X surely. 4117

⁸⁶ Bereishit 34:8-12

⁸⁷ Compensating the father of the bride for the loss of her value as a useful member of the family.

⁸⁸ Money that was given to the bride’s father by the groom

⁸⁹ See the writings of Eliezer Berkowitz

⁹⁰ According to Rashi the *mohar* is a debt which the husband incurred at the beginning of the marriage which is paid to her if he divorces her; Rashi on Shemot 22:15

was a gift to the father required by custom or whether it was a payment essentially selling the bride also is not clear.⁹¹ Interestingly, the root מ-ה-ר has the base meaning of hasten⁹² and the verb is used in this way numerous times throughout the books of Bereishit, Shemot, Devarim as well as in Yehoshua, Shoftim, and Shmuel.⁹³ With one small vowel change one could also read ‘mahor yimharena’ as ‘he shall surely quicken her to him as a wife’.

Lehithaten

We also see the occurrence of the concept of mohar once in Shmuel when Shaul has David told that the only bride price he wants is foreskins of a hundred Philistines. Here we also see the modern Hebrew word for marriage, lehithaten. This is the only occurrence of this modern Hebrew word for marriage in Tanach and it is used twice. The verse continues, “the idea was straight in the eyes of David to *lehithaten* in/with the king” and he got up and went to do the deed. The meaning of *lehithaten* is not clear as it is connected to ‘the king’. It is obvious though that receiving Michal is the prize as at the end it states ‘and Shaul gave him his daughter Michal as a wife’.

<p>And Saul said, “Say this to David: ‘The king desires no other bride-price than the foreskins of a hundred Philistines, as vengeance on the king’s enemies.’” —Saul intended to bring about David’s death at the hands of the Philistines. —When his courtiers told this to David, David was pleased with the idea of Lehithaten bamelekh. (Meaning of Heb. uncertain.) Before the time had expired, David went out with his men and killed two hundred Philistines; David brought their foreskins and (Meaning of Heb. uncertain.) they were all counted out for the king, Lehithaten bamelekh. Saul then gave him his daughter Michal as a wife.</p>	<p>וַיֹּאמֶר שְׂאוּל כֹּה־תֹאמְרוּ לְדָוִד אִי־חַפֵּץ לְמִלְחָה בְּמַהֵר כִּי בְמַאֲהַ עֶרְלוֹת פְּלִשְׁתִּים לְהַנְקֶמם בְּאֵיבֵי הַמִּלְחָה וְשְׂאוּל חָשַׁב לְהַפִּיל אֶת־דָּוִד בְּיַד־פְּלִשְׁתִּים: וַיִּגְדּוּ עֲבָדָיו לְדָוִד אֶת־הַדְּבָרִים הָאֵלֶּה וַיֵּשֶׁר הַדְּבָר בְּעֵינָיו דָּוִד לְהִתְחַתֵּן בְּמִלְחָה וְלֹא מְלָאוּ הַיָּמִים: וַיָּקָם דָּוִד וַיִּלְחָם הוּא וְאָנְשָׁיו וַיָּהוּ בַפְּלִשְׁתִּים מָאתַיִם אִישׁ וַיָּבֵא דָוִד אֶת־עֶרְלֹתֵיהֶם וַיִּמְלְאוּם לְמִלְחָה לְהִתְחַתֵּן בְּמִלְחָה וַיִּתְּנוּ־לוֹ שְׂאוּל אֶת־מִיכָל בִּתּוֹ לְאִשָּׁה: Shmuel I 18:25-27</p>
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In Shmuel II we find a follow up to the story. David sends messengers to Shaul’s son saying, “give (grant?) me my wife, Michal who I *arashiti* to me with one hundred Philistine foreskins. Despite the difference in the number of foreskins it is significant in its use of the verb א-ר-שׂ. This sounds like David’s act of paying the bride price was a form of *erusha*.

⁹¹ Ramban states that the mohar is a gift given before the wedding to the bride’s father; Ramban, on Shemot 22:15

⁹² Strong’s 4116. mahar

⁹³ 64 Occurrences

Does *erash* mean betrothal, like the Rabbis interpret it, or does it just mean promised - as a result of giving a *mohar*? As we saw above, the meaning of all this is not so clear.

<p>David also sent messengers to Ish-bosheth son of Saul, to say, “Give me my wife Michal, for whom I paid the bride-price of one hundred Philistine foreskins.”</p>	<p>וַיִּשְׁלַח דָּוִד מַלְאָכִים אֶל-אִישׁ-בְּשֶׁת בֶּן-שָׁאוּל לֵאמֹר תִּנְּנָה אֶת-אִשְׁתִּי אֶת-מִיכָל אֲשֶׁר אָשַׁר אֶתְּשִׁיתִי לִי בְמָאָה עֶרְלוֹת פְּלִשְׁתִּים: Shmuel II 3:14</p>
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Conclusion

We have seen then that, in addition to using the verb ‘to take’ the Torah references marriage using the root ‘to give’ in conjunction with ‘to him as a wife’. This mysterious verb *ש-ר-א*, is somehow in the mix and it was at least customary for the groom to make some kind of *mohar* payment to the bride's father. In addition the book of Shmuel throws in the word *lehitchaten*. What was a young woman’s status after a man gave her father a gift? Would her father still give a gift if she was a widow, perhaps with money or land of her own? Was she promised to him (and therefore it would not be acceptable for another man to court her)? Could she (or her father) cancel the promise by returning the gift (and perhaps adding more to appease him for the social embarrassment)? Or was she, as the Rabbis project “married” but still living in her father’s house until she either came of age or the man came back from war etc (in which case adultery applies)? I did not find anything concrete that confirms the meaning given to the verb *ש-ר-א* by the Rabbis in the Aramaic word *Erusin*.

So what constituted a biblical marriage, or a marriage from Bayit Rishon or Bayit Sheni? I still don’t really know and I expect it differed by time, tribe and region.⁹⁴ The way a woman is “taken” by a man is not described in the Torah. Nor is how she becomes *m’orashah* to a man. One can see where the challenge was for the Rabbis to impute biblical origin, as there is not much to work from.

What I did learn from my research is that there is wiggle room. The proof sources provided by the Rabbis to support their system as d'oraita are not strong, dare I say weak, and archaeologists and historians continue to learn more about life in the regions Jews inhabited in the pre-mishnaic, mishnaic and talmudic periods. BE"H there are righteous rabbinic scholars and historians working to halakhically define the traditional wedding as a rabbinic system and to find ways for halakhic change to include risk-free Jewish weddings. May haShem guide their hearts and their hands and bring this to fruition quickly.

⁹⁴ For instance was a wedding performed by those who never left Babylon the same as a wedding performed in Eretz Israel? Did a marriage look the same in Bayit Rishon or Sheni as it did in the years following the Sinai experience?

Historical Evolution

The second task I set for myself was to look at how the halakhah concerning divorce evolved historically, since the first mentions in the Mishnah and Tosefta. I was fascinated to learn that within one generation it took a step backward, then moved backwards some more, then evolved in a positive way which lasted for centuries,⁹⁵ then retrogressed,⁹⁶ then took another step backwards⁹⁷ and stagnated for centuries resulting in the catastrophic situation of iggun in modern times.

To summarize in short:⁹⁸ The original Mishnah in Arakhin states reasons that a gett is given, and the husband is forced to give a gett if necessary.

<p>And likewise, you say the same with regard to women's bills of divorce, the court coerces him until he says: I want to do so.</p>	<p>וְכֵן אָמְרָה אֹמֵר בְּגִטֵי נָשִׁים, כּוֹפִין אוֹתוֹ עַד שְׂיֹאמֵר, רוֹצֵה אָנִי: Mishnah Arakhin 5:6 See also TB Bava Batra 48a:2</p>
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In the next generation, in the time of R Chiya and R Yehuda Hanasi, it is ruled that a man cannot be forced since it might be that the wife is trying to get divorced because she loves another man.⁹⁹ At the end of Mishnah Nedarim we read:

<p>Initially the Sages would say that three women are divorced even against their husbands' will, and nevertheless they receive payment of what is due to them according to their marriage contract. The first is the wife of a priest who says to her husband: I am defiled to you, i.e., she claims that she had been raped, so that she is now forbidden to her husband. The second is a woman who says to her husband: Heaven is between me and you, i.e., she declares that he is impotent, a claim she cannot prove, as the truth of it is known only to God. And the third is a woman who takes a vow, stating: I am removed from the Jews, i.e., benefit from sexual intercourse with any Jew, including my husband, is forbidden to me. They subsequently retracted their words and said that in order that a married woman should not cast her eyes on another man and to that end ruin her relationship with her husband and still receive payment of her marriage contract, these halakhot were modified as follows: A priest's wife who says to her husband: I</p>	<p>בְּרֵאשׁוֹנָה הָיוּ אוֹמְרִים, שְׁלֹשׁ נָשִׁים יוֹצְאוֹת וְנוֹטְלוֹת כְּתוּבָה, הָאוֹמֶרֶת טְמֵאָה אָנִי לָךְ, שְׁמַיִם בֵּינֵי לְבִינָךְ, נְטוּלָה אָנִי מִן הַיְהוּדִים. הִזְרִו לְזֹמֵר, שְׁלֵא תְהֵא אִשָּׁה נוֹתְנַת עֵינֶיךָ בְּאַחֵר וּמְקַלְקֶלֶת עַל בְּעֻלָּה. אֵלָּא הָאוֹמֶרֶת טְמֵאָה אָנִי לָךְ, תְּבִיא רְאִיָּה לְדַבְרֶיךָ. שְׁמַיִם בֵּינֵי לְבִינָךְ, יַעֲשׂוּ</p>
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⁹⁵ Teshuvot haGaonim- Shaarei Tzedek 4:4 siman 15; Rif Ketubot 27a:3

⁹⁶ Mishneh Torah, Gerushin 2:20

⁹⁷ Rabeinu Tam; Rabeinu Yitzchak

⁹⁸ Obviously this is not an exhaustive or thorough investigation of all the sources, but rather a rough summary of how we got to where we are today.

⁹⁹ Talmud Bavli Yevamot 14:1; 63a:12-63b:8; 65b; Nedarim 91a; Ketubot 63a:4-64a, 72a

<p>am defiled to you, must bring proof for her words that she was raped. As for a woman who says: Heaven is between me and you, the court must act and deal with the matter by way of a request, rather than force the husband to divorce his wife. And with regard to a woman who says: I am removed from the Jews, her husband must nullify his part, i.e., the aspect of the vow that concerns him, so that she should be permitted to him, and she may engage in sexual intercourse with him, but she is removed from all other Jews, so that if he divorces her she is forbidden to all.</p>	<p>דָּרַךְ בְּקִשָּׁה. נְטוּלָה אֲנִי מִן הַיְהוּדִים, יִפְרֵה חֵלְקוֹ, וּתְהֵא מְשֻׁמְשָׁתוֹ, וּתְהֵא נְטוּלָה מִן הַיְהוּדִים: Mishnah Nedarim 11:12</p>
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Later the Bartenura¹⁰⁰ asks why they changed their opinion ('חזרו לומר כן) and states that:

<p>The generations were corrupted and they suspected that she is lying to release her from under her husband”</p>	<p>נִתְקַלְקְלוּ הַדּוֹרוֹת וְחָשְׁשׁוּ שֶׁהִיא מְשַׁקֵּרֶת לְהַפְקִיעַ עֲצָמָהּ מִתַּחַת בְּעֵלָהּ</p>
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After discussion about under what unusual circumstances a woman should be “entitled to a divorce” and much other enjoyable reading,¹⁰¹ the Gemara connotes a woman who doesn't want to stay married as an *Isha Moredet* - a woman who rebels against her husband.¹⁰² Though a man can be defined as a *mored* the definitions differ, placing women at a legal disadvantage and the compensations and punishments are inequitable.¹⁰³ The definition of a *moredet* for this purpose is not clear. There is a dispute in both the Talmuds¹⁰⁴ whether it refers to a “ממלאכה” domestic¹⁰⁵ *moredet* or to a “המטה מתשמיש” sexual *moredet*, and later authorities added more definitions.¹⁰⁶

Both of these definitions, however, obviously denote the actions of a woman trying to get out of her marriage - as the only way she could acquire a divorce was to cause the man to want to divorce her.¹⁰⁷ This line of thought makes sense of many of the stories in the Talmud concerning “bad” wives.¹⁰⁸ The stories in Nedarim 91a-b are particularly humorous. So we see that even though the stories are from the perspective of husbands, in the talmudic times the laws of divorce caused problems for women. The Rabbis laid out

¹⁰⁰ 15th-century Italian rabbi best known for his popular commentary on the Mishnah.
¹⁰¹ See Talmud Bavli Yevamot 65b
¹⁰² Mishnah Ketubot 5:7; Talmud Yerushalmi Kiddushin 1:2:7; Ketubot 63a:4;
¹⁰³ Talmud Bavli Ketubbot 64a,b; Talmud Yerushalmi Ketubot 5:8:1
¹⁰⁴ Talmud Bavli Ketubbot 63a; Talmud Yerushalmi Ketubbot 30b 5:8
¹⁰⁵ See Mishnah Ketubot 5:5 for a list of the wife’s domestic responsibilities.
¹⁰⁶ Rambam, Ishut 13:17; Shulhan Arukh E.H. 75
¹⁰⁷ And receive her *ketubah*
¹⁰⁸ See for instance the story of Rav Chia’s wife in Talmud Bavli Yevamot 63a and the discussions between Abaye and Rava and lists if what a good and bad wife is in 63b.

extensive rules on how to make the Isha Moredet suffer for her sin of wanting out of the marriage so women would understand that this is not acceptable.¹⁰⁹

Things looked up later though. In the time of the Sevara'im (6th/7th century) following the Muslim conquest, a new "problem" arose.¹¹⁰ Women began to go to the muslim courts to get divorced if they couldn't get divorced in the Jewish court. The Geonim¹¹¹ therefore instituted a takanah¹¹² that forced men to divorce their wives¹¹³ and give them Ketubah!¹¹⁴ In the words of Michael Satlow:

"Geonim were not shy about acting as legal innovators when they felt the times demanded it. They assumed that they had the authority to enact decrees that might even go against traditions in the Talmud. The first such decree was issued in 650/51 ce, and concerned the "rebellious wife." A later responsum, by Rav Sherira Geon (fl. 968–1004), refers to it: As to your question, concerning a woman living with her husband, who says to him, "Divorce me! I do not wish to live with you!"—is he required to give her something from her ketubah or not? Is such a woman considered rebellious or not? We have seen that, by the letter of the law, we do not oblige the husband to divorce his wife when she sues for divorce, except in those cases where our Sages stated that it is incumbent on him to divorce her (M. Ket. 7:10). . . . Later they enacted another takkanah, that the court should issue a proclamation concerning her for four consecutive weeks, and the court should admonish her: "Know that even if your ketubah amounts to one hundred maneh, you have forfeited it. . . ." Finally, they enacted that the proclamation be issued for four weeks and she forfeits everything; nevertheless, the husband was not obliged to grant her a divorce. . . . It was then enacted that she should be kept waiting for twelve months without a divorce, in the hope that she might be placated. But after twelve months, the husband is forced to grant her a divorce. Later, our Sages the Saboraim realized that the daughters of Israel were appealing to the gentile courts to obtain a coerced divorce from their husbands, and some were divorcing their wives under duress,

¹⁰⁹ Talmud Bavli Ketubot 64a

¹¹⁰ Around 637–650 CE

¹¹¹ The halakhic leaders of Babylonian Jewry; sages of Sura and Pumbedita

¹¹² legal enactment

¹¹³ Responsum of Rav Sherira Gaon, Otsar HaGeonim to tractate Ketubot, no. 478; Rav Sherira Geon Avraham Grossman, 'Halakhic Decisions on Family Matters in Medieval Jewish Society', The Shalvi/Hyman Encyclopedia of Jewish Women; Halachot of Rav Yitzchak Alfasi

¹¹⁴ The amount of money, property etc listed in her Ketubah. Today it is rare for any woman who divorces to receive anything as bathei din do not enforce it (and as mentioned above a woman is at risk of losing much more than her ketubah due to blackmail or ransom). If a woman outside of Israel does receive Ketubah, the one or two hundred zuz generally written in the ketubah translates into less than a hundred dollars or at the very most a few thousand dollars. In Israel there is sometimes an extra clause where a groom can add more value. This is generally referred to as *Maimon* and some men negotiate for either ketubah or maimon or neither.

resulting in doubts concerning the validity of such a divorce, creating a calamitous situation. Accordingly, in the time of Mar Rav Rabbah [and] Mar Rav Hunai, may they rest in peace, it was enacted that a rebellious wife suing for divorce should receive intact all the “property of iron sheep” that she had brought with her, and that the husband should make good all destroyed or lost property. But whatever he himself undertook to bestow upon her, whether yet extant or not, he need not pay her, and if she should seize any such assets [the court] will confiscate them and restore them to the husband. As to the husband, we force him to write her an immediate write of divorce, and 200 d the Rise of Reason she is entitled to the [statutory payment] of 100 or 200 zuzim. This has been our custom now for more than three hundred years, and you, too, should do so.”

- From CREATING JUDAISM History, Tradition, Practice

At the end of the geonic period the Rif ruled that this legislation superseded the talmudic halakhah throughout the Jewish world.¹¹⁵ Apparently this was the practice for over 500 years!¹¹⁶

Sadly however, in the 12th century in Egypt, the Rambam who ruled that a local man could marry a second wife irrespective of his first wife's wishes, argued against the takana of the savoraim and ruled that we need to go back to the original ruling from the Talmud.¹¹⁷ The Rambam defined a moredet as a woman who denies her husband sexual relations. He brings the law of the Talmud for a moredet then continues...

<p>There are geonim who say that in Babylonia different customs were followed with regard to a woman who rebels [against her husband]. These customs have not, however, spread throughout the majority of the Jewish community, and in most places within the Jewish community, there are many sages of stature who differ with them. [Therefore,] it is proper to follow the laws prescribed by the Talmud.</p>	<p>וְאָמְרוּ הַגְּאוֹנִים שֶׁיֵּשׁ לָהֶם בְּבָבֶל מִנְהַגוֹת אַחֵרוֹת בְּמוֹרְדָת. וְלֹא פָּשְׁטוּ אוֹתָן הַמִּנְהַגוֹת בְּרַב יִשְׂרָאֵל וְרַבִּים וְגִדּוּלִים חוֹלְקִין עָלֵיהֶם בְּרַב הַמְּקוֹמוֹת וְכֵדִין הַגְּמָרָא רְאוּי לְתַפֵּס וְלְדוֹן: Mishneh Torah Marriage 14:14</p>
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Even though the Rif had ruled that the takanah was in force throughout the Jewish world, the Rambam, for whatever reason, effectively erased 500 years of humane halakhah. Once

¹¹⁵ Rabbi Yitzhak ben Yaakov Alfasi ha-Cohen, Morocco and Spain (1013–1103); Leading talmudic authority; author of Sefer ha-Halakhot; Rif, Ket. 26b-27a

¹¹⁶ from the mid-seventh to the mid-twelfth centuries

¹¹⁷ Moses ben Maimon (1138–1204) Mishneh Torah, sefer Nashim, Laws of Marriage ch 14:14; Rambam, Ishut 3:2–5, 14:8-14; Mishneh Torah, Hilkhhot Gerushin 2:20

again, women's well being and autonomy were in the hands of their husbands and at the mercy of courts, especially if they had the bad luck of 'not marrying well'. He did allow men to be forced to give a get¹¹⁸ when a wife pleaded *ma'is alai*¹¹⁹ (however not for a *moredet*¹²⁰), which was helpful to some women. Much debate on the subject ensued¹²¹ until Rabbenu Tam¹²² turned the tide with his ruling that the court can **never** force a husband to divorce his wife.¹²³ His main argument was that coercion could not be found in the Babylonian Talmud, that Ravina and Rav Ashi were the last authoritative halakhic decisors and basically that the Geonim were wrong. While the Rambam overrode the *takana* of the geonim in favor of the talmudic ruling stating that "there are many sages of stature who differ with them", Rabenu Tam went so far as to claim that there could never have been such a *takanah*.¹²⁴ Rabenu Yitzchak,¹²⁵ the main editor of the *Tosafot*, said it is better not to force men to give a get.¹²⁶ The *Ritva*¹²⁷ concurred, stating that the Ramban, as well as some others, disagreed with Rambam concerning a forced gett and within a few centuries this position became unanimous.¹²⁸ This is how we got to "a gett has to be given voluntarily" which is the party line today and the cause of much undo suffering.¹²⁹

¹¹⁸ Mishneh Torah, Gerushin 2:20; Hilkhot Ishut 14:8

¹¹⁹ He is disgusting to me

¹²⁰ BT, Ketubbot 63b–64a

¹²¹ Usually requiring that the wife forfeit her rights to *ketubah* or her family pays off the husband.

¹²² Jacob ben Meir (1100-1171), grandson of Rashi; the younger brother of Rashbam; one of the most renowned Ashkenazi French Tosafists and a leading halakhic authority in the 12th century.

¹²³ *Sefer haYashar*, responsa, beginning of responsum #24

¹²⁴ Rabenu Tam maintained that the halakhic authority of the Geonim was limited to monetary issues.

¹²⁵ Isaac ben Samuel of Dampierre (1115 – c. 1184), great-grandson of Rashi. Also known as Ri HaZaken or the Ri.

¹²⁶ *Tosofot Nedarim* 36b

¹²⁷ Rabbi Yom Tov ibn Asevilli (13/14th century Spain);

¹²⁸ *Teshuvot HaRitva* 122

¹²⁹ Some modern authorities, like Rabbi Shear-Yashuv Cohen of Haifa have argued for a return to the ruling of the Geonim.

Solutions

The third task I set for myself was to look at some of the different solutions to the iggun problem that have been suggested over the years and to assess whether I feel that: a) The solution actually works; b) It is truly egalitarian; and c) I would feel comfortable endorsing it and using it.

In 1998 the Jerusalem Center for Public Affairs held a seminar entitled “Halakhic Solutions to the Problem of Agunot”.¹³⁰ At that time retired Israel Supreme Court Justice Rabbi Menachem Elon had this to say:

“Different solutions exist which many of those sitting in this room have raised, including: compulsory get, prenuptial agreement, conditional marriage, delivery of a get by an agent, and annulment. In my opinion, it is annulment that should be the central point,” adding “Furthermore, this situation is probably the most obvious violation of halakhah today. A situation which prevents a woman from remarrying because of the vicious refusal of her husband to release her from the marriage is contrary to the spirit of halakhah. Therefore, it is incumbent on us to sit together and consider all the possible solutions, discuss them in depth, and not give up until we find a solution which solves the problem.”

So far the *Rabbanut* has strongly opposed all prenuptial agreements as well as all the initiatives of the International Beit Din¹³¹

Many different preventative solutions have been suggested and written over the years in an attempt to mitigate the agunah problem. Unfortunately, the majority by far are post marriage solutions attempting to right wrongs already committed. My focus was on preventative solutions so I did not concern myself with rabbinic annulment solutions like hafka'at kiddushin,¹³² get zikiu,¹³³ or kiddushei ta'ut.¹³⁴ I also did not bother with solutions based on kofin oto ad she'yomar rotzeh ani or what is referred to as harhakot Rabbeinu Tam which is basically Jewish shunning.¹³⁵ From what I could find, the preventative

¹³⁰ International Jewish Women's Human Rights Watch; Jerusalem Seminar on the problems of religious divorce. Winter 1998/99 Newsletter No. 3

¹³¹ <https://www.internationalbeitdin.org/>

¹³² Proposed by R. Shlomo Riskin among others: “Women and Jewish Divorce: The Rebellious Wife, the Agunah, and the Right of Women to Initiate Divorce in Jewish Law, a Halakhic Solution” Ktav Publishing, 1989

¹³³ Bill of annulment

¹³⁴ Sifra, Vayikra Dibbura d'Nedavah 3:15; Arachin 21a:12; Bava Batra 48a; Kiddushin 50a:1-2

¹³⁵ The distancing methods of Rabbenu Tam (1100-1171)

solutions generally divide themselves into three loose categories. I am only citing the most popular or well known ones in the U.S.¹³⁶

Ketubah Clauses or addendums: Already in 1955 the conservative movement adopted what is referred to as the Lieberman clause.¹³⁷ A clause was inserted into the ketubah stating that the couple agrees to present themselves to the beth din after they have divorced civilly.¹³⁸ Orthodox Rabbi Joseph Soloveichick considered the clause valid and Orthodox posek Rav Moshe Feinstein supported something similar.¹³⁹ Right wing orthodoxy refused to accept the efforts as halakhically viable however, and the RCA followed suit so the Lieberman clause remained valid only in the Conservative world. Orthodox posek Rabbi Yosef Eliyahu Henkin¹⁴⁰ suggested that a clause be included that a beth din (or the husband) will authorize the writing and sending of a gett if the marriage breaks up. Surprisingly this seems to be the best of the early suggestions because it would force the hand of the beth din. None of the orthodox clauses seem to have been widely used however. In the dati leumi, Mossad haRav circles that I was a part of in Israel in the eighties and nineties, everyone I knew had traditional weddings with traditional Ketubah, with no added clauses or prenups. In addition, none of these solutions are really enforceable as they don't work if the husband simply leaves the community, or in the case of Israel, the state.

Conditional marriage¹⁴¹ and prenuptial agreements: There are quite a few "prenups" out there. The most effective solution in this category that I have seen is the one endorsed by the Conservative movement in the late 60's. It was proposed by Orthodox Rabbi Dr. Eliezer Berkowitz in his book 'Tenai be-nisuin uve-get'¹⁴² and is still used today. This one works by signing a prenuptial agreement that if the couple divorces civilly the husband is required to give a gett. It states that if six months have gone by since the civil divorce the marriage is retroactively annulled. This is a definite improvement over the earlier ones but it utilizes negative language and it is linked to first receiving a civil divorce, which can have its own

¹³⁶ For an in depth look at prenups see: SIGN AT YOUR OWN RISK-- THE "RCA" PRENUPTIAL MAY PREJUDICE THE FAIRNESS OF YOUR FUTURE DIVORCE SETTLEMENT by SUSAN METZGER WEISS

¹³⁷ There is no way to enforce this though.

¹³⁸ Of course, presenting oneself to the beit din does not do any good if the beit din rules itself "unable" to issue the gett.

¹³⁹ R Feinstein was considered one of the great Jewish halakhists of the twentieth century. His conception of the nature of women and gender difference is a bit confusing as some of his rulings seem to include women while others definitely exclude them and paint them as second class citizens.

¹⁴⁰ 1881–1973

¹⁴¹ Kiddushin al tena'i. The status of the marriage is dependent on certain agreements.

¹⁴² (1908-1992), Conditionality in Marriage and Divorce," 1966, published by Mosad HaRav Kook. He was far ahead of his time.

set of challenges.¹⁴³ It also does not work in Israel where the rabbanut has jurisdiction over all Jewish divorce.¹⁴⁴ Other options linked to civil courts are also sometimes used in the American Orthodox community such as “the New Jersey model”, “the New York model, and the self-effectuating PNA.¹⁴⁵ I did not delve into those options as they seem to be limited by state and as I mentioned, I do not like the idea of linking civil divorce with religious divorce.

Financial disincentives to give a *gett*: More widely accepted in the Orthodox world is a prenuptial agreement called smugly, The Prenup. In 1994 Rabbi Mordechai Willig¹⁴⁶ formulated a pair of prenuptial documents that has been endorsed by an impressive array of Orthodox rabbis and organizations¹⁴⁷ including the RCA¹⁴⁸ and the Beth Din of America which claims it “maintains a 100% success rate in preventing get-refusal”.¹⁴⁹ The first provision is similar to the Lieberman clause in that it grants authority to the rabbinical court and the couple agrees to accept their decisions.¹⁵⁰ Again, this is only enforceable if the man stays in the community, and it makes the woman dependent on the goodwill of the beth din to rule in her favor. The second provision requires the husband to pay¹⁵¹ his wife an amount of money for every day he refuses a *gett* (based on his obligation in the ketubah to financially sustain her).¹⁵² If you read closely however there are red flags relating to the power afforded the beth din.¹⁵³ It is questionable, depending on where the couple live, if this is a civilly binding agreement.¹⁵⁴ I also find it distasteful as it is simply a financial

¹⁴³ In my own case I spent two years fighting for a civil divorce and custody of my children from an abusive spouse and then another two and half years waiting for a *gett*. Other women have had it much harder.

¹⁴⁴ State Rabbinical Court

¹⁴⁵ Michael J. Broyde, The effectiveness of (Rabbinic) prenuptial agreements in preventing marital captivity

¹⁴⁶ Sgan Av Beth Din of the Beth Din of America, and a Rosh Yeshiva at the Rabbi Isaac Elchanan Theological Seminary of Yeshiva University

¹⁴⁷ <https://theprenup.org/explaining-the-prenup/rabbinic-endorsements/>

¹⁴⁸ Today the RCA requires the use of a *rabbinically-sanctioned* prenuptial agreement.

¹⁴⁹ Though of course that only counts the cases that actually reached the beth din.

¹⁵⁰ “Each spouse agrees to appear before a panel of Jewish law judges (*dayanim*) arranged by the Beth Din of America, if the other spouse demands it, and to abide by the decision of the Beth Din with respect to the *Get*.”

¹⁵¹ The Chicago Beth Din Zedek has its own pre-nup with the financial disincentive as optional.

¹⁵² According to Rabbi Shalom Mashash, there existed a similar prenup in Morocco in which the husband undertook to pay the sum of 5,000 francs per day, in case the couple were divorced in civil court but he still did not grant a *get*. Cambridge University Press, *JEWISH LAW, STATE, AND SOCIAL REALITY: PRENUPTIAL AGREEMENTS FOR THE PREVENTION OF DIVORCE REFUSAL IN ISRAEL AND THE UNITED STATES*

¹⁵³ For instance, the husband’s financial obligation is waived if the wife “fails to abide by the decision or recommendation of the Beth Din of America”.

¹⁵⁴ A similar prenuptial agreement was written for use in Israel referred to as the Koleh initiative. Cambridge University Press, *JEWISH LAW, STATE, AND SOCIAL REALITY: PRENUPTIAL AGREEMENTS FOR THE PREVENTION OF DIVORCE REFUSAL IN ISRAEL AND THE UNITED STATES*

version of 'kofin oto ad she'yomar rotzeh ani' which punishes the refuser in the hopes that he will comply.

The biggest issue I have with 'The Prenup' is the same issue I have with all three of these types of solutions: they are not systemic solutions. They do not solve the issue of *iggun* but only mitigate it. Basically they are a band-aid with a hope and a prayer. All of them work from an ex post facto perspective that resigns itself to the continuation of the inherent inequality of marriage and divorce. They do not address the intrinsic systemic problem. I have no doubt that all the prenups out there were written with great scholarly effort and the best of intentions. I also have no doubt that they have helped many people and are a whole lot better than nothing. But they are last century's solutions and in the 21st century they are actually holding back progress. As long as those in authority feel these are sustainable solutions and people accept their views, they will not look for others. One has to wonder why the RCA and BDA call the prenup they use "the single most effective solution to the agunah problem".¹⁵⁵ Are they really concerned with the long term solving the *agunah* problem, or do they, halila, want to convince people that this is the best that can be done in order to prevent actual systemic change? The same question can be asked concerning the Conservative movement.

The Geonim were wise enough to revise the halakhah so that Jewish women did not have to resort to going to muslim civil courts in order to gain their freedom from recalcitrant Jewish husbands. Yet today's Jewish women are told there is no choice but to pursue what justice they can find in conjunction with civil courts. The failure of the system could not be more obvious. There is a fourth category of solutions however, that actually addresses the intrinsic problem and has the potential for paving the way for the elimination of *iggun*.

No Kiddushin- No need for gett: The no kiddushin - no need for gett solution puts traditionalists in a panic because it acknowledges that the culprit for *iggun* is the rabbinically instituted ceremony itself. The forerunner of these bold solutions was the Brit Ahuvim ceremony, written by Rabbi Professor Rachel Adler.¹⁵⁶ While I was still naively blinded to the severity of the *iggun* issue in the later part of the twentieth century, Rabbi Adler was already working towards the ideals that I am passionate about today. Her approach to the wedding ceremony was wonderfully innovative as it was based on the talmudic partnership model which fits perfectly with our modern view of marriage. Rabbi Adler explicitly emphasized that the wedding ceremony does not include Kinyan or Kiddushin and therefore a *gett* is not needed to exit the marriage.¹⁵⁷

¹⁵⁵ <https://rabbis.org/2013-resolution-prenuptial-agreements-for-the-prevention-of-get-refusal/>

¹⁵⁶ Rachel Adler, *Engendering Judaism* (Philadelphia, PA: The Jewish Publication Society, 1998)

¹⁵⁷ Unilateral acquisition

Her model does still leave a bit of room for undesirable halakhic implications however, under the current status quo, such as Common Law Marriage or safek kiddushin.¹⁵⁸ For instance, Rabbi Yosef Eliyahu Henkin considered civil marriage and Reform marriage as forms of common law marriage requiring a *gett*.¹⁵⁹ Thankfully, Rav Mose Feinstein's ruling that a *gett* is a necessity only for a halakhic marriage was widely accepted.¹⁶⁰ Nevertheless, depending on the community, this could still pose a problem for women who may have married in a Reform ceremony and later joined a more Orthodox leaning community. Rabbi Amitai Adler addressed this by including a Wedding contract, also termed Brit Ahuvim.

Adopt, Adapt, or Develop

The fourth task I set for myself was to either adopt, adapt, or develop a Jewish wedding ceremony that effectively reflects the evolving reality of Jewish marriage, and that I can use, in integrity, as a wedding officiant. In addition to an egalitarian ceremony, I wanted a contract or ketubah¹⁶¹ that specifies how the marriage can end if it becomes necessary, halilah.¹⁶² Having a ritualized way to formally break up a marriage is important for closure and it takes on even more importance if the marriage is viewed as a spiritual-energetic bond. For many, the modern view of Jewish marriage includes ideals like soulmate and other energetic-spiritual connections. This necessitates some action or ceremony that represents breaking that spiritual-energetic bond. Also, the inclusion of a contract makes the wedding compatible with one of the three options in the original mishnah which is nice. Lastly, the Ketubah, along with Chuppah¹⁶³ and breaking a glass has become one of the familiar and cherished symbols of a Jewish marriage. I also wanted to include the language and concept of *kedushah*, a special holiness, as marriage is an opportunity for two people to express *kedushah* through their special relationship. Realizing that Hashem is present in everything and that all people are created in the image of the Divine leads to *kedushah*,¹⁶⁴ which we manifest in our relationships and interactions with others.

¹⁵⁸ Questionable kiddushin

¹⁵⁹ Perushei Ibra 18

¹⁶⁰ Iggrot Moshe EH I:74; EH I:75

¹⁶¹ Wedding contract attached to a wedding; The majority of the Talmudic sages clearly rule that the Ketubah is Rabbinic in origin. According to Sephardic Poskim the Ketubah is rabbinically legislated while Ashkenaz Poskim view the Ketubah as Biblically ordained. This is reflected in the traditional text.

¹⁶² may it be unthinkable

¹⁶³ bridal canopy

¹⁶⁴ Sacredness, sanctity, holiness, being set apart, unique

Be Kedoshim: because I Hashem
Eloheikhem am Kadosh

קְדוּשִׁים תִּהְיוּ: כִּי קָדוֹשׁ, אֲנִי יְהוָה אֱלֹהֵיכֶם.
Vayikra 19:2

Today the word *Kiddushin* has taken on a sense of *kadosh* or *kedushah* in many, if not most people's minds. Because of this I decided to reconceptualize and adapt the term *kiddushin* to fit the modern concept of holiness in a marriage. Though I exchanged the act of *kiddushin* for a partnership model in the wedding ceremony, I coupled the word in the title and in the Ketubah with the term hadadiyim-reciprocal to reflect the idea of mutuality. The result is what I have named Kiddushin Hadadiyim.

Glossary

D'oraita Aramaic דְּאִוְרַיְתָא 'of instruction': It derives from the Hebrew or which means light. Used to mean a halakha originating from the Torah (versus rabbinical halakhot/laws).

Halakhah Hebrew הֶלְכָה 'Jewish law': The root of the word halakha means to walk or go; halakha is the way a Jew is directed by Torah to conduct oneself. Interpretations and applications of halakha differ according to one's hashkafa.

Halakhic Hebrew הלכתית 'adhering to הֶלְכָה halakha'

Mishnah (pl mishnayot) Hebrew מִשְׁנָה 'repeated study': A written record published at the end of the second century C.E. by Rabbi Yehuda Hanasi¹⁶⁵. The content of the Mishnah was an ongoing process which began long before R. Yehuda redacted it. Out of concern that the Oral Torah would be lost, Rabbi took on the near impossible task of preserving the current rabbinic tradition by compiling it into a system. In addition to recording the rabbinic tradition that he had received, Rabbi also included other rabbinic thoughts including many disputes between different rabbinic sages. He decided in some cases which statement of halakha he considered normative, though he was careful to also include minority opinions (possibly to ensure there was precedent if laws needed to be adapted or changed in the future). The Mishnah is pretty much the same in both talmuds though there are some variations in the text and in the order of the material. Also used to mean a paragraph in a sefer kodesh (holy text).

Talmud Hebrew תַּלְמוּד 'instruction, learning': The generic term for the (2) compilations that include the Mishna and a Gemorah¹⁶⁶. The two talmuds use different dialects of Aramaic and there were

¹⁶⁵ One of the last tannaim and keepers of the Oral Torah

¹⁶⁶ Aramaic גְּמָרָא, from the Hebrew verb gamar, to finish or complete; rabbinical analysis that comments and expands upon the Mishnah

cultural differences between Babylon and Israel that are reflected in the attitudes and opinions of the rabbis in the respective talmuds. The main difference between the two however is the level of sacredness that they attribute to mishnaic texts. The rabbis of the Bavli accepted the entire mishnah as divinely inspired and therefore considered each word sacred. The rabbis of the Yerushalmi, on the other hand, did not emphasize the sanctity of each word of the Mishnah as they were aware of the limitations of recording material that had been previously transmitted only orally as well as the risk in organizing all the mishnaic material together into one seeming whole. The Talmud Yerushalmi was later largely abandoned due to a power struggle between the sages of Israel and Babylon. Because of this, the Talmud Bavli was awarded more authority than the Yerushalmi and throughout the middle ages and beyond the Yerushalmi was for the most part neglected by scholars. In recent times there has been a resurgence of studying the Yerushalmi.

Talmud Bavli Hebrew תלמוד בבלי 'Babylonian Talmud': The Talmud is not a homogeneous book. It was written by hundreds of authors and even after its completion it was edited, changed and added to by groups of students as well as anonymous authors¹⁶⁷ over a period of a couple of hundred years¹⁶⁸. The discussions in the Bavli are often more complex than in the Yerushalmi.

Talmud Yerushalmi Hebrew תלמוד ירושלמי 'Jerusalem Talmud': The Talmud Yerushalmi was codified about a hundred or two hundred years before the Bavli. The rabbis of the Yerushalmi seem to have had more contact with regular people than those in Bavel.

¹⁶⁷ Leading rabbis of the time, called the Savoraim

¹⁶⁸ approx 5th-7th century