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SHULHAN 'ARUKH, 'EVEN HA'EZER, HILKHOT ISHUT  
AND HILKHOT KIDUSHIN: AN ANNOTATED  
TRANSLATION

by

Maynard W. Bell

Thesis submitted in partial fulfillment of the  
requirements for the degree of Master of Arts  
in Hebrew Letters and Ordination

Hebrew Union College-Jewish Institute of Religion  
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Referee, Prof. Guttman

## DIGEST

This Rabbinic Thesis contains an original translation into English of thirteen chapters of Shulhan 'Arukh, 'Even Ha'ezer, covering part of Hilkhot Ishut and Hilkhot Kidushin, along with my own annotations (based in part on the Ba'er Hetev commentary), which hopefully clarify the text for the lay reader. In addition, a glossary of Hebrew terms, which I have left untranslated, is supplied, as well as a list of Rabbinic Authorities, Talmudic tractates, and other sources cited in the original text. The material deals mainly with laws regarding proscribed male-female relationships, proper sexual conduct, and the affecting of betrothal and marriage.

Chapter 18 deals with the ex post facto validity of certain prohibited betrothals.

Chapter 19 deals with the liability and punishment of an individual who has intercourse with a consanguineous relative or a married woman.

Chapter 20 deals with what actually constitutes intercourse, in a proscribed male-female relationship, the prohibition against lesbianism, and how to deal with lesbians.

Chapter 21 deals with the necessary distance which a man should keep and the necessary precautions he must take to avoid an incestuous or other prohibited sexual relationship and the way in which the above affects husband-wife and parent-child relationships.

Chapter 22 deals with the prohibition against yihud

(the closeting of a man and a woman which produces the suspicion of a proscribed act of intercourse), potential instances of such a situation, and the precautions that must be taken to avoid yihud.

Chapter 23 deals with the prohibition against wasting the semen virile, which is intended solely for the purpose of procreation. Ways in which the semen virile comes to be wasted are discussed as well as precautionary measures that should be taken to avoid involuntary seminal emission.

Chapter 24 deals with the advisability of one's avoiding yihud with another man or with an animal, though this is not a matter of prohibition.

Chapter 24 deals with the necessity for one to limit the frequency of marital intercourse, the proper conduct of intercourse, the laudibility of personal chasteness, and the performance of intercourse as marital duty to one's wife.

Chapter 26 deals with the prohibition against affecting betrothal with an act of intercourse, and accordingly against having intercourse with a woman to whom one is not yet validly married, as well as the prohibition against betrothal with no prior arrangement and the ex post facto validity of such.

Chapter 27 deals with the proper method of affecting valid betrothal, the nature and value of the betrothal token, the proper betrothal formula, and the efficacy of alternate betrothal formulae.

Chapter 31 deals with betrothal by means of a token of some value, the minimum value of that token, the validity of such a betrothal when the token is of uncertain value, situations in which the value of the token is questionable, and the necessity of appraising the value of the token.

Chapter 32 deals with betrothal by means of a legal document.

Chapter 33 deals with betrothal by means of sexual intercourse.

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## PREFACE

The Shulhan'Arukh, though not the first comprehensive code of halakhah (Jewish Law), was the first such code to gain universal acceptance by both the Sephardic (Spanish-Oriental) and Ashkenazic (German-Polish) Jewish communities. Prior to the ascendancy of the Shulhan'Arukh, in the early seventeenth century, the latter community, especially, had been resistant to the establishment of a fixed code of law, with its potentially deleterious effects on the continuing dialectic approach to the halakhah born of the Talmudic tradition.

The complete standard text of the original work by Rabbi Joseph Karo, a Sephardi writing in sixteenth century Palestine, incorporates the notations of Rabbi Moses Isserles, a Polish scholar, which highlight variations in Ashkenazic practice from the Halakhah as cited by Karo. It is the glosses of Isserles which gave Karo's compilation a wider acceptance than earlier such attempts at codification, including Alfasi's Code, the Mishneh Torah of Maimonides, and most significantly the Tur of Jacob ben Asher (the Shulhan'Arukh is essentially a summary of Karo's extensive commentary on the Tur, Bet Yosef).

The Shulhan'Arukh remains today, as it has been for nearly four centuries, the authoritative guidebook for the normative practice of halakhic Judaism. A nineteenth century abridgement, the Kitzur Shulhan'Arukh (Solomon



Ganzfried) serves as a practical reference source for halakhically observant laymen and is available in translation.

The complete original work, however, has never been rendered in an accurate modern language translation. As such, it has fallen to disuse, except by students of the halakhah, traditional rabbis, seminarians, and others seeking answers to halakhic questions that are not adequately treated in the later abridgements.

The original text also has potential value for those who are interested in studying the historical or sociological bases of Jewish custom and practice, regardless of their orientation toward halakhic Judaism. Clearly, it would seem that a translation, readily usable by non-experts in the field of Rabbinic or Medieval Hebrew literature or those unversed in Hebrew language, would be a valuable piece of resource material.

In this light, my colleague, Rabbi Harold S. Jaye, at the suggestion of our common and revered mentor, Dr. Alexander Guttman, Professor of Talmud and Rabbinics at the College-Institute, completed an annotated translation of the first seventeen chapters of Even Ha'ezer, the third part of the Shulhan 'Arukh, which deals with such subjects as marriage, divorce, personal status, and sexual conduct. The material which follows expands on the work of Rabbi Jaye's Rabbinic Thesis, adding an additional thirteen chapters of translation (Chapters 18-27 and 31-33) together with my

annotations (based in part on the Ba'er Hetev commentary), which hopefully make the text readily understandable to the layman.

I have left certain Hebrew terms, most often because of their technical-legal nature, untranslated. These appear in a glossary which follows the text. In addition, I have appended a list of Rabbinic authorities, Talmudic tractates, and other sources cited in the original text.

Isserles' glosses can be distinguished by the words "NOTE" and "END NOTE" which surround each. Parentheses are as they appear in the original. Bracketed words are added to the original text, where the Hebrew cannot be directly rendered into English syntax.

I wish to express my deep gratitude to Dr. Guttmann for his advice, guidance, and patient assistance, in the production of this work.

SHULHAN 'ARUKH 'EVEN HA 'EZER

## HILKHOT ISHUT

XVIII. Betrothal: With whom does it take effect?  
Herein there is one paragraph.

1) Betrothal takes effect with persons prohibited to marry by a negative commandment or by a positive commandment.

NOTE: It is all the more valid when it is a transgression of a mere rabbinic prohibition pertaining to more distant<sup>1</sup> relatives<sup>2</sup>--END NOTE.

XIX. Stoning is inflicted on the presumption that shel is an 'erwah [prohibited because of incest]. Herein there are two paragraphs.

1) In the case of he who is presumed to be related<sup>2</sup> by consanguinity, he is sentenced on this presumption even though there is no clear evidence that this individual was a relative<sup>2</sup> and he is flogged, strangled, or stoned on this presumption.

2) In the case of a man and woman who comes from a distant land, she claiming that "this [man] is my husband" and he claiming that "this [woman] is my wife", if it has been a matter of public knowledge<sup>3</sup> for 30 days that she is his wife, one<sup>4</sup> would be liable for the death penalty on her account.<sup>5</sup>

XX. For what type of intercourse is one considered guilty of having had an incestuous relationship? Herein there are two paragraphs.

1) He who has normal intercourse with one of the 'arayot, or he who embraces or kisses or receives sensual pleasure through bodily contact with a consanguineous relative is flogged and is suspected of having had an incestuous relationship.

NOTE: He who has intercourse with her<sup>1</sup> whether in a normal or abnormal manner--as soon as he has contact with her, i.e. he inserts the tip of his penis, he is liable on her account for the death penalty or for karet.<sup>2</sup> And it is not necessary for it to be witnessed that [he inserted his penis] as a makeup brush is placed into a makeup container; rather as soon as the witnesses have seen them cleaving to each other in the fashion of adulterers, they are liable for the death penalty for this (Tur) and the woman becomes prohibited to her husband<sup>3</sup> (Nimuke Yosef, Chapter 2 of Yebamot). A grown woman who has intercourse with a minor less than nine years old is not liable for the death penalty on his account (Tur), and it seems to me that the same holds true as to her not being prohibited to her husband. To wit, Harav Baal Haturim<sup>4</sup> has recorded many laws as to when such people are considered culpable or not for the death penalty. We learn from this, in [i.e. for] our times, through which type of intercourse a woman becomes forbidden to her husband. See there, the intercourse

involving a female less than three years old does not constitute intercourse (Tur), because [of the rule] that intercourse involving any female less than three years old does not really constitute intercourse since her virginity returns<sup>5</sup> (In notes on Yebamot). Even if leap years are involved<sup>6</sup>, her virginity returns<sup>7</sup> (this is the opinion of the Master<sup>8</sup> based on the Jerusalem Talmud)--END NOTE.

2) Regarding women who rub (NOTE: the explanation is those who play [sexually] by rubbing each other--END NOTE), there is a prohibition against it, and this is the behavior of the Egyptians about which we were warned<sup>9</sup>, and it is proper to inflict rabbinic stripes<sup>10</sup> on them, since they have violated this prohibition. It is in order for a husband to be strict with his wife about this matter and to prevent women, who are known for the above, from visiting her and to prevent her from going to visit them.

XXI. One should keep himself [far] removed from incestuous relationships. Herein there are seven paragraphs.

1) A man must keep himself far far away from women and it is prohibited [for him] to beckon with his hand or his foot or to signal with his eyes to any woman who is an 'erwah. He is forbidden to flirt with her or cause her to behave frivolously or to look at her beauty or even to savor her perfume. It is forbidden to gaze at women who are standing over laundry, and it is forbidden to gaze at the

colored garments of a woman whom he knows, even if she isn't wearing them, lest he come to have impure fantasies about her. If one meets a woman in the marketplace, it is prohibited to follow her. Instead, he should run, leaving her to the side or behind him. Neither should one pass by the doorway of a harlot, even from as far a distance as four cubits. And one who gazes, even at the small finger of a woman or thinks about her in such a way as to receive sexual pleasure, it is as though he gazed at her bet hateref (NOTE: this means genitals--END NOTE). And it is forbidden to listen to the voice of an 'erwah or to see her hair. One who devotes his attention to any of these things has rabbinic stripes inflicted on him. Such things are also prohibited as violations of a Lav.

2) Daughters of Israel may not go about in the marketplace<sup>1</sup> bareheaded, this applies to unmarried as well as married women.<sup>2</sup>

3) It is permissable for one to gaze at an unmarried woman in order to determine whether she is attractive enough to marry, be she a virgin or not, moreover, it is proper to do so; but one should not gaze at her in an obscene manner. Regarding this Scripture says: "I have made a covenant with my eyes; how then could I look upon a virgin?"<sup>3</sup>

4) It is permissable for a man to look at his wife, even if she is menstruating and is an 'erwah for him,<sup>4</sup> [and] even though he might derive sexual pleasure from seeing her, since she will be permissable to him<sup>5</sup> after her period, this

will not lead him to [ritual] stumbling. However, he cannot flirt with her or behave frivolously with her.

5) It is prohibited to use the services of any woman be she a grown woman or a minor, be she a slave or a free woman, lest one succumb to the transgression of impure fantasizing. What kind of services are we talking about? washing his face, hands or feet, even if she only pours water for him to wash his face, hands or feet, even if she does not touch him, also making his bed in his presence or filling his cup.

NOTE: Some say that, in the same manner, eating from the same plate as an 'erwah, like one's menstruant wife, is prohibited also (Binyamin Ze'ev Matityahu, #143). Then there are some who are lenient regarding all of these, in as much as they do not prohibit such matters of affection, except with one's menstruant wife<sup>6</sup> (Shlomo ben Adret #1,148). And some say that none of this is prohibited<sup>7</sup> except in privacy. However in a place where many people are present,<sup>8</sup> e.g. a bath house, it is permissible to be washed by gentile servant girls and such is commonly done (Mordecai ben Hillel, Chapter Af al Pi<sup>9</sup> quoting Rabbi Shimshon bar Baruch). And some say that all such things, if they are not done in an affectionate way but the intent is for the sake of God, are permissible. Accordingly, we are accustomed to be lenient regarding such things (Tosafot at the end of Tractate Kidushin). But some say that it is not proper to perform matters of affection even



with one's wife, e.g. looking at her head, if it has lice, in the presence of others<sup>10</sup> (Nimuke Yosef in the chapter: Hezkat Habatim<sup>11</sup>)--END NOTE.

6) It is not proper to inquire about a woman's welfare, even through an intermediary; it is even prohibited to send her greetings through her husband, but it is permissible to inquire of her husband about her welfare.

7) In the case of one who embraces or kisses one of the 'arayot who wouldn't tend to arouse his passion, like his elder sister or his father's sister, etc., even though he wouldn't receive any sexual pleasure, be she a grown woman or a minor, this is still considered exceedingly detestible, it is a matter of prohibition and it is characteristic of fools who are in no way related to the 'erwah. Exceptions are a father [who does the above] to his daughter or a mother to her son.

When is it permissible for a father to embrace his daughter or kiss her or to sleep with her, bodies touching, and likewise for a mother with her son? During all the time when they are minors. But as they are growing up and the son and daughter are reaching maturity so that her breasts become evident and pubic hair begins to grow, this one<sup>12</sup> should sleep in his own bed and she should sleep in her own bed.<sup>13</sup> And if the daughter is ashamed to stand naked before her father or she becomes betrothed, and, similarly, if the mother is ashamed to stand naked before her son, even if they are still minors, as soon as they have reached the age

to be ashamed [to be naked] in their presence, they should not be slept with. Instead, they should sleep in their own beds.

XXII. The prohibition against yihud [privacy] and with whom it is forbidden to be closeted.<sup>1</sup> Herein, there are twenty paragraphs.

1) It is prohibited to be closeted with an 'erwah from among the 'arayot, whether she be an elderly woman or a mere girl, for this activity is conducive to incestuousness. Exceptions are the mother with her son and the father with his daughter or the husband with his menstruant wife. The bridegroom, whose wife becomes menstruous before he initiates intercourse, is prohibited to be closeted with her.<sup>2</sup> Instead, she should sleep among women and he should sleep among men. If he had intercourse with her first and later on she became impure,<sup>3</sup> he is permitted to be closeted with her (see Yereh De'ah #192).

2) After the deed of Amnon and Tamar,<sup>4</sup> David and his Bet Din issued a decree regarding yihud with an unmarried woman:<sup>5</sup> even though she is not in any way an 'erwah,<sup>6</sup> [yihud] with her is [nonetheless] included in the category of yihud with an 'erwah.<sup>7</sup>

Shammai and Hillel issued a decree regarding yihud with a gentile woman. The result is that in the case of anyone who is closeted with a woman with whom it is forbidden to be closeted, be she an Israelite or a gentile,

rabbinic stripes are inflicted on both the man and the woman and a public condemnation of them is issued.

NOTE: But [this is] only [true] when it is known that he was closeted with her; however her testimony is not accepted with regard to him<sup>8</sup> (Yitzhak ben Sheshet, #281) and even one witness<sup>9</sup> is not believed (Yosef Kolon, principle 189). In any case, if it appears to the Bet Din that there is reason to suspect that a prohibition has been violated here, it is necessary to keep them separate (op. cit., Yitzhak ben Sheshet)--END NOTE.

A married woman is an exception, for even though it is forbidden to be closeted with her, if she is closeted with, no stripes are inflicted, in order to avoid rumors about her [implying] that she behaved obscenely [committed adultery] and to prevent gossip from circulating that her children are mamzerim.

3. Regarding any woman with whom it is prohibited for one to be closeted, if one's wife is with him, it is certainly permissible for him to be closeted with her, since his wife will watch him. However, an Israelite woman cannot be closeted with a gentile, even if her husband is with him.

4. Israelite infants are not entrusted to gentiles for either book learning or the learning of crafts.

5. An individual woman should never be closeted even with several men, unless the wife of one of them is there; similarly, an individual man should never be

closeted, even with several women.

NOTE: Some say that a woman can be closeted with two kasher men, if he<sup>10</sup> is in town<sup>11</sup> (Tur, quoting Asher ben Yehiel) and men, in general, are to be considered as being kasher (Rabbenu Nisim Gerondi, Chapter 10: Yohasin). However, if they are unchaste individuals, even if there are ten of them, it is forbidden. All of the above applies to when this occurs in the town. In the field, however, or at night, even in town, [the presence of] three [men] is necessary<sup>12</sup> (Bet Yosef quoting Avraham ben David), even if they are kasher (this is also found in the Tur, quoting Asher ben Yehiel). There are those who permit an individual man [to be closeted with] several women if his business is not with the women (Tur, quoting Rashi).

6) Where there are several women together with several men, there is no suspicion of yihud. If the men were outside and the women inside, or the men were inside and the women outside, and a woman went inside along among the men or a man among the women, they would be prohibited [from doing such] because of yihud.

7) Even a man whose business or whose trade involves women is forbidden to be closeted with the women. Whatever he does, he should deal with them [only] if his wife is with him, or else he should switch to another trade.

8) There is no suspicion of anyone closeted with a woman whose husband is in town, because of her fear of her husband. If this individual is intimate with her, e.g. she

grew up with him or is his relative, or if her husband expressed his jealousy [warning her] with regard to this individual, he should not be closeted with her, even if her husband is in town.

9) In a building which is open to public traffic, there is no suspicion of anyone who is closeted with an 'erwah.<sup>13</sup>

10) It is permissible for one to be closeted with two sisters-in-law or with two rival wives,<sup>14</sup> or with a woman and her mother-in-law, or with a woman and her husband's daughter, or with a woman and her mother-in-law's daughter, for there is enmity between these and one would not "cover-up" for the other.<sup>15</sup> The same applies to a woman who has a little girl with her, who knows the "taste" of intercourse but does not make herself available for intercourse for she<sup>16</sup> will not perform an obscene act in her presence, because she<sup>17</sup> would reveal her secret.

11) A girl of less than three years of age, or a boy of less than nine, is permitted to be closeted with them,<sup>18</sup> for the prohibitions of privacy are only made regarding a woman who is capable of intercourse or a man who is capable of intercourse.<sup>19</sup>

12) A hermaphrodite should not closet himself with women; but if he was closeted, stripes are not inflicted on him, because [his sex] is uncertain. However, a man may closet himself with a hermaphrodite or a person of uncertain sex.<sup>20</sup>

13) The sages established that women should talk to one and another in the latrine, lest a man should enter and be closeted with them.

NOTE: Some say [this applies] only to former times, when latrines were in the field. But these days, they are in town and there is no suspicion<sup>21</sup> (Hagahot Maimuni, Chapter 2, from Hilhot Isure Bi'ah)--END NOTE.

14) A woman should not go about in the marketplace with her child [following] behind her, lest her child be seized and if she goes after him to get him back she be mistreated by the culprits who seized him.

15) Even an upright and kasher man is never appointed to be the guardian of a court where there are women, even if he stands outside, for "there is no [suitable] guardian for 'arayot."<sup>22</sup>

16) One should not appoint a man to be the guardian of his household, so that he does not incline his wife toward the way of sin.

17) It is prohibited for a scholar to dwell in a court where there is a widow, even if he never closets himself with her, because there [is still] suspicion,<sup>23</sup> unless his wife is with him.

18) A woman is prohibited to raise a dog, because there is suspicion.<sup>24</sup>

19) A woman should not purchase male servants, even if they are minors, because of suspicion.

20) He who does not have a wife should not teach

children, since the mothers of the children come to the school for their children, and he might happen to be stimulated by the women. Likewise, a woman should not teach children, since their fathers, who would come in connection with the children, might happen to be closeted with her. It is unnecessary for a teacher's wife to be present with him in the school, rather she may remain in her home, while he teaches in his place.

XXIII. The prohibition regarding the spewing of seed to no purpose<sup>1</sup> and things that cause this. Herein there are seven paragraphs.

1) It is prohibited to spew the semen virile to no purpose and this sin is more grave than any other sin [mentioned] in the Torah. Accordingly a man should not insert [his penis into the vagina] then ejaculate outside, and he should not marry a minor who is not fit to give birth.<sup>2</sup>

2) Regarding those who fornicate with the hand<sup>3</sup> and spew the semen virile, the only adequate punishment for them--since they transgress a serious prohibition--would be for such that do this to dwell in a state of excommunication. Regarding them it is said: "your hands are full of blood"<sup>4</sup> and "it is as if he smote the soul."

3) It is prohibited for a man to induce himself to erection mentally or to bring himself to have impure fantasies. However, if an impure fantasy comes to him, he

should direct his mind away from vain matters to matters of Torah, for she<sup>5</sup> is a lovable woman and a gracious lady. Accordingly, it is prohibited for a man to sleep on his neck [i.e. back] with his head facing upward unless he is at a bit of an incline, so that he does not develop an erection.<sup>6</sup> And one should not look at animals or beasts or fowl when they are engaged in male-female intercourse. It is permissible for people to induce animals to procreate by aiding entry as a makeup brush is inserted into a makeup container,<sup>7</sup> since they are engaged in their vocation,<sup>8</sup> they will not come to have impure fantasies.

4) It is prohibited for an unmarried man to touch his genitals, lest he come to have impure fantasies. He should not even touch below his navel, lest he come to have impure fantasies. And when he has to pass water, he should not take hold of his penis as he urinates. But if he is married, he is permitted. Whether he is married or unmarried, he should touch his penis only when he needs to go to the toilet (NOTE: See Orah Hayyim, #3--END NOTE).

5) A woman who has an obstruction in her womb, so that if her husband was to have intercourse with her he would ejaculate outside, is prohibited.<sup>9</sup>

NOTE: (However, it is permissible to have marital intercourse with a minor or an aylonit,<sup>10</sup> since it is done in the normal way<sup>11</sup>) Tosafot and Mordecai ben Hillel, First Chapter of Yebamot, and Nimuke Yosef in the chapter: Haba al Yevemto.<sup>12</sup>--END NOTE.



6) It is prohibited to ride an animal without a saddle.

NOTE: (the synonym for saddle in Old French is "basteau"): In the Gemara, in the chapter, Kol Hayad<sup>13</sup> there is the implication that it is prohibited to wear undergarments that are not fashioned with legs, because that might induce one to destroy seed.<sup>14</sup> Even though it is possible to argue that the import of the Gemara is only for former times when there was Terumah [Heave Offering] and there might be reason to be concerned that the body had been defiled,<sup>15</sup> in any case since Asher ben Yehiel cites this in his decisions, this implies that even these days it is prohibited (all this is his own opinion). Regarding the fact that this<sup>16</sup> is customarily permitted in the bath house, it could possibly be said that for a very short time they did not prohibit it; so it seems to me. It is likewise prohibited in the Gemara for one to bathe with his father or brother or his mother's husband or his sister's husband. We are accustomed these days to permit the preceding; since one's nakedness is covered in the bath house, there is no fear of any impure fantasy (Agudah)--END NOTE.

7) Among the sainted forebears and the great sages, there was one individual who boasted that he had never seen his "circumcision" [i.e. penis] and one who boasted that he had never paid attention to his wife's shape, since his mind was directed away from divre habai [vanity] (NOTE: the explanation is that habai is a synonym for hevel<sup>17</sup>--END NOTE)

to righteous concerns, which preoccupy the minds of holy individuals.

XXIV. An Israelite is never suspected of buggery or homosexuality. Herein there is one paragraph.

1) An Israelite is never suspected of homosexual or animal sodomy. Accordingly, there is no prohibition about being closeted with them. However, one who avoids yihud with a man or an animal is counted praiseworthy.<sup>1</sup> The great sages avoided animals in order to prevent being closeted with them. And in those generations when criminals<sup>2</sup> were rampant, there was good reason to avoid being closeted with men.

XXV. One should make a fence<sup>1</sup> against too-frequent intercourse, and how one should behave during intercourse. Herein, there are ten paragraphs.

1) It is proper for a man to discipline himself toward extreme sanctity, pure thought, and correct insight, in order to be kept safe from stumbling into obscene behavior, and he should avoid yihud which is its greatest cause. And likewise he should accustom himself to avoid frivolity, drunkenness, and divre 'agavim (NOTE: this means frivolity and lust--END NOTE). A man should not remain unmarried, for this practice [i.e. being married] causes great purity. More emphatically than all this, the sages said "he should direct himself and his thought to matters of

Torah and expand the wisdom of his intellect, for obscene thoughts prevail only in a heart empty of wisdom."

2) One should not act lightheadedly with his wife or talk obscenely about vain matters even between himself and herself. Indeed, scripture says: "He tells man what His talk is."<sup>2</sup> The sages, may their memory be ascribed for blessing, said: "even frivolous conversation between a man and his wife is destined to bring punishment on its account."<sup>3</sup> He should neither talk to her during intercourse nor before it, lest he should happen to think about another woman. If he talked with her when engaged in intercourse, it is immediately said of him: "He tells man what His talk is." However, in the matter of intercourse, one is able to talk with her in order to increase his desire or if he is fighting with her and it is necessary to appease her in order to placate her, he may speak with her in order to appease her.

NOTE: A husband may do whatever he wants with his wife, he may have intercourse any time he so wishes, and he may kiss any limb he wishes and have intercourse with her whether in a normal or abnormal manner or may touch limbs, as long as he doesn't spew seed for nought (Tur). There are those who are lenient and say that it is permissable,<sup>4</sup> even in an abnormal manner, even if he wastes seed, as long as it is occasional and he does not do it habitually (This is also in the Tur, quoting Rabbi Yitzhak). And even though all this is permitted, everyone who personally limits himself in the

matter of this leniency is considered a holy individual (this is Isserles' opinion)--END NOTE.

One should not engage in intercourse too frequently, so as to be found constantly beside her, for this behavior is extremely reproachful and is conduct [typical of] crude people. However, everyone who limits intercourse<sup>5</sup> is held praiseworthy, as long as he does not neglect marital duty,<sup>6</sup> except with his wife's consent.<sup>7</sup> And even if he is engaged in intercourse because of marital duty, he should not intend to have pleasure but [should act] like a man who is repaying a debt, because he owes it to her as marital duty, and to fulfill the commandment of his Creator regarding procreation, and to have children engaged in Torah and the fulfillment of the commandments of Israel. He should only have intercourse when she is so desirous; and if she is not desirous, he should induce her into desiring it. He should be exceedingly modest when engaged in intercourse and never engage in intercourse in the presence of any individual, even a minor, unless he is an infant who doesn't know how to talk.

3) One should not engage in intercourse at the beginning of the night or at the end of it, but in the middle.

4) It is prohibited to engage in intercourse in the marketplaces, in the streets, in gardens, in orchards-- only in a dwelling place, lest it appear like lewdness and [people would become] accustomed to lewdness. And he who has intercourse with his wife in such places is beaten

with rabbinic stripes.

5) It is prohibited for a man to engage in intercourse by candle light, even if shadowed by a talit.<sup>8</sup> If it was Shabbat and he had no other place and the candle was burning<sup>9</sup> he should not engage in intercourse at all. Likewise, it is prohibited to engage in intercourse during daytime, for this would constitute brazenness on his part.<sup>10</sup>

NOTE: (See Orah Hayyim, Chapter 260, paragraph 11 and Chapter 315, paragraph 1)--END NOTE.

6) It is prohibited to engage in intercourse during years of famine, with the exception of those who are childless.<sup>11</sup>

7) A lodger should not engage in intercourse until he returns to his own home.<sup>12</sup>

8) One should not initiate intercourse with his wife, when she is hated by him at the time of intercourse. Likewise, if he has made up his mind to divorce her, even though she is not hated by him, he should not initiate intercourse with her.

9) He should not initiate intercourse with her, if either he or she is drunk.

10) One should not engage in intercourse with his wife while thinking of another, even if both of them were his wives.

NOTE: (See more of these laws in Orah Hayyim, Chapter 240)--END NOTE.

## HILKHOT KIDUSHIN

XXVI. That one should not betroth through intercourse<sup>1</sup> and the prohibition against engaging in intercourse with an unmarried woman. Herein there are four paragraphs.

1) A woman is not considered married except through betrothal which was contracted in the proper manner. Certainly, if intercourse had been initiated with her in a lewd manner, that was not performed with the intent of betrothal, this does not amount to anything. And even if intercourse had been initiated with her with the intent of contracting marriage between himself and herself, she is not considered to be his wife, even if he set her aside for himself.<sup>2</sup> Rather, on the contrary, he is forced to eject her from his household.

NOTE: This only applies to the case where she was ashamed to undergo ritual ablution and he initiated intercourse with her when she was [still] a nidah.<sup>3</sup> But if a woman is set aside for him and she had undergone ablution on his behalf, some say that it is permissable and that this is the concubine mentioned in the Torah<sup>4</sup> (Rabbi Avraham ben David and a few commentators). Some say that it is prohibited and stripes should be inflicted for this, because of the injunction: "There shall be no harlot of the daughters of Israel"<sup>5</sup> (Maimonides, Asher ben Yehiel, and the Tur). In the case of a heathen<sup>6</sup> who marries a heathen woman and, similarly, an apostate<sup>7</sup> who marries an apostate woman by

their own custom and afterwards they are converted, there is no assumption of betrothal<sup>8</sup> at all and she is permitted to leave him<sup>9</sup> without a divorce decree. Even if he had lived with her for several years, this can only be regarded as mere lewdness<sup>10</sup> (Yitzchak ben Sheshet, Chapter 6, and in Terumat Hadeshen, Chapter 209) (also see above Chapter 149, paragraph 6)--END NOTE.

2) If a woman is brought into the bridal chamber,<sup>11</sup> she is not betrothed by this;<sup>12</sup> and some say that [the betrothal] is doubtful.<sup>13</sup>

3) She who is betrothed<sup>14</sup> is considered to be a married woman, in so much as anyone who would have intercourse with her<sup>15</sup> is culpable,<sup>16</sup> and she needs a divorce decree to free her for the market.<sup>17</sup>

4) A woman can be betrothed by three means: by money, or by a document, or through intercourse. [This is] according to the Torah. But the sages prohibited betrothal through intercourse, because this constitutes lewdness. And if one initiated betrothal through intercourse, rabbinic stripes are inflicted on him and she is betrothed. Even if he betrothed her with money or a document, if there was no prior arrangement<sup>18</sup> or if he betrothed her in the marketplace,<sup>19</sup> rabbinic stripes are inflicted on him and she is betrothed.

NOTE: Some say that stripes are not inflicted on him, if he betrothed through money or a document, even in the marketplace and without prior arrangements (Tur

quoting Asher ben Yehiel). I see no reason to inflict stripes on one who betrothes without prior arrangements--  
END NOTE.

XXVII. What is the betrothal formula? and that he<sup>1</sup> must say it and he must give [her the money or object of betrothal]. Herein, there are ten paragraphs.

1) How does he betroth her with money? He gives her, in the presence of two, a perutah or the equivalent value of a perutah.<sup>2</sup> And he says to her: "Behold, you are betrothed to me<sup>3</sup> with this."

NOTE: Some say that he should say to her: "according to the Law of Moses and Israel"<sup>4</sup> (Kol Bo), and we are accustomed to do so in principle, and we are likewise accustomed to betroth with a ring;<sup>5</sup> the reason appears in Tikune Hazohar (this is the opinion of Isserles)--END NOTE.

And the same is the law<sup>6</sup> if he says to her: "behold, you are betrothed to me" or "behold, you are my wife" or similarly any expression which implies betrothal in that place, as long as she understands that it is a betrothal formula, or if he had been speaking with her beforehand about matters of betrothal and gave her [a token], even in silence,<sup>7</sup> it is [valid] betrothal, provided that they are still busy talking about that matter;<sup>8</sup> and all the more so, if he made a definite expression of betrothal but she did not understand it, this is [still] betrothal.<sup>9</sup>



NOTE: Some say that it is not [even] required that they speak directly about that matter, rather indirect discussion of that matter suffices, i.e. they do not talk about betrothal but only about the needs of their union (Mordecai, at the end of Haish Mekadesh,<sup>10</sup> also so wrote Rabbi Shlomo Ben Adret). And some say that direct conversation with her is not required; rather [its having been] mentioned in her presence is sufficient (Mordecai at the beginning of Kidushin, and this implication is also made in the Tur).

2) If he says to her: "behold, you are my wife," "behold, you are bound to me," "behold, you are acquired by me," "behold, you are my betrothed," "behold, you are mine," "behold, you are in my possession," "behold, you are taken by me;" this is valid betrothal.<sup>11</sup>

NOTE: If she understood his words or if they had spoken beforehand about matters of betrothal<sup>11</sup> (Rabbenu Nisaim Gerondi and Magid Mishneh) but the [testimony] of the man is not accepted that he did not intend it for the sake of betrothal<sup>12</sup> (Bet Yosef, quoting Asher ben Yehiel)--  
END NOTE.

3) If he says to her, "behold, you are designated for me," "you are set aside for me," "you are my help meet," "my opposite," "my rib,"<sup>13</sup> "my closed-in one," "the one to be under me," "my shut-in one," "one I got hold of," behold, this one is betrothed because of doubt.<sup>14</sup>

NOTE: The same is the case if he says "behold you are my designated,"<sup>15</sup> but if he says to her "you are my

spouse,"<sup>16</sup> some say that this amounts to nothing<sup>17</sup>--  
END NOTE.

All this applies if he had been speaking with her beforehand about matters of betrothal. However, if he did not talk to her first about matters of betrothal they are not concerned about these words.<sup>18</sup>

NOTE: In the case of he who gives [a token] to her for the sake of love or affection, there is suspicion of betrothal, since he might have said to her that there would be love and affection between them [in marriage]. This is comparable to his saying to her "you are designated for me" or "you are set aside for me" (Teshuvat Maimuni at the end of Ishut). Some say that even though these formulae are not effective, [even] if he had not first been speaking with her about matters of betrothal, in any case, if she says that she understood it as being for the sake of betrothal, then there is doubtful betrothal (Rabbenu Nisim Gerondi). And even if he gave her [the token] in silence and said nothing, but he and she had been saying that they intended it for the purpose of betrothal, it constitutes [valid] betrothal. (in Mordecai, the chapter: Haish Medadesh; and in the responsa of Rabbi Meir of Rothenburg). And in the situation where there was not [valid] betrothal,<sup>19</sup> even if he repeats after that and says to her "behold, you are betrothed to me," it is necessary to take the money from her and give it to her [again] for the sake of betrothal (Magid Mishneh quoting Rabbi Shlomo ben Adret)--END NOTE.

4) If he says to her "behold, you are betrothed" but does not say "to me," she is not betrothed.

NOTE: (Such is the basic law,<sup>20</sup> but some are strict and say that this constitutes betrothal<sup>21</sup>) (You can find these in the responsa of Rabbi Shlomo ben Adret, Rabbi Moshe ben Nahman, and Rabbi Asher ben Yehiel, section 36)--  
END NOTE.

But if he had been speaking with her about matters of betrothal, behold this one is betrothed. And if he first betrothed a particular woman with completely certain betrothal and [then] said to another in her presence "be you betrothed" but did not say "to me", there are some indications [that betrothal was intended] (NOTE: the explanation is that just as when one takes hold of the handle of a vessel and the vessel itself is pulled along, these words<sup>22</sup> indicate that they are pulling the phrase "to me" along with them--END NOTE) and [valid] betrothal is suspected.

5) There are some who say that if, when he gives her the money, he says to her "behold, I am giving it to you for the purpose of betrothal," it is as though he said "[you are betrothed] to me."

NOTE: It is necessary for him to recite to her a formula which indicates the future, e.g. he must say: "behold, these [coins] are [will be for] betrothal" or "behold, they will be for betrothal"<sup>23</sup>; but if he says only "they are [for] betrothal"<sup>24</sup>, it does not amount to anything.

(Bet Yosef quoting Rabbi Yitzhak Duran)--END NOTE.

6) If he says to her "behold, I am your husband," "behold, I am your master," "behold, I am your groom," it does not amount to anything even if he had been speaking with her beforehand about matters of betrothal, because it is written "when [a man] takes [a woman]"<sup>25</sup> and not "that he takes himself."

NOTE: (If he gives the money to an individual and says to him "behold, you are my father-in-law" without saying "your daughter is betrothed to me," this does not amount to anything) (Hagahot Alfasi, the first chapter of Kidushin)--END NOTE.

7) If she gives him money and says "behold, I am betrothed to you," she is not betrothed.

8) In the case where he gave her [a token] and she recited [a formula], if he had been speaking with her about matters of betrothal, this constitutes certain betrothal, and if not, this constitutes doubtful betrothal. And if the husband answers "yes" at the time of the giving, this constitutes certain betrothal, even if they have not been [previously] involved with this matter.

9) In the case where she gave [a token] and said to him "this dinar<sup>26</sup> is given to you as a token in order that I become betrothed to you," and he took it and said to her "behold, you are betrothed to me with the benefit ensuing from my acceptance of a gift from you," if he is an important person, behold, she is betrothed, since she has

the benefit of his receiving benefit from her and, by virtue of this benefit, she makes herself acquired by him. And a scholar's investigation is necessary to determine who is not an important person, so that she could be declared free without a divorce degree.<sup>27</sup>

NOTE: (Some are strict [and declare the betrothal valid] even if she doesn't say first that by virtue of what she is giving that "I am betrothed to you", but only just gives and he says "you are betrothed to me, etc.", while she remains silent)<sup>28</sup> (The responsa of Shlomo ben Adret, #1213)--  
END NOTE.

10) The minimum amount of money with which betrothal is affected is the weight of half of a barley corn in pure silver (see Yoreh De'ah, #294, paragraph 6, the amount of the value of a perutah).

XXXI. That there is no betrothal with less than the equivalent value of a perutah,<sup>1</sup> and if an appraisal is necessary.<sup>2</sup> Herein there are nine paragraphs.

1) There is no betrothal with less than the equivalent value of a perutah. Nonetheless, if he betrothed her with any object,<sup>3</sup> it is not necessary to appraise if first, if it is of the equivalent value of a perutah. Only if it is of the equivalent value of a perutah, is she betrothed. Even if he said to her "become betrothed to me with this object which is worth fifty zuz" and no appraisal is made of it first, if it is found afterwards that it is worth 50 zuz, she is betrothed.

2) Some say that if he betrothed her with a [type of] object which [people in general] cannot appraise properly and significant errors are sometimes made [in its appraisal], for example precious stones or pearls or similar such things, and he said to her "become betrothed to me with this stone which is worth fifty zuz," an appraisal is necessary because she does not rely on his statement. And some say that even if he betrothed with the plain stone and did not say to her that it is worth fifty zuz, an appraisal is necessary. Therefore, we are accustomed to betroth with a ring which has no stone in it.<sup>4</sup>

NOTE: And if he betrothed her with a ring which had a stone in it or with a plain ring and it is discovered to be of brass, even though it is not proper to betroth with such, there is suspicion of [valid] betrothal (Bet Yosef quoting Rabbi Shimon ben Tzemaḥ and Mordecai ben Hillel, the first chapter of Kidushin). And even if the witnesses state under the hupa that it is of gold and it is [later] found to be of brass, even though it would seem that according to law [woman] is not betrothed, nonetheless we must be strict in the actual case<sup>5</sup> (Teshuvat Maimuni, at the end of Hilhot Nashim). In any case, we are accustomed, under the hupa, to inquire of the witnesses if the ring is worth a perutah, in order that the bride should know that he can only betroth her with the equivalent value of a perutah (Orhot Hayyim). Likewise, we are accustomed to cover the face of modest brides, and they are not particular about the amount with

which one betrothes them [this is] explained in the responsa of Shlomo ben Adret).

3) If one betrothed with food or with an instrument or similar such thing, that was worth less than the equivalent value of a perutah, behold, this [woman] is betrothed out of doubt, for perhaps this commodity is worth a perutah in another locality. And some say, if he betrothed with a cooked dish or an unripe vegetable or similar such things, if they do not have the equivalent value of a perutah in that locality, she is not betrothed at all, to wit, such a commodity could not reach another locality before it was spoiled or deteriorated and not worth a perutah.

4) What we said, that she is betrothed out of doubt--for perhaps this commodity is worth a perutah in another locality, [implies that] she needs a divorce decree to free her to the world, and if he wishes to keep her, she would need another betrothal; and if another man betrothed her with a complete betrothal, the first man should divorce her and the second man should marry her, but the second man should not divorce her and the first marry her.

NOTE: [This applies] only if the second man did not have intercourse with her before the divorce, but if he had intercourse with her, behold, the first one is prohibited, and just as she is prohibited to her husband, she is prohibited to the man with whom she had intercourse (Mordecai ben Hillel, the first chapter of Kidushin) and see below chapter 46, paragraph 5--END NOTE.

5) [In the case of] one who says to a woman "become betrothed to me with this date", "become betrothed to me with this", become betrothed to me with that",<sup>6</sup> if any [one] of them is worth a perutah, behold, this [woman] is betrothed; and if not, she is not betrothed, except out of doubt, since the value of one date could be a perutah in another locality. And if he said to her "become betrothed to me with this, this, and this";<sup>7</sup> [the value] of all of them being combined, if their total worth is the equivalent value of a perutah, she is betrothed; and if not she is betrothed out of doubt. If she were to have eaten them one by one, and the last one was worth a perutah, she is betrothed; and if not she is betrothed only out of doubt, since those dates which she ate are like a debt,<sup>8</sup> and [in the case of] he who betrothes by remitting indebtedness,<sup>9</sup> she is not betrothed. So there is no betrothal except with the last date.<sup>10</sup>

6) If he said to her "become betrothed to me with these" and [then] she ate them one by one, then also those which she ate together combine to the value of a perutah, since he had completed all his words before he gave her anything. Therefore, as soon as he gave [them to] her, the first one comes to her hand for the sake of betrothal, and she eats it as her own. And the same applies if he says to her "with this and this" and he completed his whole statement before she received them; they are counted together [in value] even if she ate them one by one. Some disagree with this.



7) If he said to her, "let one half of you be betrothed to me with half of a perutah and [the other] half of you be betrothed to me with half of a perutah" or if he said to her, "[one] half of you with a perutah and [the other] half of you with a perutah" or "[one] half of you with a perutah today and [the other] half of you with a perutah tomorrow" or "both your halves with a perutah", or if he said to his friend, "your two daughters for my two sons with a perutah" or "your daughter is betrothed to me and your cow is sold to me for a perutah" or "your daughter is betrothed to me and your land is sold to me for a perutah", behold this [woman] is betrothed out of doubt.

8) [In the case of] one who says to a woman "become betrothed to one half of me", behold this [woman] is betrothed. To what can this be likened? To his saying to her "become my wife, you and [this] other [woman]", in which case it is apparent that she only has half of a husband.<sup>11</sup> But if he said, "half of you is betrothed to me", she is not betrothed, for one woman cannot properly be [married] to two [men]. And likewise, [in the case of] one who says to her "behold you are betrothed to me and to this [fellow]", she is not betrothed.

9) If he betrothed her with money of less than a perutah in value, even though he might send her sivlonot

(NOTE: This means gifts, for this is an expression

[related to] sevel or masa [burden] and masa appears in the expression matana [gift], e.g. "veyisa mas'ot. . ."

[portions were taken for them from Joseph's table]<sup>12</sup>-END NOTE)

after that there is no suspicion that he sent those gifts for the purpose of betrothal. But if he betrothed her with less than the equivalent value of a perutah and after that simply [i.e. without saying anything] had intercourse with her in the presence of witnesses, she needs a divorce decree<sup>13</sup> for undoubtedly he had intercourse with her for the sake of betrothal.

NOTE: The same applies [in the case of] a minor who betroths and [then] grow up alongside her, [that is] she would need a divorce decree, for undoubtedly, he would have intercourse with her, when he was grown up, for the sake of betrothal (Tur, Chapter 43, and the responsa of Asher ben Yehiel, Chapter 35). But only in such a manner, because everyone knows that there is no betrothal at all [involving] minors or with less than a perutah, and, therefore, he who initiates intercourse for the sake of betrothal, but in an instance in which one may err<sup>14</sup> another betrothal is necessary (Teshuvat Maimuni, at the end of Nashim, as is explained in this chapter, paragraph 4)--END NOTE.

XXXII. How is the woman betrothed by a document?  
Herein there are four paragraphs.

1) How [is she betrothed] with a document? He writes for her on a parchment or a clay tablet--even though it is not of the equivalent value of a perutah--"behold you are not betrothed to me" and he gives it to her in the presence of witnesses. And it is necessary for him to

write it especially for the woman who is being betrothed, like [in the case of] a divorce decree; and if it is not written especially for her, she is not betrothed. And it should only be written with her consent; and if it is written without her consent, this constitutes doubtful betrothal.

2) Even though the document might be invalid for the purpose of betrothal,<sup>1</sup> they consider the parchment, if it is worth a perutah, to have made her betrothed;<sup>2</sup> and if not, this constitutes doubtful betrothal.<sup>3</sup>

3) If she is a minor<sup>4</sup> or a young maiden<sup>5</sup> and he betroths through her father with a document, he writes: "your daughter is betrothed to me."

4) And some say that it is necessary that the names of [both] the man and the woman be mentioned in the document of betrothal, just as it is necessary to mention them in a divorce decree.

NOTE: If [it] was written on something which was fixed to the ground or the benefit [ensuing] from which was prohibited, some say that it<sup>6</sup> is disqualified (Magid Mishneh, Chapter 3 of Ishut); and there are some who consider it acceptable (Rabbi Shlomo ben Adret, Chapter 603). And it is not necessary to write the date in a document of betrothal (Rabbenu Yeruham). If he wrote it with his hand, and if it was not signed by witnesses, she is betrothed out of doubt (Nemuke Yosef, the Chapter: Arbaah Ahim [Yebamot]). If he gives her the document and says "on the

condition that this parchment is mine,"<sup>7</sup> she is not betrothed (Rabbenu Nisim Gerondi, the first chapter of Kidushin).

XXXIII. How is the woman betrothed through intercourse? Herein there are two paragraphs.

1) How [is she betrothed] through intercourse? [If] he says to her in the presence of two witnesses "behold you are betrothed to me with this intercourse" and he closets himself with her in their presence,<sup>1</sup> this one is betrothed, even though this constitutes brazenness.

NOTE: Whether he has intercourse with her in a normal or abnormal manner (Tur)--END NOTE. And her legal condition is that of a betrothed and not a married woman.<sup>2</sup>

NOTE: And some say [this applies] only when he has intercourse with her in his father-in-law's house,<sup>3</sup> but if he brought her into his own house and had intercourse with her,<sup>4</sup> or if he already betrothed [her] and [then] had intercourse with her,<sup>5</sup> her legal condition is that of a married woman. And some say that [in the case of] an unmarried man who has intercourse with an unmarried woman in the presence of witnesses, there is suspicion that he may have intended it for the sake of betrothal (Mordecai ben Hillel, in the chapter, Ha'omer), for the assumption is that a man does not perform his intercourse as an act of lewdness. But if he has a reputation for lewdness or if

he has another wife, there is no suspicion<sup>6</sup> (Terumat Hadeshen, Chapter 209). And some are lenient regarding the whole matter. See below, Chapter 149 and 167, paragraph 2, and above Chapter 15, paragraph 14.

2) [Usually] he who betroths through intercourse intends [to affect it] with a completed [act of intercourse]. Accordingly, if before he finished, she accepted betrothal from another individual, she is betrothed to both of them; but if he started intercourse with her and withdrew immediately or if he spoke first so that she knew that acquisition would be through interlabial intercourse,<sup>7</sup> he acquires [her] immediately.

## FOOTNOTES

### Chapter XVIII.

<sup>1</sup>literally, "second degree".

<sup>2</sup>Certain marriages are proscribed by Jewish Law. If such a betrothal takes place, however, it is valid ex post facto, in certain specific cases, whether the consummation of the marriage would of necessity cause the violation of a negative or positive biblical prohibition or a rabbinic prohibition.

### Chapter XIX.

<sup>1</sup>i.e. a woman who is party to a sexual union.

<sup>2</sup>i.e. a relative of the party with whom he had intercourse.

<sup>3</sup>literally, "if there is the presumption in the city."

<sup>4</sup>who would violate her sexually.

<sup>5</sup>30 days at least. If the married couple is not known to have lived in a place at least thirty days, it cannot be assumed that their marriage is a matter of public knowledge and another individual who had intercourse with the woman may be considered to have been ignorant of the fact that she is married and, therefore, an 'erwah. He would, therefore, not be subject to the death penalty.

### Chapter XX.

<sup>1</sup>with one who is forbidden to him as an 'erwah.

<sup>2</sup>divine extirpation, a category of punishment under rabbinic law. See glossary.

<sup>3</sup>for the purpose of intercourse.

<sup>4</sup>Jacob ben asher, compiler of the Tur.

<sup>5</sup>According to rabbinic tradition, if the hymen of a minor less than three years old is broken, it grows back.

<sup>6</sup>involved in the calculation of the girl's age.

<sup>7</sup>Even though additional months are actually included in her age, if she is technically less than the prescribed age, her virginity returns.

<sup>8</sup>Isserles.

<sup>9</sup>Homosexuality is one of the inbred sexual vices of the Egyptians mentioned in Leviticus 18:3f, which Israelites are warned to refrain from.

<sup>10</sup>A category of punishment, under rabbinic law, for the violation of certain precepts.

## Chapter XXI.

<sup>1</sup>or street.

<sup>2</sup>Unmarried women, in this case, includes widows and divorcees but not virgins (Ba'er Hetev).

<sup>3</sup>Job 31:1.

<sup>4</sup>A menstruant, including one's wife, is an 'erwah. Marital intercourse is proscribed until after a wife has finished menstruating and has been purified through ablution (ritual bath). The rabbis extended the period of a woman's impurity. See Tractate Nidah.

5for intercourse.

6The above mentioned services rendered by women can be utilized according to more lenient authorities. Even those who are lenient, however, would not permit a woman who is in a state of impurity (i.e. menstruating) to touch a man. Accordingly, even one's wife, who would at other times render such services to her husband, is prohibited from doing so during her menstrual period.

7any of these services can be utilized as long as the recipient is not closeted with the administrator of the service.

8and, therefore, nothing illicit would be done.

9Tractate Ketubot.

10Looking at her head in public could be considered a lewd gesture, since such activity is a potential source of erotic thoughts.

11Tractate Baba Batra.

12i.e. the father.

13i.e. the daughter.

## Chapter XXII.

1Being closeted here indicates staying together alone, not necessarily having intercourse. Since the suspicion of intercourse is present, however, there is a prohibition against this.

2Since the marriage cannot yet be consummated, because the bride is menstruating.



3i.e. menstruous.

4II Samuel 13:1f. Amnon violated his sister Tamar in a situation of yihud.

5a rabbinic tradition.

6An unmarried woman who is not a consanguineous relative is not an 'erwah, since intercourse with her constitutes neither incest nor adultery.

7and is thus prohibited.

8If the sole evidence of the yihud was her testimony, it implicates no one, since the testimony of a woman or a single witness is not accepted.

9one legally recognized witness, i.e. a kasher male adult.

10i.e. her husband.

11and may come home at any time.

12Since the testimony of at least two kasher witnesses is needed to confirm or deny an instance of yihud, any two of the three could testify about the remaining individual. In such instances, where there goings-about cannot be seen readily, even individuals who would normally be above suspicion should assure that the minimum number of kasher witnesses are present to remove any suspicion of yihud.

13Since their goings-about could be seen readily, they would be afraid to violate a prohibition there.

14in a polygamous situation.

15The natural rivalry of one would make the other fearful of violating a prohibition with the man, in her

presence.

<sup>16</sup>the woman

<sup>17</sup>the girl

<sup>18</sup>the girl with men and the boy with women.

<sup>19</sup>Girls of less than three years of age are still legally considered virgins, even if they are violated (see Chapter 20, note 4). Boys of less than nine years of age are considered incapable of intercourse, but even if they succeeded, this is legally not intercourse.

<sup>20</sup>literally, a person whose sexual organ is overgrown with a tissue and whose sex is therefore uncertain.

<sup>21</sup>regarding the accidental entrance of a man into a latrine which is being used by a woman.

<sup>22</sup>Talmud Babli, Ketubot 13b. If there is an opportunity, any man or woman may engage in prohibited intercourse, no matter how tight the guarding is.

<sup>23</sup>suspicion of yihud.

<sup>24</sup>suspicion of buggery.

### Chapter XXIII.

<sup>1</sup>It is prohibited to deliberately spew the semen virile or to put oneself in a position where semen virile could be spewed for any other purpose than that of procreation.

<sup>2</sup>Either in the case of coitus interruptus or coitus with a minor, the semen virile could not possibly be considered to have been used for the purpose of procreation.

3i.e. masturbate.

4Isaiah 1:15. The text is used to imply that the masturbatory act destroys future lives.

5i.e. Torah

6by rubbing against the bed covers.

7placing the male animal's penis into the female's vagina.

8Animal husbandry is part of their vocation, and such an action, which would otherwise be regarded as an obscene gesture and conducive to obscene thoughts, would be regarded as a business matter.

9to her husband for the purpose of intercourse.

10Such would be likely to have obstructed or tight vaginas that would interfere with procreation.

11Although neither a minor nor an aylonit would make a suitable wife for the purpose of procreation, if one acquired one of these as a wife by one of the legally defined methods of betrothal, whether he was ignorant of her status or not, the betrothal is valid ex post facto. Indeed, where polygamy was the custom, one could theoretically have such a wife in addition to another who could readily bear children.

12Tractate Yebamot.

13Tractate Nidah.

14The garment, if it was open at the bottom, might expose his genitals and encourage a situation where he would waste the semen virile.

<sup>15</sup>The Terumah still was given to the Priests at that time, and they had to eat it in a ritually clean state.

<sup>16</sup>i.e. wearing an open-bottomed undergarment.

<sup>17</sup>Habai and hevel are synonymous terms which translate into English as "vanity". Isserles is defining Karo's term, which must have been obscure to his Ashkenazic readership.

#### Chapter XXIV.

<sup>1</sup>Though there is no prohibition, one who is chaste "above and beyond the call of duty" with these matters is counted praiseworthy.

<sup>2</sup>The implication here is sexual criminals, e.g. those who were went for homosexual acts or sodomy.

#### Chapter XXV.

<sup>1</sup>i.e. restrict himself.

<sup>2</sup>Amos 4:13. Literally, "He declares to man what is his thought."

<sup>3</sup>Hagiga 5b.

<sup>4</sup>to have intercourse.

<sup>5</sup>i.e. the frequency of intercourse.

<sup>6</sup>It is marital duty to satisfy a wife's sexual desires. Chaste individuals who limit the frequency of intercourse are held praiseworthy. However, they must not let their high moral character interfere with their marital duty.

7With his wife's consent, he may abstain from even the intercourse that he would normally engage in as marital duty to her.

8i.e. the talit was being used as a partition between the bed and the light.

9The candle has been lit before the Shabbat to provide light throughout. Extinguishing it for the sake of modesty would remove the only source of light in the house, which could not be rekindled during the Shabbat, because of a prohibition of the Torah.

10During daylight as in candle light, the partners in the intercourse could see each other, which is considered brazenness.

11During any period of distress, it is inappropriate to engage in intercourse, unless one has yet to fulfill the mitzvah of procreation.

12This prohibition was written at a time when lodgers were not likely to have private quarters. Engaging in intercourse, when not in the strictest privacy, is considered an act of lewdness. Ba'er Hetev states that if a lodger had private quarters, he could engage in marital intercourse.

#### Chapter XXVI.

1According to Kidushin 9b, betrothal can technically be affected through intercourse, provided that the husband recited the proper formula: "behold you are betrothed to me through this intercourse, according to the Law of Moses and

Israel", and that the statement of betrothal and the departure of the couple into a state of privacy were properly witnessed. This mode of betrothal of biblical origin, though valid ex post facto, was considered an act of zenut (lewdness) by Rabbinic authorities and made any person who used it culpable for stripes. Evidentially, by Karo's time, even the ex post facto validity of this method of betrothal was called into question. See Chapter 26, paragraph 4.

<sup>2</sup>to live with her,

<sup>3</sup>An unmarried woman is not obligated to undergo ritual ablution after her menstrual periods, since she will not be engaging in intercourse. She is, however, considered a nidah until she does. Accordingly, any bride who has not been purified since her last menstrual period must undergo ablution before the marriage can be consummated.

<sup>4</sup>e.g. Hagar.

<sup>5</sup>Deuteronomy 23:18.

<sup>6</sup>i.e. a born heathen.

<sup>7</sup>i.e. a born Jew who converted to another religion.

<sup>8</sup>i.e. they are not considered married.

<sup>9</sup>In this case, since there is no valid betrothal and marriage according to Jewish law, she is free to leave her husband (whom she married by heathen custom) and marry again.

<sup>10</sup>Since they were married by heathen custom, this marriage cannot be considered valid.

<sup>11</sup>The place where the bride and groom are closeted together and the marriage becomes consummated.

<sup>12</sup>She does not become betrothed by virtue of the yihud alone. The yihud must be preceded by the other legal criteria for betrothal.

<sup>13</sup>While some deny the validity of the betrothal completely, some classify it as being of doubtful validity.

<sup>14</sup>through a valid act of betrothal. The implication, in this case, is that she had been acquired through Kidushin (betrothal) but not yet through Nisuin (the final stage of marriage) Jewish marriage takes place in two stages: Kidushin and Nisuin. Although both stages are part of the modern Jewish wedding ceremony and are performed consecutively on the same occasion, in former times, the betrothal could be affected months or even years before the final stage of marriage. Though the betrothed couple would live apart until the Nisuin ceremony, the betrothal was legally binding, in as much as the bride would need a divorce decree to free her to marry another.

<sup>15</sup>i.e. anyone other than her betrothed.

<sup>16</sup>of having had intercourse with a married woman.

<sup>17</sup>i.e. to marry another.

<sup>18</sup>Prior to the betrothal, marriage arrangements should be made. This phase in contracting the marriage is called Shidukhin. Shidukhin does not have the force of betrothal and can be broken without a divorce decree. Karo implies that Kidushin affected without Shidukhin is prohibited, though valid ex post facto.

<sup>19</sup>e.g. if he apprehended her in the marketplace, gave her the token (see Chapter 27), and recited the legal formula for the betrothal in the presence of witnesses. "Spur of the moment" betrothal even if affected by means other than intercourse is, nonetheless, prohibited.

#### Chapter XXVII.

<sup>1</sup>i.e. the groom.

<sup>2</sup>The groom gives the bride a token of a prescribed value, the acceptance of which by the bride, as stipulated by the groom in the betrothal formula, affects the betrothal.

<sup>3</sup>literally, "you become a taboo in my behalf," i.e. you become taboo for other men. In modern times, we translate mekudeshet as "consecrated" because it sounds better than "taboo."

<sup>4</sup>This phrase is added to the above-mentioned formula. Such is normative Jewish practice today.

<sup>5</sup>A ring theoretically of the value of a perutah (a small coin mentioned in the Mishnah) or more, serves as the token of betrothal. It is normative Jewish practice today for the bride's wedding ring to serve as the token of betrothal.

<sup>6</sup>i.e. it is just as valid.

<sup>7</sup>i.e. even if he did not recite a betrothal formula.

<sup>8</sup>e.g. if they are still talking about their prospective marriage.

<sup>9</sup>If she took the token without understanding the



reason for which it was given, and he clearly intended betrothal, as attested to by his recitation of an obvious betrothal formula, she is betrothed and would need a divorce decree to free her.

<sup>10</sup>Tractate Kidushin.

<sup>11</sup>If he recites one of the above formulae, and as Isserles notes, she understands it as a betrothal formula or if the matter of betrothal had been discussed by them beforehand, the betrothal is valid.

<sup>12</sup>If he recites the formulae under the given conditions, the betrothal holds, and if he renegs, claiming that he did not intend his statement for the purpose of betrothal, his word is not accepted.

<sup>13</sup>The allusion here is to Adam and Eve (Genesis 2:22).

<sup>14</sup>Though these formulae are of dubious legal validity, the betrothal holds because their invalidity is uncertain, also.

<sup>15</sup>The Hebrew term translated here as "designated" is harufa which could also be translated "betrothed". Kidushin 6a notes that the formula mentioned above has the same force as the standard betrothal formula, "hare at mekudeshet li" (translated "behold you are betrothed unto me" or "you become a taboo in my behalf"): "if one says to a woman 'be my harufah', she is betrothed, for in Judaea they call the betrothed harufah."

<sup>16</sup>"My spouse" here is the translation for Nesuati. Nisuin is the final stage of marriage, following betrothal

(Kidushin or Erusin). Nisuah, therefore cannot be used as a synonym for Arusah, i.e. it cannot be part of a betrothal formula.

17 This formula is counted inappropriate, i.e. there is no betrothal at all.

18 If there was no prior expression of intent to betroth, all these formulae are regarded as invalid.

19 i.e. he had given a token but there had been no expression of intent to betroth before or after he gave it.

20 i.e. accepted law.

21 If he happened to utter these words, those who are strict would insist that valid betrothal has taken place, even though he did not make it clear that it was he, who was taking the woman in betrothal.

22 i.e. "be you betrothed".

23 indicating the future.

24 These words do not indicate the future.

25 Deuteronomy 22:13.

26 a Roman coin. Mishnah Kidushin records a controversy over whether the token of betrothal is of the equivalent value of a dinar or a perutah.

27 It must be proved that the benefit was not significant enough to take the place of a tangible betrothal token. If he was not an important person, the benefit which she would receive by having him receive her token is of less value. If his importance cannot be disproved,

however, the betrothal holds and she needs a divorce decree to free her.

28She would still need a divorce decree to free her, in this case.

### Chapter XXXI.

1i.e. if the token is not of the equivalent value of a perutah or more.

2to determine the value of the token.

3The value of which was obvious.

4It is still normative Jewish practice today to betroth with a plain gold ring with no stone in it.

5and consider the betrothal binding if doubtful.

6The reference here is to three separate dates.

7i.e. the three dates together.

8in that they are already consummed. The actual betrothal token is his remittance to her of the value of her indebtedness to him for the dates which she ate.

9and not with a tangible token.

10which was the only tangible object of value left at the time that the betrothal was to have taken effect.

11i.e. she must share her husband with his other wife.

12Portions (mas'ot) or gifts of food were taken for them. Just as masa, a term for burden, can connote a gift, so sevel, another term for burden, yields a term for gifts, sivlonot.

13to free her to marry another.

<sup>1</sup>e.g. if he attempted to betroth when he was legally ineligible to do so.

#### Chapter XXXII.

<sup>1</sup>i.e. there is a problem with its form or contents, e.g. it was not written especially for the woman to be betrothed or was written without her knowledge or consent.

<sup>2</sup>The betrothal is valid, since the parchment itself serves as a betrothal token. This is not really betrothal by document; it is betrothal by money (i.e. the intrinsic value of the parchment). See Talmud Kidushin 9b.

<sup>3</sup>For the parchment might be worth a perutah in another locality.

<sup>4</sup>i.e. a girl under 12 years of age.

<sup>5</sup>legally, a girl between the ages of twelve and twelve and a half.

<sup>6</sup>i.e. the document.

<sup>7</sup>The reason is that the parchment on which the formula was written was not hers.

#### Chapter XXXIII.

<sup>1</sup>i.e. they witness him departing into a situation of privacy with her.

<sup>2</sup>Though a marriage is normally made consummate with intercourse, in this case intercourse is used as a means of betrothal instead of money or a document. Jewish Betrothal and Jewish Marriage are two different legal steps,

the former preceding the latter temporally.

<sup>3</sup>In former times, the betrothal and marriage could be many months or even several years apart. A betrothed woman remained in her father's household until the time of her marriage, when she went to live with her husband in his own home. Thus, if he had intercourse with her in her father's house, after reciting the appropriate betrothal formula, she was betrothed but not married.

<sup>4</sup>The act of his bringing her to his house to cohabit with her affects the marriage.

<sup>5</sup>i.e. the prior step of betrothal had been affected through one of the legal methods. See Kidushin 9b.

<sup>6</sup>that he intended the intercourse for the purpose of betrothal.

<sup>7</sup>i.e. a contact without insertion and withdrawal.

## GLOSSARY

- 'ARAYOT - (plural of 'ERWAH); see below.
- ARUSAH - (from ARAS, "to betroth"); a betrothed woman,
- AYLONIT - (from AYIL, "ram"); a male-like woman, a woman with male characteristics, a woman incapable of bearing children.
- BET DIN - a court of law, a rabbinic court which arbitrates or makes decisions in matters of halakhah (Jewish Law).
- BET HATOREF - (literally, "place of dirtiness"); the vulva and vagina.
- DINAR - a coin of the Roman period equal to one hundred Perutot (see Perutah). According to some authorities a DINAR comprises the minimum value of an effective betrothal token.
- ERUSIN - (from ARAS, "to join together"); betrothal, a synonym for KIDUSHIN (see below).
- 'ERWAH - (literally, "nakedness", "lewdness", "incest"); a woman forbidden to a man (and he to her) in that intercourse between them would violate the prohibition against incest, adultery, or having contact with a menstruant.

- GEMARA - (from GAMAR, "to complete"); the dialectic commentary on the Mishnah, also used as a synonym for the Talmud (the Mishnah and the Gemara together).
- KARET - (from KARAT, "to cut"); divine extirpation or excision; according to one opinion: an untimely death by divine decree, probably excommunication. This category of punishment, of Biblical origin, was not inflicted through human means in pre-Talmudic times. One who is liable for KARET, if left unpunished by the earthly court, will receive his punishment at the hand of God, according to Rabbinic doctrine.
- KASHER - proper or fit. A KASHER individual is fit to perform certain responsibilities or receive certain honors, as a result of his observance of the mitzvot (statutes) of Jewish Law.
- KIDUSHIN - (from KADESH, "to sanctify", "to set apart"); betrothal, the first stage in the affecting of a binding Jewish marriage (one that can only be dissolved with a divorce decree). See Chapter 26, note 14.
- LAV - a negative biblical commandment, as prefaced by the phrase: "you shall not".

- MAMZER - (plural, MAMZERIM); a bastard. As defined by Jewish Law, a bastard is the issue of incest punishable by KARET or the issue of an adulterous relationship between a married Jewish woman and a Jewish man who is not her husband.
- NESUAH - (from NASA, "to take up"); a married woman, a betrothed woman who has subsequently been taken in marriage. See Chapter 26, note 14.
- NISUIN - Jewish marriage, the final step in the affecting of a binding Jewish marriage. See NESUAH.
- PERUTAH - small coin of the Roman period. Most authorities assert that its value comprises the minimal acceptable worth for a betrothal token.
- SHIDUKHIN - (from SHADAKH, "to negotiate"); marriage arrangements, the step prior to betrothal in the affecting of a Jewish marriage. SHIDUKHIN can be dissolved without a divorce decree.
- TERUMAH - Heave Offering, the priest's share of the crop or dough.
- YIḤUD - (from YAḤED, "to join"); a state of closeting, which arouses the suspicion that a man and



woman in such a state may have had intercourse.

ZUZ - a silver coin (equivalent to a DINAR) mentioned in Rabbinic literature, a half Shekel.

LIST OF RABBINIC AUTHORITIES, TALMUDIC TRACTATES, AND OTHER  
SOURCES CITED IN THE TEXT

Avraham ben David of Posquieres (RABAD) - a twelfth century French writer of responsa, author of a critique on Maimonides' code.

Aguda - a book of laws listed in Talmudic order, which also considers Gaonic decisions, compiled by the fourteenth century German scholar, Alexander Suslin Hakohen.

Asher ben Yehiel (ROSH) - a thirteenth-fourteenth century scholar, author of Halakhot, a code following the order of the Talmud, the father of Jacob ben Asher.

Baba Batra - the third tractate of Order Nezikin, Babylonian Talmud, dealing with the responsibilities and rights of real estate ownership.

Bet Yosef - a comprehensive code compiled by Joseph Karo, as a commentary on the Tur. The Shulhan 'Arukh is an abridgement of Bet Yosef.

Binyamin Ze'ev Matityahu - a fifteenth-sixteenth century Greek dayyan, author of the responsa volume bearing his name.

Hagahot Alfasi - a halakhic work by the fifteenth century Polish scholar Menahem Tiktin.

Hagahot Maimuni - anonymous comprehensive collection of thirteenth century German and French responsa, attributed to Meir Hakohen of Rothenburg.

Jacob ben Asher (Harav Baal Haturim) - a fourteenth century Spanish dayyan, compiler of the four volume Tur, a systematic and comprehensive code, see Tur.

Kidushin - the last tractate of Order Nashim, Babylonian Talmud, dealing with betrothal and marriage.

Kol Bo - a fourteenth century halakhic work, attributed to Aaron ben Jacob Hakohen of Lunel (France).

Magid Mishneh - a commentary on Maimonides' Mishneh Torah by the fourteenth century Spanish scholar, Vidal of Tolosa.

Mordecai ben Hillel - a thirteenth century German scholar, author of Sefer Mordecai, an exhaustive commentary on Talmudic problems, following the order of Alfasi's Code.

Moses Isserles (REMA) - a sixteenth century Polish scholar, author of glosses on the Shulhan 'Arukh, showing differences in Ashkenazic practice.

Moses Maimonides - (RAMBAM) - a twelfth century Spanish philosopher and halakhist, author of the first of the major comprehensive codes of halakhah, including both Talmudic materials and Biblical halakhah, the Mishneh Torah (Yad Hahazakah).

Moses Nahmanides (RAMBAN) - a thirteenth century Spanish scholar, author of a major commentary on the Bible and Torat Haadam, a halakhic work on the subject of mourning.

Nimuke Yosef - a commentary on Alfasi's Code by the fourteenth century Spanish scholar, Yosef Ibn Haviva.

Nida - the seventh tractate of Order Taharot, Babylonian Talmud, dealing with the menstruant.

Nisim ben Reuven Gerondi (HARAN) - a fourteenth century Spanish scholar, author of a commentary on Alfasi's Code.

Orah Hayyim - the first volume of the Shulhan 'Arukh, dealing with ritual laws.

RASHI - an eleventh century Provençal scholar and commentator, author of the most important commentaries on both the Bible and the Talmud.

Shimon ben Tzemaḥ (TASHBATZ) - a fourteenth-fifteenth century Spanish scholar and writer of responsa.

Shlomo ben Adret (RASHBA) - a thirteenth century Spanish writer of responsa.

Terumat Hadeshen - a responsa work by the fifteenth century German scholar, Israel ben Petaḥyah Isserlin.

Teshuvat Maimuni - Responsa of Maimonides.

Tikune Hazohar - a book of the Zohar, the central work of Kabbalistic literature, containing a midrashic commentary on the first portion of the Torah, Bereshit.

Tosafot - a collected set of glosses by twelfth and thirteenth century Provençal scholars on the Talmud, appearing beside the Rashi commentary, in standard editions of the Babylonian Talmud.

Yebamot - the first tractate of Order Nashim, Babylonian Talmud, dealing with Levirate Marriage.

Yeruham ben Meshulam - a fourteenth century Provençal scholar, author of a systematic code.

Yoreh De'ah - the second volume of the Shulhan 'Arukh, dealing with dietary laws, mourning, circumcision, etc.

Yosef Kolon - (MAHARIK) - a fifteenth century Italian Halakhist, author of a responsa volume.

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