

I FOUND MY WIFE WAS NOT A VIRGIN!: A DEVELOPMENTAL
EXAMINATION OF THE MOTZEI SHEM RA

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Thesis Submitted in Partial Fulfillment of Requirements for Ordination

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New York, New York

February 2, 2009

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Summary:

Deuteronomy 22:13-29 is comprised of six laws compounded into a singular unit dedicated to the theme of adultery. This section is often subdivided on the basis of style and content into three subsections. The first subsection, vss. 13-21, examines two cases concerning charges that a bride was not a virgin at the time of marriage. This first subsection can be further divided into two companion cases: the first, a situation in which a husband falsely accuses his wife of not being a virgin and is proven false; and the second, where the accusations are proven to be true. These sections are jointly referred to as the “motzei shem ra” meaning that the husband, through his accusation, bring a bad name upon his wife (and, in turn, his father-in-law and family). The tannaim and amoraim evaluate this topic in the following bodies of work: Mishnah Ketubot and Sanhedrin, Tosefta Ketubot, Sifre Devarim, PT Ketubot and Sanhedrin and BT Ketubot, Sanhedrin and Makkot. For the thesis, I translated each of the relevant primary sources with the help of chervuta, a few dictionaries and *occasionally* an English translation. To gain background on the subject of marriage, virginity, Mediterranean and specifically Roman law, I consulted several books and academic articles. The thesis includes an introduction, three chapters, a conclusion and bibliography. Chapter 1 deals with tannaitic texts, chapter 2 deals with the Palestinian Talmud, and Chapter 3 deals with the Babylonian Talmud. The goal of the thesis was to examine the legal development of the *motzei shem ra* from Deuteronomy 22:13-22 through the amoraic literature.

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Introduction

Deuteronomy 22:13-29 is comprised of six laws compounded into a singular unit dedicated to the theme of adultery. This section is often subdivided on the basis of style and content into three subsections. The first subsection, vss. 13-21, examines two cases concerning charges that a bride was not a virgin at the time of marriage. This first subsection can be further divided into two companion cases: the first, a situation in which a husband falsely accuses his wife of not being a virgin and is proven false; and the second, where the accusations are proven to be true. These sections are jointly referred to as the “*motzei shem ra*” meaning that the husband, through his accusation, bring a bad name upon his wife (and, in turn, his father-in-law and family).

Several Biblical commentators note that the two sections differ in style, the first containing a lengthier and wordier description of the accusation, including statements from both the plaintiff and the defendant. The second section is terse and restricted; it jumps immediately to the legal decision and subsequent punishment.

The Biblical text overall is brief, directive and swift. The circumstances of the case are set forth in v. 13-14. As stated,

כִּי יִקַּח אִישׁ אִשָּׁה וְבָא אֵלֶיהָ וְשָׁנְאָהּ:

וְשֵׁם לָהּ עָלִילַת דְּבָרִים וְהוּצָא עָלֶיהָ שֵׁם רָע וְאָמַר אֶת הָאִשָּׁה הַזֹּאת לָקַחְתִּי וְאָקְרַב אֵלַיָּהּ וְלֹא מָצָאתִי לָהּ בְּתוּלִים:

A man marries a woman, cohabitates with her, and then “takes an aversion to her.” He then brings [false] charges against her and “brings upon her a bad name” by saying, “I married this woman; but when I approached her, I found that she was not a virgin.”

Either way, adjudication of the case is fast and simple. The husband states his accusation and the parents produce the signs of their daughter’s virginity before the elders of the city gates. At this point, the father states his daughter's innocence,

וְאָמַר אָבִי הַנָּעַר אֶל הַזְּקֵנִים אֶת בְּתִי נָתַתִּי לְאִישׁ הַזֶּה לְאִשָּׁה וַיִּשְׁנָאָהּ:
וְהִנֵּה הוּא שֵׁם עָלִילַת דְּבָרִים לֵאמֹר לֹא מָצָאתִי לְבִתִּי בְּתוּלִים וְאֵלֶּה בְּתוּלֵי בְּתִי וּפְרָשׁוֹ הַשְׁמָלָה
לִפְנֵי זְקֵנֵי הָעִיר:

I gave my daughter to this man to marry but he has taken an aversion to her; he made up these charges by saying, 'I did not find her a virgin.' But here is the evidence of my daughter’s virginity!’ And they shall spread out the cloth before the elders of the city (displaying proof that his daughter was indeed a virgin)¹.

At this point, it is clear that the husband is a defamer. He is sentenced to three distinct

1. The "evidence" of virginity is a garment or cloth spotted with hymeneal blood, presumably from the wedding night. The bride's parents would save it as evidence of her virginity (because their daughter, their reputation and the price price they receive all depend in it). Tigay, Jeffrey H. *JPS Torah Commentary : Deuteronomy*. Washington D.C.: Jewish Publication Society, 1996. p. 205.

punishment, each corresponding to a specific element of his transgression. He is flogged, because he has defamed and degraded his wife and her family. He is fined a hundred shekels of silver because his accusation has disgraced the father and the daughter, implying that he did not make an honest deal with his son-in-law. Lastly, he can never divorce her, which presumably was his initial intent.² Thus, both the father and daughter are now reinstated to their previous positions and the daughter, in particular, is protected from the disgrace and public humiliation of divorce.

Verses 20-21 explain the reverse situation: if the husband's accusations prove to be true. Unlike the previous section, there are no statements made by the two parties. The text goes straight from guilt to punishment. It states,

וְאִם אִמֶּת הָיָה הַדָּבָר הַזֶּה לֹא נִמְצְאוּ בְּתוּלִים לַנַּעֲרָה
וְהוֹצִיאוּ אֶת הַנַּעֲרָה אֶל פֶּתַח בֵּית אָבִיהָ וְסָקְלוּהָ אַנְשֵׁי עִירָהּ בָּאֲבָנִים וּמָתָהּ כִּי עָשְׂתָה נִבְלָה
בְּיִשְׂרָאֵל לְזָנוֹת בֵּית אָבִיהָ וּבַעֲרַת הָרַע מִקֶּרְבָּךְ:
כִּי יִמָּצָא אִישׁ שֹׁכֵב עִם אִשָּׁה בַּעֲלַת בַּעַל וּמָתוּ גַם שְׁנֵיהֶם הָאִישׁ הַשֹּׁכֵב עִם הָאִשָּׁה וְהָאִשָּׁה
וּבַעֲרַת הָרַע מִיִּשְׂרָאֵל:

If the charges are proven true and the girl is found not to be a virgin (produce the signs of virginity) then the girl is brought out to the entrance of her father's house and then men of her town shall stone her to death; for she did a shameful thing in Israel, committing fornication while under her father's authority. Thus, you will sweep away evil from your midst.

When examining this legal situation, several questions remain. First, it is unclear exactly what

2. Tigay, p. 205.

the charges are, and where and before whom he brings the charges. The phrase used in v. 14, *sim lah alilot dvarim* is of uncertain definition. It is most often translated as “[he brings/makes up] “wanton deeds”³ or “accuses her of misconduct.”⁴ Are these formal charges in court or simply rumors spread around the community? These details are important in order to understand the context and the severity of the accusations and who is the plaintiff or defendant in this case. It is possible that the wife’s family has brought the husband to court, as a response to his accusation. As Carolyn Pressler writes, “roles in the ancient Near Eastern court cases appear to have been much more flexible than roles in contemporary American courts of law. The one who brought the case before the elders could become the one accused.”⁵ Based on the Biblical verses, it is unclear if “the husband falsely and formally charged his bride before the elders, thus jeopardizing her life, or have the parents charged their son-in-law with spreading rumors about their daughter.”⁶

Still the content of the husband’s accusations remains uncertain. The text states that he did not find her to be a virgin. In the Hebrew, it reads, *Lo matzati livitcha betulim*, which can

3. Pressler, Carolyn. "Laws Concerning Adultery" Deuteronomy 22:13-27." In *The View of Women Found in Deuteronomic Family Law*, 21-43. New York: Walter de Gruyter, 1993.

4. Tigay, p. 204.

5. Pressler, p. 23.

6. Pressler, p. 23.

also mean that he literally did not find the signs of virginity on her. But, the text does not clarify what exactly those signs would be.⁷

Second, the husband's punishment (if his wife is found innocent) is not the standard punishment that the Bible prescribed for one who makes a false accusation. The law of false testimony is outlined in Deuteronomy 19:16-21:

כִּי יָקוּם עַד חָמֵס בְּאִישׁ לַעֲנוֹת בּוֹ סָרָה:
וְעָמְדוּ שְׁנֵי הָאֲנָשִׁים אֲשֶׁר לָהֶם הָרִיב לִפְנֵי יְקֹוֹק לִפְנֵי הַכֹּהֲנִים וְהַשֹּׁפְטִים אֲשֶׁר יִהְיוּ בַּיָּמִים
הָהֵם וְדָרְשׁוּ הַשֹּׁפְטִים הַיָּטֵב וְהַנָּה עַד שֶׁקֶר הָעֵד שֶׁקֶר עָנָה בְּאָחִיו:
וַעֲשִׂיתֶם לוֹ כְּאֲשֶׁר זָמַם לַעֲשׂוֹת לְאָחִיו וּבַעֲרַתְּ הָרַע מִקִּרְבְּךָ:
וְהַנִּשְׁאָרִים יִשְׁמְעוּ וַיֵּרְאוּ וְלֹא יִסְפוּ לַעֲשׂוֹת עוֹד כַּדָּבָר הָרַע הַזֶּה בְּקִרְבְּךָ:
וְלֹא תַחֲוֹס עֵינֶךָ נַפֶּשׁ בְּנַפֶּשׁ עֵין בְּעֵין שׁוֹן בְּשׁוֹן יָד בְּיָד רֶגֶל בְּרֶגֶל:

If a malicious witness rises against another to accuse the other falsely, then both parties to the dispute shall appear before Adonai, and before the priests and judges in authority at that time, and the judges shall make a thorough investigation. If the man who testified is a false witness, if he has testified falsely against his fellow, you shall do to him as he schemed to do to his fellow. Thus you shall sweep out evil from your midst. Nor shall you show pity: eye for eye, tooth for tooth, hand for hand, foot for foot.

7. Gordon J. Wenham, in his article "Betulah: A Girl of Marriagable Age" argues that *betulim* should be defined as "tokens of adolescence," i.e. a piece of cloth stained with menstrual blood. Thus, if a husband brings an accusation that he does not see blood, this refers to one of two situations: either the girl has not yet matured or the girl has become pregnant (by another man) . In either case, if he did not find *betulim*, he brings claim against the father since he believes he has been cheated in his purchase. For more on Wenham's definition of *betulim* see Wenham, Gordon J. "Betulah: 'A Girl of Marriageable Age'" *Vetus Testamentum* 22, no. 3 (July 1972): 326-48.

This principle of reciprocal retribution would require that the two penalties for the two passages of the *motzei shem ra* mirror each other: that the slandering husband should be put to death for bringing false accusations against his wife (which, if proven true, would have caused her to receive the death penalty).

The Biblical laws surrounding the slandered bride left many questions to be examined by the future exegetes who encountered them. While the text is explicit, it is an idealized and theoretical outline of this type of accusation. Thus, further nuance and analysis becomes the job of the tannaitic and amoraic rabbis of the Mishnaic and Talmudic worlds.

Although not explicit at first glance, I believe that the Biblical authors implicitly presume the woman's innocence. The tannaitic rabbis who encounter this text do not necessarily assume this innocence. The scholars of the Mishnah and Tosefta are less concerned with the outcome of the case than with the information *left out* of the Biblical text and the process by which this case would potentially be adjudicated. In order to fully understand this text, the rabbis seek to define the semantic range of various key terms, introduce new theoretical details, and question where this case should be adjudicated (i.e. in a monetary court or in a capital court).

The tannaitic and amoraic rabbis focused on certain key issues that they will return to repeatedly at each stage of the exegetical process. The legal discussion regarding the slandered bride is primarily confined to Tractates Ketubot and Sanhedrin, in Mishnah, Tosefta (Ketubot only), and

the Palestinian and Babylonian Talmuds⁸ (“Yerushalmi” and “Bavli,” respectively). The tannaitic midrash Sifre Devarim also addresses the issue, and much of its argumentation is ultimately absorbed into PT and BT Ketubot.

The rabbinic compilations deal with two general issues: what classifies a woman as a “virgin” and what is the exact process of adjudication in the case of an accusation of infidelity during betrothal. In examining the details of each of these issues, the Mishnaic material establishes a preliminary framework of discussion. The Talmuds expand upon this framework. Through an analysis of the key issues at each stage of rabbinic discussion I aim to demonstrate that the rabbis seek to move in the direction of greater leniency. Moving from Torah to Tosefta and Mishnah and then to PT and BT, we see a hesitancy to adjudicate and a greater interest in preserving the marital union. My examination of these texts reveals that each rabbinic generation reveals its discomfort with the stringencies of those preceding and seeks to create greater flexibility and compassion (for the accused bride) through their examinations of the *motzei shem ra*.

8. From this point forward, I will primarily refer to the Palestinian Talmud as PT and the Babylonian Talmud as BT.

Chapter 1: Tannaitic Literature

Section 1: Literary Relationships

Section 2: Halakhic Development

There are several theories as to the “correct” relationship of the Mishnah to the Tosefta and vice versa. For the purposes of my thesis, I will be examining the most well known theories and testing their relevance to Mishnah and Tosefta Sanhedrin and Ketubot.

One theory is that the Mishnah predates the Tosefta and the Tosefta acts as a commentary on the Mishnah adding detail to certain themes and addressing “holes” in the text with questions and elaborations. As a commentary to the Mishnah, the Tosefta records (possibly) later teachings that are not included in the Mishnah. In another sense, the Tosefta may also act as a supplement to the Mishnah, by giving fuller explanations of Mishnaic halakhah.⁹ In these instances, the Tosefta will take a Mishnaic statement and elaborate on it, often quoting the Mishnaic material first and then including supplementary tannaitic statements. In this capacity, the Tosefta will also (at

9. Goldberg, Abraham. "Tosefta-Companion to the Mishna." *The Literature of the Sages : Oral Tora, Halakha, Mishna, Tosefta, Talmud, External Tractates*. Vol. 1. Philadelphia: Fortress P. 1987. 283-302.

times) discuss topics entirely left out of the Mishnah.

More recently, it has been posited by a minority of scholars that the Tosefta actually predates the Mishnah. This theory, most notably supported by Judith Hauptman, suggests that the Tosefta was contemporary with a *version* of the Mishnah Hauptman believes that the Tosefta had access to a *version* of the Mishnah, which she refers to as the [the ur-Mishnah]. In this way, the “Mishnah is an amalgam of two older texts, the ur-Mishnah and the Tosefta, and other materials and was produced by the redactor of the Mishnah early in the third century.”¹⁰ Hauptman believes that the Toseftan material and other halakhic sources were redacted to form our present Mishnah. The redactor did this by reducing aggadic statements and excising several stories, midrashim and opinions. In this revision of the Mishnah-Tosefta relationship, Hauptman maintains the opinion that the Mishnah cannot be fully understood without relating to the Tosefta “both to explain difficult phrases and also to spell out the “events” to which the Mishnah refers but which the Mishnah does not bother to relate in full for its audience.”¹¹

Hauptman maintains that the Tosefta is in certain ways a commentary on the Mishnah but not on the Mishnah in its present form. She differs from much previous scholarly opinion by stating the

10. Hauptman, Judith. *Rereading the Mishnah : A New Approach to Ancient Jewish Texts*. Boston: Mohr Siebeck GmbH & Company KG. 2005. P. 21.

11. Hauptman, *Rereading the Mishnah*, p.22.

following: “1. The Tosefta comments not on our Mishnah but on an ur-Mishnah, some of which later became our Mishnah. 2. The Tosefta itself is one source of the Mishnah.”¹² Thus, her theory is a radical departure from previous scholarship that maintains that the Tosefta is a commentary on (or perhaps contemporaneous with) the Mishnah that we have today.

Literary Relationships

While I examined of the relevant *motzei shem ra* materials through the lens of Hauptman’s theory, I concluded that Hauptman’s theory did not work for Mishnah and Tosefta Ketubot . During the course of my research, I came to the conclusion that in the case of the materials that I examined, the Tosefta as an expansion of and commentary on the Mishnah¹³. The Tosefta, in its commentary on the Mishnah, questions certain topics, supplementing them with questions and further explanations. The material in the two texts is in a roughly parallel order and the themes are identical in some cases and merely similar in others. Both texts include material that is unique to their compilation. But only the Mishnah includes material that is not picked up later, either by the Bavli or Yerushalmi. In my estimation, our Mishnah is either contemporaneous with or precedes the Tosefta. A few examples will illustrate this general conclusion.

12. Hauptman, *Rereading the Mishnah*, p, 23.

13. I make this statement only in relation to the texts I have studied namely, Tosefta Ketubot and Mishnah Ketubot.

Mishnah Ketubot 1:1

משנה מסכת כתובות פרק א משנה א

בתולה נשאת ליום הרביעי ואלמנה ליום החמישי שפעמים בשבת בתי דינין יושבין בעיירות
ביום השני וביום החמישי שאם היה לו טענת בתולים היה משכים לבית דין:

A virgin is married on Wednesday; and a widow on Thursday, for twice a week the court sits in the town, on Monday and on Thursday, and if he has a claim of virginity, he would rise up early and go to court.¹⁴

Tosefta Ketubot 1:1

תוספתא מסכת כתובות (ליברמן) פרק א הלכה א

מפני מה אמרו בתולה ניסית ליום הרביעי שאם היה לו טענת בתולים היה משכים לבית דין
אם כן תנשא לאחר שבת אלא מפני שמתקין צרכיו כל ימות השבת התקינו שיהא נושא אותה
ברביעי מן הסכנה ואילך התקינו שיהא נושא אותה בשלישי ולא מיחו בידן חכמים רצה לישא
בשיני אין שומעין לו אם מחמת אונס מותר.

On what account did they rule, *A virgin is married on Wednesday*?

So that if there is a complaint against her virginity, he gets up the next morning and goes to court early.

If so, she should [just as well] be married after Shabbat [i.e. Sunday].

But, because the husband does his preparations [for the wedding] through the [three] weekdays, they arranged that he should marry her on Wednesday.

From the time of the danger (Bar Kokhba War¹⁵) and thereafter, began the custom of marrying her on Tuesday, and the Sages did not stop them.

14. Kehati, Pinchas, trans. *The Mishnah: Seder Nashim V. 1 Yevamot and Ketubot*. Jerusalem: World Zionist Organization, 1992.

15. The text uses the word *sakanah* which literally means danger. I associated this with the Bar Kokhba Revolt from Neusner's translation. Neusner, Jacob. *The Tosefta: Third Division: Nashim: The Order of Women*. Rowman and Littlefield, 1999.p. 59.

If he wanted to marry her on Monday, they did not listen to him.
But if on account of a constraint, it is permitted.¹⁶

Mishnah Ketubot 1:1 states the times at which two types of women would get married (presumably the most common types of marriages—one who has never been married and one whose husband has died and is being remarried). Tosefta Ketubot 1:1 responds to the terse, declarative Mishnah with a question: Even though the cited text states clearly and definitely that a virgin gets married on a Wednesday, the Tosefta seeks explanation. Thus, it can be assumed that the Tosefta *knew* this Mishnah but did not *know* the reasons behind it. In this way, the Tosefta is acting as a commentary on that Mishnah.

First, the Tosefta seeks to understand the Mishnah's ruling. Second, it moves on to address anecdotes that deviate from the Mishnah's seemingly hard and fast rule. The Tosefta informs the reader that while the ideal day for a virgin to get married is Wednesday, that may in fact not be the case any longer (i.e. since Bar Kokhba revolt in 132-135) and/or that there are exceptions to the rule (if there is constraint such as a death in the family).

Who Gets a Ketubah of 200 zuz

Mishnah Ketubot 1:3

משנה מסכת כתובות פרק א משנה ג

16. Neusner, *The Tosefta*, p. 59.

הגדול שבא על הקטנה וקטן שבא על הגדולה ומוכת עץ כתובתן מאתים דברי רבי מאיר
וחכמים אומרים מוכת עץ כתובתה מנה:

An adult male who had relations with a girl who was a minor or a boy who was a minor had relations with an adult [woman] and one injured by a piece of wood [such that her hymen is destroyed]-their ketubah is two hundred, says Rabbi Meir. But, the Sages say, one injured by a piece of wood, her ketubah is maneh.¹⁷

Tosefta Ketubot 1:2

תוספתא מסכת כתובות (ליברמן) פרק א הלכה ב

גדול הבא על הקטנה וקטן הבא על הגדולה ומוכת עץ כתובתן מאתים משום ר' יהודה
בן אגרא אמרו אי זו היא קטנה ואי זהו קטן קטן פחות מבן תשע שנים ויום אחד קטנה
פחותה מבת שלש שנים ויום אחד.

An adult male who had sexual relations with an adult female and a minor male who had sexual relations with an adult, and a girl who was injured by a blow [such that her signs of virginity are destroyed]¹⁸, their marriage contract [for a marriage] to another [person] is two hundred [zuz].

In the name of R. Judah b. Agra they said, "Who is a minor female and who is a minor male?"

A minor male is younger than nine years and one day old.

A minor female is younger than three years and one day old.¹⁹

Tosefta Ketubot 1:3

תוספתא מסכת כתובות (ליברמן) פרק א הלכה ג

17. Kehati, p. 7.

18. This is known in Hebrew as *mookat etz*, literally translated as one who is injured by a piece of wood (as translated in Mishnah Ketubot 1:3 above). The term *mookat etz* is a category of woman referenced in tannaitic and amoraic texts.

19. Neusner, *The Tosefta*, p. 60.

בוגרת ואילונית כתובתן מאתים נשאת בחזקת שהיא כשירה ונמצאת אילונית אין להן כתובה רצה לקיים נותן כתובה מנה הבא על החרשת ועל השוטה ועל הבוגרת ועל מוכת עץ אין להן טענת בתולים סומא ואילונית יש להן טענת בתולים סמכוס אמ' משם ר' מאיר סומא אין לה טענת בתולים.

An adult woman and a barren woman-their marriage contract is 200 zuz.
If she is married under the assumption that she is [sexually] suitable and turned out to be barren, she has no marriage contract.²⁰

In this example, both the Mishnah and Tosefta begin with the same legal principle that the minor, the woman who has sex with a minor and the one who is injured by a blow should all receive the same marriage settlement. The Mishnah challenges this notion by citing the Sages' opinion that a barren woman should be placed in a different (and lower) category.

The Tosefta does not include this dispute between R. Meir and the Sages. Rather, the Tosefta is interested in understanding exactly who is included in the category of minor girl, (known in Hebrew as *katana*). By clarifying who exactly is a minor male and female, the Tosefta gives the reader a better understanding of who would fall under these legal categories. Here in some senses, the Tosefta functioning as a commentary on the Mishnah. But, in another sense, the Tosefta acts as a supplement to the Mishnah, by further defining the ages of the minor girl and boy.

20. An *aylonit* is defined as a woman who is congenially barren and is unable to give birth to a child because of a congenital defect.

Tosefta Ketubot 1:3 then mentions the adult woman and barren woman as further categories of women who receive a ketubah of 200 zuz. The Mishnah makes no mention of these women.

Here, again, the Tosefta is looking beyond the standard categorizations, seeking further understanding of how widely and to whom these categories apply.

Who is Subject to Claims of Virginity

Mishnah Ketubot 1:2

משנה מסכת כתובות פרק א משנה ב

בתולה כתובתה מאתים ואלמנה מנה בתולה אלמנה גרושה וחלוצה מן האירוסין כתובתן מאתים ויש להן טענת בתולים הגיורת והשבויה והשפחה שנפדו ושנתגיירו ושנשתחררו פחותות מבנות שלש שנים ויום אחד כתובתן מאתים ויש להן טענת בתולים:

A virgin her ketubah is 200 zuz, and a widow her ketubah is maneh. A virgin widow, a [virgin] divorced woman and a woman [after her husband-to-be died] who underwent chalitzah after the erusin-their ketubah is 200 zuz and they have a claim of virginity.²¹ A female convert, captive, bondswoman who were redeemed, converted, or were freed less than three years and one day of age¹-their ketubah is 200 zuz and they have a claim to virginity.²²

Tosefta Ketubot 1:3

תוספתא מסכת כתובות (ליברמן) פרק א הלכה ג

21. The claim of virginity applies to them; If the second husband finds them not to be virgins, they lose their ketubah.

22. Kehati, p.6.

הבא על החרשת ועל השוטה ועל הבוגרת ועל מוכת עץ אין להן טענת בתולים סומא ואילונית יש להן טענת בתולים סמכוס אמ' משם ר' מאיר סומא אין לה טענת בתולים.

...He who has sexual relations with a deaf-mute girl or with an idiot or with a mature woman or with the mookat etz-they are not subject to claim of virginity²³ In the case if a blind woman or a barren woman, they are subject to a claim of virginity. Sumkhos said in the name of Rabbi Meir "A blind girl is not subject to a claim of virginity."²⁴

The issue of who has a claim to virginity is a subject well covered by both the Mishnah and Tosefta. Both texts are interested in who is considered a virgin and thus can have a claim of virginity brought against her. Both Mishnah and Tosefta are interested in categorizing the types of women whose virginity might be subject to dispute or who are in a more vulnerable position than the paradigmatic betrothed female. But the two categories of women mentioned in the Mishnah and Tosefta do not overlap. It is possible (looking at the Tosefta as a supplement to the Mishnah) that the Tosefta accepted and assumed the categorizations of the Mishnah and, in it's reading of the text, sought to discuss *additional* categories of women.

It is noteworthy that both sets of the categories will reappear in discussions in the Palestinian and Babylonian Ketubot tractates.

Sifre Devarim

23. In this situation, the husband cannot bring a case against her virginity after the wedding night.

24. Neusner, *The Tosefta*, p. 61.

Sifre Devarim stands apart from Mishnah and Tosefta in many respects. Sifre Devarim, a halakhic midrash, engages directly with the Biblical text of Deuteronomy 21:13-22, quoting and explaining and refining the intention of the Biblical law. In this way Sifre and Mishnah/Tosefta represent two different types of tannaitic literature. Thus, there is an overlap in technique and perhaps also in the end result: a more thorough and detailed understanding of the legal limits and process of the *motzei shem ra*. This can be seen in a number of examples:

False Charges and Claims of Virginity

Sifre Devarim Piska 236

ספרי דברים פיסקא רלה

ושם לה עלילות דברים.
יכול אפילו אמר לה הקדחת התבשיל והיא לא הקדיחה?

And makes up charges against her [and defames her]. (22:14)

The text asks, is it possible that this law applies even if he said to her “You burned the soup,” when she had not burned the soup?²⁵

Here, Sifre Devarim searches for what constitutes an appropriate reason to bring charges against the wife. The Biblical text simply states that he brings the charges, but does not tell us why, other than the simple fact that he hates her. The reason for his hatred is not disclosed. Sifre Devarim recognizes this lack of information and then looks for a way to understand it.

25. Neusner, Jacob. *Sifre to Deuteronomy*. New York: Scholars P, 1987.p. 151.

By asking this question, Sifre Devarim seeks to further understand the nature of these charges, (referred to in the Hebrew as *alilot dvarim*) which the husband brings against the wife. This is done through a *gezeirah shava*²⁶, or an argument by analogy.

ספרי דברים פסקא רלה

תלמוד לומר עלילות דברים עלילות דברים לגזירה שוה מה עלילות דברים האמור להלן טענת בתולים אף עלילות דברים האמור כאן טענת בתולים אי מה עלילות דברים האמור להלן מקום בתולים אף עלילות דברים האמור כאן מקום בתולים מנין לרבות ביאה אחרת תלמוד לומר והוציא עליה שם רע.

The text states, *alilot dvarim* in two places. Just as *alilot dvarim* here concerns *taanat betulim* can we say that also here *alilot dvarim* concerns *taanat betulim* (a claim against signs/token of virginity).

How do we know that these *alilot dvarim* should include sexual relations of another kind [besides vaginal sex]. Scripture states, “brings upon her an evil name” [which encompasses a variety of sexual acts].²⁷

First, the above section establishes a clearer definition of the nature and extent of the act of defamation or *motzei shem ra*. Second, this section acts as a crucial link between the biblical vocabulary and the forthcoming tannaitic and amoraic discussions.

26. *Gezeira shava* is a hermeneutical principle of Biblical interpretation. A *gezeira shava* compares two passages with either identical or similar terminology. The comparison is used to either clarify the meaning of a passage or the apply a halakhah from one verse to another.

27. Neusner, *Sifre to Deuteronomy*, p. 152.

As stated above, the tannaim do not use the phrase *alilot dvarim* in their descriptions of the *motzei shem ra*. When referring to charges brought against the wife, only the phrase *taanat betulim* is used. Sifre Devarim, in the above section, links the two phrases, presenting a bridge between the two pieces of text. From this sections, the reader understands what *alilot dvarim* mean in tannaitic language.

Conceived in Holiness

When speaking about the husband's punishment, Sifre Devarim explains that the fine of one hundred shekels of silver will be given to girl's father. Sifre quotes first from Deuteronomy, saying "*and give it to the father.*" It then adds an extra piece of information-one that will be discussed further in the Palestinian and Babylonian Talmuds.

Sifre Devarim Piska 237 states,

ספרי דברים פיסקא רלז

וענשו אותו, ממון. מאה כסף, כסף צורי. ונתנו לאבי הנערה, פרט לגיורת שהיתה הורתה
שלא בקדושה ולידתה בקדושה שאין לה מאה כסף. כי הוציא שם רע, לא על זו בלבד הוציא
שם רע אלא על כל בתולות ישראל.

...this excludes the case of a woman convert who was not conceived in holiness but who was born into holiness. Since she does not come under the law of the 'hundred shekels of silver.' 'For the man has defamed a virgin of Israel.'²⁸

28. Neusner, *Sifre to Deuteronomy* p. 156.

Here, Sifre Devarim furthers an element of the discussion. The Biblical text states only that the husband had defamed a virgin of Israel.”²¹ Thus, there is an implicit understanding that the wife is an Israelite. Thus, Sifre Devarim picks up on the logical question about what to do with a woman is the child of a convert.

Mishnah Ketubot 4:3 includes a similar statement.

משנה מסכת כתובות פרק ד משנה ג

היתה הורתה שלא בקדושה ולידתה בקדושה הרי זו בסקילה אין לה לא פתח בית האב ולא מאה סלע.

If she was not conceived in sanctity but was born in sanctity-then she liable to stoning. She has neither the door of her father's house nor one hundred sela.²⁹

These passages are one of the few near-verbatim textual parallels between the two sets of text.

Stoning

Sifre Devarim, like our Mishnah, discusses the wife's punishment, if she is proven guilty.

Piska 240 states,

ספרי דברים פסקא רמ

29. Kehati, p. 53.

וסקלוה כל אנשי עירה, וכי כל אנשי עירה רוגמים אותה אלא במעמד כל אנשי עירה.
באבנים, יכול באבנים מרובות ת"ל +ויקרא כ כז+ באבן אי באבן יכול באבן אחת תלמוד לומר
באבנים אמור מעתה אם לא מתה בראשונה תמות בשניה.

And the men of the town shall stone her with stones. Do all the men stone her? Rather, it must be done in the presence of all the men of the town.

With stones? One might think that it is to be done with many stones, Scripture says elsewhere, "stone." (Lev. 20:27).

Since it says there "stone" one might think that only one stone should be used, therefore the verse here states, "stones." Thus, you may draw the conclusion that if she does not die by the first stone, she should die by the second stone.³⁰

The above discussions brings to light new clarity and definition to the nature of the woman's punishment. This passage is another link between the Mishnah and the Sifre Devarim. In the same passage of Mishnah Ketubot 4:3, Mishnah defines the various types of punishment, depending on the time at which the wife [and her parents] converted.

In the Sifre Devarim, the two issues of 1. how to punish a convert (or the child of a convert) and 2. the details of where the stoning takes place are found in two separate piskaot: Sifre Devarim 238 and 240. In the Mishnah, these subjects are combined. This leads to an observation about the Mishnah: it seems to want to systematize and combine information that Sifre—based on the Torah itself—would be inclined to leave separate. Sifre's principle of organization is the Torah; Mishnah has its own idea of how topics should be organized.

30. Neusner, *Sifre to Deuteronomy*, p.159.

Mishnah Ketubot 4:3 states,

משנה מסכת כתובות פרק ד משנה ג

הגיות שנתגיירה בתה עמה וזנתה הרי זו בחנק אין לה לא פתח בית האב ולא מאה סלע היתה הורתה שלא בקדושה ולידתה בקדושה הרי זו בסקילה אין לה לא פתח בית האב ולא מאה סלע היתה הורתה ולידתה בקדושה הרי היא כבת ישראל לכל דבר יש לה אב ואין לה פתח בית האב יש לה פתח בית האב ואין לה אב בסקילה לא נאמר פתח בית אביה אלא למצוה:

A female convert whose daughter was converted with her, and she committed adultery-then she is liable for strangulation. She has neither a door of the house of her father, not the one hundred sela. If she was not conceived in sanctity and born in sanctity, she is liable for stoning. She has neither a door to her father's house nor [does she receive] 100 sela. If she was conceived and born in sanctity, then she is a daughter of Israel in all respects.

If she has a father, but does not have the door of the house of her father; if she has the door of the house of her father but does not have a father-then she is liable to stoning; "the door of her father's house" was stated as the mitzvah.³¹

The use of biblical citations is ubiquitous in Sifre Devarim and sparing in the other tannaitic materials. Thus these examples act as an important link between the origins of this issue in the Biblical text and the following tannaitic and amoraic works. On a different note, their similarity in both topic and language suggests a mutual knowledge of one another, if not a more direct act of borrowing from one body of text to another.

Halakhic Development

Sifre Devarim , Mishnah and Tosefta set up the basic set of legal concerns that become the

31. Kehati, p. 53.

building blocks of the halakhic discussion in the Palestinian and Babylonian Talmuds. While all three compilations inform future tannaitic and amoraic works, the Mishnah and Tosefta more explicitly provide the basic halakhic framework in which these discussions will continue: who is considered a virgin (i.e. who receives a 200 zuz ketubah), who is not considered a virgin, when a virgin can get married and the nature of punishment (in the event that a claim of virginity is brought before the bet din) for the accusing husband, the accused wife and the perjuring witnesses.

This list of topics become important when we enter explicitly into the discussion of the *motzei shem ra* in the PT and BT. Knowing who and who is not considered a virgin, and against whom a claim may or may not be brought is vital to the adjudication process of a potential case. The following information is explicitly laid out in Mishnah and Tosefta Ketubot.

Categorization of Women

1. During tannaitic times, it was customary that a virgin be married on Wednesday. 2. A woman who is eligible to married on a Wednesday (i.e. women considered virgins) , which may include:

- a minor girl who has sex with an adult male,
- an adult woman who has sex with a minor boy;
- A virgin widow,
- a [virgin] divorced woman

- a [virgin] woman [after her husband-to-be died] who underwent *chalitzah* after the *erusin*;
- a convert, captive, bondswoman [all of whom] were redeemed, converted, or were freed less than three years and one day of age.

The categories of women that are left in question are the blind and barren woman, and the *mookat etz*. In Tosefta Ketubot 1:3 Sumkhos says in the name of R. Meir that a blind woman is not subject to a claim of virginity (thus making her ineligible to receive the 200 zuz). However, R. Meir represents the minority opinion. Thus, the halakhah (stated explicitly later) can be inferred as against R. Meir's ruling (namely, the blind woman is subject to a claim of virginity and receives the 200 zuz ketubah).

Punishment

Tosefta Ketubot 1:5 outlines the parameters for the different punishments that will be inflicted on the husband, wife and their respective witnesses, depending on the outcome of the case. In the case in which the husband's claim is proven false, he is lashed, pays the father 100 selaim and is prohibited from ever divorcing his wife. If the claim is proven true, the wife is taken to the door of her father's house and stoned to death. In this section, the Tosefta basically restates the outlined punishments that appear in Deuteronomy 22:19-21. But, in its restatement, the Tosefta introduces new vocabulary and further details into the outlined punishment scenario that is described in Deuteronomy.

Deuteronomy 21:18-19 text states,

ולקחו זקני העיר ההוא את האיש ויסרו אתו:
וענשו אתו מאה כסף ונתנו לאבי הנערה כי הוציא שם רע על בתולת ישראל ולו תהיה לאשה
לא יוכל לשלחה כל ימיו:

[If the cloth shows that she indeed show signs of virginity] the elders of the town shall take the man and flog him and they shall fine him a hundred shekels [of silver] and give it to the girl's father; for the man has defamed a virgin of Israel.

Tosefta 1:5, in addition to describing the husband's punishment, states that his [false] witnesses will also be punished: they too will be stoned to death.

תוספתא מסכת כתובות (ליברמן) פרק א הלכה ה

המוציא שם רע ונמצאו עדיו זוממין הוא לוקה ונותן ארבע מאות זוז והזוממין מקדימין לבית הסקילה ואם היתה יתומה הוא לוקה וכתובתה קיימת ונותן ארבע מאות זוז והזוממין מקדימין לבית הסקילה לא אמ' לעידים שיעידו אלא הם באו מאיליהן והעידו הוא אין לוקה ואין נותן ארבע מאות זוז והזוממין מקדימין לבית הסקילה זינתה כשהיא נערה ומשבגרה הוציא עליה שם רע הוא אין לוקה ואין נותן ארבע מאות זוז והיא זוממיה מקדימין לבית הסקילה.

He who accuses [the bride of having sexual relations with another man before marriage] and his witnesses turn out to be conspirators he is lashed and pays 400 zuz [to the accused woman's father]. And the witnesses are taken out and stoned. If he did NOT tell the witnesses to come forward but they came along on their own, he is not lashed and does not pay the 400 zuz. But, the witnesses are taken out for stoning.³²

The same pattern emerges in the opposite situation when the wife is found guilty.

32. Neusner, *The Tosefta*, p. 61.

In this case Deuteronomy 22:21-22 states,

ואם אמת היה הדבר הזה לא נמצאו בתולים לנער:
והוציאו את הנער אל פתח בית אביה וסקלוה אנשי עירה באבנים ומתה כי עשתה נבלה
בישראל לזנות בית אביה ובערת הרע מקרבך: כי ימצא איש שכב עם אשה בעלת בעל ומתו
גם שניהם האיש השכב עם האשה והאשה ובערת הרע מישראל:

If the charges prove true, the girl was found not to be a virgin, then the girl shall be brought out to the entrance of her father's house, and the men of her town shall stone her to death; for she did a shameful thing in Israel, committing fornication while under her father's authority. Thus, you sweep away evil from your midst.

Of the three tannaitic texts, the Tosefta is the only one to explicitly mention the inclusion of witnesses in the discussion of punishment. As a commentary on the Mishnah (and a potentially later document than the Sifre Devarim), the Tosefta is further systematizing aspects of the adjudication process. Further halakhic discussion on the treatment of witnesses involved in the case of the *motzei shem ra* appear in PT and BT Ketubot and Sanhedrin.

Changes in Physical Maturity

Tosefta Ketubot 1:5

תוספתא מסכת כתובות (ליברמן) פרק א הלכה ה

זינתה כשהיא נערה ומשבגרה הוציא עליה שם רע הוא אין לוקה ואין נותן ארבע מאות זוז
והיא וזוממיה מקדימין לבית הסקילה.

If she committed fornication when she was a girl (naarah) and afterwards she became a full-grown woman, he accused her [of doing this], he is not lashed and does not pay 400

zuz. She AND her witnesses are taken out for stoning.³³

Here, the Tosefta inserts tannaitic categorizations of physical maturity. The Bible does not mention the status of the girl when she commits the alleged fornication. The division of *katana*, *naarah* and *bogeret* are rabbinic inventions. These categories continue to surface throughout the discussions in the Talmuds in discussions of when a crime was committed and how that will affect punishments of the individuals involved.

At this point, the tannaim have established their basic interests and concerns in regards to the *motzei shem ra*. Issues of status, punishment and the overall process of adjudication take shape as the *motei shem ra* is revisited by the amoraim. As we examine the later rabbinic texts, the rabbis move further from the Biblical law and engage in a more contemporary re-working of the *motzei shem ra*.

33. Neusner, *The Tosefta*, p. 61.

Ch. 2 Tannaitic and Amoraic Literature: PT Sanhedrin and PT Ketubot

Section 1: Literary Relationships

Section 2: Halakhic Development

While the tannaitic texts establish the framework for the discussion of the *motzei shem ra*, a more complex and detailed conversation emerges in the Palestinian Talmud. Two tractates discuss the *motzei shem ra*: PT Sanhedrin and PT Ketubot. The Sanhedrin sugya focuses on whether the accusation will be treated primarily as a monetary case or as a capital case. In this discussion, PT Sanhedrin presents a new aspect of the *motzei shem ra*, namely the process of adjudication and punishment. PT Ketubot elaborates upon the issues raised in Mishnah Ketubot. PT Ketubot incorporates material from Tosefta Ketubot, Sifre Devarim and PT Sanhedrin.

PT Ketubot primarily follows the order of Mishnah Ketubot: taking each line of Mishnah and further analyzing and questioning the tannaitic statements. PT Ketubot also takes relevant sections of Tosefta, interjecting them into relevant discussions. At certain times the Yerushalmi treats the Tosefta like the Mishnah; as a tannaitic starting-place from which the amoraim jump off into further discussions. The PT uses the Tosefta to supplement certain discussions and to support the amoraic point of view. The Tosefta is not always preserved in its original form, but is sometimes changed to fit the amoraic viewpoint or to better suit the flow of an argument. It is

clear from my research that the Palestinian amoraim readily used and regarded Toseftan material as authoritative material.

Textual Relationships: Revisiting Issues Mentioned in Tosefta

The Blind and Barren Woman

Tosefta Ketubot 1:3 discusses the case of a blind or barren woman. The Tosefta first states that they are subject to a claim of virginity (i.e. their husband could accuse them of not being a virgin). Sumkhos adds in the name of R. Meir that a blind girl is not subject to a claim of virginity. PT Ketubot, in the passage below, seeks to understand R. Meir's ruling.

PT Ketubot 1:4 IIIc-IVc³⁴

תלמוד ירושלמי מסכת כתובות פרק א דף כה טור ג/ה"ד

ומה טעמא דרבי מאיר אני אומר מצא ואיבד מה טעמא דרבנן יכולה היא לתופשו מה עבד לה רבי מאיר יכול הוא לדחות ברוק תני טענת בתולים עד שלשים יום דברי רבי מאיר וחכמים אומרים מיד מה אנן קיימין אם בשבעל מיד אם בשלא בעל אפילו לאחר מיכן עד כמה אלא כן אנן קיימין בסתם.

What is the reason for R. Meir's view?

I maintain that the husband found signs of virginity but hid them (so as to claim that she is not a virgin).

How does R. Meir deal with the claim of the rabbis?

The husband has the power to wipe out the signs of virginity with a little spit.

34. The numbering of the PT Ketubot and Sanhedrin materials are taken from Jacob Neusner's system of outlining.

It has been taught, “A claim against a woman’s virginity must be brought within thirty days of marriage”—said R. Meir.
The Sages say it must be brought forthwith.

How shall we interpret this dispute? If we deal with a case in which we know that the husband has sexual relations, then he must bring the claim right away. If we deal with a case in which he did not have sexual relations, then even after much time [there can be no claim, there being no evidence].³⁵

Although the above sugya appears as one unit in PT Ketubot, it is actually a combination of Tosefta Ketubot 1:3 and 1:4. Tosefta Ketubot 1:3 deals with the status of the blind or barren woman. Tosefta Ketubot 1:4 deals with the situation of the *aylonit*, a woman who, for whatever reason, does not develop sexually in the usual and proper way. By merging these two *halakhot* of Tosefta Ketubot into one contiguous unit PT Ketubot undermines the literary integrity of the two independent *halakhot* and marginalizes the original issue of the *aylonit*. I will illustrate these claims by setting out the Toseftan materials:

Tosefta Ketubot 1:3

תוספתא מסכת כתובות (ליברמן) פרק א הלכה ג

פטענת בתולים סומא ואילונית יש להן טענת בתולים סמכוס אמ' משם ר' מאיר סומא אין לה טענת בתולים.

35. Neusner, Jacob, trans. *The Talmud Of Israel: A Preliminary Translation and Explanation*. Vol. 22. Chicago: The University of Chicago P. 1985. p. 37-38.

In the case of blind woman and a barren woman, they are subject to claim of virginity.

R. Sumkhos said in the name of R. Meir, "A blind girl is not subject to a claim of virginity."³⁶

Tosefta Ketubot 1:4

תוספתא מסכת כתובות (ליברמן) פרק א הלכה ד

כנסה בחזקת שהיא כשירה ונמצאת אילונית אע"פ שנסתרה ויש עדים שלא נתיחדה עמו כדי בעילה אין השיני יכול לטעון טענת בתולים לפיכך אין כתובתה עליו אלא מנה טענת בתולים שלשים יום דברי ר' מאיר ר' יוסה אומ' אם נסתרה מיד לא נסתרה אפי' לאחר שלשים.

If he [first husband] married her on the assumption that she was [sexually] suitable and she turned out to be barren³⁷ even though she was in private [with him], or there are witnesses that she was not alone with him [first husband] for a sufficient time to have sexual relations, the second [husband] has no claim of virginity against her. Therefore, the marriage contract is maneh. [In such a case] "The claim of virginity may be brought for thirty days". These are the words of Rabbi Meir.

R. Yose said," If she was in private with him [the first husband] it must be brought forthwith. If she was not in private [with the first husband, then the claim may be brought] even after thirty days."³⁸

What emerges from this shift is a new, broader application for the statements of R. Meir and R. Yose. In their original form, they refer only to the situation of the first husband and the *aylonit*.

36. Neusner, *The Tosefta*, p.60.

37. In this translation, Neusner translates the word *aylonit* to mean a woman who had had prior sexual relations. I chose to reflect a more direct translation of the Hebrew text and translated *aylonit* as barren.

38. Neunser, *The Tosefta*, p. 61.

As presented in PT Ketubot, their statements are applied to *any* case of suspected virginity. Additionally, PT Ketubot attributed R. Yose's statement to the Sages, thus turning it into a majority opinion, and thereby shifting R. Meir's opinion to minority status.¹

Insertion of Sifre Devarim

PT Ketubot 4:4 stands apart from earlier sections of Ketubot in terms of both style and content. This section of Ketubot, which deals primarily with the *motzei shem ra*, engages directly and repeatedly with the Biblical source of *motzei shem ra*—Deuteronomy 22:13-21. In this section, the editor not only employs the hermeneutical principles used in Sifre Devarim but also pulls sections of text directly from Sifre.

Burning the Soup

PT Ketubot 4:4 begins its second section with an examination of the opening lines of Deuteronomy 22:14-19, "A man takes a wife and cohabits with her. Then he takes an aversion to her and makes up charges against her and defames her. And charges her with shameful conduct."

PT Ketubot 4:4 IId raises a question as to what might cause the husband to take aversion to his

wife:

תלמוד ירושלמי מסכת כתובות פרק ד דף כח טור ב /ה"א

כתיב כי יקח איש אשה ובא אליה ושנאה לעולם אינו חייב עד שיכנוס ויבעול ויטעון טענת בתולים ושם לה עלילות דברים יכול אפילו הקדיחה לו את התבשיל?

Might one think that would encompass even overcooking the soup/meal?

PT Ketubot 4:4 He-g continues with a *gezeirah shava* to further understand the nature of *alilot dvarim*, commonly translated as “wanton deeds.”

נאמר כאן עלילות דברים ולמטן נאמר עלילות דברים מה עלילו דברי' למטן זנות אף למעלן זנות אי מה עלילות דברים שלמטן ממקום בתולין אף כאן מניין אפי' בא עליה ביאה אחרת ת"ל והוציא עליה שם רע מ"מ.

Here it is stated *alilot dvarim* and there it is stated *alilot dvarim*. [Deut. 22:17].

Just as *alilot dvarim* means *z'nut*¹ there, so too *alilot dvarim* means *z'nut* here.

If we assume that just as *alilot dvarim* means fornication. Should one propose that just as *alilot dvarim* stated below refers to sexual relations in the normal manner, so here the same definition prevails, how then do we know that even if [the illicit lover] had sexual relations with her in some other way, [the charge still applies?] Scripture says, “and brings an evil name upon he” -means in all instances/on any count. [Meaning whether the sexual act was “normal” or “abnormal manner”]³⁹.

This section of the sugya is noteworthy on a number of levels. First, this is an example of PT

39. Neusner, *The Talmud of Israel: Ketubot*, p. 132.

Ketubot using the Sifre Devarim to further its understanding of the issue of *motzei shem ra*. This sugya is thus an important datum to be considered in connection with the under-explored issue of how the Talmuds related to this halakhic midrash. Second, the PT sugya follows the style of Sifre Devarim, using the hermeneutical principle of analogy to make a subtle but important change to the Sifre Devarim text. This change clues the reader in to their opinion of the woman about whom charges about her virginity are brought.

A nearly identical parallel text found in Sifre Devarim Piska 235, states as follows:

ספרי דברים פיסקא רלה

ושם לה עלילות דברים, יכול אפילו אמר לה הקדחת התבשיל והיא לא הקדיחה תלמוד לומר עלילות דברים עלילות דברים לגזירה שוה מה עלילות דברים האמור להלן טענת בתולים אף עלילות דברים האמור כאן טענת בתולים אי מה עלילות דברים האמור להלן מקום בתולים אף עלילות דברים האמור כאן מקום בתולים מנין לרבות ביאה אחרת תלמוד לומר והוציא עליה שם רע.

ואמר את האשה הזאת, מלמד שאין אומר דבריו אלא בעמידתה. לקחתי ואקרב אליה ולא מצאתי לה בתולים, הרי עדים שזינתה בבית אביה.

Alilot dvarim [is found] in two places. Just as *alilot dvarim* here concerns *taanat betulim* so can we say that also here *alilot dvarim* concerns *taanat betulim* (a claim of virginity).

How do we know that these *alilot dvarim* should include sexual relations of another kind [besides vaginal sex]? Scripture states, “brings upon her an evil name” [which encompasses a variety of sexual acts].⁴⁰

40. Neusner, *Sifre to Deuteronomy*, p. 151.

In Ch. 1, I showed how this section of Sifre Devarim helped to bridge the terminological differences between the Biblical and tannaitic discussions of the *motzei shem ra*. PT Ketubot's version of this *piska* of Sifre Devarim again changes our understanding of *alilot devarim*. While Sifre Devarim equates *alilot dvarim* and *taanat betulim* (claims against one's virginity), PT Ketubot thinks that *alilot dvarim* does not just mean a claim based on an alleged absence of virginity, but also implies *z'nut*, which is most often translated as "prostitution" or unchastity. Thus, I infer that the scholars of PT Ketubot reworked this section of Sifre to convey their feelings that if a woman's virginity is questioned, that question must have resulted from unchaste actions (i.e. having sex with one person while betrothed to someone else).

Statements from Sifre Devarim are inserted into PT Ketubot 4:4 two other times. In both instances, the PT authors treat the Sifre as a jumping off point for further, more in-depth discussion. What is particularly noteworthy about this section of PT Ketubot is that it employs the hermeneutical principles seen in Sifre and treats the Sifre (like the Mishnah) as a skeleton upon which it builds more detailed discussions.

Spreading Out the Garment

PT Ketubot 4:4 also revisits the examination of the *simla*, (often translated as) the bed sheet [containing evidence of hymeneal bleeding] or garment worn by the bride on her wedding night. Deuteronomy 22:17 specifies that the girl's parents will "spread out the cloth" before the town

elders of as evidence of their daughter's virginity.

PT Ketubot examines this process, using statements from Sifre Devarim Piska 237.

PT Ketubot 4:4 IIx- states,

תלמוד ירושלמי מסכת כתובות פרק ד דף כח טור ג/ה"ד

ופרשו השמלה הכל משל תני רבי ישמעאל זה אחד משלשה מקריות שנאמרו בתורה במשל(...) תני רבי אליעזר בן יעקב אומר ייאמרו הדברים ככתב.

"And they shall spread out the garment" (Deut. 22:17)
The whole thing is meant as a metaphor.

R. Ishmael taught, "This is one of three verses used in the Torah in the sense of a parable (...)

It was taught: R. Eliezer ben Jacob says, the matter should be interpreted precisely as it is written. (in a literal way, not in a metaphor)⁴¹.

The above section is a close parallel to Sifre Devarim Piska 237. PT Ketubot, in its usage of this section of the Sifre piska, expands upon the original statements to give further depth to the issue at hand. PT Ketubot revises the material by inserting the following amoraic opinion in between two statements of Sifre Devarim.

PT Ketubot 4:4 IIv states:

תלמוד ירושלמי מסכת כתובות פרק ד דף כח טור ג/ה"ד

אמר רבי יוסי בי רבי בון לעולם אינו חייב עד שיכנוס ויבעול ויטעון טענת בתולים ופרשו השלמה לא סוף דבר.

41. Neusner, *The Talmud of Israel: Ketubot*, p.135.

Said R. Yose b. Rabbi Bun “Under no circumstances is the husband liable [under the law of Deut. 22:13-12] unless he marries the girl and has sexual relations with her and then lays a claim against her virginity.”⁴²

Here, the text of Sifre Devarim is re-inserted in PT Ketubot:

תלמוד ירושלמי מסכת כתובות פרק ד דף כח טור ג/ה"ד

ופרשו השלמה לא סוף דבר ופרשו השמלה אלא עד שיתחווירו הדברים כשמלה.

“And they shall spread out the garment.”-It is not the end of the matter that they should merely spread out the garment but the matter is not decided until the issues are [as plain as] the garment.

Here, the PT Ketubot editors continue with one final statement regarding the details of spreading out the garment..

רבי אסי אמר ופרשו השמלה לעולם אין העדים נסקלין ולא הבעל לוקה ולא נותן מאה סלע עד שיאמרו עמנו היה במקו' פלוני והבעל שכרן להעיד עדו' שקר.

R. Assi said, “and they shall spread out the garment”. Under no circumstances are perjured witnesses stoned, nor the husband flogged, nor must he pay 100 selas, unless [other] witnesses state, “He was with us in such and such a place and the husband hired them to give false testimony.”

At this point PT Ketubot moves into a deeper discussion about the law regarding witnesses.

It is noteworthy that both of the amoraic statements limit the circumstances in which the

42. Neusner, *The Talmud of Israel: Ketubot*, p.136.

husband is liable and the circumstances in which the case can be adjudicated. These amoraic insertions hint (as I will show in greater detail below) that the Palestinian amoraim portray themselves as being less interested than their tannaitic predecessors in the possibility of actually bringing such a case to trial. It is also worth noting that both amoraic statements use term *l'olam* (translated as “under no circumstances”) to limit the viability of an accusation making its way to court.

Halakhic Development

PT Sanhedrin

Tractate Sanhedrin deals mainly with the judicial procedures of courts, the qualifications of judges, criminal law, and the administration and methods of punishment of criminals charged with and condemned for capital crimes. The term “Sanhedrin” refers to the quasi-mythical Great Court comprised of 71 ordained scholars, as well as to the subordinate courts of 23 judges who allegedly functioned on a more local level. The general term *beit din* usually refers to courts consisting of three members. Chapter 1 of Tractate Sanhedrin “defines the various courts and their competence i.e. ‘courts of three’ with monetary matters; ‘courts of twenty three’ with criminal cases that may involve the death penalty; and ‘courts of seventy one’ with exceptional

cases, like trying a high priest or a whole city accused of idolatry.”⁴³

Mishnah Sanhedrin opens by delineating which cases will be judged in a court of three and which will be judged in a court of twenty-three. This is the context in which the *motzei shem ra* is first introduced, although it is mentioned only once as part of a list of crimes which would be adjudicated in a court of three. The issue of what type of court will hear the case of the *motzei shem ra* (which is raised in Mishnah Sanhedrin) has not been addressed in Mishnah Ketubot, Tosefta Ketubot or Sifre Devarim. Mishnah and PT Sanhedrin broaden the scope of the *motzei shem ra* discussion to include a more detailed understanding of the punishments and who receives what punishment in what situation.

The major dispute of Mishnah Sanhedrin 1:1 (as it relates to the *motzei shem ra*) is the question of which court will adjudicate the case. The Mishnah establishes the basic positions, while the Talmud takes the dispute into greater depth.

Mishnah Sanhedrin 1:1 states,

משנה מסכת סנהדרין פרק א משנה א

דיני ממונות בשלשה גזילות וחבלות בשלשה נזק וחצי נזק תשלומי כפל ותשלומי ארבעה
וחמשה בשלשה האונס והמפתה והמוציא שם רע בשלשה דברי רבי מאיר וחכמים אומרים
מוציא שם רע בעשרים ושלשה מפני שיש בו דיני נפשות:

43. Ehrman, Arnost Z. "Sanhedrin." *New Encyclopedia Judaica*. 2nd ed. 2007. 23-24.

Monetary cases decided in a court of three; cases of theft or bodily injury are decided by three; cases regarding claims of full damages or half damages or double compensation or four or fivefold compensation [are decided by three]. Cases concerning claims against the rapist, the seducer, and the defamer, are decided by three judges.¹ This is Rabbi Meir's opinion.

But, the Sages say the case against the *motzei shem ra* is decided by twenty-three, since it may involve a capital charge.⁴⁴

Rabbi Meir maintains that the case of the *motzei shem ra* is a monetary case, but the Sages disagree. They maintain that the trial should be tried as a capital case, because there is the possibility that the wife or the perjuring witnesses will be stoned.

The Palestinian rabbis continue the debate, citing a series of opinions on both sides. In this section, the PT rabbis interject their own viewpoints directly into the Mishnah.

In PT Sanhedrin 1:1 Rabbi Yose b. Rabbi Bun sides with Rabbi Meir's opinion (that the trial should take place in a court of three) stating,

תלמוד ירושלמי מסכת סנהדרין פרק א דף יח טור ב /ה"א

במוציא שם רע פליגי רבי מאיר אומר הבעל לוקה ונותן מאה סלע בשלשה והעדים נסקלין
בכ"ג ורבנין מרין מקום שהעדים נסקלין שם הבעל לוקה ונותן מאה סלע אבל בנערה
מאורסה כל עמא מודו מקום שנסקלת שם מפסדת כתובתה.

44. Neusner, Jacob. *The Talmud of the Land of Israel Vol. 31 : Sanhedrin and Makkot*. New York: University of Chicago P, 1984. p. 20.

With the *motzei shem ra*, Rabbi Meir said that the husband is lashed and gives his 100 sela, this is a court of three. And the witnesses are stoned, this is a court of twenty-three.

[In contrast] the Sages teach in a court where the witnesses are stoned, there the husband receives lashes and gives his 100 selas. But, with the betrothed maiden everyone agrees that in the place where she is stoned, this is also where her ketubah is diminished.⁴⁵

In PT Sanhedrin, the amoraim present the complicated reality that were this case actually to be adjudicated there would both monetary and capital punishments regardless of who wins. Thus, the debate shifts from what court will adjudicate the case to which court will give out each respective punishment.

PT Ketubot

In Tractate Ketubot, the Palestinian rabbis pick up where the tannaim left off, readdressing and further illuminating aspects of the *motzei shem ra*. While following the order of the Mishnah, the Palestinian amoraim examine the tannaitic rulings and offer new interpretations of the Mishnah. In these examples of textual overlap, a pattern emerges among the rabbis: while still attempting to understand and decipher the appropriate punishments for the people involved in the case of the *motzei shem ra*, several new perspectives emerge, leaving the reader with the sense that the rabbis of the amoraic era are becoming less interested in (or are legally unable to) bring this kind

45. Neusner, The Talmud of Israel: Sanhedrin and Makkot. p.20.

of case to trial. This pattern can be seen in a number of examples.

A Virgin is Married on Wednesday

Mishnah Ketubot 1:1 stated the following principle:

משנה מסכת כתובות פרק א משנה א

בתולה נשאת ליום הרביעי ואלמנה ליום החמישי שפעמים בשבת בתי דינין יושבין בעיירות
ביום השני וביום החמישי שאם היה לו טענת בתולים היה משכים לבית דין:

A virgin is married on Wednesday and a widow on Thursday. For twice weekly courts are in session in town, on Monday and on Thursday. So, if the husband had a complaint as to virginity, he immediately goes to the court.⁴⁶

Tosefta Ketubot 1:1 questions the reasoning behind the assigned days and inserts the following note:

תלמוד ירושלמי מסכת כתובות פרק א דף כד טור ד /מ"ד

לר' לעזר מן הסכנה והילך נהגו לשאת בשלישי ולא מיחו בידן חכמי' בשיני אין שומעין לו ואם
מפני האונס מותר מהו מפני האונס מפני הכשפים.

From the time of danger and thereafter, they began the custom of marrying on Tuesday and the Sages did not stop them. If he wanted to marry on [Monday] they did not listen to him, but if it is on account of constraint, it is permitted.¹

46. Kehati, p. 4.

This Toseftan baraita is repeated in PT Ketubot 1: 1h-l and subsequently questioned by the editors/anonymous voice of the PT.

תלמוד ירושלמי מסכת כתובות פרק א דף כד טור ד /מ"ד

מה בין שני לשלישי לא דומה משתהא יום אחד למשתהא שני ימים וישתהא שני ימים שלא יערב עליו המקח ויערב עליו.

What is the difference between Monday and Tuesday?
Waiting one day is not the same as waiting two days.
So let him wait the two days anyway!
It is so the purchase will not become pleasing to him.
So let the purchase become pleasing to him!⁴⁷

Here, the amoraim break from previous statements by admitting the possibility that finding one's wife without the proper tokens of virginity might be acceptable to the husband.

This point is made further with Rabbi Ila's response, which immediately follows:

תלמוד ירושלמי מסכת כתובות פרק א דף כד טור ד /מ"ד

רבי אילא בשם רבי אלעזר מצא הפתח פתוח אסור לקיימה משום ספק סוטה.

Rabbi Ila said in the name of Rabbi Eleazar, "If one found an open entry, it is forbidden to maintain the marriage, because there is doubt as to the woman being faithless as a wayward wife."⁴⁸

47. Neusner, *The Talmud of Israel: Ketubot*, p. 17.

48. Neusner, *The Talmud of Israel: Ketubot*, p. 17.

Here, Rabbi Ila presents a new legal procedure for dealing with the case of the *motzei shem ra*. Rather than adjudicating the case (and possibly stoning the bride and/or the perjuring witnesses), the marriage ends in divorce. The divorce reinforces the ideals of purity and virginity that the idealized Jewish marriage was built upon, while still preserving the life of the bride.

This same reasoning is repeated seven more times in Ketubot 1:1. Each time a category of women is presented and the conclusion is the same: the women may keep their marriage settlement but the marriage must end in divorce because there is doubt as to whether [the wife is] *a wayward wife* (in Hebrew-*safek sotah*). The following is PT Ketubot's response to Mishnah Ketubot 1:2 and 1:4.

Mishnah Ketubot 1:2

משנה מסכת כתובות פרק א משנה ב

בתולה כתובתה מאתים ואלמנה מנה בתולה אלמנה גרושה וחלוצה מן האירוסין כתובתן מאתים ויש להן טענת בתולים הגיורת והשבויה והשפחה שנפדו ושנתגיירו ושנשתחררו פחותות מבנות שלש שנים ויום אחד כתובתן מאתים ויש להן טענת בתולים:

A virgin, her ketubah is two hundred and a widow, a *maneh*.. A virgin, widow, divorcee and one who has severed her levirate connection through *chalitzah*-at the stage of betrothal-their marriage contract is worth two hundred zuz, and they have a claim of virginity. A female convert, captive, and a bondwoman who were redeemed, converted, or were freed when then were less than three years and a day-their ketubah is two hundred, and they have a claim of

Mishnah Ketubot 1:4

משנה מסכת כתובות פרק א משנה ד

בתולה אלמנה גרושה וחלוצה מן הנשואין כתובתה מנה ואין להם טענת בתולים הגיורת והשבויה והשפחה שנפדו ושנתגיירו ושנשתחררו יתירות על בנות שלש שנים ויום אחד כתובתן מנה ואין להם טענת בתולין:

A virgin, widow, divorcee or one who has severed the levirate connection through *chalitzah*-at the stage of consummation of the marriage-their ketubah is one maneh and they do not have a claim of virginity A female, or a captive, and a bondswoman who were redeemed, or converted, set free more than three years and one day of age-their ketubah is maneh and they do not have a claim to virginity.⁵⁰

PT Ketubot 1:1 IVg responds:

תלמוד ירושלמי מסכת כתובות פרק א דף כה טור א/ה"א

אמר בכתובת מנה מאתים אבל לקיימה אינו רשאי משום ספק סוטה .

The marriage settlement is one maneh or two hundred zuz but in terms of keeping the marriage going, the husband is forbidden to do so, because of safek sotah [the possibility that she was secluded with another man!].⁵¹

49. Kehati, p.6.

50. Kehati, p.8.

51. Neusner, *The Talmud of Israel: Ketubot*, p.17.

This same reasoning is used for the adult woman, rape victim, the *mookat etz*¹, and the woman whose husband discovers an “open entrance” (for whatever reason, she does not exhibit the proper signs of virginity). Each woman mentioned falls outside the category of the idealized virgin *naarah* (who has had no intimate contact with a man prior to the consummation of her marriage). Each of the women in these seven examples is in some way is deficient: missing the proper “tokens of virginity” or suspected of possible misdeeds. Further, in each of these cases it is also forbidden to maintain the marriage and the woman keeps her ketubah settlement. Here, I believe that the Palestinian amoraim show compassion for women who may find themselves in these vulnerable positions by ruling that the marriages should be ended by divorce rather than compelling them to undergo a *motzei shem ra* adjudication, which could lead to the capital punishment of either the bride and/or the perjuring witnesses. This compassion will resurface as the rabbis of Babylonia contend with the tannaitic and [Palestinian] amoraic rulings of the *motzei shem ra*.

Ch. 3 Tannaitic and Amoraic Literature : BT Sanhedrin, BT Ketubot and BT Makkot

Section 1: Literary Relationships

Section 2: Halakhic Development

The Babylonian Talmud analyzes previous tannaitic and amoraic opinions in an attempt to fully understand the case of the *motzei shem ra*. Three tractates of the Babylonian Talmud discuss the *motzei shem ra*: BT Ketubot, BT Sanhedrin and BT Makkot. It is noteworthy that all three Babylonian tractates follow the concerns of the parallel PT tractates. The BT Sanhedrin sugya further addresses the concerns of the Palestinian amoraim: under what circumstances the case should be adjudicated as a monetary case or as a capital case. BT Ketubot elaborates on issues raised in PT Ketubot, namely R. Eleazar's statement that a man who find his wife an "open entrance" is rendered forbidden to him. The Babylonian rabbis express their discomfort with R. Eleazar's opinion and search for ways to limit the applicability of his ruling.. BT Makkot focuses on less central players in the *motzei shem ra*, introducing a discussion about the punishment of perjuring witnesses. For the purposes of this thesis, I have examined the relevant material but I will not be discussing BT Makkot as it is least informative to our present discussion. All three tractates are unified in their efforts to limit the viability of the *motzei shem ra*'s accusation and to

prevent all parties involved from physical punishment.

BT Ketubot follows order of the PT Ketubot sugyot. Unlike PT Ketubot, BT Ketubot incorporates very little material from the Tosefta or Sifre Devarim. BT Ketubot deals primarily with statements made in Mishnah Ketubot, PT Ketubot and alleged baraitot.

Point of Common Interest Between PT and BT Ketubot

An Open Entrance

Mishnah Ketubot 1:1 states that a virgin should be married on a Wednesday so that if her husband has a claim that she is not a virgin, he should go immediately to the courts, which meet on Thursday. In response to this Mishnah, PT Ketubot suggests that perhaps a virgin could get married on a Monday or a Tuesday. Here, a dispute arises between the PT Ketubot editors.

PT Ketubot 1:1h-l states,

מה בין שני לשלישי לא דומה משתהא יום אחד למשתהא שני ימים וישתהא שני ימים שלא
יערב עליו המקח ויערב עליו המקח לית יכול דאמר רבי אילא בשם רבי אלעזר מצא הפתח
פתוח אסור לקיימה משום ספק סוטה.

What is the difference between Monday and Tuesday?
Waiting one day is not the same as waiting two days.
So let him wait two days anyway!
It is so the purchase will become pleasing to him!
So let the purchase become pleasing to him.

R. Ila said in the name of R. Eleazar, "If one found an open entry, it is forbidden to maintain the marriage because there is a doubt as to the woman's having been faithless as a wayward wife."⁵²

In the Palestinian Talmud, Rabbi Eleazar's ruling becomes the accepted practice when dealing with the possibility of a woman who does not exhibit the expected signs of virginity. This is shown in several subsequent examples, all following the same basic pattern: the husband finds something unusual about the wife, as a result of which the wife can keep her marriage settlement but the marriage must end.

PT Ketubot 1:1 Illo continues with the following question:

וחש לומר שמא אנוסה היא קול יוצא לאנוסה ואפילו תחוש לה משום אנוסה לא ספק אחד
ספק אנוסה ספק פתוחה מדבר תורה להחמיר אמר רבי יוסי ואפילו תחוש לה משום אנוסה
שתי ספיקות ספק אנוסה ספק פתוחה ספק משנתארס' ספק עד שלא תארס שתי ספיקות
מדבר תורה להקל קידשה בחופה לית ליה באילין קנסייא אמרין רבי מתניה עבד לברתיה כן
על דעתיה דרבי לעזר במקום שבתי דינין יושבין בכל יום תינשא בכל יום ובמקום שאין בתי
דינין.

But why not take into the account the possibility that she was raped?
If a girl was raped, everyone knows it!

And even if you take account of the possibility that she had been raped, you still have only a single case of doubt that is whether she had been raped or seduced. In such a case, on the basis of the law of the Torah, one must in any event, impose a stringent ruling.

Said R. Yose, "And even if you take into account the possibility that she was raped, there are still two sources of doubts. First of all, you have the question of whether

52. Neusner, *The Talmud of Israel: Ketubot*, p.17.

she was raped or seduced. Second, you have the doubt of whether this had taken place before she had been betrothed or after she had been betrothed. Now, you have two matters of doubt, so far as the law is concerned, you must impose a lenient ruling.”⁵³

To rule leniently was to let the wife keep her marriage settlement and for the husband to divorce her, as we learn from R. Eleazar’s ruling.

In dealing with R. Eleazar’s statement, the Babylonian Talmud asks why the wife must be forbidden to her husband. Through both rabbinic argumentation and anecdotal evidence, the Babylonian scholars exhibit discomfort with R. Eleazar’s ruling and attempt to limit its application.

BT Ketubot 8b-9a repeats a version of R. Eleazar’s statement:

תלמוד בבלי מסכת כתובות דף ח עמוד ב דף ט עמוד א

אמר רבי האומר פתח פתוח מצאתי - נאמן לאוסרה עליו. ואמאי? ספק ספיקא הוא, ספק תחתיו ספק אין תחתיו, ואם תמצא לומר תחתיו, ספק באונס ספק ברצון! לא צריכא, באשת כהן. ואיבעית אימא: באשת ישראל, וכגון דקביל בה אבוה קידושין פחותה מבת ג' שנים ויום אחד.

R. Eleazar said, “One who says, I found [in my bride] ‘an open entrance’, is believed to render her forbidden to him.”

[Gemara asks]: But why should she be rendered forbidden to him on this basis? Even

53. Neusner, *The Talmud of Israel: Ketubot*, p.17.

if we believe that she previously cohabitated with another man it is a case of double doubt whether she is forbidden to him.

First there is doubt [whether her previous cohabitation occurred under [his authority] ([i.e. during her betrothal to him) or whether it occurred when she was not yet under his authority] i.e. before the betrothal.

And if you will say [that it occurred] under his authority, [there is still] doubt as to whether [it occurred] by force or by consent?

[R. Eleazar's ruling] is only applicable [with reference to] a Cohen's wife.¹ Or if you wish to say, with respect to a Yisrael's wife-in a case where her father accepted betrothal on her behalf when she was less than three years and a day old.⁵⁴

Here, BT limited R. Eleazar's ruling so that it only applies to two categories of people. In doing this, the BT implies that in a situation of double doubt (for your average Israelite *naarah*) a wife may be permitted to her husband. It is clearly not seen as fair to compel the dissolution of a marriage in a situation of double doubt. The practice of allowing the couple to remain married is not stated explicitly, but rather, is revealed through anecdotal evidence in BT Ketubot 10a-b (which will be examined further in the second section of this chapter). It is noteworthy that PT *explicitly* states that in a case of double doubt we rule leniently, while BT does not. BT is focused on the specific applicability (or, rather, limiting the applicability) of R. Eleazar's statement, not on the overarching Torah principle attached to it that in all cases of double doubt,

54. Wachsman, Rabbi Mendy, and Rabbi Abba Zvi Naiman, trans. *Talmud Bavli Tractate Ketubot The Schottenstein Edition*. Vol. 2. Brooklyn: Metzora Publications, 2000.

we rule leniently.

Spreading Out the Garment

BT Ketubot, like Sifre Devarim and PT Ketubot, follows the ordering of Deuteronomy 22:13-21. Each statement of the Biblical passage is questioned and reexamined. When looking at the three together, a pattern emerges: each one interprets the Biblical text metaphorically but also preserves and states the same exact minority opinion of R. Eliezer ben Jacob.

Sifre Devarim 237 states:

ספרי דברים פסקא רלז

רבי עקיבה אומר הרי הוא אומר ופרשו השמלה לפני זקני העיר נמצאו עדי הבעל זוממים. ופרשו השמלה, יבואו עדיו של זה ועדיו של זה ויאמרו דבריהם לפני זקני העיר רבי אליעזר בן יעקב אומר דברים ככתבם.

And they shall spread out the garment means that they must make their words as clear as if the garment itself were exhibited.

Rabbi Akiba says: "And they shall spread the garment before the elders of the city" indicates that the husband's witnesses are shown to be false.

"And they shall spread the garment:" The witnesses for each side must come forward and give their testimony before the elders of the city..

R. Eliezer ben Jacob, however, says: The matter is to be taken literally.⁵⁵

55. Neusner, *Sifre to Deuteronomy*, p. 245.

PT Ketubot 4:4 IIX-IVa states:

תלמוד ירושלמי מסכת כתובות פרק ד דף כח טור ג/ה"ד

ופרשו השמלה הכל משל תני רבי ישמעאל זה אחד משלשה מקריות שנאמרו בתורה במשל(...) תני רבי אליעזר בן יעקב אומר ייאמרו הדברים ככתבן מהו ייאמרו הדברים ככתבן אמר רבי יוסי בי רבי בון לעולם אינו חייב עד שיכנוס ויבעול ויטעון טענת בתולים ופרשו השלמה לא סוף דבר ופרשו השמלה אלא עד שיתחווהו הדברים כשמלה רבי אסי אמר ופרשו השמלה לעולם אין העדים נסקלין ולא הבעל לוקה ולא נותן מאה סלע עד שיאמרו עמנו היה במקו' פלוני והבעל שכרן להעיד עדו' שקר.

“And they shall spread out the garment” (Deut. 22:17) –the whole thing is meant as a metaphor.

R. Ishmael taught, “This is one of three verses used in the Torah in the sense of a parable (..)

It was taught: R. Eliezer ben Jacob says, the matter should be interpreted precisely as it is written. (in a literal way, not in a metaphor).

“And they shall spread the garment.” It is not the end of the matter that they should [merely] spread out the garment but the matter is not decided until the issues are as plain as the garment.

R. Assi said: “‘And they shall spread out the garment.’ Under no circumstances are perjured witnesses stoned, nor the husband flogged, nor must he pay 100 sela, unless other witnesses state, “he was with us in such and such a place and the husband hired them to give false testimony.”

PT Ketubot behaves like Sifre Devarim in its attempts to define and understand the Biblical discourse of Deuteronomy 22:13-21. Here, also, PT Ketubot limits the circumstances in which the case can be adjudicated.

BT Ketubot follows a similar direction to PT Ketubot and their shared tannaitic forebearers. Like Sifre Devarim and PT Ketubot 4:4, BT Ketubot 44a-46a follows the order of Deuteronomy 22:13-21. Each line of the Biblical text is followed by a series of questions aimed at understanding how the Rabbis, as compared with R. Eliezer ben Jacob, would interpret the dispute. In each instance, the Gemara (on behalf of the Rabbis) attempts to reinterpret the Biblical text in terms of the Babylonian amoraic construction of the judicial process.

BT Ketubot 46a states,

תלמוד בבלי מסכת כתובות דף מו עמוד א

בשלמא לר"א בן יעקב, היינו דכתיב: ופרשו השמלה, אלא לרבנן מאי ופרשו השמלה? אמר רבי אבהו: פרשו מה ששם לה; כדתניא: ופרשו השמלה - מלמד, שבאין עדים של זה ועדים של זה ובוררין את הדבר כשמלה חדשה; רבי אליעזר בן יעקב אומר: דברים ככתבן, שמלה ממש.

It is all well according to Eliezer ben Jacob for that is what is written "and they should spread out the sheet". But according to the rabbis, what is the meaning of "and they should spread out the sheet?"

Rabbi Abbahu said it means: They clarify [the accusation] that he placed upon her. As it was taught in a baraita: "And they should spread out the garment:" This teaches that the witnesses of that one and the witnesses of the this one [the groom and the bride's father] come and [via the girl's parents] clarify the matter like a new [clean] sheet.

Rabbi Eliezer ben Jacob says the word of the verse are to be understood as they are written: an actual sheet.⁵⁶

It is noteworthy that the version of this discussion found in the BT includes the opinion of Rabbi

56. Wachsman, *Talmud Bavli Tractate Ketubot The Schottenstein Edition*.

Abbahu, a Palestinian amora, who is not mentioned in the parallel section of PT. In the end, each Talmud makes essentially the same point. The majority view *uparsu simla* as a metaphor while R. Eliezer ben Jacob interprets the statement literally.

Halakhic Development

BT Sanhedrin

In contrast to PT Sanhedrin, BT Sanhedrin delves into great detail when dealing with the *motzei shem ra*. Overall, BT Sanhedrin attempts to diminish the circumstances in which such a case would reach the courts. Specifically, BT Sanhedrin continues to limit the circumstances in which this case would lead to capital punishment (i.e., the accused wife being stoned to death).

BT Sanhedrin Chapter 1 is a lengthy exposition of the dispute between Rabbi Meir and the Sages introduced in Mishnah Sanhedrin 1:1. In this sugya, the Gemara attempts to understand the many possible reasons for this dispute. Among the seven examples given, the third explanation for the dispute introduces new key elements that would limit the possibility of adjudication.

BT Sanhedrin 8b states:

תלמוד בבלי מסכת סנהדרין דף ח עמוד ב

הכא במאי עסקינן - כגון דאתרו בה סתם.
והאי תנא הוא, דתניא: ושאר כל חייבי מיתות שבתורה - אין ממיתין אותם אלא בעדה
ועדים והתראה, ועד שיודיעוהו שהוא חייב מיתה בבית דין, רבי יהודה אומר: עד שיודיעוהו
באיזה מיתה הוא נהרג.

What case are we dealing with here?

Where [there are witnesses to the wife's infidelity who] warned her in a general manner.

And the opinion [of R. Meir] accords with this Tanna [R. Yehudah] for it was taught in the following baraita:

Regarding all others who are mentioned in the Torah as being liable for the death penalty, they cannot be put to death without an assembly, witnesses and warning. Furthermore, [one cannot be put to death] unless they had informed him that [if he transgresses] he will be liable to execution by the court.

But, Rabbi Yehudah says, [One cannot be put to death] unless they had told him through which [method] of execution he would be put to death [should he transgress].⁵⁷

In its attempt to understand the nature of the dispute between R. Meir and the Sages, the Gemara introduces the concept of “warning.” A warning, known in Hebrew as *hatra'ah*, is an essential element in adjudicating a capital case. According to the law of warning, a formal warning must be given to a person who is about to perform a transgression. The warning must state the act that is forbidden and the specific punishment that one would incur for doing that action. Capital and corporal punishment cannot be administered unless a warning was given and acknowledged by the transgressor before she or he committed the act. Only in the case of idol worship and perjuring witnesses is punishment administered without warning.⁵⁸

57. Dicker, Rabbi Asher, trans. *Talmud Bavli: Tractate Sanhedrin The Schottenstein Edition*. Vol. 1. Brooklyn: Metsorah Publications, 1993.

58. Steinsaltz, Adin, and Leonard Baskin. *Talmud Reference Guide : The Steinsaltz Edition*:

In the case of the *motzei shem ra*, the wife would have had to be warned by two witnesses before she had illicit sexual relations that in doing that specific act she would be liable for stoning. The realistic possibility that this type of warning would occur is highly unlikely. Thus, by introducing the concept of warning as one of the major criteria for capital punishment, the possibility that the wife would be put to death is significantly diminished. In later sugyot, the Gemara will argue about whether a general or a specific warning is needed in the case of the *motzei shem ra*. But, either way, some form of warning is now necessary to try the case as a capital case and without it, the accusation will be tried as purely a monetary case. By trying the case as a monetary case, there is no possibility of capital punishment for either the wife or her perjuring witnesses. This change, I assert, is part of a pattern in the Babylonian Talmud to restrict the severity of the husband's accusation and reduce its potential consequences. By doing this, the rabbis have recast the *motzei shem ra* to look like any other case of capital adjudication as they understand it. They thus introduce their own notion of "due process."⁵⁹

The Reference Guide. New York: Random House, Incorporated. 1990. p. 185

59. The rabbis desire to limit the possibility of adjudication in cases of suspected adultery is also evident in the case of the *sotah*. Judith Hauptman notes that, "the rabbis sharply reduce the number of instances in which a man could subject his wife to the ordeal of the bitter waters because they recognize that, by their standards, this section of Torah treats women unfairly." For more on the topic of Sotah, see Hauptman, Judith. "Sotah." *Rereading the Rabbis*. Westview Press: Boulder 1998. P. 15-29.

BT Ketubot

BT Ketubot 8b-10b presents a series of examples of men who claim that their wives did not produce the appropriate “tokens of virginity.” While Mishnah Ketubot 1:1 focus on explaining the basic elements of the accusation, both PT Ketubot and BT Ketubot also attempt to limit the legal repercussion of the husband’s claim. However, the Palestinian Talmud does not question the husband’s reliability. Rather, the Palestinian amoraim (as seen in Section One) accept Rabbi Eleazar’s ruling and declare the wife to be forbidden to her husband. The Babylonian Talmud suggests, through several examples that the reliability of the husband should be questioned and, when possible, the marriage should be preserved.

All of the cases except for one are heard by tannaim. The case examples deal with both types of claims the husband can make: that he found his wife an “open entrance” or that she did not bleed on the wedding night.

BT Ketubot 10a states:

תלמוד בבלי מסכת כתובות דף י עמוד א

ההוא דאתא לקמיה דרב נחמן, אמר ליה: פתח פתוח מצאתי, אמר ליה רב נחמן: אסבוהו כופרי, מברכתא חביטא ליה.

There was a groom who came before R. Nachman. He said to Rav. Nachman, "I found an open entrance." R. Nachman said to them: "Give him [lashes] with palm branches! Mervachta must be lying before him!"⁶⁰

In this example, R. Nachman does something radical-when he hears the husband's claim, he punishes the husband! Rashi explains that the term Mervachta refers to the prostitutes of Mervachta who are laying and waiting for the husband. Otherwise, how would be known the difference between an open and closed entrance if he had not already been with other women? The punishment acts to discourage the husbands from "coming to the court with this particular plea and to make them rethink their claim."⁶¹

The rabbis then discuss R. Nachman's decision:

והא רב נחמן הוא דאמר: מהימן! מהימן, ומסבין ליה כופרי. רב אחאי משני:
כאן בבחור, כאן בנשוי.

But Rav Nachman himself is the one who said above that [a groom] is believed when he lodges such a claim? He is believed!-But we nevertheless give him lashes with palm branches. Rav Ahai said: Here he is dealing with a previously unmarried man, whereas here [in the above ruling] Rav Nachman was dealing with a previously married man, who does not receive lashes for such a claim.⁶¹

60. Wachsmann, *Talmud Bavli Tractate Ketubot The Schottenstein Edition*.

61. Wachsmann, *Talmud Bavli Tractate Ketubot The Schottenstein Edition*.

Here, the rabbis emend Rav. Nachman's ruling to refer only to men for whom it was their first marriage. The rabbis attempt to preserve earlier teachings that valued the husband's credibility while reducing the possibility that this case would come to court. With the threat of lashes, a new husband was less likely to bring a dubious claim before the court.

The second example is found in the BT in two different versions, both dealing with the accusation of an open entrance.

BT Ketubot 10a

תלמוד בבלי מסכת כתובות דף י עמוד א

ההוא דאתא לקמיה דרבן גמליאל, אמר ליה: פתח פתוח מצאתי, אמר ליה: שמא הטיתה? אמשול לך משל, למה הדבר דומה? לאדם שהיה מהלך באישון לילה ואפילה, היטה מצאו פתוח, לא היטה מצאו נעול.

There was a groom who came before Rabban Gamliel. He said to him: "I have found an open entry." He [Rabban Gamliel] said to him, "Perhaps you angled your entry so that you thought you encountered an open entry when in fact you did not.. I will give you an analogy: To what is this matter comparable? To a person who was walking in the black of night and darkness. If when he arrived home, he deliberately angled his approach, he found [the door of his house] open; but if he did not deliberately angle his approach, he found [the door] locked."⁶²

A second version of the story follows immediately:

איכא דאמרי, הכי אמר ליה: שמא במזיד הטיתה, ועקרת לדשא ועברא? אמשול לך משל, למה הדבר דומה? לאדם שהוא מהלך באישון לילה ואפילה, היטה במזיד מצאו פתוח, לא היטה במזיד מצאו נעול.

62. Wachsmann, *Talmud Bavli Tractate Ketubot The Schottenstein Edition*.

There are those this is what [Rabban Gamliel] said to the groom. Perhaps you angled your entry deliberately and tore out the door and the bar.⁶³

In both versions of the story, Rabban Gamliel changes the focus of the claim from the wife to the husband. Rather than entertaining the claim with certainty, Rabban Gamliel suggests that in fact, the new husband may have done something in the act of cohabitation to create the appearance of an open entrance, when there may not have been one. These hypothetical scenarios do not prove or disprove his claim. Rather, they show that a certain level of clarification must be reached before a claim of this kind can be considered credible. By bringing forth an analogy, Rabban Gamliel forces the husband to reconsider his claim.

The second half of this section deals with stories in which the husband does not find blood following intercourse.

BT Ketubot 10a-b

תלמוד בבלי מסכת כתובות דף י עמוד א-ב

ההוא דאתא לקמיה דרבנן גמליאל בר רבי, אמר ליה: רבי, בעלתי ולא מצאתי דם, אמרה לו: רבי, בתולה הייתי. אמר להם: הביאו לי אותו סודר, הביאו לו הסודר, ושראו במים וכבסו ומצא עליו כמה טיפי דמים, אמר לו: לך זכה במקחך.

There was a groom who came before Rabban Gamliel bar Rebbi. [The groom] said to him: "My teacher! I cohabited but I did not find blood! [The bride] said to [Rabban Gamliel bar Rebbi] said to him: "My master! I was a virgin!" Rabban Gamliel bar

63. Wachsmann, *Talmud Bavli Tractate Ketubot The Schottenstein Edition*.

Rebbi] said to them: Bring me the cloth that you cleaned yourself with after you cohabited. They brought him the cloth. He soaked it in water and washed it and found several drops of blood on it. Go and enjoy your acquisition!⁶⁴

The claim of no blood is a stronger than a claim of finding an open entrance. This is because actual, physical evidence that should be produced during first-time intercourse was not produced. Thus, there is a clear lack of physical proof and because of this, the husband can make his claim with some credibility. However, Rabban Gamliel the Elder's response to the groom and bride indicates that this type of claim (like the claim of an open entrance) is subject to human error. Here, the claim of the wife is believed over the claim of the husband and the rabbi's test proves this.

Because this tradition is associated with a Palestinian rabbi, the Babylonian rabbis discuss whether this practice could be carried out in Babylonia:

BT Ketubot 10a-b

אמר ליה הונא מר בריה דרבא מפרזקיא לרב אשי: אנן נמי נעביד הכי! אמר ליה: גיהוץ שלנו ככיבוס שלהם, ואי אמרת נייעבד גיהוץ, מעברא ליה חומרתא.

Huna Mar son of Rava of Parzakya said to Rav Ashi: We should do this. He said to him, "Our pressing is like their simple laundering. And if you say we should press it, the [pressing] stone rubbing over it would remove [the stains]."

64. Wachsman, *Talmud Bavli Tractate Ketubot The Schottenstein Edition*.

The Babylonian rabbis conclude that unfortunately, this practice would not work in Babylonia. Thus, they are left without a method of uncovering bloodstains. [And yet by implication they approve of the earlier tradition].⁶⁵

A second example follows:

ההוא דאתא לקמיה דרבן גמליאל ב"ר, אמר ליה: רבי, בעלתי ולא מצאתי דם, אמרה ליה: רבי, עדיין בתולה אני. אמר לה: הביאו לי שתי שפחות, אחת בתולה ואחת בעולה, הביאו לו והושיבו על פי חבית של יין, בעולה ריחה נודף, בתולה אין ריחה נודף, אף זו הושיבה ולא היה ריחה נודף, אמר לו: לך זכה במקחך.

There was a groom who came before Rabban Gamliel bar Rebbi. He said to him: My teacher!, I cohabitated but did not find blood. [The bride] said to [Rabban Gamliel bar Rebbi]: My teacher, I am still a virgin! He said to them: Bring me two female slaves, one a virgin and one a non-virgin. They brought the slave girls to him and he seated them on the opening of a wine barrel. In the case of the non-virgin, her breath was fragrant from the aroma of the wine that had permeated through her, while in the case of the virgin, her breath was not fragrant. He then seated [this] bride on the wine barrel as well and found that her breath was not fragrant, demonstrating that she was still a virgin as she claimed. He said to [the groom]: Go and collect your acquisition!⁶⁶

This story is similar to the previous one. In both cases, the husband brings a claim, the woman refutes her husband's claim, and is put to a clinical test, which exonerates her.¹ In this situation, (theoretically) the presence of the hymen would block the scent of wine from penetrating the woman's body and coming forth from her mouth. If the hymen were absent, the scent would

65. Wachsman, *Talmud Bavli Tractate Ketubot The Schottenstein Edition*.

66. Wachsman, *Talmud Bavli Tractate Ketubot The Schottenstein Edition*.

come into the body and out through her mouth. In the case of the accused bride, her hymen blocks the scent and she is exonerated. Here again, the rabbis are showcasing a situation in which the wife's claim of virginity is preserved and the marriage remains intact.

It is noteworthy that three of the four stories are apparently of Palestinian origin and yet, all four stories are preserved in the Babylonian (and not in the Palestinian) Talmud. This shows that these alleged Palestinian sugyot exemplified values and lessons that were important to the Babylonian amoraim and redactors of the Babylonian Talmud. It is also possible that these Palestinian sugyot do not have parallels in PT and that that they were created in Babylonia—thus reflecting Babylonian interests—and attributed to Palestinian amoraim.

These anecdotes show that rabbis had successfully deterred husbands from making false claims and unjustly taking their wives to court. The rabbis also show awareness of the tension between law as it is written in Torah and law as it is carried out in people's lives. These stories, coupled with the Talmud's attempts to limit the viability of R. Eleazar's ruling, show a textual progression from stringency to a place of compassion for and leniency towards women.

Conclusion

The *motzei shem ra* is a legal issue with limited applicability outside the Biblical world. I say that because there is no anecdotal or other evidence that such a case was actually brought to trial. While discussions of adultery continue from the Babylonian Talmud into the law codes, the *motzei shem ra* ultimately blends into the background of these larger discussions of sexual conduct among married and non-married individuals.

As evidenced from my thesis, the *motzei shem ra* begins in Deuteronomy 22:13-21. It is couched among a series of laws pertaining to sexual conduct among married and non-married individuals. From its original Biblical context, the tannaitic scholars, through Mishnah, Tosefta and Sifre Devarim, attempt to understand and adapt the legal proceedings for dealing with an accused wife, her accusing husband and their respective witnesses to their own time periods. Through this analysis, a detailed discussion emerges (primarily) in tractates Sanhedrin and Ketubot. Tractate Sanhedrin debates whether the case should be tried in a monetary court or a capital court. While the PT Sanhedrin preliminarily debates the issue, BT Sanhedrin goes into great depth, examining the possible reasons why the case should take place in one or the other court. BT Sanhedrin also discusses the reliability of witnesses and the importance of respecting judges. PT Ketubot addresses issues a breath of issues concerning the types of women who are considered virgins,

what kind of ketubah each woman receives and how this would ultimately be affected in the case of an accusation. In each instance, the PT Ketubot attempts to categorize and classify women into “virgins” and “non-virgins” depending on various sexual and non-sexual acts that may have rendered them lacking the proper signs of virginity. PT Ketubot also addresses where and how various categories of women should be punished (i.e. in the doorway of their father’s house, in front of the city gates etc) depending on their conversion status (if they are the child of a convert) and the nature of their primary family unit. BT Ketubot expands upon all of the issues raised in PT Ketubot, looking for further reasoning and stronger legal grounds upon which this case would or could be brought to court.

In both Sanhedrin and Ketubot, the amoraic scholars distance themselves from earlier tannaitic opinions in an attempt to limit the possibility of this accusation actually being brought to trial. Both tractates, introduce theoretical issues and anecdotal evidence to support the preservation of the marriage and to keep couples away from divorce. By resolving the question of virginity before adjudication, the rabbis also restrict the possibility of the accusation resulting in capital punishment (either for the wife or the perjuring witnesses).

In BT Ketubot 45a Rava says:

שאני מוציא שם רע דחידוש הוא.

The case of the defamer is different for it is an anomaly.

In many ways, Rava’s statement exemplifies the subject of the *motzei shem ra*: it is a legal issue

that for all intents and purposes is laid to rest in the amoraic era. Through the evolution of the *motzei shem ra* from Biblical through the tannaitic and amoraic writings, the rabbis dilute the issue until it blends into the background of more general marital law.

When seen in the broader context of the development of rabbinic law, the rabbis deal with the *motzei shem ra* like they deal with other vulnerable individuals (particularly women). In these cases, the rabbis reinterpret and revise the Biblical law to reflect their sense of morality and justice. For example, in the case of the *sotah*, the rabbis move to limit the ability for a man's accusation to the ritual of drinking the bitter waters only to women "who were highly likely to be guilty of what their husbands suspected them of. Like the case of the *motzei shem ra*, the rabbis state that if the case is to be viable, a proper warning must be issued by the husband in front of witnesses. Mishnah Sotah 1:2 states

משנה מסכת סוטה פרק א משנה ב

כיצד מקנא לה אמר לה בפני שנים אל תדברי עם איש פלוני ודברה עמו עדיין היא מותרת לביתה ומותרת לאכול בתרומה נכנסה עמו לבית הסתר ושהתה עמו כדי טומאה אסורה לביתה ואסורה לאכול בתרומה ואם מת חולצת ולא מתיבמת:

How does he warn her? If he said to her before two witnesses: Do not converse with so and so, and she conversed with him, she is still permitted to her husband and may eat *terumah*. If she entered a hidden place with him, and remained with him long enough to become defiled, she is forbidden to her husband and forbidden to eat *terumah*.⁶⁷

67. Kehati, *Mishnah Seder Nedarim: Nazir: Sotah*. Vol. 2.

Judith Hauptman cites the addition of warning as one of the examples in which the rabbis sought to re-work the Torah text, and limit its application because it was unfair to women. She writes, "Those who agree that the rabbis interpreted the Torah may disagree, that their motivation was a concern for women. Some may argue, for instance, that the rabbis concern was for justice, a cause they pursued with a passion. I would answer that these concerns are essentially the same."⁶⁸ Hauptman goes on to show how the rabbis attempted to restrict the application of the *sotah* ritual out of concern for the moral problems the ritual represented and discriminatory nature in which the punishments are carried out. I believe that Hauptman's reasoning applies to way in which the rabbis treat the subject of the *motzei shem ra*, and claims against virginity in general. As evidenced in my evaluation of the material, the rabbis move further away from adjudicating the *motzei shem ra* and closer to just and fair treatment of the new bride. In conclusion, the *motzei shem ra* is one example of the rabbis quest for justice and (relative) equanimity for women (another vulnerable figures) by re-interpreting the Biblical laws to adhere to a more modern context.

In the case of the stubborn and rebellious son, BT Sanhedrin 71a states, "there never was a *ben sorer u'moreh* (stubborn and rebellious son) nor will there ever be one in the future. And why then was the law of *ben sorer u'moreh* written in the Torah? God said, "expound the passage and you will receive reward for doing so." The case of the stubborn and rebellious son is a second

68. Hauptman, *Rereading the Rabbis*. p.18.

example of how the tannaim and amoraim rework Biblical law in order to protect a vulnerable character. Rather than examining the possibility that this case was actually existed, the rabbis reduce the situation to legal fiction. In the case of the *ben sorer u'moreh*, studying and examining the law is enough.

Like the *sotah* and the *ben sorer u'moreh*, the case of the *motzei shem ra* becomes nearly impossible to adjudicate through the limitations and restrictions of the tannaitic and amoraic rabbis. At the end of this thesis, the message that most profoundly resonates with this topic are the words of Rabban Gamliel, who says to a concerned groom, “Go and collect [i.e. be happy with] your acquisition.!” Like Rabban Gamliel, the amoraim were most concerned with preserving marital unity and allowing the anxious new husband a chance to become happy with his bride.

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