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TOWARDS A STUDY TRANSLATION OF THE MISHNAH

ACCESSIBLE TO THE AMERICAN JEWISH ADULT READER

Michael N. Dolgin

Thesis submitted in partial fulfillment
of the requirements for Ordination

Hebrew Union College-Jewish Institute of Religion
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Referee, Professor Richard Sarason

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INTRODUCTION

The motivation behind creating a study translation of the Mishnah designed for the modern adult Jewish reader is relatively simple. Effective translations should be audience-specific because reading is an interactive process. When a reader approaches a Jewish text, whether in translation or in the original, that person "translates" that text as he or she reads it. To read a text is to interpret, to react. Meaningful study is dialogue. The ingredients necessary to make such dialogue possible are expressed beautifully by Michael Fishbane:

> Perception of the stylistic and editorial
> arrangement of literary materials. . .allow(s) the
> voice of a text to speak on its own terms and
> according to its own arrangement. The more
> conscious a reader is of these conventions, the less
> likely will he be to subjectivize a text
> irresponsibly; the more likely will his reading tend
> towards a disciplined freedom: spontaneity within
> necessity.[1]

In confronting an ancient Jewish text such as the Mishnah, that is foreign in form and content, the opportunities for erroneous readings are many. The modern reader is generally unfamiliar with the genre and assumptions of rabbinic literature. However, if a translation of a given document can communicate stylistic and editorial characteristics along with

content, the probability of meaningful study is greatly enhanced. In other words, to learn from the Mishnah, one must simultaneously learn about the Mishnah.

Such a task is important, but it is far from simple. The Mishnah is one of the seminal works of Rabbinic Judaism. Every variety of Judaism practiced today is indebted to ideas, rituals, and customs that found their first written expression in its pages. The centrality of the document is one of the factors that makes it so difficult. Later generations have spent centuries investigating, expounding, and expanding on this text. As a result, myths and legends have arisen concerning the origin, meaning, and nature of the document. Subsequent texts such as the Talmuds and the legal codes have created "canonical" understandings of the Mishnah based on ahistorical assumptions about the text. Judaism has traditionally read the Mishnah only in light of later documents. While such an approach is part of the Jewish heritage, it obscures our view of the Mishnah itself.

Even if one successfully disentangles the Mishnah text from the web of myth that has arisen around it, the document remains obscure. Reliable historical information about the period of origin of the Mishnah is extremely limited. Facts about the Mishnah itself are even more scarce. Modern

scholars are unable to agree on the identity of its editors, the editorial methods they used to create it, its purpose, or the precise audience for whom it was intended. However, such ambiguity should not lead to resignation. While we have no definitive answers concerning the document, we have one tool at our disposal that makes meaningful Mishnah study possible: the document itself. While the Mishnah is divided and subdivided, finally into individual paragraphs, these units are not to be read in isolation. This text expresses itself systematically. Each paragraph has a context, but it must be culled from the document as a whole. Other roughly contemporary rabbinic documents can be utilized to supplement the contextual evidence offered by the Mishnah.

No proper method of choosing and organizing the information to be presented to the target audience along with the translation of a unit of text is self-evident. In designing such a method, I have made certain assumptions concerning the needs of modern adult learners, the nature of the translation process, and the challenge presented by the Mishnah itself. The first three chapters of this thesis will be devoted to articulating and substantiating these assumptions. Chapter Four describes the format to be followed in creating a study translation of tractate Qiddushin of the

Mishnah. Chapters Five is an introduction to the study translation. Chapter Six contains that translation and Chapter Seven consists of a brief evaluation of it and suggestions for further development.

NOTES

[1]Michael Fishbane, <u>Text and Texture</u>, New York, Schocken Books, 1979, pp. xii-xiii.

CHAPTER I

This chapter examines the specific needs and characteristics of adult learners in a text-study situation. My assumption is that adult learners exhibit specific traits to which both instruction and instructional materials must be adapted. I shall begin by reviewing adult education research in the general community, then focus on how such research has been applied to Jewish adult study, and finally examine how principles of educational theory have been applied to teaching rabbinic texts.

A considerable literature exists on the topic of adult education or andragogy.[1] All sources in this field bear witness to the fact that the education of adults requires the acceptance of basic assumptions foreign to pedagogy. These differences traverse the spectrum of educational theory. E. S. Newton, in an attempt to summarize the work of other theorists concerning salient characteristics and styles of the adult learner, suggest four underlying ideas that set adults apart:

> 1. The heart of adultness is independence and self direction.
> 2. The mature individual is a veritable storehouse of codified experiences which are the essence of his central identity.
> 3. The adult's readiness for learning is inherent in his societal role as a worker, parent, spouse, organizational member, and the like.
> 4. The adult's orientation to learning is *here and now* and *problem centered.*[2]

These traits which adult learners share are reflected in the expectations that they as students bring to a classroom situation. As a product of their very adultness, they are more likely than young learners to be heterogeneous in background, impatient with purely theoretical discussion, and resentful of condescension on the part of the instructor.[3] They are motivated by internal factors rather than external rewards and punishments and expect to be treated as a resource in the classroom, not merely a receptacle for information.

The research of Malcolm S. Knowles, the leading theorist in adult education, indicates that, because adults bring specific characteristics and assumptions to a learning situation, the main elements of the educational process must be adapted to fit their needs. The climate and planning of the sessions, diagnosis of needs, setting of objectives, designing of learning plans, the learning activities themselves and their evaluation must all take on a different character.[4] The primary changes from the traditional pedagogical model are that the student must be the teacher's partner and the activities ought to provide for the maximum amount of independence for the learner.

Independence may be difficult to create in a text-study situation. In learning situations involving reading materials

taken from a specialized body of knowledge, unique study skills must be offered to the learner to avoid her/him being forced into a dependent role.[5] When confronted by a text that is from a different culture or an unfamiliar genre, such adaptations become even more important to the adult student. For example, a few study skills programs have been designed to meet the needs of first year law students. These courses take into account the requirements of law students as adults and as learners facing a difficult and unfamiliar literature. One such course was offered at the law school of Brigham Young University. Enrollment for the first offering of the course was much larger than expected and student evaluations following the sessions were consistently positive. The law school curriculum committee even agreed to allow the students to apply the credit received for the course to their law degree. The class focussed on study skills such as reading through a case in its entirety as a preview before studying it, reading the case with specific questions in mind, reading for certain basic factors common to the literature, and underlining these basic factors when they were discovered.[6] The complexity of legal literature, similar in some ways to that of the Mishnah, can be learned more easily and

effectively if, at the outset, the learner is offered the necessary tools to approach the text.

Another relevant experiment in adult learning centered on the information made available to the learner, rather than on study skills. Dr. Knowles included a description of a "Biblical Andragogy Clinic" in his anthology, Andragogy in Action.[7] One of the primary tasks of this clinic was to bridge the gap between modern Biblical scholarship and the understanding and experience of modern adults. Eugene Trester, founder of the project, argues that we make the mistake of expecting the instructor to provide access to essential information. We deprive the adult learner of any prospect of independence when approaching the Biblical text. Trester states:

> The prevailing assumption has been that the vocabulary and the very complexity of biblical scholarship are too difficult for ordinary adults. I am suggesting that the germ of the problem lies rather in the fact that religious educators of adults have not understood and been at ease with the basic processes in the facilitation of adult learning.[8]

The sentiments expressed in this paragraph apply at least as well to rabbinic literature. Scholars and some educators in the field seem to operate from the assumption that Mishnah-study is beyond the abilities of the average adult learner.

This text is described as too technical, too oblique, too difficult or too esoteric for general readership. Beginning with this mindset, the prospect of exposing the learner to critical study of this text as an aid has been ignored. This approach held sway with reference to Bible study until modern biblical scholarship was made available to the adult student. To date, no attempt has been made to present the text of the Mishnah in conjunction with modern scholarship about the document. However, the value of critical scholarship in teaching Talmud has been considered. Professor David Weiss Halivni then at the Jewish Theological Seminary, gave an address at a conference of Solomon Schecter Day School principals arguing that modern critical scholarship could be used as an effective aid in teaching Talmud at the day school level. Rabbi David C. Kraemer, also of the Seminary, provides a supporting argument and pedagogic example in his article in Jewish Education.[9]

The previously-mentioned research has been applied more specifically to Jewish adult learners and Jewish andragogy. The information that is available indicates that Jewish adult learners require special consideration and that successful Mishnah-study requires the application of andragogic theory.

Rabbi Sanford Kopnick investigated the specific factors that motivate a Jewish adult learner to attend a study session on a Jewish topic. His research used samples in six different age groups.[10] He found certain motivations were shared by all groups. The majority of the participants in his survey indicated that their primary motivation for attending an adult education program was the topic of study. Of the eighteen programs that participated in the survey, at least seven were text-study classes.[11] The overwhelming majority of participants in his survey also was motivated by the need to feel more competent as Jews. With the large number of text study classes being conducted on an ongoing basis, all necessary attempts should be made to make adults who attend them feel competent. General andragogic research supports this conclusion about adult learners. One other general conclusion of Kopnick's study was that a majority of the participants looked to adult education programs to help them "understand their lives in a more spiritual way."[12] To understand how this motivation might operate in relation to a Mishnah text-study situation, the available research on teaching methodology for rabbinic textual topics must be reviewed.

Literature describing modern instructional methods for teaching rabbinic texts is not readily available. This statement is even more accurate if applied to teaching them to adults. For this reason, I am unable to review literature specifically about andragogic teaching of Mishnah and other texts.[13] Instead, I shall also include pedagogic research and will adapt it to fit adult study.

A series of four articles by Aviv Ekrony appeared in Hebrew Pedagogic Quarterly (*Sheviley Hahinnukh*) that discussed methodology for teaching *aggadah*.[14] While each of these are entitled, "Methods for Teaching *Aggadah*," they are not primarily theoretical articles. Each one chooses a specific text or group of texts and suggests ways to teach them in the classroom. However, theoretical underpinnings can be culled from the four articles when read together. Ekrony mentions in his second article that the understanding of the text that he describes in his writings comes from a theoretical work about the literary and religious nature of *aggadah*.[15] So Ekrony seems to say that the teacher, or one who will take an active part in the learning process, needs background information on the genre of the text at hand. Because successful andragogy requires that the adult learner takes such an active part,

theoretical understandings of the document being addressed
must be made available to the student.

Ekrony seems to take a similar approach to the agadic
text in each of the four articles. If he is dealing with a
group of texts, he first divides them into sub-groups by
either content or purpose. Once he has identified the texts
he will discuss, and the order in which the teacher should
present them, he describes the literary patterns underlying
the document and addresses each separately. For example, his
first article analyzes a midrash concerning the attempts of
Jochanan ben Zakkai's students to console him after the death
of his son. Four of his students make unsuccessful attempts.
Each of them cites a biblical character who faced the loss of
a loved one, hoping the example would aid their teacher in
dealing with his grief. Within their statements, Ekrony
identifies how the biblical characters they cite as examples,
beginning with Adam and continuing until King David, are
arranged in historical sequence and from least to greatest.
The theological tension in the text, arising from the question
of the connection between sin and death, is heightened through
each of these four presentations. Without investigating this
progression within the verses chosen by the students, their
efforts could be perceived as simple prooftexting. This

approach to teaching *aggadah* based on a literary analysis of the unstated if not hidden aspects of the literature fits well with the common conception of *aggadah* as folklore. Such a text is assumed to have moral and theological overtones. Such lessons can comfortably be ascribed to the motives or goals of the authors. The exercise of literary analysis of a traditional text to discover its religious and ethical significance sounds appropriate to the necessities of adult learning situations described above.

However, the Mishnah is rarely regarded in these terms. The form of its writing is legalistic rather than folkloristic. Its text normally has no "plot". The lack of descriptive details seems to remove the author or editor and his intentions from the text. The Mishnah text is to be studied only in the context of later commentaries on it, not as a document in itself. It is assumed that there is no polemical or political agenda hidden within the document and that the Mishnah is no more than its content. For these reasons, which are assumptions created by pre-modern Judaism about the nature and significance of the Mishnah, suggested methodologies for teaching Mishnah take a different form than those offered for *aggadah*.

The methodology suggested for teaching Mishnah in Israeli elementary schools found in the Educational Encyclopedia, published by the Ministry of Education, accepts these traditionalist assumptions about the Mishnah.[16] The article concerning the Mishnah has three parts. The first describes the educational difficulty posed by the Mishnah in an elementary school setting. Because the Mishnah does not include lengthy debate but rather statements of different positions relative to a given custom or ritual, it is difficult to interest the student and requires extensive preparation on the part of the teacher. Such a situation also exists in an andragogic scenario. The second part of the article suggests four methods or aids the teacher could use. The teacher should focus on 1) the relationship between Mishnah and Bible, 2) the logical format of the Mishnah which is designed to restate and expand the legal system of the Torah, 3) exposing the students to realia or pictures of realia from the Second Temple period, and 4) providing other study aids such as a Bible, maps, and history books, etc. The third section of the article suggests that the teacher coordinate Mishnah study with learning from other disciplines such as history, holiday traditions, and Hebrew language and literature. The logic of the Mishnah text assumes the

students' knowledge not only of these Biblical texts but of rabbinic texts and assumptions as well. Providing background that explains the logical context of a given Mishnah text within rabbinic thought could help the adult learner feel more competent. Explaining the realia of the Mishnaic culture to modern readers is also important. Adults naturally wish to actively participate in learning by sharing knowledge they have obtained that is relevant to the topic of discussion. Describing the historical and physical reality of first, second, and third century Palestinian existence would make it easier for the adult to identify and offer appropriate complementary realia from the modern day. In addition, such information would help the reader to avoid making unwarranted or anachronistic associations.

While this article is written from a traditionalist perspective and designed for the teaching of young children, many of its suggestions are also appropriate for an adult education situation. The relevance of the Bible to modern Judaism and daily life is more readily admitted than that of the Mishnah. Including Biblical considerations in commentaries on the Mishnah can help point out the Mishnah's relevance. In addition, adults would also appreciate a multi-disciplinary approach to the text. Today's adult learners are

generally more conversant with the idiosyncracies of sociology, anthropology and the scientific method than they are with pseudo-legal writings of late antiquity such as the Mishnah. By including relevant knowledge from these other fields, the adult is more likely to feel confident and independent in approaching the text.

How much more so this is true when we begin from modern scholarly assumptions about the Mishnah rather than the traditionalist perspective. The works of Jacob Neusner and many other scholars view the Mishnah as having more in common with midrash than previously assumed. While its literary genre is essentially different than that of *aggadah*, modern scholars read the Mishnah as an ideological document to a varying degree. It not only reflects the culture of first, second, and third century Palestine, but it also projects an ideal reality to be sought after.[17] Only through exposure to modern scholarship does the modern adult reader have the opportunity to see Mishnah in this light, as an amalgamation of religious goals and historical and political necessity. Viewing the Mishnah from this perspective helps the document to better meet the modern Jew's spiritual needs. Critical research suggests a substantial parallel between the goals of

the Mishnah and the spiritual goals of today's modern Jewish adult.

This aspect of the Mishnah is considered in Ya'akov Yagar's article entitled, "Methodology of Teaching Mishnah."[18] Yagar's article shares many of the weaknesses of Ekrony's articles described above. While it claims to describe a methodology, the essay actually gives an example of a Mishnah lesson. However, the introduction to the article seems to share the assumptions of the academic school of Mishnah study. The document is compared to a culture, rather than to a legal code. The purpose he proposes for Mishnah study is illuminating. Exposure not only to the ideas of the Mishnah but to the Mishnah document itself is a requirement if today's Jews wish to have an fully synthesized and organic understanding of their own Judaism.[19] The work of Kopnick referred to previously indicates that this is a goal of modern, liberal, Jewish adults who attend adult education sessions.

Presently, no educational materials exist for andragogic situations that present complete sections of Mishnah-text framed in this light. The Danby and Blackman translations include only limited notation that address the text from an internal rabbinic and often anachronistic perspective. The

Neusner translation included no annotation whatsoever. Therefore, this review of andragogic literature indicates that there is a need for a new translation of the Mishnah designed to more appropriately suit the needs of adult learners. Such a project requires an investigation of the process of successfully translating rabbinic texts, which is found in the next chapter.

NOTES

[1] The existing literature is much too extensive to be reviewed in this brief essay. The work of Dr. Malcolm Knowles has been central to the development of this discipline. Anyone wishing to pursue further research in this area is directed to his works and his bibliographies.

[2] E. S. Newton, "Andragogy: Understanding the Adult as a Learner," in Reading and the Adult Learner, ed. by L. S. Johnson, Newark, Delaware: International Reading Association, 1980, pp. 3-4.

[3] Samuel Joseph, "Some Characteristics of Adults as Learners as Compared with Children," offprint taken from Adult Basic Education: A Guide for Teachers and Teacher Trainers, by the National Association for Public School Adult Education, Washington, 1966, pp. 11-19.

[4] Malcolm S. Knowles, Modern Practice of Adult Education, Cambridge Press, 1980, p. 390.

[5] C. K. Mayfield, "Establishing a Reading and Study Skills Course for Law Students," in Reading and the Adult Learner, pp. 16-17.

[6] Ibid., p. 18.

[7] E. Trester, "The Biblical Andragogy Clinic," in Andragogy in Action, ed. by Malcolm Knowles, San Francisco: Jossey-Bass Printers, 1984, pp. 343-349.

[8] Ibid., p. 346.

[9] David C. Kraemer, "Critical Aids to Teaching Talmud," Jewish Education, Vol. 49, #1 (1981), pp. 37-40. The address by Professor Halivni is mentioned without a specific date at the beginning of the article.

[10] Sandford Kopnick, Towards a Profile of the Contemporary Adult Jewish Learner, Rabbinic Thesis, Hebrew Union College-Jewish Institute of Religion, 1991, p. 59.

[11] Ibid., p. 156-157.

[12] Ibid., p. 87.

[13]Ya'akov Yagar, "Methodology for Teaching Mishnah," *Shevilei Hahinnukh* (Hebrew Pedagogic Quarterly), Vol. 41, No. 1, p. 47. Yagar laments that he was unable to find any previous research on his topic.

[14]Aviv Ekrony, Sheviley Ha-Hinnukh (Hebrew Pedagogic Quarterly), four articles appearing in Vol. 42: pp. 33-36, pp. 84-87, pp. 172-175, and pp. 221-223.

[15]Ekrony, p. 84. His source is Joseph Heinemann's *Darchei Ha'aggadah*.

[16]Educational Encyclopedia (Hebrew), published by the Israeli Ministry of Education, Jerusalem, 1964, Vol. 2, columns 1084-1085.

[17]The copious work of Jacob Neusner is the clearest example of such an opinion. While many other scholars, such as Shaye J. D. Cohen dispute his findings, they nevertheless seem to accept his methodology and approach to the text. The nature of the Mishnah clearly goes far beyond a codification of existing oral traditions at a specific historical time. For a clear example, compare Neusner's Judaism: The Evidence of the Mishnah and Shaye Cohen's review of it in Conservative Judaism, Vol. 37, Fall '87, pp. 48-63.

[18]Yagar, pp. 44-51.

[19]Ibid., pp. 44, 47.

CHAPTER II

In this chapter, I intend to review literature in the field of translation theory that is relevant to the creation of a translation of the Mishnah directed specifically toward the American adult Jewish learner. I do not consider myself a scholar of translation or linguistic theory, yet I shall try to gather relevant concepts from this field to make my approach to the translation at hand more systematic, consistent, and effective. While this review is unlikely to be exhaustive, its scope should be adequate for the task at hand. I shall first examine translation theory, much of which has been enunciated in relation to Bible translation, then evaluate Neusner's explanation of his theory of translation of the Mishnah, and then state the full definition of "translation" that I shall be using for the remainder of this project.

From the field of translation theory, I have identified three different issues that appear directly relevant to the task at hand: What different kinds of translations are there? How might the goal of the activity of translating be accurately described? How could a good translation be characterized?

Marilyn Gaddis Rose offers a response to the first question that can be useful in providing a theoretical backdrop for a study translation."[1] She describes translations not as specific types but as falling along a spectrum. The two poles that frame this continuum could be referred to as "reader-oriented" and "text-oriented" translations.[2] Certainly a text created with a specific audience in mind should be located on the "reader-oriented" end of the spectrum. However, we must investigate her system of classification further in order to understand the significance of this statement. The name that she assigns to the spectrum as a whole is the "autonomy to audience" continuum. A text that is authoritative and may not be compromised for the needs of a readership is considered autonomous. To the degree that a text may be tailored to create a desired audience response, it is found on the audience side of the classification. In reference to this distinction, she makes the important point that we must independently classify the text to be translated and its translation.[3] With application to the Mishnah in the present context, the original document falls far to the autonomous end of the spectrum while the study translation necessarily will be audience-related. Her theoretical categories clarify one

of the difficulties in Mishnah translation and also indicate that a mere rendering of the original Hebrew artfully into English may not be sufficient. Extra-textual notes may be required in order to enact such a shift from the original to the target document, here the study translation. That an extra-textual solution may be required may be implied in H. Stephen Straight's attempt to delineate the problems of translation in three questions:[4]

> (1) Does the translation succeed in evoking a response in its readers that is qualitatively equivalent to that of the readers of the original? More specifically, does it enable its readers to grasp as fully as they can what there is about the original that makes it meaningful, valuable, beautiful, and worth being translated? (2)Does it evoke a comparable response without unwarranted masking of differences between the cultural contexts of the original and the translation? (3) Should this translation (of this work for its intended readers) have been attempted in the first place?

Taking his questions in reverse order, one could argue that such a translation is too difficult; that forcing the Mishnah into a translation for so general an audience is not a worthy effort. My arguments at the end of the first chapter clearly indicate that I do not accept this statement. Because Mishnah-study is important and helpful for the adult learner to construct an organic understanding of his or her own Judaism, such a document is deserving of translation. Even if

the opposing viewpoint may have some merit, it is moot in this case. The Mishnah is presently being studied by the target audience and so should be put in as useful a form as possible, even if a perfect translation for this audience is not achievable. Further, this objection is less significant if we allow for the inclusion of marginal notes. Their importance is more obvious with regard to his second question. Rendering the Mishnah into English forcibly masks the cultural differences between author/editor and reader because of the differences in historical period and connotations of the languages. A comparable response is only possible when marginal notes are present to preserve the connotations of third-century Hebrew that are simply not available in twentieth-century English. Finally, the question of equivalent response to that of the original readership must be considered in the light of Rose's continuum. The Mishnah is a highly autonomous document.[5] It clearly assumes extensive cultural knowledge on the part of its small, intended readership. To make it available to a diverse audience in translation, marginal notes must be supplied or an equivalent response is inconceivable. However, marginal notes are not to be taken as a necessary evil but an essential supplement to an

audience-oriented translation. This argument can be more clearly stated after we define the process of translation.

The previous discussion allows for the assumption that cultural and contextual variables are external to the translation process, which is the transmission of a document from a source-language to a target-language. Such a definition of translation is inadequate. A more complete definition can be identified within the literature on Bible translation. While the literary genre of the Bible is different from any form found in rabbinic literature, it presents many of the same difficulties. Successful Bible translation is the communication of an ancient document from a radically different culture into the idiom of today's language and society. A theoretical model for the process of Bible translation should inform an attempt to formulate a theoretical basis for translation of rabbinic documents.

An appropriately complex model is explained in Eugene Nida's _Toward a Science of Translation_.[6] Nida refers to his theory as an ethnolinguistic model of translation.[7] He offers this approach as a substitute for the inadequate notion that the only variables that need to be addressed relevant to the translation situation are internal to the translator. The translator must consider the total cultural framework in which

communication is to take place. This background consists of differences both in time and culture between the era of the document and that of its target audience. Noteworthy aspects of his theory for the project at hand include the following:

1) The total cultural framework includes the sociological and historical situations of the source document, the translator, and the target audience.
2) The author (or original contemporary audience), translator, and target audience each understands the document they read based upon their own cultural situation.
3) While the temporal gap between the source and the audience represents an expected cultural difference, the translator and target audience may differ culturally even though they share the same historical era.
4) The temporal difference between source and audience may not be the most significant factor to consider. Some present-day aboriginal cultures are closer to the society of Biblical times than to modern, technological society. The primary gap lies between the cultures of the author or text and the target audience.[8]

While one might assume from his theory that cultural assumptions are a stumbling block to writing or understanding a translation, this may not be the case. The translator is unable to escape his or her own sociological situation and therefore should not try. Instead, the translator must attempt to be aware of it. Furthermore, the audience, when experiencing a text in their own language, "can only express their response behaviorally within the cultural context in which they live."[9] To communicate a document accurately to an audience, the original context of the document must be

transmitted to the target audience along with the words of the text themselves. In other words, the target audience must be able to respond to the message presented in its language in much the same way that the original audience responded to the message presented in its language.

These conclusions based upon Nida's theory are extremely important in creating a translation for the modern American Jewish adult learner. If the Mishnah is presented to this audience in English with limited annotation, the readers will understand the ancient text as if its words referred to today's modern culture. The result is an anachronistic misrepresentation of the internal meaning of the Mishnah. Further problems arise when the commonly used translations are considered. The annotations found in the Blackman translation of the Mishnah come from a halachic, Jewish framework. The Mishnah is read through the eyes of the Talmud with the further assumption that the primary concern of the reader is knowing which opinion expressed in the Mishnah was later adopted by Jewish law. Because this represents neither the cultural context of the original document nor that of the target audience of this project, it is inappropriate for the task at hand. The Danby translation not only contains very limited annotation, but the translation itself is into British

rather than American English. The problem this poses should not be underestimated. The problems with the more recent Neusner translation are equally serious. The text is presented with no annotation at all. This format is inadequate to communicate the cultural context inherent in the document. In addition, the outline format used by Neusner and his team of translators is unfamiliar to modern readers. While it sometimes maintains the rhetorical framework of the original Hebrew, it only communicates the document accurately to those who already understand its intricacies. While Neusner is the primary scholar of the Mishnah's original cultural context and intent, this focus of his research does not appear along with his translated text, only in his introduction and in his other volumes about the Mishnah.[10]

The importance of the cultural context of the target audience has not only been demonstrated in theory but also in practice. In his Notes on the New Translation of the Torah, Harry Orlinsky explains the reasoning behind the new and different Jewish Publication Society translation of the Torah in 1962.[11] He says that the committee made substantial changes in the hallowed Revised Standard Version because of significant changes in the world, the English language and the American Jewish community. A new translation of the Torah

text was required because the cultural context of the target audience had changed. Further evidence can be found in The Torah: A Modern Commentary, by W. Gunther Plaut. The commentary on the Biblical text mixes traditional Jewish commentary with text-critical, anthropological, and historical notes because the modern reader comes from a rational, scientific cultural context. The sections called "Gleanings" also very specifically serve this function. It is also significant that the text is divided not according to traditional weekly portions, which are duly noted, but by meaningful divisions in the text itself. It would appear that the target audience is more comfortable reading and studying smaller, more homogeneous units of text rather than the larger, heterogeneous traditional divisions. Evidence exists that the cultural context of the target audience should play a decisive role in the format of a translation of ancient Jewish texts. However, because the literary genres of Torah and Mishnah are radically different, the theoretical aspects of translation must be considered specifically in the light of rabbinic literature.

Very little has been written concerning theory of translation of rabbinic literature. The common topic of research has been in scientifically establishing the best

Hebrew and Aramaic texts to translate. However, Jacob Neusner, the most prolific translator of rabbinic literature today, has published a volume on his theory of translation of rabbinic texts.[12] Neusner's style of translation is certainly unique. He presents rabbinic texts, Mishnah included, in an outline form, which he refers to as an analytical translation. My goal is not to judge the overall value of his method of translating. I merely am attempting to discover the intended and actual characteristics of his translation to determine whether his work would be appropriate for use in an adult study situation.

Neusner does accept the position that documents must be periodically re-translated to fit the needs of a given generation.[13] This position seems to imply recognition of the importance of cultural context of the target audience in the translation process. At one point, Neusner makes specific reference to cultural variables. In concluding his discussion of the importance of his format of analytical translation, Neusner states that there are three definitive traits to a piece of sustained writing: rhetoric, logic, and topic.[14] Because the Mishnah is stated in concise, legalistic fashion, it utilizes a standardized rhetoric throughout. Therefore, rhetoric is the easiest level at which to gain access to the

document. He understands the logic of the document to be implicit in its rhetorical framework. Further, because it is a multi-authored, edited document that deals with multiple topics, the topical aspect of the document is the least useful point of entry. Because he believes the rhetoric of the document to be its primary characteristic, he finds exposure to and analysis of the rhetoric to offer the best access to the intellects behind the document. This journey takes us from text to literary context to cultural matrix, according to Neusner. While this sounds similar to the present project, Neusner does not mention which target audience is able to consume this form of translation. He hints at that audience in a different passage in which he also articulates the purpose of translations of rabbinic literature as he sees it:

> In my view a translation should serve as a clear, literal rendition in the one language of what is written in the other: rendition, not paraphrase, not interpretation, not commentary, not "great literature." Translation should moreover facilitate ready reference to every line of the document, so that *analytical studies* in American English can be undertaken by *specialists* in other subject areas. . .(emphasis added)[15]

The target audience referred to in this statement is not the layperson attending adult education classes, but rather, the non-specialist scholar. His format seems to be designed for those who wish to make specific kinds of studies of the

documents based on extensive background in a particular area. This analysis is confirmed by comparing the above paragraph to a chapter from another of his works clearly designed for his target audience.

In Neusner's The Mishnah: An Introduction, Neusner argues, as he does in his writings on translation theory, that the evidence necessary to understand the Mishnah must be drawn out of the document itself and that his analytical translation makes this possible.[18] One of the texts that he utilizes to make this point is the final paragraph in the Mishnah, Tractate Uqsin 3:11. After translating the text in his analytical format, he then explains the text based on internal evidence that he assumes is available to the reader.[17] This internal evidence actually consists of assumptions made by the rabbis writing and editing this text. The member of the target audience, in order to duplicate Neusner's analysis without external explanation, must know that the issue of ritual uncleanness in rabbinic literature is tied to the presence of liquid, which is based on Leviticus 11-15. Further, one must intuit that it is possible that liquid may not be subject to uncleanness at all. Also, one must know that the actions described in this text in reference to honeycombs are the necessary activities one must engage in to

be able to use the honey in them. These assumptions must be understood merely to approach the text on a concrete level. Neusner continues his "inductive" analysis from there. Clearly, to expect such knowledge from a target audience of non-specialists is ludicrous. Even if laypeople possess such knowledge, they are not drawn to the text in order to perform complex analytical studies.[18] Neusner's method of translation is not adequate for this project. An adult study translation requires rendering the text into American English in a familiar prose format with extensive annotations to fill the cultural gap between the original text and the target audience.

A version that succeeds at this task could be called a "good translation" for the purposes of modern Jewish adult study. By this definition, the "translation" actually refers to a process that takes place internally in the target audience when they read the English version of the Mishnah along with the contextual commentaries that accompany it. The choice of those annotations is crucial to the success of the translation. Therefore, it requires more than a purely theoretical basis. The following chapter presents data gathered in focus groups testing currently available Mishnah translations on members of the target audience. In chapter

four, this actual data will be synthesized with the theoretical findings presented in these first two chapters to describe and justify a format for a study translation of Mishnah text.

NOTES

[1] M. G. Rose, "Translation Types and Conventions," in _Translation Spectrum: Essays in Theory and Practice_, ed. by M. G. Rose, Albany: State University of New York Press, 1981, pp. 31-40.

[2] Ibid., p. 32.

[3] Ibid., pp. 33-34.

[4] H. S. Straight, "Knowledge, Purpose, and Intuition: Three Dimensions in the Evaluation of Translation," in _Translation Spectrum_, p. 47.

[5] While scholars agree about very little in reference to the Mishnah, it is evident from the document itself that it was intended for a specific, elite audience. Evidence includes the lack of introduction to the document, the lack of a logical beginning or end, elliptical diction, and failure to define its technical terms.

[6] Eugene A. Nida, _Toward a Science of Translating, with Special Reference to Principles and Procedures Involved in Bible Translating_, Leiden: E. J. Brill, 1964. An enormous literature exists in this field, but the works of Nida seem to be central to theory of biblical translation.

[7] Ibid., pp. 147-149.

[8] Ibid., p. 148.

[9] Ibid., p. 148.

[10] Neusner's _A History of the Mishnaic Law of Women_, Leiden: Brill, 1979-80, Vols. I-V contains the kind of information referred to here. However, that series of volumes is a scholarly work which contains a full translation. It is not purely a translation that would be used for the same purpose as the product of this project.

[11] Harry M. Orlinsky, _Notes on the New Translation of the Torah_, Philadelphia: The Jewish Publication Society of America, 1969.

[12] Jacob Neusner, _Translating the Classics of Judaism: In Theory and In Practice_, Atlanta: Scholars' Press, 1989.

[13] Ibid., p. 38-40.

[14] Ibid., p. 104.

[15] Ibid., p. 64.

[16] Jacob Neusner, <u>The Mishnah: An Introduction</u>, Northvale, NJ: Jason Aronson Inc., 1989, chapter 1.

[17] Ibid., p. 8.

[18] See references to Kopnick in Chapter 1.

CHAPTER III

The presently available, complete translations of the Mishnah are text-oriented rather than reader-oriented in nature.[1] As a result, the experts who were consulted in creating them were text scholars rather than lay persons. However, in attempting to create a reader-oriented translation, input must be obtained from a sample of the prospective audience. In this chapter, I shall describe the assumptions that I brought to this process, the methodology I employed in gathering data, and the nature of the data that I received.

In approaching this task, I accepted certain assumptions that ought to be articulated in order to provide a context for understanding my choice of methodologies. The first of these is that present adult study of blocks of Mishnaic text other than *Pirqei Avot* are likely to use either the Danby or Blackman translations. While Neusner has also produced a complete Mishnah translation, his volume is new in comparison to these others, less well known, and probably less often used. Other partial Mishnah translations are available but fill a different need than the one that I am attempting to address. These mostly pedagogic devices seem designed either for introducing children to the Mishnah or creating

opportunities for general discussions using a small block of text as the catalyst.[2] I have found none that are specifically designed for adult study of the Mishnah itself. For these reasons, the Danby and Blackman translations have been chosen as starting points for comparison.

A second assumption was that the apparatuses that I develop to accompany the text would be at least as important as the new translation itself. Because of the difficulty of the original text, only a limited amount of adaptation to the audience is possible. Were I to have presented my own translation, the subjects would have been reading the text with no surrounding apparatus at all because the sessions had to precede my writing appropriate commentaries. By using available translations, I hoped to indicate their inadequacy for this particular task and also to gather information that would be useful in creating both my translation and the accompanying apparatuses.

The data was collected by conducting focus groups at Indianapolis Hebrew Congregation for the explicitly-stated purpose of gathering reactions of adult lay persons to present translations. I made oral announcements at all of the congregation's permanent study sessions and put the following notice in the temple bulletin:

TRANSLATION EVALUATORS NEEDED

Would you like to help in creating a new translation of the Mishnah designed for the American adult Jewish reader? Our rabbinic intern, Michael Dolgin, will be running focus groups this summer in order to form a readable translation. No Hebrew ability is necessary. Groups will likely run on Sunday afternoons. If you are interested, call the temple and leave Michael a message!

Individuals attended the sessions as a result of the announcements and the notice independently. The majority of them were regular attenders at adult education programming, though some were not. Both women and men participated, with women representing a slight majority. They ranged in age from early thirties to mid-seventies and were not all members of the congregation. A few of the regular attenders came from the Reconstructionist and Orthodox synagogues in the city. In total, twenty-four individuals participated in the focus groups with the average attendance at each of the seven hour-and-a-half-long sessions being seven or eight.

As mentioned previously, the texts presented in the focus groups came from the Danby and Blackman translations. However, they were not presented in their original forms. While the Blackman is a complete English translation, it also contains a Hebrew text of the Mishnah. I avoided providing

the Hebrew to the subjects for two reasons. First, my intention is to evaluate and produce English translations. Because my intended audience is one that may have no knowledge of Hebrew, I wished for us to depend completely on English during our sessions. Second, I was concerned that the presence of the Hebrew might affect the credibility that the group assigned to the translation. Therefore, i retyped the sections of each translation used along with the footnotes so that the translations could be presented on equal footing and totally in English. While this resulted in a slightly different presentation of the footnotes than is found in both original translation, the new versions are at least as easy to use if not easier. Samples of the handouts for the focus groups are found in Appendix A.

At the beginning of each session, I reminded the group of our purpose. I was honest in saying that the primary goal was collecting their feedback on the translations and that while understanding or mastery of the information in the text would come as a by-product, it was only that. I attempted to be as non-directive as possible. I would announce the paragraph that we were to read silently and then ask the participants to explain what it meant in their own words. I also consistently reminded them to point out other kinds of information not

present in the translation that they believed would be useful in approaching the text. When one of them asked a question, I asked other members of the group to try to explain before I offered a response. When they professed understanding of a given passage without restating its meaning in their own words, I asked them to voice their understanding. When a passage that I saw as potentially problematic was glossed over or ignored in their explication of the paragraph at hand, I asked them to focus on it and explain it. Thus, while I took an active part in the sessions, I saw my role as facilitating the expression of their understanding of, and responses to, the text. In order to collect the data that was produced, I made audio tapes of the sessions and reviewed them subsequently to search for patterns and comments of interest.

The selections of text used in the sessions were from Mishnah-tractates Megillah and Qiddushin. They were chosen because they deal with different areas of the rabbinic tradition, yet both contain textual characteristics that might be considered typically Mishnaic.[3] In the seven sessions, we covered chapters one and two of tractate Megillah and chapters one, two, three, and the first paragraph of four from tractate Qiddushin. Megillah, Chapter One and Qiddushin, Chapter Two were presented from the Danby translation. Megillah, Chapter

Two and Qiddushin, Chapter One and Qiddushin 3:1-4:1 were taken from the Blackman translation. The text was presented to the participants in chapter units. The only exception to the above division was Qiddushin 3:12. Because of its importance in contemporary Jewish matters and the substantial differences between the Danby and Blackman translations, it was presented without footnotes in parallel columns on a single page (See Appendix A).

The data collected is considerable, if only in size. Verbatim presentation of the comments would be unnecessarily long, in my opinion.[4] I shall present selections from the data collected as it falls into five categories: reactions (1)to the task as a whole, (2)to the text as a whole, (3)to the form of the text, (4)to specific words in the text, and (5)specific suggestions made by the participants.

Initial reactions to the task as a whole took a number of forms. I was asked consistently after each of the series of sessions what value their comments could possibly have to me. Despite the fact that I explained the role that their responses would have in my research a number of times and in a number of ways, there seemed to be some amount of disbelief on their part that what they derived from the text could be valuable. This point will be further analyzed in the

following chapter. The group, despite its changing composition from week to week, also exhibited a consistent tendency to stray from the task at hand. Individuals would ask questions or raise issues that were at best distantly related to the text under discussion. There seemed to be a constant resistance to the central task of paraphrasing and analyzing any given paragraph. However, the participants accepted my urging to remain on task and some were even grateful for it. In fact, some group members, especially those who participated in most or all of the sessions, found the exercise rewarding and enjoyable. Many of these comments took place before or after sessions and so are not preserved on the tapes.

Much of what is found on the tapes takes the form of reactions to the text as a whole. Many individuals stated in no uncertain terms that the document seemed to make no sense whatsoever. While such comments were generally made about a specific paragraph, they were also generalized to apply to the document as a whole. These reactions seemed to be as much to the form of the document as to the content expressed within it. One asked specifically, "Is there supposed to be some intrinsic value to the way in which the statements are made?" In many different ways the participants seemed to be stating

that the document as a whole was part of a genre unfamiliar to them. The most common form that this expression took was as "why" questions: Why does the text present so many details? Why does the Mishnah include information in a tractate that does not seem to fall under the topic suggested by its title? Why does the Mishnah present different opinions on the same matter (i.e., are they choices or is one assumed to be correct)?

Despite the expressions of distance, some of the individuals did attempt to suggest literary or modern parallels to the text and the ideas presented within it. One woman who is a lawyer compared the first chapter of Qiddushin to legal documents she has read, though she seemed to indicate more of a similarity in intention than form. She indicated that the desire to define exactly when a transaction occurs (which she perceived as the goal of the Mishnah text) struck a chord with modern legal procedure. One man who is an engineer said that the text sounded like a technical manual that might be written by an expert in one discipline for the benefit of an expert in a different discipline. As he stated the parallel, he also stated how confusing he found the document at hand. Another participant made an analogy between the situation of the *yevamah* and the emotional situation of Hamlet

concerning his mother's remarriage. The significance of such comments will be further examined in the following chapter.

The participants reacted not only to the content of the translations but to their form as well. The most common reaction was not stated explicitly but was quickly obvious from the discussions that arose. Despite the presentation of the footnotes in the same size type as the text and their consistent presence on the same page as the material they purport to explain, students of the translations did not read the footnotes. While some members of the group did consistently read the footnotes, most did not. Even when I included in my introductory comments the importance of the notes along with the text itself, the notes were not widely or consistently used. Additionally, sometimes use of the footnotes produced no benefit over the text itself. Specifically, in the Blackman translation, many of the comments were text-critical or assumed knowledge of Hebrew. Other notes included references to Biblical texts or to appendices not immediately available and were not likely to be of great advantage, especially if many readers were unwilling to read the notes themselves.

The fact that the readers did not avail themselves of the notes does not imply that they achieved an adequate

understanding of the text without them. While the participants often expressed confidence that they had apprehended the meaning of the text, many of their conclusions contradicted the commonly accepted meaning of the paragraphs. Such misunderstandings were most clearly evident in discussions that arose in response to specific words or phrases in the translations. Three brief examples should suffice to demonstrate the confusion possible as a result of translation without an adequate explanatory apparatus. The Danby translation of Megillah 1:10 contains the term "free will offering." Possibly because no description of such an offering was available on the page, we were unable to avoid a digression into the topic of free will in the philosophical sense. In Qiddushin 1:2, Blackman rendered one of the ways in which a Hebrew bondman acquires himself as by "his outstanding worth." While the Hebrew refers to the value of the years of service remaining, the translation was understood to refer to his being an outstanding bondman or individual. In Qiddushin 1:5, Blackman rendered the method of purchasing certain kinds of objects called in Hebrew *chazakah* as "usucaption." The term itself caused a considerable amount of confused discussion and the corresponding footnote failed to explain the issue adequately. However, misunderstanding did not seem

to be limited to poor or archaic word choice on the part of translators. It became obvious on a number of occasions that understanding of the text was difficult because the audience lacks sufficient understanding of the realia of the Tannaitic period. Gaps were obvious on a regular basis, in reference to such topics as the workings of the religious calendar, the sacrificial cult, the meaning of the term "vows," the levirate marriage, and the institution of slavery.

Aside from these examples distilled from the data, the participants also made some specific suggestions that support some of the conclusions I have drawn. A number of the readers suggested that a more complete treatment of Mishnaic technical terms should be readily available. There was difficulty in distinguishing when a technical term was being translated and when the phrase chosen was to be taken as non-technical. Another important suggestion was that historical data relevant to the people, places, events, and rituals mentioned should be available. Such a resource might help close the realia gap. Also, as indicated above, the subjects wished to know the "why" of the text. Such answers could be offered in an apparatus providing the larger context within rabbinic thought of the ideas discussed.

The responses of the readers to the two translations of the text indicate that there is room for improvement. The nature of such an audience-centered translation will be explained more fully in the following chapter where the data from the focus groups is integrated with the theoretical discussion from Chapters One and Two.

NOTES

[1]The three complete translations available are *The Mishnah* by Herbert Danby, Oxford University Press, 1972; *Mishnayot* by Philip Blackman, The Judaica Press, 1964; and *The Mishnah: A New Translation* by Jacob Neusner, Yale University Press, 1988. I refer to them as text-oriented because of their limited annotation. Neusner's single volume Mishnah translation employs no explanatory annotation, Danby's notes are quite limited, and Blackman's notes are often critical comments on the Hebrew text itself. While these apparatuses provide some information, they are clearly intended to facilitate the reading of an English rendering of the Hebrew text. They do not attempt to communicate the contextual assumptions of the authors and editors of the Mishnah. For an explanation of the term "text-oriented," see previous chapter.

[2]Neusner's *Learn Mishnah* and Lipman's *The Mishnah: Oral Traditions of Judaism* are typical of such attempts. The Mishnah text is not presented in complete units. Other materials follow this pattern of presentation.

[3]Factors that I considered typically Mishnaic include: 1) The presence of a variety of subject matters under a single tractate subject heading, 2) the use of technical language, 3) failure to explain the most basic elements of the subject at hand, 4) the inclusion of materials clearly varying in dates of origin and other factors. Initially, my proposal included translating and annotating two tractates, so Megillah was also included.

[4]While the tapes contain much useful data, they consist of approximately nine hours of material. Many of the conclusions I drew from the tapes were based on repeated data. Copies of the audio tapes can be made available upon request.

CHAPTER IV

In this chapter, I shall describe and justify the "translation apparatus" that appears below along with the English version that I shall present of one tractate of the Mishnah. While the English used will be contemporary American English, it will not differ that significantly from translations already available. As described in previous chapters, when a document is as foreign to the target audience as the Mishnah is to the modern American adult Jewish reader, the translation is not just the words of the text. The translating actually occurs when the reader, using the apparatus provided, responds to the text out of her or his own cultural context. Therefore, it is the apparatus that deserves full attention in this chapter. I shall first describe a few overriding concerns that shaped my choice of commentaries, then describe each of them, and then justify my choices based on the data from the first three chapters.

In running focus groups, certain participant responses occurred regularly that affected both the form and content of the apparatuses chosen. One fact that was painfully clear was that <u>participants do not consistently read footnotes</u>. Most of the time, the explanatory notes were ignored. I believe that

people will be more willing to read and consider a commentary written in a prose format than one in footnote form. My observations in other text study situations supports such a position. Indianapolis Hebrew Congregation's very successful weekly Torah study uses the Plaut Torah commentary. In these sessions, the commentary attracts attention, interest, and study nearly equal to that devoted to the biblical text. Because the central aspect of an adult-centered Mishnah edition is the supplementary materials, the apparatuses must be written in prose.

After almost every session of the focus groups, a different individual would approach me and express amazement that her or his comments and those of the group could somehow be of interest or use to me. This attitude is the exact opposite of the emotional response required for a successful translation. An adult who felt independent, empowered, and able to contribute meaningfully to the classroom situation would not make such a comment. The primary goal of all the following commentaries is to resolve this difficult situation and help the participants feel that they are actually understanding and responding to the text at hand.

I have defined five commentaries that are necessary to bridge the gap between the text and its original audience and

my translation and its target audience. I shall first present

them with a brief description and then explain how each is

based in data from earlier chapters.

> 1) Historical Context--These notes provide an historical
> setting for any groups, individuals, or practices
> mentioned. They may also include a brief description of
> the practices themselves or of parallels to them found in
> Roman law.
> 2) Rabbinic Context--These notes provide necessary
> background information from other parts of the Mishnah
> and contemporary sources that the document assumes its
> readers possess.
> 3) Biblical Context--Biblical verses explicitly or
> implicitly referred to by the text are presented in full
> with brief explanatory notes. Translations are taken
> from Tanakh-The Holy Scriptures (Jewish Publication
> Society, 1988).
> 4) Technical Terms--The Mishnah is replete with rabbinic
> legal jargon. This aid explains them and their
> relationship to the text. Technical terms appear in
> italics in the text and commentaries.
> 5) Critical Comments--These notes provide modern,
> scholarly annotations relevant to the terms, content,
> logic, or context of the passage being addressed, as well
> as questions for discussion.

While the fifth category may seem to overlap with most of the

earlier descriptions, it does not. 1 have attempted to limit

information in the first four commentaries to explanations

with which most readers or researchers with modern assumptions

would agree. The fifth category represents disputed or

controversial statements from critical research that offer the

reader an opportunity to speculate about the meaning and

significance of the text at hand. I shall now explain the

connections between each of the commentaries and the data in previous chapters of this work.

Historical Context (HC)

Chapter 1:   A) Adult learners are impatient with purely theoretical discussion.   Historical details will provide a more solid basis for concrete discussions of issues, traditions, and individuals mentioned in the text.   B) The literature on educational methodology concerning Mishnah specifically asserts the student's need for knowledge of the historical background and realia of the mishnaic period.   C) For adult Jewish learners to understanding their own present-day spiritual needs, which is one of the reasons adult learners come to study sessions, they need to develop a sense of the flow of Jewish history and the changes the religion underwent over time.

Chapter 2: A) A central concern in evaluating translation is that the reader be able to grasp what there is about the original that makes it meaningful. B) The reader must also be able to respond to the translated document as is he or she were reading the original. Historical background is one of the necessary aids to achieving these goals. C) Communicating the context of the original document must include something of the history of its day.   D) Existing translations do not provide the reader with necessary knowledge of realia of mishnaic times.

Chapter 3: A) In focus groups, lack of knowledge of mishnaic realia consistently caused confusion. B) The subjects participating in the focus groups specifically requested additional relevant historical data.

Rabbinic Context (RC)

Chapter 1: A) The elemental characteristic of adultness is independence. Because the target audience is unfamiliar with rabbinic culture and assumptions, this gap must be bridged. B) Even for those with an understanding of rabbinic assumptions, this text represents a unique genre presenting a specialized body of knowledge. The words between the lines must be spelled out to preserve the independence of the learner. C)People's primary motivation for attending adult study is the topic. The content of the Mishnah is only accurately accessible in the larger context of rabbinic thought of the tannaitic period. D) One of the difficulties of teaching Mishnah is that it presents opposing opinions but does not articulate the reasoning behind them. The interaction between differing views can only be perceived with awareness of the conceptual context of the statements.

Chapter 2: A) The Mishnah is an autonomous rather than an audience-centered document. It assumes knowledge on the part of the audience that must be supplied to modern Jewish adults.

B) The connotations of mishnaic word choice cannot be communicated in an English version of the text. C) The reader will supply modern, anachronistic connotations for words if rabbinic meanings are not available. D) No present translation describes the rabbinic context of the Mishnah without assuming familiarity with later halachic thought.

Chapter 3: A) Subjects argued that the document as a whole seems to make no sense, and consistently asked "why" questions. This evidence implies they did not have adequate access to the rabbinic thought underlying the text. B) Subjects anachronistically read the text in their own cultural context out of ignorance of the rabbinic framework. C) Misunderstandings were not only based on confusing technical terms but also on faulty understanding of common language due to unfamiliarity with rabbinic institutions such as slavery, vows and oaths, and betrothal.

Biblical Context (BC)

Chapter 1: A) The need of adults to understand their lives in a more spiritual way often expresses itself in Bible study classes. The connection between the Bible and the Mishnah will help make the text more meaningful for adult learners. B) Research on educational methodology suitable for Mishnah suggests focussing on the relationship between Bible and

Mishnah.   C) Adults   wishing to   formulate an   organic
understanding of   their own   Judaism will   wish to   incorporate
both Bible and Mishnah.

Chapter 2: A) The authors and   editors of the Mishnah wrote
for an audience who knew Bible.   Therefore, Biblical texts
cited or alluded to in the text need to be supplied on the
page.   B) Neusner's example of an inductive approach to the
text of the Mishnah assumes that the audience will relate
Biblical texts not cited in the Mishnah to their understanding
of the latter.

Chapter 3:   A) Notations in existing translations refer the
reader to Biblical texts but do not provide them.   B) Once
subjects located these texts in the Bible, they often had
difficulty comprehending their connection to the Mishnah text
at hand.

     Technical Terms (TT)

Chapter 1:   A) Adult learners' need for independence is
directly threatened by the presence of foreign, unexplained
technical terms in the text of the Mishnah.   B) Because the
Mishnah is an unfamiliar literary genre, the technical terms
must be identified for the student.   C) Adults are motivated
to attend study sessions by their need to feel competent as

Jews.   Technical   terms also frustrate the   attainment of this goal.

Chapter   2:   A)   Technical   terms are   part of   the autonomous nature   of   this   document   which   must   be   explained   in   an audience-oriented translation.   B)   Adult learners, responding out of their   own cultural context,   will supply   inappropriate meanings   for technical   terms if   rabbinic understandings   are not   provided.   C)   The   limited   annotations   in   existing translations do not adequately explain Mishnaic terminology.

Chapter   3:   A)   Technical   terms   in   the   Mishnah   caused significant   confusion in   the focus   group   sessions.   B) One subject   compared   the document   to   technical   manuals   he had read, when explaining that he did not understand the text.   C) Readers had difficulty understanding when a   technical term was being   used in   the   document.   D)   The   attempts of   existing translations   to   render   technical terms   in   common   language (i.e.,   "free-will   offering")   caused confusion   and unrelated discussion.   E)   The   attempts   of   existing   translations   to render   technical   terms   in   English   technical   language also resulted in confusion (i.e., "usucaption").

Critical Comments (CC)

Chapter   1:   A)   The   adult approach   to learning   is oriented toward   the   present   and   problem-centered.   The   scholarly

speculations presented in this commentary will help the learner see how the Mishnah may have addressed political or theological concerns in its own day. The presence of such material will highlight the fact that the Mishnah addresses concerns still relevant today, albeit in terms of its own context. B) Modern Biblical scholarship has played this role successfully in modern adult Bible study. C) Research in educational methodology for teaching rabbinic literature suggests that materials and lessons should be presented in light of sophisticated, scholarly understandings of such documents. D) Extensive research on the Mishnah from this perspective is available. E) Modern adult learners are more comfortable with the genres of anthropological and historical analysis than those of rabbinic literature. Presenting them with information about the Mishnah on a useful but sophisticated level will support the motivations such learners bring to study situations. F) Understanding some Mishnah texts as describing a future, desirable reality, as much modern research does, will aid the learner in applying the text to her/his own thoughts and experiences.

Chapter 2: A) The temporal gap between the Mishnah and the modern day must be bridged in a successful translation. Much of our historical understanding of the Mishnaic period is

theoretical. Nevertheless, adult learners ought to be provided the opportunity to judge such proposals on their own merits. B) The commentaries included in Plaut's Torah commentary present this type of information about Biblical literature and have proven meaningful to the adult learner.

Chapter 3: A) Subjects often indicated their unfamiliarity with the genre of the Mishnah, a question that is still open to debate. B) Commonly asked "why" questions can only be answered out of a scientific, theoretical approach to the Mishnah.

The format that I have chosen for a study translation of the Mishnah designed for the American Jewish adult learner seems to have adequate support from the theoretical and experiential data gathered. The following two chapters represent an introduction to the Mishnah and Tractate Qiddushin and an application of the above explained theory of translation to Mishnah Tractate Qiddushin.

CHAPTER V

INTRODUCTION

What The Mishnah Is Not

The Mishnah is a mysterious work. Though it has stood as a centerpiece of Judaism for almost two thousand years, there is still substantial disagreement over the nature, purpose, and intended audience of the document. We have almost no direct evidence from the time of origin of the Mishnah to support different understandings of this seminal Jewish text. The layperson and scholar alike must base their conclusions on the same source: the internal evidence of the Mishnah. Anyone wishing to develop her/his own organic understanding of the Judaism of today should begin in the pages of the Mishnah. The vocabulary, practices, and concepts of modern-day Judaism often found their first expression in the Mishnah. To formulate an understanding of the origins and potential meanings of our ceremonies and traditions, we must look to the Mishnah. But if we wish such study to be more than an exercise in frustration, we must have our own concept of what the Mishnah is. Only then can its text have meaning today.

Modern historical and textual scholarship has presented a number of new approaches to understanding the Mishnah. The commentaries found in this volume represent many different viewpoints and may at times contradict one another. Such dilemmas are part and parcel of the goal of this translation: to offer modern adult readers the opportunity to make their own decisions concerning the nature of the Mishnah and its meaning for them.

While there is much confusion over what the Mishnah is, there is greater agreement among scholars over what it is not. Such information underlies the design and content of this volume. By sharing scientific opinions of what the Mishnah is not, hopefully the reader may be able to face this central Jewish document without relying upon assumptions foreign to the text itself.

1) The Mishnah is not a unified work written by a single author at a specific point in history. The Mishnah is attributed to Rabbi Yehuda the Patriarch at the beginning of the third century of the Common Era. However, such a statement would imply only that he was the editor or redactor of the Mishnah, not its author. Historical support is lacking even for this assertion. The process by which the Mishnah

took on its present form lasted far beyond the life of Yehuda the Patriarch.

The word "mishnah" means "that which is learned or taught by repetition," and also refers to the teachings of individual rabbis who lived in Palestine in the first two centuries of the Common Era. There were traditions that the editors included in the Mishnah and those that they chose to exclude, for reasons unknown. Those traditions that they did include did not all originate in any given period. Some of the ideas and traditions found in the Mishnah appear to predate the fall of the Second Temple in 70 C.E. However, there is no evidence that their original form or meaning was preserved in the Mishnah. Some important rabbinic ideas appear for the first time in the Mishnah. There is disagreement over whether such attestation implies that they were originated at that time or if they were merely first recorded in this document.

2) The Mishnah is not a law code. While the Mishnah contains many statements of Jewish ritual and civil law, it is not a code. The Mishnah commonly cites several different opinions on the same question and it rarely decides between them in any overt manner. Many views are given in the name of those who held them, some are attributed to "the sages", and others are presented anonymously. Often in one single

paragraph of the Mishnah (which, traditionally, is also called a mishnah), the beginning and the end of a paragraph deal with different legal or ritual issues. Furthermore, the Mishnah contains not only law but folklore, commentary, philosophy, theology, culture, stories, and wisdom. If the purpose of a law code is to state the law, then the Mishnah seems to have one or more other purposes underlying it.

3) The Mishnah should not be read in light of later Jewish legal codes and treatises. While the Mishnah is the heart of the Talmud and of most later Jewish tradition, it can be understood and analyzed on its own terms and in light of contemporary documents and historical conditions. This translation does not share the traditional assumption that the editors of the Babylonian Talmud, working centuries later than the Mishnah's redactors and in a different country, understood the Mishnah just as its own authors and editors did. While the meanings that the Mishnah text assumed after later extrapolation and analysis are both interesting and relevant to the development of modern Judaism, they are not the focus here. This document is designed to offer the reader an opportunity to confront the Mishnah *qua* Mishnah.

3) The Mishnah is not a commentary on the Torah. At times the Mishnah seems to be clarifying the biblical text and

in other situations contradicting it. The Mishnah itself
recognizes that many of the traditions and rulings reported in
it have almost no scriptural basis upon which to rely
(Tractate Hagiga, Chapter 1, Mishnah 8). The Mishnah makes no
attempts to imitate the Hebrew of the Torah, and uses its own
terminology to describe observances. The organization of the
Mishnah is different from that of Scripture. The Mishnah
contains no sustained narrative but instead is divided
topically into six orders (Agriculture, Holidays, Status of
Women, Damages, Sacrifices, and Ritual Purity). Each order is
divided into subdivisions called tractates, which are loosely
topical in organization. Each tractate is divided into
chapters and paragraphs which are often artificial. Though
Scripture is quoted as evidence or clarification in some
instances, the relationship between Scripture and Mishnah is
open for debate.

4) The Mishnah is not an historical work. While we know
that the Mishnah was completed at the beginning of the third
century of the Common Era, the document itself does not
provide evidence to this fact. This date is an assumption
based on the names of the rabbis contained in the document.
From reading the text only, one might assume that everything
described in it, from monetary law to the Temple cult, had

been in force since the days of Moses and was still in force. The rhetoric of the Mishnah blurs the historical distinctions among the different rulings contained within it and gives the document an eternal flavor. Modern and traditionalist Jews disagree over the relationship between the Mishnah and its historical surroundings. While this controversy causes different groups to read the text in disparate ways, all would agree that the Mishnah is primarily a theological, not an historical document.

5) The Mishnah is not a legislative document. The completion of the Mishnah did not mark the innovation of the customs, laws, and practices found within it. This text is not the beginning of a religious reform, though it may represent the end product of such a movement. Therefore, it is at the discretion of the reader to decide whether the arguments used to support a given position represent the original reasons behind it or a *post hoc* explanation or justification. While the inclusion of some materials and exclusion of others does imply a norm-setting role for the document, the Mishnah's primary role appears to be to report and preserve Jewish traditions and practices, and, perhaps, to further their study.

6) The Mishnah was not written for the general public. The Mishnah was designed to be read by a specific group rather than a lay audience. The document has no introduction nor does it often define its terms. It casually assumes the issues that lie at the foundation of its discussions. For example, the tractate that includes the rules for reading the book of Esther on Purim never mentions why it should be read. The availability of the document in translation for a wide audience is an event not anticipated by the writers and editor(s) of the Mishnah. For this reason, explanatory commentary is essential to reading the text. This volume contains two different kinds of commentaries. The contextual comments provide the reader with information that the authors and redactors of the Mishnah would have assumed on the part of their audience. The critical comments contain additional data from historical and textual scholarship as well as questions that highlight issues found in the text.

How to Use this Translation

The goal of this translation is to provide the interested adult with an opportunity to have a meaningful encounter with the Mishnah text. While the commentaries are designed to

augment and encourage such efforts, these explanatory remarks contain certain biases concerning the meaning of the passages you will be reading. Therefore, the following procedure is suggested when using this translation:

1. No amount of commentary on the Mishnah could take the place of a knowledgeable teacher. This format was created with a classroom or teacher-learner situation in mind. Its goal is not to replace an instructor but to allow the learner to play a more independent and meaningful role in such discussions.

2. Read the first block of text in the tractate you are studying without the accompanying commentaries. Each such meaningful division of the text has been presented first without further explanations or aids.

3. As you read, write down a list of questions that the text elicits in your mind. These questions may be matters of the plain meaning of the text or complex religious philosophy, or anything in between.

4. Five commentaries accompany each paragraph (mishnah) of the text. They are listed and briefly explained below. For each paragraph, one of these has been chosen as the most important for understanding that particular text. This commentary is found underneath the

translation on the same page. The other four commentaries follow it in a linear fashion continuing onto the facing page where necessary. The primary commentary may be read in its entirety either before or after reading the individual paragraph to which it applies.

5. Begin to re-read the text paragraph by paragraph, using the commentaries on the page to help develop and answer your questions.

6. The five commentaries are as follows:

1) Historical Context--These notes provide an historical setting for any groups, individuals, or practices mentioned. They may also include a brief description of the practices themselves or of parallels to them found in Roman law.

2) Rabbinic Context--These notes provide necessary background information from other parts of the Mishnah and contemporary sources that the document assumes its readers possess.

3) Biblical Context--Biblical verses explicitly or implicitly referred to by the text are presented in full with brief explanatory notes. Translations are taken from Tanakh-The Holy Scriptures (Jewish Publication Society, 1988).

4) Technical Terms--The Mishnah is replete with rabbinic legal jargon. This aid explains them and their relationship to the text. Technical terms appear in italics in the text and commentaries.

5) Critical Comments--These notes provide modern, scholarly annotations relevant to the terms, content, logic, or context of the passage being addressed, as well as questions for discussion.

While the fifth category may seem to overlap with most of the earlier descriptions, it does not. I have attempted to limit information in the first four commentaries to explanations with which most readers or researchers with modern assumptions would agree. The fifth category represents disputed or controversial statements from critical research that offer the reader an opportunity to speculate about the meaning and significance of the text at hand.

While some of the material in any of these commentaries could be labelled as speculative to a greater or lesser degree, most of the knowledge we have today of the meaning and significance of the Mishnah is similarly tentative. If one must begin to approach the document with some sense of what it is, I would offer the metaphor suggested by Ya'akov Yagar:[1] The Mishnah is more like a culture than a document. The reader must play the part of the anthropologist. In the final analysis, the meaning and significance of the Mishnah for today's Judaism is in the mind, heart, and soul of the reader.

NOTES

1.Ya'akov Yagar, "A Methodology for Teaching Mishnah," <u>Hebrew Pedagogic Quarterly</u>, Vol. 41, No. 1, 1981, p. 44.

INTRODUCTION

Tractate Qiddushin

The word "Qiddushin" as used in the Mishnah means "betrothals," though the general meaning of the word is "sanctifications." The word "betrothals" is chosen as a translation because the marital status it describes does not correspond to the modern categories of engagement or marriage. Like engagement, betrothal represents a specific bond between a woman and a man but does not imply that they are living under the same roof. Like marriage, betrothal is a formal, sacred relationship that requires a religious divorce for its dissolution. Qiddushin as a term for betrothal is first used in rabbinic literature. It is not a biblical word. Methods and types of betrothal represent the primary subject matter of this tractate.

[1]A woman may be acquired [in marriage] in three ways, and she may acquire her freedom in two ways. She may be acquired by [exchange of] money, written contract, or sexual intercourse.

"By [exchange of] money"--The School of Shammai says: With a *dinar* or its equivalent, but the School of Hillel says: With a *perutah* or its equivalent. How much is a *perutah*? One-eighth of an Italian *issar*.

She may acquire her freedom by a writ of divorce or through the death of her husband.

The *levirate widow* is acquired by sexual intercourse, and she acquires herself by the *rite of release* or by the death of the *levir*.

[2]A Hebrew slave may be acquired by [exchange of] money or a written contract, and he may acquire his freedom through [the passage of the six] years [of service], [the coming of] the Jubilee year, or by payment for his remaining [years of] obligation.

A female Hebrew slave has an advantage over him in that she may also acquire her freedom by [the appearance of physical] signs [of maturity].

One who has chosen to serve indefinitely may be acquired by having an ear pierced, and may acquire himself by [the coming of] the Jubilee year or the death of his owner.

[3]A Canaanite slave may be acquired by [exchange of] money, written contract, or *chazakah*, and he may acquire his freedom by money [paid] by others or by a written document that he himself [received]--according to Rabbi Meir.

But the Sages say: by money he himself [pays] or by a written document [received by] others, as long as the money belongs to others.

[4]Large herd animals are acquired by [an act of] delivery, but small herd animals by [an act of] lifting-- according to Rabbis Meir and Eliezer. But the Sages say, Small herd animals are also acquired by leading.

[5]Real estate may be acquired by [exchange of] money, written contract, or *chazakah*, but movable property may only be acquired by [an act of] *delivery*.

Movable property may be acquired along with real estate by [exchange of] money, written contract, or *chazakah*, but the movable property qualifies the real estate to require an oath [in litigation].

[6]If anything is used as payment [in a barter arrangement], once [one party] has taken possession [of that object], the other [party] is liable for its counterpart. How [does this process work]? If an ox is exchanged for a cow, or an ass for an ox, once one [party] has taken possession, the other [party] is liable for its counterpart.

Temple ownership is [effected] by [payment of] money, while lay ownership is [effected] by *chazakah*.

[*A verbal declaration*] dedicating something to the Temple is equivalent to [the act of] transferring it to a layperson.

[7][Regarding] every commandment concerning the son that is incumbent on the parent--men are obligated and women are exempt. But [regarding] every commandment concerning the parent that is incumbent on the child-- both men and women are obligated.

[Regarding] every *positive time-bound commandment*, men are obligated and women are exempt. But [regarding] every positive commandment that is not time-bound, both men and women are obligated.

[Regarding] every *negative commandment*, whether or not it is time-bound, both men and women are obligated with the exception of "You shall not destroy" (Lev. 19:27), "You shall not round off" (Lev 19:27), and "You shall not become ritually impure by contact with the dead." (Lev. 21:1)

[8][The sacrificial activities of] laying hands on [the head of the animal], elevating (waving), bringing [the meal offering] near [to the altar], taking a handful [of the meal offering], burning [on the altar], breaking the neck of a bird, sprinkling [the blood on the altar] and receiving [the blood from the slaughtered animal] are performed by men and not by women except for the meal offering of the *wife suspected of adultery* and the female *nazirite* who elevate [their own offerings].

[9]Every commandment dependent upon the Land is only performed in the Land [of Israel], but those not dependent upon the Land are performed both inside and outside the Land [of Israel], with the exception of the [commandments concerning] *fruit of the first three years* and *illicit mixtures*.

Rabbi Eliezer says: also [use] of the *new grain*.

[10]Anyone who observes [even] one commandment will fare well, have a long life, and inherit [his portion of] the Land. But everyone who observes not even one commandment will not fare well nor have a long life nor inherit [his portion of] the Land.

Anyone who has a part in *Scripture*, *Mishnah*, and *correct conduct* will not quickly sin, as it is written, "A three-fold cord is not readily broken!" (Ecclesiastes 4:12). But anyone without a part in *Scripture*, *Mishnah*, and *correct conduct* has no part in society.

TRACTATE QIDDUSHIN 1:1-1:10

[1]A woman may be acquired [in marriage] in three ways, and she may acquire her freedom in two ways. She may be acquired by [exchange of] money, written contract, or sexual intercourse.

"By [exchange of] money"--The School of Shammai says: With a *dinar* or its equivalent, but the School of Hillel says: With a *perutah* or its equivalent. How much is a *perutah*? One-eighth of an Italian *issar*.

She may acquire her freedom by a writ of divorce or through the death of her husband.

The *levirate widow* is acquired by sexual intercourse, and she acquires herself by the *rite of release* or by the death of the *levir*.

RABBINIC CONTEXT (RC)

The act of betrothal in early rabbinic literature no longer consists of "buying a wife" as it did in biblical times.[1] The three actions mentioned in this paragraph are symbolic acquisitions, confirming a change in the status of a relationship. The man involved, who must be of legal age, must grant his consent. If the woman is of legal age, she also must grant her consent.[2] If she is underage, her father may marry her off by accepting the token payment or contract in her stead.[3] The exchange of money or written contract, or the single act of sexual intercourse, must be for the stated purpose of betrothal.[4] If betrothal was confirmed through sexual intercourse, marital relations were usually prohibited until the couple was married.[5] However, there was a custom in Judea (the south) that the couple lived together in her father's house between betrothal and marriage.[6]

The act of betrothal consisted of making a statement of intent at the time of the exchange. The literature assumes that there were also two witnesses to the betrothal.[7] The betrothal itself was usually preceded by negotiations. Early rabbinic Judaism considered this whole process both religious and civil, as it recognized no clear distinction between the two.[8] In fact, the school of Hillel allowed negotiations leading to betrothal to take place on the sabbath.[9] This paragraph is the only text in the Mishnah in which the woman is "acquired." The reason for this choice of words is formal rather than ideological. Mishnah tractates typically begin with a rhetorical structure that brings together a variety of cases that share a single property. This tractate opens with a unit of text on acquisitions. The word "acquired" is used to strengthen the logical analogy between the content of this paragraph and the cases that follow in the remainder of the chapter. Elsewhere in the Mishnah, a woman is "betrothed."[10] The Hebrew word for betrothal literally means "sanctification."

The *levirate widow* is treated as if she were betrothed (See TT). Her relationship to the *levir* is formalized by sexual intercourse and a statement of intention on the part of the *levir*.[11]

TECHNICAL TERMS (TT)

Dinar--a coin of significant value

Perutah--a coin of minor value. A *dinar* is worth 192 *perutot*.

Issar--a coin worth 8 *perutot*. The *issar* is a Roman coin/weight.

Levirate widow--or *yevamah* in Hebrew. If a woman is betrothed or married to a man who has brothers, and he dies before fathering any children by her, she is left in a state of quasi-betrothal to his oldest brother.[12] He may either wed her or complete the *rite of release* so that she may marry another (See BC).

Rite of Release--or *chalitzah* in Hebrew. If the *levir* did not wish to marry the widow of his late brother, then the *levirate widow* and the *levir* would go together to the local tribunal of judges. There she would remove his sandal, say, "Such shall be done to the one who does not build up his brother's house," and spit. Afterward, she was free to marry another.

Levir--or *yavam* in Hebrew. The brother of the deceased, or sometimes another male relative, who participated in the above rituals.

BIBLICAL CONTEXT (BC)

<u>Deuteronomy 24:1</u> A man takes a wife and possesses her. She fails to please him because he finds something obnoxious about her, and he writes her a bill of divorcement, hands it to her, and sends her away from his house.

<u>Deuteronomy 20:7</u> Is there anyone who has paid the bride-price for a wife, but who has not yet married her? Let him go back to his home, lest he die in battle and another marry her.

<u>Deuteronomy 25:5-10</u> When brothers dwell together and one of them dies and leaves no son, the wife of the deceased shall not be married to a stranger, outside the family. Her husband's brother shall unite with her: take her as his wife and perform the levir's duty. The first son that she bears shall be accounted to the dead brother, that his name may not be blotted out in Israel. But if the man does not want to marry his brother's widow, his brother's widow shall appear before the elders in the gate and declare, "My husband's brother refuses to establish a name in Israel for his brother; he will not perform the duty of a levir." The elders of his town shall then summon him and talk to him. If he insists, saying, "I do not want to marry her," his brother's widow shall go up to him in the presence of the elders, pull the sandal off his foot, spit in his face, and make this declaration: Thus shall be done to the man who will not build up his brother's house.

HISTORICAL CONTEXT (HC)

While the wording of this mishnah is no earlier than the middle of the second century, its content may pre-date the destruction of the Temple in 70 C.E. Traditions of the schools of Hillel and Shammai are sometimes dated to this period. At this time, Pharisaic Judaism, which became Rabbinic Judaism, was only one sect of Judaism. These sects (Pharisees, Sadducees, etc.) often differentiated themselves from the others by their rituals surrounding betrothal and marriage.[13]

Roman law also had separate stages of betrothal and marriage and considered betrothal a complete commitment as did the Mishnah.[14] However, in Roman law, betrothal required no symbolic transaction, only the consent of both parties.[15] In addition, either party could end the betrothal without divorce proceedings.[16] The Jews of Alexandria, Egypt, sought to introduce such freedom into Jewish marriage documents, but the practice was not accepted.[17]

CRITICAL COMMENTS (CC)

1. While this paragraph and the chapter that it begins differ in form and content from the heart of this tractate, such constructions are typical of the beginning of Mishnah tractates.

2. Outside of this paragraph, the tractate ignores betrothal by intercourse. It may have occurred only rarely or the editor(s) may have disapproved of the practice.[18]

3. The schools of Hillel and Shammai seem to differ about what financial status one should attain before getting married. In almost all cases (this one included), later tradition follows Hillel.

²A Hebrew slave may be acquired by [exchange of] money or a written contract, and he may acquire his freedom through [the passage of the six] years [of service], [the coming of] the Jubilee year, or by payment for his remaining [years of] obligation.

A female Hebrew slave has an advantage over him in that she may also acquire her freedom by [the appearance of physical] signs [of maturity].

One who has chosen to serve indefinitely may be acquired by having an ear pierced, and may acquire himself by [the coming of] the Jubilee year or the death of his owner.

BIBLICAL CONTEXT (BC)

Deuteronomy 15:12-17 If a fellow Hebrew, man or woman, is sold to you, he shall serve you six years, and in the seventh year you shall set him free. When you set him free, do not let him go empty-handed: Furnish him out of the flock, threshing floor, and vat, with which the Lord your God has blessed you. Bear in mind that you were slaves in the land of Egypt and the Lord your God redeemed you; therefore I enjoin this commandment upon you today.

But should he say to you, "I do not want to leave you"—for he loves you and your household and is happy with you—you shall take an awl and put it through his ear into the door, and he shall become your slave in perpetuity. Do the same with your female slave.

Exodus 21:7-11 When a man sells his daughter as a slave, she shall not be freed as male slaves are. If she proves to be displeasing to her master, who designated her for himself, he must let her be redeemed; he shall not have the right to sell her to outsiders, since he broke faith with her. And if he designated her for his son, he shall deal with her as is the practice with free maidens. If he marries another, he must not withhold from this one her food, her clothing, or her conjugal rights. If he fails her in these three ways, she shall go free, without payment.

Leviticus 25:47-50, 54 If a resident alien among you has prospered, and you kinsman, being in straits, comes under his authority and gives himself over to the resident alien among you, or to an offshoot of an alien's family, he shall have the right of redemption even after he has given himself over. One of his kinsmen shall redeem him, or his uncle or his uncle's son shall redeem him, or anyone of his family who is of his own flesh shall redeem him; or if he prospers, he may redeem himself. He shall compute with the purchaser the total from the year he gave himself over to him until the Jubilee year; the price of his sale shall be applied to the number of years, as though it were for a term as a hired laborer under the other's authority. If he has not been redeemed in any of those ways, he and his children with him shall go free in the jubilee year.

Leviticus 25:39-41 If your kinsman under you continues in straits and must give himself over to you, do not subject him to the treatment of a slave. He shall remain with you as a hired or bound laborer; he shall serve with you only until the jubilee year. Then he and his children with him shall be free of your authority; he shall go back to his family and return to his ancestral holding.

HISTORICAL CONTEXT (HC)

According to some historical texts, the Jewish institution of civil bondage as described here had disappeared with the destruction of the First Commonwealth in 586 B.C.E.[19] If this position is accepted, then this mishnah is dealing with the biblical category on a theoretical level. Other sources seem to argue that bondage continued among the Jews into Mishnaic times. This latter approach says that these bondmen were likely to function as personal servants, business managers, skilled workers, or artisans.[20] Therefore, if Jews did have Jewish bondmen at the time this mishnaic ruling took shape, the institution had changed significantly from its biblical formulation. However, all agree that even if Jews had bondmen, legal persons capable of rights and obligations but bound by law to render service to another, they did not have slaves, who were chattel owned like things.[21] In Roman society of early rabbinic times, both bondage and slavery existed. A father could sell either his son or daughter into slavery.[22] The rabbis knew of the Roman custom of seizing a debtor's children and selling them as slaves.[23] After the Bar Kokhba rebellion (132-135 C.E.), many Jews were sold as Roman slaves.[24]

RABBINIC CONTEXT (RC)

The Hebrew word used in this paragraph is 'eved, which means slave. However it is doubtful whether Jews actually had Jewish slaves in mishnaic times. Further, the individual described has certain rights, which is characteristic of a bondman rather than a slave.[25] The rabbis were aware of some Roman laws of bondage and slavery. They found the selling of individuals into slavery as punishment obnoxious.[26] While the category of Hebrew bondman comes up in a number of cases in the Mishnah, it is never an object of focus. Only this text describes the way in which one may acquire a Hebrew bondman. The Tosefta, a slightly later collection of traditions that parallels the Mishnah in organization and content, has no parallel to the material in the Mishnah on slavery.

The idea that the Hebrew bondwoman goes free when she reaches physical maturity has no support in the Biblical tradition. It grows from the rabbinic understanding that the father only has control over the daughter when she is a minor. Therefore, if he sells her as a bondwoman while a minor, she must go free when she reaches maturity. While the bondwoman seems to be worse off than her male counterpart in the biblical tradition, she receives better treatment in rabbinic sources.

CRITICAL COMMENTS (CC)

1. If one accepts the conclusion that the institution of civil bondage among the Jews had ceased centuries before the composition of this paragraph, one could conclude that its guidelines were never intended to be put into action. If this were so, it might be easier to understand how the mishnah could contradict the apparent meaning of relevant Biblical passages. Furthermore, one could argue that the opinions expressed in this paragraph tell us, though indirectly, which aspects of Roman civil bondage the rabbis found most distasteful.[27]

2. One might wonder why this passage is found in the tractate on betrothal. One possible answer is that the editor(s) of the Mishnah did not break up blocks of early traditions they received and this large construction, that makes up the first chapter of this tractate, was one such unit of text.[28]

[3]A Canaanite slave may be acquired by [exchange of] money, written contract, or *chazakah*, and he may acquire his freedom by money [paid] by others or by a written document that he himself [received]--according to Rabbi Meir.

But the Sages say: by money he himself [pays] or by a written document [received by] others, as long as the money belongs to others.

HISTORICAL CONTEXT (HC)

The "Canaanite slave" had probably ceased to exist after the Destruction of the First Temple. The word "Canaanite" here is taken from the Biblical idiom and refers to a slave who is a non-Jew. The status of such a person is actually neither slave nor bondman (See HC on mishnah 2 for full discussion). In biblical times, though he was purchased like a slave, he still had certain rights, such as being allowed to rest on the Sabbath (See BC).

Rabbi Meir was a student of Rabbi Aqiba and lived in the middle of the second century. These were very poor economic times for the Jewish people. Many Jews were sold as slaves to foreigners. However, it is very unlikely that any Jews owned foreign slaves at the time that these opinions were expressed.

RABBINIC CONTEXT (RC)

The act of freeing a slave by written contract is evidenced elsewhere in the Mishnah in a source that dates from the same period as the words of Rabbi Meir here.[29] The rabbinic understanding of the life of the foreign slave is quite different from the ideas contained in Leviticus 25 (See BC). Our mishnah and the other passages in the Mishnah all refer to the freeing of slaves while the Bible speaks of passing them to one's children.

Rabbi Meir and the sages disagree on two basic issues relevant to the manumission of slaves.[30] 1)Can a slave take part in a transaction independent of his master? Elsewhere in the Mishnah we are told that anything acquired by a slave immediately becomes the property of his master. This condition holds for the foreign slave, wife, or minor children, but not for the Israelite bondman.[31] This restriction complicates the process of freeing a "Canaanite slave." If a slave may not participate independently in a sale, than his own purchase price must be paid by others, as Rabbi Meir suggests. If he has this right, he himself may pay using the money of others, as he has no possessions of his own. This is the position of the sages. 2)Is the act of manumission considered primarily a loss or a gain for the slave? If the transition is for his benefit, others are permitted to act on his behalf. If the transition is to his detriment, only he can perform the act of receiving his writ of manumission.[32] Rabbi Meir believes that a slave suffers a loss, monetary or otherwise, at the time of manumission. Therefore, only he may accept the writ. The sages see the transaction as a gain for the slave and therefore rule that others may act on his behalf as well.

BIBLICAL CONTEXT (BC)

Leviticus 25:44-46 Such male and female slaves as you may have—it is from the nations round about you that you may acquire male and female slaves. You may also buy them from among the children of aliens resident among you, or from their families that are among you, whom they begot in your land. These shall become your property: you may keep them as a possession for your children after you, for them to inherit as property for all time. Such you may treat as slaves. But as for your Israelite kinsmen, no one shall rule ruthlessly over the other.

Exodus 20:8-10 Remember the sabbath day and keep it holy. Six days you shall labor and do all your work, but the seventh day is a sabbath of the Lord your God: you shall not do any work—you, your son or daughter, your male or female slave, or your cattle, or the stranger who is within you settlements.

TECHNICAL TERMS (TT)

Chazakah—This term refers to a single, symbolic action performed by the slave to indicate to someone watching that a given person is his master. Any act that would formalize the transfer of ownership would qualify as *chazakah*. In other passages in the Mishnah, this word is used to refer to usucaption, ownership established by use over an extended period of time. As the term is used here in a different context, its meaning is different in this mishnah.[33] The term usually refers to some kind of presumptive evidence.

CRITICAL COMMENTS (CC)

1. The mention of Rabbi Meir in this mishnah indicates that the unit in which it is found could not come from earlier than the middle of the second century. By this time, the institution being addressed had likely disappeared.

⁴Large herd animals are acquired by [an act of] delivery, but small herd animals by [an act of] lifting-- according to Rabbis Meir and Eliezer. But the Sages say, Small herd animals are also acquired by leading.

HISTORICAL CONTEXT (HC)

Rabbis Meir and Eliezer lived in the second century, during and after the Bar Kokhba rebellion. Before the first rebellion and subsequent destruction of the Temple, most Jews had lived and worked on family farms in the Land.[34] The primary economic activity had been growing seed crop, followed by tending orchards and then grazing of large and small cattle.[35] Large cattle--cows- -were relatively scarce while small cattle-sheep and goats--were more in abundance. Just before the destruction of the Temple, the Sages had banned the raising of small cattle because they do too much damage to the cultivated land.[36] This mishnah, coming significantly later than the destruction, is largely theoretical in nature.

RABBINIC CONTEXT (RC)

In these first few paragraphs of this tractate, we see that the Mishnah is concerned with defining the exact moment that the transfer of ownership from one domain to another takes place. The surest method of confirming a transaction is lifting, when it is appropriate. The methods of transaction that are suitable are different depending on the object or material that is bought or sold.[37]

In order to purchase an animal, one must perform an initial symbolic action that indicates ownership. Such an acquisition requires an act that is appropriate to the object being purchased. If *lifting* is a fitting act of purchase, this method should be used as it is the most decisive display of ownership.[38] Rabbis Meir and Eliezer seem to believe that *lifting* would be considered a natural method by which to express ownership of a sheep or goat. The sages don't consider lifting such an animal a common action and therefore they allow other methods of purchase.

In some early rabbinic traditions, those who herd or raise small cattle come in for severe criticism. In one such statement, those who tend such animals are set in the same category with non-Jews, while they remain separate from (and possibly superior to?) Jewish heretics and Jews who convert to other religions. Another such tradition asserts that merchants and those who tend to orchards are superior to those who raise small cattle.[39] The negative attitudes are a result of the deleterious affect that small cattle have on farm land.

[5]Real estate may be acquired by [exchange of] money, written contract, or *chazakah*, but movable property may only be acquired by [an act of] *delivery*.

Movable property may be acquired along with real estate by [exchange of] money, written contract, or *chazakah*, but the movable property qualifies the real estate to require an oath [in litigation].

RABBINIC CONTEXT (RC)

In a monetary dispute between two parties, the Jewish court can sometimes force one of the parties to take an oath in order to resolve the matter.[40] The court cannot force an oath to resolve a disagreement over slaves, written documents, land, or objects pledged to the Temple.[41] An oath could be imposed to resolve disagreements over movable property. If a questionable transaction occurs in which objects subject to an oath and those not subject to an oath are exchanged, the entire content of the transaction becomes eligible for an oath in litigation.

The literal translation of the rabbinic expression for "real estate" is "property that carries security." Land was considered to act as security for debts incurred by its proper Jewish owner. Even if the land was sold, one could collect from the land of the original owner. The same is not true for movable property, which is deemed "property that carries no security" by the early rabbis.

HISTORICAL CONTEXT (HC)

After the destruction of the Temple, the Romans confiscated much of the land in Judea. Such action would have undermined the Jewish economy because land had acted as security.

TECHNICAL TERMS (TT)

Chazakah--this term refers to any specific action that implies ownership of the land in question, such as building a fence around the property.

Delivery--The act of receiving and transporting an object or animal from one place to another implied ownership of that property.

BIBLICAL CONTEXT (BC)

Genesis 24:12-13 Then Abraham bowed low before the people of the land, and spoke to Ephron in the hearing of the people of the land, saying, "If only you would hear me out! Let me pay the price of the land; accept it from me, that I may bury my dead there."

Jeremiah 32:9-15 So I bought the land in Anathoth from my cousin Hanamel. I weighed out the money to him, seventeen shekels of silver. I wrote the deed of purchase, sealed it, and had it witnessed; and I weighed out the silver on a balance. I took the deed of purchase, the sealed text and the open one according to rule and law, and gave the deed to Baruch son of Neriah son of Mahseiah in the presence of my kinsman Hanamel, of the witnesses who were named in the deed, and all the Judeans who were sitting in the prison compound. In their presence I charged Baruch as follows: Thus said the Lord of Hosts, the God of Israel: "Take these documents, this deed of purchase, the sealed text and the open one, and put them into an earthen jar, so that they may last a long time." For thus said the Lord of Hosts, the God of Israel: "Houses, files, and vineyards shall again be purchased in this land."

Genesis 34:8-10 And Hamor spoke with them (Jacob's sons) saying, "My son Shechem longs for your daughter. Please give her to him in marriage. Intermarry with us: give your daughters to us, and take our daughters for yourselves: You will dwell among us, and the land will be open before you; settle, move about, and acquire holdings in it.

[6]If anything is used as payment [in a barter arrangement], once [one party] has taken possession [of that object], the other [party] is liable for its counterpart. How [does this process work]? If an ox is exchanged for a cow, or an ass for an ox, once one [party] has taken possession, the other [party] is liable for its counterpart.

Temple ownership is [effected] by [payment of] money, while lay ownership is [effected] by *chazakah*.

[*A verbal declaration*] dedicating something to the Temple is equivalent to [the act of] transferring it to a layperson.

RABBINIC CONTEXT (RC)

The issue at hand here is discovering when a transaction is final. In a case of barter, once one of participants has formally accepted an object through an act of possession, that person no longer has the right to return the object he has received and rescind the deal. Once one has accepted an object or animal, its counterpart is considered to be in the possession of the other party to the transaction even if it has not yet changed hands. This mishnah discusses barter as a form of commerce for the average individual. Elsewhere in the Mishnah, the rabbis consider monetary transactions.[42] The act of transferring an object is given more legal weight than the transfer of money. If one has paid but not yet received any merchandise, the money may be returned and the deal cancelled. If one has received an object or animal but not yet paid for it, the deal is final. The rabbis do note that while one who has received money and not yet delivered the promised merchandise has the legal right to rescind the deal, his action would not be morally correct.

The final two sentences of this mishnah adapt these rules for the benefit of the Temple. Only the Temple seems to have the right to enact binding monetary transactions. The lay person must deal in barter. When the layperson is seen as the purchaser, he must receive the object for the transaction to be complete. The Temple is able to purchase by payment of money. When the layperson is seen as the vendor, the transaction is final when he gives the object over into the other's possession.[43] However, as soon as one dedicates an object to the Temple by saying, "This ox is pledged to the Temple," the Temple takes possession of the object.

TECHNICAL TERMS (TT)

Chazakah--this term here is all encompassing and refers to any action on the part of a purchaser that would indicate ownership and finalize a transaction.

Verbal declaration--vowing to give over something in one's possession to the Temple. Such a statement might be "This ox is *heqdeish*," meaning set apart for holy service, or consecrated.

HISTORICAL CONTEXT (HC)

It is understandable that different economic rules would apply to the Temple. It is acceptable for serious ethical questions to arise in everyday transactions, but all dealings involving the Temple must remain above reproach. The Temple was the central source from which Jewish autonomy drew its legitimacy.[44] Further, one should not take lightly promises made to God.

BIBLICAL CONTEXT (BC)

Judges 17:1-3 There was a man in the hill country of Ephraim whose name was Micah. He said to his mother, "The eleven hundred shekels of silver that were taken from you, so that you uttered an imprecation(*) which you repeated in my hearing--I have that silver; I took it." "Blessed of the Lord be my son," said his mother. He returned the eleven hundred shekels of silver to his mother; but his mother said, "I herewith consecrate the silver to the Lord, transferring it to my son to make a sculptured image and a molten image. I now return it to you.

(*) This phrase implies that she had uttered an imprecation cursing anyone who knew of the whereabouts of the money but did not disclose it.

CRITICAL COMMENTS (CC)

1. The early rabbinic understanding of economic transactions was different in the realm of the holy than in secular matters. Does such a division still exist today?

2. This paragraph seems to provide a connection between the two smaller units that make up the initial block of traditions that begins this tractate (1:1-6 and 1:7-10).[45] The formal, rhetorical link it forges between the two is evident in the Hebrew phraseology. This mishnah begins with the same Hebrew word as do 1:7,9,10. Is there a relationship between the content of the two sections? If so, what is it?

[7][Regarding] every commandment concerning the son that is incumbent on the parent--men are obligated and women are exempt. But [regarding] every commandment concerning the parent that is incumbent on the child-- both men and women are obligated.

[Regarding] every *positive time-bound commandment*, men are obligated and women are exempt. But [regarding] every positive commandment that is not time-bound, both men and women are obligated.

[Regarding] every *negative commandment*, whether or not it is time-bound, both men and women are obligated with the exception of "You shall not destroy" (Lev. 19:27), "You shall not round off" (Lev 19:27), and "You shall not become ritually impure by contact with the dead." (Lev. 21:1)

RABBINIC CONTEXT (RC)

The Tosefta, a later collection of traditions from roughly the same historical period as those in the Mishnah, provides details that clarify these categories.[46] This first type of commandment, which a father is obligated to do for his son, includes circumcising him, redeeming him if he is a first-born son, teaching him Torah, teaching him a trade, and finding him a wife. Others add that the father must also teach the son how to swim. Of these different responsibilities, the tradition in Tosefta Qiddushin dwells specifically on the importance of having a trade. "Anyone who does not teach his son a trade teaches him thievery." Obligations of the children to the parents include providing them food and drink, clothing and shelter, assistance in getting in and out of their living quarters, and help with personal hygiene. While both the son and daughter are obligated, it is understood that the daughter may not be able to assist her parents because she is under the authority of her husband.

Positive time-bound commandments include those related to the Sukkah, Lulav, and tefillin, as examples. Positive commandments that are not time-bound include returning lost objects, sending away the mother bird before taking the eggs, building a railing along one's roof, and the wearing of tzitzit (fringes). Rabbi Simeon exempts women from wearing tzitzit.

The rabbinic context described previously seems to represent a clear division between the religious and social functions of men and women. In fact, the rabbis compare a man without a trade to a woman without a husband.[47] However, when we view the larger rabbinic context, the lines begin to blur. Rabbi Simeon seems to be a minority opinion in stating that tzitzit is a time-bound commandment. Rabbi Simeon was a contemporary of Rabbi Meir whose wife Beruriah, daughter of a sage herself, is reported to have expressed independent opinions on Jewish legal matters.[48] While evidence concerning this issue is very limited, the religious reality of the day may not have followed such a simple division between gender roles as the one described in this mishnah.

TECHNICAL TERMS (TT)

Positive time-bound commandments—those injunctions phrased as "thou shalt do X." which are connected to a specific season of the year or time of day (See CC).

Negative commandments—those injunctions that are phrased "thou shalt not do X." Shabbat is both a positive commandment (Remember the Sabbath day) and a negative commandment (You shall not do any work).

BIBLICAL CONTEXT (BC)

Leviticus 19:27 You shall not round off the side-growth on your head, or destroy the side-growth of your beard.

Leviticus 21:1-4 The Lord said to Moses: Speak to the priests, the sons of Aaron, and say to them: None shall defile himself for any [dead] person among his kin except for the relatives that are closest to him: his mother, his father, his son, his daughter, and his brother; also for a virgin sister, close to him because she has not married, for her he may defile himself. But he shall not defile himself as a kinsman by marriage, and so profane himself.

HISTORICAL CONTEXT (HC)

In a general sense, the status of women in the Jewish and Roman legal systems of mishnaic times seems to have been roughly equivalent. In the words of one Roman law code, "In many parts of our law, the condition of woman is worse than that of men."[49] However, based on the rabbinic context presented previously, we cannot infer that the life of the people was exactly as it is reflected in the Mishnah.

CRITICAL COMMENTS (CC)

1. The understanding of what should be considered a *positive time-bound commandment* seems to have been a point of controversy in Mishnaic times. It is difficult to discern whether this precept had already been established and there was disagreement over its meaning or whether it represents a post hoc explanation of the differences between the traditional practices of men and women.

2. If the statement in this mishnah concerning the roles of men and women does not simply describe the religious life of the time, then it might represent one of three possibilities: a) past practice that had changed by the editing of the Mishnah; b) basic legal structure that was not intended to prescribe behavior in all specific cases; or c) a position that its author hoped could be attained or regained in the future.

[5][The sacrificial activities of] laying hands on [the head of the animal], elevating (waving), bringing [the meal offering] near [to the altar], taking a handful [of the meal offering], burning [on the altar], breaking the neck of a bird, sprinkling [the blood on the altar] and receiving [the blood from the slaughtered animal] are performed by men and not by women except for the meal offering of the *wife suspected of adultery* and the female *nazirite* who elevate [their own offerings].

RABBINIC CONTEXT (RC)

All of the sacrificial activities mentioned in this mishnah are found in Biblical passages with the exception of receiving the blood from the slaughtered animal (See BC). The blood was received in a vessel by a priest before it was sprinkled on the altar.[50] If the receiving was done by anyone other than a priest, the sacrifice was disqualified.[51]

The actions mentioned in this mishnah seem to divide into two categories: those done by the layperson bringing the sacrifice and those done by the priests. The first two could be done by the lay person while the rest were done by priests. There was a difference of opinion among the sages about woman laying hands on sacrifices. While some believed that woman should not do it, Rabbis Simeon and Jose argued that women could, but that they were not commanded to do so.[52] The difference seems to be over woman's prerogative to perform ritual acts that they are neither commanded to do nor prohibited from doing. The second lay act, that of elevating the meal offering, was not performed with woman's meal offerings.[53] All priestly acts were performed by men. The last two activities are cited as exceptions because Scripture specifically states that women are to perform them (See BC). The intent in this mishnah may be purely theoretical classification, as husbands are reported to have brought any sacrifice that their wives were obligated to bring.[54]

HISTORICAL COMMENTS (CC)

The rabbis associated with this argument lived in the middle of the second century. The sacrificial service had lapsed for almost a century by their time. The Mishnah here is merely systematizing Biblical rules under its own rubrics.

CRITICAL COMMENTS (CC)

1. The location of this tradition in the present context might be seen to imply that it was part of a larger discussion about Jewish gender roles. In fact, it is a continuation of the previous mishnah. Early versions of the Mishnah did not contain paragraph divisions. The use of similar language to begin 1:7,9,10 indicates that this paragraph is not an independent unit.

BIBLICAL CONTEXT (BC)

Leviticus 1:3-4 If his offering is a burnt offering from the herd, he shall make his offering a male without blemish. He shall bring it to the entrance of the Tent of Meeting, for acceptance in his behalf before the Lord. He shall lay his hand upon the head of the burnt offering, that it may be acceptable in his behalf, in expiation for him.

Leviticus 6:7-8 And this is the ritual of the meal offering: Aaron's sons shall present it before the Lord, in front of the altar. A handful of the choice flour and oil of the meal offering shall be taken from it, with all the frankincense that is on the meal offering, and this token portion shall be turned into smoke on the altar as a pleasing odor to the Lord.

Leviticus 7:28-31 And the Lord spoke to Moses, saying: Speak to the Israelite people thus: The offering to the Lord from a sacrifice of well-being must be presented by him who offers his sacrifice of well-being to the Lord: his own hands shall present the Lord's offerings by fire. He shall present the fat with the breast, the breast to be elevated (waved) as an elevation offering before the Lord, the priest shall turn the fat into smoke on the altar, and the breast shall go to Aaron and his sons.

Numbers 6:1-3 The Lord spoke to Moses, saying: Speak to the Israelites and say to them: If anyone, man or woman, explicitly utters a nazirite's vow, to set himself apart for the Lord, he shall abstain from wine and any other intoxicant; he shall not drink vinegar of wine or of any other intoxicant, neither shall he drink anything in which grapes have been steeped, nor eat grapes fresh or dried.

Numbers 5:11-15,25 The Lord spoke to Moses, saying: Speak to the Israelite people and say to them: If any man's wife has gone astray and broken faith with him in that a man has had carnal relations with her unbeknown to her husband, and she keeps secret the fact that she has defiled herself without being forced, and there is no witness against her—but a fit of jealousy comes over him and he is wrought up about the wife who has defiled herself; or if a fit of jealousy comes over one and he is wrought up about his wife although she has not defile herself--the man shall bring his wife to the priest. And he shall bring as an offering for her one-tenth of an ephah of barley flour. No oil shall be poured upon it and no frankincense shall be laid on it, for it is a meal offering of jealousy, a meal offering of remembrance which recalls wrongdoing....Then the priest shall take from the woman's hand the meal offering of jealousy, elevate the meal offering before the Lord, and present it on the altar.

TECHNICAL TERMS (TT)

Wife suspected of adultery—a married woman who was warned by her husband not to be alone with a certain man and yet did so. If there were not witnesses to report what occurred, she was subject to a semi-magical Temple ritual (See BC).

Nazirite—One who took a vow avoid any food or drink made from grapes, not to cut his or her hair and not to have contact with a corpse (See BC).

"Every commandment dependent upon the Land is only performed in the Land [of Israel], but those not dependent upon the Land are performed both inside and outside the Land [of Israel], with the exception of the [commandments concerning] *fruit of the first three years* and *illicit mixtures*.

Rabbi Eliezer says: also [use] of the *new grain*.

TECHNICAL TERMS (TT)

Fruit of the first three years—or *orlah* in Hebrew. Fruit of newly planted trees is forbidden for the first three years. The fourth year's produce was traditionally brought to Jerusalem (See BC).

Illicit mixtures— or *Kilayim* in Hebrew. The term refers to the prohibition against interbreeding different species of animals, growing different species of crops with no separation between the two, and wearing garment with wool and linen woven together within them (See BC). Such mixtures are seen as violations of the order of creation.

New grain—Each year, one was only allowed to eat of the new year's produce once a sheaf was offered to the Temple. This offering is called the *omer* and was practiced each day from Passover to *Shavu'ot*. This ritual is the origin of the "counting of the Omer," which is still commemorated today in more traditional congregations with a prayer at evening services between Passover and *Shavu'ot*.

RABBINIC CONTEXT (RC)

The phrasing of this mishnah is confusing. The two exceptions mentioned at the end of the first paragraph are exceptions to the first clause, not the second. These two practices are viewed by the author of this tradition as dependent on the Land but are also to be in force outside of the Land. However, the prohibitions against *illicit mixtures* do not seem to fit the category (See TT). Some of them are not dependent on the Land. The central concern of such agricultural laws is describing the proper way to farm God's Land. The prohibition against *illicit mixtures* seems more closely linked to protection of the general order of creation than to the Land itself.

In the Tosefta, this method of distinguishing among the commandments is expressed differently.[55] In that source, commandments to which Israel was bound before she entered the Land are binding both inside and outside the Land; while those commandments by which Israel was not bound until she entered the Land are only binding in the Land. The commandments concerning *fruit of the first three years* and *new grain* would be perfect examples of exceptions to the rule in that form because of the phrasing the Torah uses when giving those commandments (See BC). However, that source does not cite them as exceptions. Its author may not have thought that these practices need to be observed outside the Land of Israel, as there was disagreement as to whether the prohibition of *fruit of the first three years* need be observed outside the land.[56]

The three possible exceptions to the general rule that are listed in this mishnah occur again as a group elsewhere in the Mishnah.[57] It is possible therefore that the practice of observing them outside the Land may have come first followed by the general rule explaining it later (See CC).

HISTORICAL CONTEXT (HC)

As there had been diaspora Jewish communities since the time of the Babylonian exile in 586 B.C.E., it was important even in the days of the authors of the Mishnah to consider differences in practice between those within and outside the Land. The practices that are mentioned in this paragraph were still relevant when the Mishnah was edited. The average Jew still led a rural, agricultural life and was very attached to the commandments that were dependent on the Land. Rabbi Eliezer lived in the middle of the second century and was a student of Rabbi Akiva. In his lifetime, the Bar Kokhba rebellion failed and Jews were forbidden to enter Jerusalem or hold land around it.

BIBLICAL CONTEXT (BC)

Leviticus 19:23-25   When you enter the land and plant any tree for food, you shall regard its fruit as forbidden. Three years it shall be forbidden for you, not to be eaten. In the fourth year all its fruit shall be set aside for jubilation before the Lord; and only in the fifth year may you use its fruit—that its yield to you may be increased: I the Lord am your God.

Leviticus 19:19   You shall observe my laws. You shall not let your cattle mate with a different kind; you shall not sow your field with two kinds of seed; you shall not put on cloth from a mixture of two kinds of material.

Leviticus 23:10-12,14   Speak to the Israelite people and say to them: When you enter the land that I am giving to you and you reap its harvest, you shall bring the first sheaf of your harvest to the priest. He shall elevate the sheaf before the Lord for acceptance in your behalf; the priest shall elevate it on the day after the sabbath. On the day that you elevate the sheaf, you shall offer as a burnt offering to the Lord a lamb of the first year without blemish. Until that very day, until you have brought the offering of your God, you shall eat no bread or parched grain or fresh ears; it is a law for all time throughout the ages in all your settlements.

[10]Anyone who observes [even] one commandment will fare well, have a long life, and inherit [his portion of] the Land. But everyone who observes not even one commandment will not fare well nor have a long life nor inherit [his portion of] the Land.

Anyone who has a part in *Scripture*, *Mishnah*, and *correct conduct* will not quickly sin, as it is written, "A three-fold cord is not readily broken!" (Ecclesiastes 4:12). But anyone without a part in *Scripture*, *Mishnah*, and *correct conduct* has no part in society.

RABBINIC CONTEXT (RC)

The first paragraph of this mishnah is speaking in euphemistic language. The alternate version of this paragraph found in the Tosefta compares someone who observes even one commandment to someone who commits one sin, who is then said to do evil to himself and shorten his days.[58] The importance attached to any single action is typical of rabbinic thought. To that end, the parallel text chose another quotation from Ecclesiastes, "A single error (sin) destroys much of value." (9:18) Rabbi Simeon son of Elazar explains that each individual is judged based on the majority of his or her actions. Likewise, God judges the world after its majority. One should always assume that the self and the world are evenly balanced between virtue and vice and that any single action can tip the scales. Rabbi Simeon adds that a single act of repentance can redeem a life-long sinner while a single sin can destroy a life of righteousness.

The second paragraph of this mishnah describes the rabbinic antidote for sin. The phrase "have a part in" appears to mean "to acquire a share for oneself through study." Another version of the statement uses a word that implies study of *Scripture* and *Mishnah*, but not necessarily *correct conduct*.[59]

The prooftext from Ecclesiastes implies that the author approved of the book. Into the second century of this era, the rabbis did not agree on the exact religious status of the book of Ecclesiastes.[60]

TECHNICAL TERMS (TT)

Scripture--this term can refer to the Five Books of Moses or the entirety of the Jewish Bible. Here it seems to mean the entire Jewish Bible, which is the written tradition.

Mishnah--this term is used in early rabbinic sources to refer to the teachings of a given rabbi. Here it more generally denotes the oral traditions of the sages of the day.

Correct conduct--or in Hebrew *derekh eretz*, literally, the way of the land. One rabbinic description of *derekh eretz* includes a man getting himself a trade, then a house, a piece of land, and then a wife.[61] In the present context, the term may refer more generally to proper behavior toward others, in a social context.

HISTORICAL CONTEXT (HC)

The notion of "inheriting the Land" can be understood in a number of ways. Some take it as an oblique reference to the world to come.[62] However, elsewhere in the Mishnah, lack of study is not listed as a reason for exclusion from the world to come.[63] The phrase probably refers to the Land itself, which is the ancestral property of the Jewish people, whose title had been taken by the Romans, at least effectively, since the year 70 C.E.[64] The fact that the Jews were a largely agricultural people in this period would give the image more force. Further, the worldview of the sages of mishnaic times not only supports this reading but also creates a connection between inheriting the land and being part of the Israelite society, which was considered a holy system. The rabbis saw the life of the people on the land of Israel as a stable counterpart to the enduring heavenly order.[65] In times of chaos, following the destruction of the Second Temple and the end to Jewish hopes of restoring it with the failure of the Bar Kokhba rebellion, such an image may have been comforting to the majority of the Jewish population.

CRITICAL COMMENTS (CC)

1. There is a clear rhetorical connection between the first six *mishnayot* in this chapter and the last four. They are all part of a larger construction that makes up this first chapter of tractate Qiddushin. Is there a relationship between the content of these two sub-units or not?

[1]A man may betroth [a women] by his own [action] or through his agent. A woman may be betrothed by her own [action] or through her agent. A man may betroth his daughter [to another] when she is a *minor* by his own [action] or through his agent.

If one says to a woman:

"Be betrothed to me with this date, be betrothed to me with this [other date],"--if one of them is worth a *perutah*, she is betrothed; but if not, she is not betrothed.

["Be betrothed to me] with this one and this one and this one,"--if all of them are worth at least a *perutah*, she is betrothed; but if not, she is not betrothed.

If she was eating them one by one, she is not betrothed unless one of them was worth a *perutah*.

[2][If a man said,] "Be betrothed to me with this cup of wine," but it was honey,

"...with this honey," but it was wine,

"...with this silver dinar," but it was gold,

"...with this gold dinar," but it was silver,

"...on the condition that I am rich," but he was poor,

"...on the condition that I am poor," but he was rich--

[in all these cases] she is not betrothed.

Rabbi Simeon says--if he deceived her to [her] advantage, she is betrothed.

[3]"...on the condition that I am a *priest*," but he turns out to be a *Levite*,

"...a *Levite*," but he turns out to be a *priest*,

"...a *natin*," but he turns out to be a *mamzer*,

"...a *mamzer*," but he turns out to be *natin*,

"...a village dweller," but he turns out to be a city dweller,

"...a city dweller," but he turns out to be a village dweller,

"...on the condition that my house is near to a bathhouse," but it turns out to be far away,

"...far away [from a bathhouse]," and it turns out to be near,

"...on the condition that I have a daughter or bondwoman who is a hairdresser," but he has none, or

"...on the condition that he has none," but he has,

"...on the condition that I have no children," but he has, or "on the condition that I have [children]," but he has not--

In all these [cases], even if she says, "In my heart I would nevertheless become his betrothed," she is not betrothed, and similarly if she deceived him.

[4]If one says to his agent, "Go and betroth a certain woman to me in such-and-such a place, but he went and betrothed her in another place, she is not betrothed.

[If he said], "Now, she is in such-and-such a place," and he betrothed her in a different place, she is betrothed.

[5]If one betroths a woman on the condition that she is under no vows, but she turned out to be under vows, she is not betrothed. If he simply married her, and she turned out to be under vows, she should go out [from his house] without ketubbah.

If [one betroths a woman] on the condition that she had no defects, and she turns out to have defects, she is not betrothed. If he simply married her, and she turned out to have defects, she should go out [from his house] without ketubbah. Any defect that is disqualifying for priests is disqualifying for women.

[6]If one betroths two women with the equivalent of a perutah, or one woman with less than a perutah, despite the fact that he sent gifts afterward, she is not betrothed because he sent them on account of the prior betrothal.

And [the case is] similar if a minor betrothed a woman.

[7]If one betroths a woman and her daughter or a woman and her sister at once, they are not betrothed.

An occurrence [is reported] of five women, among whom were two sisters: a certain [man] collected a basket of figs which were from their [property], but it was the Sabbatical year, and he said: Now, all of you are betrothed to me by [virtue of] this basket [of figs], and one of them accepted on behalf of them all; and the Sages said: The sisters are not betrothed.

8[If a priest] betroths [a woman] with his *portion*, whether from among *the most holy sacrifices* or *the less holy sacrifices*, she is not betrothed.

[If one betroths a woman] with *second tithe*, whether accidentally or intentionally, he has not betrothed [her], according to Rabbi Meir. Rabbi Judah says: If accidentally, he has not betrothed [her], if intentionally, he has betrothed [her].

[If one betroths a woman] with *an object dedicated to the Temple*, if intentionally, he has betrothed [her], if accidentally, he has not, according to Rabbi Meir. Rabbi Judah says: If accidentally, he has betrothed [her], if intentionally, he has not

9If he betroths [a woman] with:
(1)fruit of the first three years of a tree's growth,
(2)mixed seeds in a vineyard,
(3)an ox due to be stoned,
(4)a heifer whose neck is to be ceremonially broken,
(5)bird offerings for a *metzorah*,
(6)the hair of a *nazirite*,
(7)the first born of an ass,
(8)meat [cooked in] milk,
(9)meat of *an unconsecrated animal* slaughtered in the Temple precinct,
--she is not betrothed.

If he sold them and betrothed [her] with the money, she is betrothed.

10If one betroths [a woman] with *priests' due*, tithes, *gifts [to be given to the priest]*, *water of purification*, *or ashes of purification*--Now this one is betrothed, even if he be an Israelite.

[1]A man may betroth [a women] by his own [action] or through his agent. A woman may be betrothed by her own [action] or through her agent. A man may betroth his daughter [to another] when she is a *minor* by his own [action] or through his agent.

If one says to a woman:

"Be betrothed to me with this date, be betrothed to me with this [other date],"--if one of them is worth a *perutah*, she is betrothed; but if not, she is not betrothed.

["Be betrothed to me] with this one and this one and this one,"--if all of them are worth at least a *perutah*, she is betrothed; but if not, she is not betrothed.

If she was eating them one by one, she is not betrothed unless one of them was worth a *perutah*.

RABBINIC CONTEXT (RC)

This mishnah seems to follow the order of inquiry suggested in 1:1. That paragraph asked how one may become betrothed through the transfer of money, and now this paragraph begins to provide the details.

The rabbis assumed that the act of betrothal, whether by agents or the actors themselves, required two proper witnesses. Agents could not serve as witnesses to the betrothal.[66]

The power of the father to give his minor daughter in betrothal was unique in the family structure. He may arrange for betrothal by any of the three methods listed in mishnah 1:1.[67] Just as the father could not give his son in betrothal, so a mother could not give her daughter in betrothal.[68]

This mishnah and those after it concentrate on betrothal by exchange of money. This paragraph establishes an aspect of betrothal by exchange of money that is central to understanding later passages. The object(s) used for betrothal must have a value of at least a *perutah*.

If he gives her a number of dates and accompanies each by a statement of betrothal, then if even one is worth a *perutah*, she is betrothed. If he makes one statement of betrothal for all of the dates, then the sum of their values must be at least a *perutah*. The minimum value is the same. His choice of wording defines whether one date or their sum total must be worth at least a *perutah*.

If she eats them as she receives them, at least one or more dates worth the minimum amount must remain with her at the end because once she eats a date, it no longer has any value.[69] To know if a valid betrothal has taken place, the rabbis must know which objects do have value and which do not. This principle is further investigated in the last three *mishnayot* of this chapter (2:8-10).

HISTORICAL CONTEXT (HC)

The use of agents by either side in arranging betrothal in the rabbinic period is a transformation of an older concept from the Bible.[70] At that time, fathers seem to have been able to give either their sons or daughters in betrothal.[71] No example of a woman appointing her own agent for betrothal is found in the Bible. This and other features introduced by the rabbis parallel the introduction of similar features into Roman law.[72] However, the changes seem to be responses to the shared surroundings in which they lived rather than one legal system imitating the other.[73]

The use of dates as an example of betrothal by money reflects the economy of barter that was prevalent among the Jewish farmers of the land of Israel. Further, dates were a source of pride. The dates of the land of Israel were world famous at that time.[74]

TECHNICAL TERMS (TT)

Minor—in rabbinic terminology, the daughter can be classified in three ways. A girl under the age of twelve is a *ketanah*—literally, a little one. The word used here is *ne'arah* which refers to a young woman who is between the ages of twelve and twelve and one half and has not yet shown physical signs of maturity. *Perutah*—a coin of small value. See Qiddushin 1:1 TT.

CRITICAL COMMENTS (CC)

1. From this mishnah we can see that betrothal by exchange of money involved the giving of the money and an accompanying statement. The editor of the Mishnah chose to focus on the money itself and its exchange, apparently following in the framework of the opening paragraph 1:1.[75] Contemporaneous traditions concerning the proper content of the statement made are reported in the Tosefta but not included in the Mishnah itself.

2. The three central sections of this tractate of the Mishnah (2:1-10, 3:1-11, and 3:12-4:8) seem to make up the heart of the tractate. They articulate typical rabbinic themes also found in the tractate on divorce.[76] These paragraphs consider A) the actions of agents, B) betrothals limited by conditions,

C) impaired betrothals, and D) betrothals in doubtful cases. Why would the rabbis be so concerned about these topics in addressing this area of the law? What does this say about the purpose of the Mishnah?

[2][If a man said,] "Be betrothed to me with this cup of wine," but it was honey,

"...with this honey," but it was wine,

"...with this silver dinar," but it was gold,

"...with this gold dinar," but it was silver,

"...on the condition that I am rich," but he was poor,

"...on the condition that I am poor," but he was rich--

[in all these cases] she is not betrothed.

Rabbi Simeon says--if he deceived her to [her] advantage, she is betrothed.

RABBINIC CONTEXT (RC)

This mishnah indicates the seriousness the rabbis attributed to the precise words spoken at the time of betrothal. According to the anonymous opinion that begins this paragraph (referred to in Hebrew as the *tanna kamma*, "the first teacher"), even though an object of sufficient value has been exchanged, the inaccuracy of the statement of betrothal invalidates the act. The concern here seems to be that the act was imperfect, not necessarily that dishonesty was intended. For example, to correct the defect, she need only return the object to him. He can then immediately return it to her while describing it accurately and they are betrothed, if she accepts it.[77]

Rabbi Simeon seems to infer that the there can be betrothal when error is involved in the man's statement, which could imply that the intentions of those involved are relevant. The prior opinion does not consider intentions as relevant. Another version of Rabbi Simeon's opinion understands her "advantage" only to mean a monetary advantage.[78]

The early rabbinic definition of "rich" appears to be relative, rather than absolute.[79] To accurately describe someone as rich, they need not be extremely wealthy. If his neighbors treat him with honor because of his wealth, then he may be called rich.

The conditions expressed in this mishnah are one of the four kinds of conditions discussed in this tractate.[80] Betrothal may be conditional upon some aspect of the persons involved. In a society where betrothal by agent was common, such conditions would be important.

[3]"...on the condition that I am a *priest*," but he turns out to be a *Levite*,

"...a *Levite*," but he turns out to be a *priest*,

"...a *natin*," but he turns out to be a *mamzer*,

"...a *mamzer*," but he turns out to be *natin*,

"...a village dweller," but he turns out to be a city dweller,

"...a city dweller," but he turns out to be a village dweller,

"...on the condition that my house is near to a bathhouse," but it turns out to be far away,

"...far away [from a bathhouse]," and it turns out to be near,

"...on the condition that I have a daughter or bondwoman who is a hairdresser," but he has none, or

"...on the condition that he has none," but he has,

"...on the condition that I have no children," but he has, or "on the condition that I have [children]," but he has not--

In all these [cases], even if she says, "In my heart I would nevertheless become his betrothed," she is not betrothed, and similarly if she deceived him.

TECHNICAL TERMS (TT)

Priest--or *kohein* in Hebrew. One descended from the line of Aaron, brother of Moses, who was of the tribe of Levi. The *kohanim* (plural) were in charge of the sacrificial service in the Temple. Certain tithes offered by the people provided sustenance for the priests and their families. Even after the Temple's destruction, the tithes continued to be collected and delivered to the priests.

Levite--or *levi* in Hebrew. One descended from the tribe of Levi but not of the line of Aaron. The Levites served in the Temple in a lesser capacity and were also supported by the people by a tithing system.

Natin--children of foreign slaves owned by Israelites. Biblical law gives these children to their Israelite owners. Their descendants became a lowly caste in Jewish society.[81] Later rabbinic tradition holds that this term may instead represent a nation of individuals known as Gibeonites who converted en masse in the time of Joshua but were forbidden since the days of King David to intermarry with the rest of the Jewish population.

Mamzer--usually translated as "bastard." In Jewish law, the term refers to children of an incestuous union, not those born out of wedlock.

HISTORICAL CONTEXT (HC)

The examples given in this mishnah were involved with significant social variables in early rabbinic times. The importance of one's pedigree within Jewish society was in a state of flux during this period. After the destruction of the Temple, various groups within the nation put forth social and ideological programs.[82] However, this mishnah probably does not reflect such efforts by the sages. The rabbis may primarily be reorganizing biblical categories under their own rubrics rather than describing the society of their day. For more detailed information on Jewish castes, see 3:12ff and appropriate contextual supplements.

In the mishnaic period, the size of the city in which one lived had different implications than it does today. One of the primary methods by which the Romans "romanized" captured populations was through urbanization.[83] In larger cities, especially the Roman cities along the Mediterranean coast, Jews were likely to be more deeply affected by foreign culture and more likely to take on foreign names.[84] Bathnouses were both evidence for and sources of Roman influence.[85] Rural populations were less exposed to Roman culture. In fact, the word translated as "village" in this mishnah may actually refer to an isolated farmhouse.[86] As such, it would provide quite a contrast to a large city (See CC).

RABBINIC CONTEXT (RC)

This mishnah is merely a continuation of the previous one (The early manuscripts of the Mishnah were divided only by chapter). Its conclusion states even more clearly that the act of betrothal must be a proper act. A defective procedure with the intention to become betrothed is not sufficient. The opinion of Rabbi Simeon from the previous mishnah is not accepted in this paragraph.

CRITICAL COMMENTS (CC)

1. The primary concern of this mishnah is that statements of betrothal be accurate. However, based on the historical evidence, the examples given in this mishnah may also allude, through the use of biblical, priestly categories, to an individual's place in Jewish society and attitude toward Roman society. What might parallels to these concerns be in modern Jewish society? How might they affect the issue of marriage?

[4]If one says to his agent, "Go and betroth a certain woman to me in such-and-such a place, but he went and betrothed her in another place, she is not betrothed.

[If he said], "Now, she is in such-and-such a place," and he betrothed her in a different place, she is betrothed.

RABBINIC CONTEXT (RC)

Just as the sages were concerned that statements of betrothal must be correct, they were also concerned that instructions to an agent must be precise. The tractate concerning divorce contains a parallel tradition that understands this first statement to say that the betrothal must take place in the specified location.[87] In the Tosefta, Rabbi Elazar disagrees. He states that unless one specified that the betrothal could only take place in a given location, the betrothal is valid.[88]

[5]If one betroths a woman on the condition that she is under no vows, but she turned out to be under vows, she is not betrothed. If he simply married her, and she turned out to be under vows, she should go out [from his house] without *ketubbah*.

If [one betroths a woman] on the condition that she had no *defects*, and she turns out to have *defects*, she is not betrothed. If he simply married her, and she turned out to have *defects*, she should go out [from his house] without *ketubbah*. Any *defect* that is disqualifying for priests is disqualifying for women.

RABBINIC CONTEXT (RC)

This mishnah is repeated with greater explanation in the tractate of the Mishnah concerning the *ketubbah*.[89] As with earlier rulings in this chapter, the primary concern of the paragraph is to systematize biblical categories under rabbinic rubrics.

If the condition set down at the time of betrothal is not met, the betrothal is invalid. Each party must have an accurate understanding of the person with whom they will be sharing a relationship.[90]

This mishnah assumes that if a marriage takes place with no explicit statement of betrothal, the normal assumption is that the woman has no *defects* and is not under any vows. The kind of vows referred to include vowing not to eat meat or not to drink wine or not to wear colored clothing.[91] If this assumption proves false, the woman should be divorced but receives no *ketubbah*. However, there is another solution. If she goes to a sage and he releases her from her vow, they may remain married.[92] Even if divorce is chosen, such a measure is not punitive. She receives no *ketubbah* because the betrothal and marriage never properly took place. While the sages speak of cases where the woman is punished and receives no *ketubbah*, such rulings only apply when she violates ritual, moral, or social rules.[93]

The topic of vows is a natural example for a tradition such as this one. Because a man has the right to invalidate vows his wife makes that would affect their marriage or her person, the issue of vows is a crucial one for their relationship (See BC).

Defects present a problem whether they are on the woman or the man. Each may have physical disabilities that invalidate the marriage. If the man has a profession that results in poor personal hygiene, such as a tanner of skins, such problems are also considered *defects*.[94] While a woman does not have the power to divorce her husband, the court may force him to give her a divorce if he has a serious *defect* with which she is unable to live.[95]

Even if she was aware of the *defect* but finds herself unable to live with it, the sages allow her to leave the marriage in some cases.[96]

TECHNICAL TERMS (TT)

Ketubbah--Today the word "*ketubbah*" is used to refer to the Jewish marriage document. The word originally referred to the amount of money that the woman would receive should she be divorced or upon the death of her husband. The *ketubbah* document took its name from this central provision contained in it.

Defects--this term refers specifically to physical defects that have a root in the priestly tradition (See BC). Disqualifying defects can be found on the man as well as the woman (See RC).

HISTORICAL CONTEXT (HC)

This mishnah appears as part of a larger block of text in Tractate Ketubbot. Its context there consists of rulings attributed to sages who lived through the Bar Kokhba rebellion. They were the last generation to struggle for independence and the first to try to make a life for the people without it.[87] Sanctity had previously been identified mainly with Temple. Expanding the priestly rules concerning *defects* to the general population may have involved an attempt to sanctify everyday life. However, it may also simply be a result of the mishnaic attempt to systematize biblical tradition. The latter explanation would imply that the rulings in this mishnah serve primarily a rhetorical rather than an ideological function.

BIBLICAL CONTEXT (BC)

Leviticus 17:17-20 Speak to Aaron and say: No man of your offspring throughout the ages who has a defect shall be qualified to offer the food of his God. No one at all who has a defect shall be qualified: no man who is blind, or lame, or has a limb too short or too long; no man who has a broken leg or a broken arm; or who is hunchback, or a dwarf, or who has a growth in his eye, or who has a boil-scar, or scurvy, or crushed testes.

Numbers 30:7-9 If she should marry while her vow or the commitment to which she bound herself is still in force, and her husband learns of it and offers no objection on the day he finds out, her vow shall stand and her self-imposed obligations shall stand. But if her husband restrains her on the day that he learns of it, he thereby annuls her vow which was in force or the commitment to which she bound herself; and the Lord will forgive her.

CRITICAL COMMENTS (CC)

1. This mishnah represents an interesting mix of Biblical and Rabbinic ideas. The notion of a *ketubbah* is a clear rabbinic innovation.[88] Yet the subjects of *defects* and vows have clear grounding in the Torah. Allusions to details from Scripture do not tell us what importance the rabbis placed on them relative to their own traditions.[89] What orientation toward biblical text does this mishnah suggest?

[6]If one betroths two women with the equivalent of a *perutah*, or one woman with less than a *perutah*, despite the fact that he sent gifts afterward, she is not betrothed because he sent them on account of the prior betrothal.

And [the case is] similar if a minor betrothed a woman.

RABBINIC CONTEXT (RC)

This paragraph offers a new example to confirm that betrothal must be contracted with a minimum value of a *perutah* in order to be valid. While gifts sent after the betrothal may be of significant value, they are sent to one already betrothed and are not considered to be part of the betrothal money.

The last sentence of this mishnah indicates that if a minor did attempt to betroth a woman, the betrothal is not valid. If he sends her gifts of significant value after he has reached maturity, they are still not betrothed.

The giving of gifts seems to have been an important obligation, even in hard economic times. The Tosefta records one ruling concerning one who robbed in order to send gifts to the house of his betrothed.[100]

TECHNICAL TERMS (TT)

Perutah--a coin of small value (See TT to mishnah 1:1)

HISTORICAL CONTEXT (HC)

The practice of giving betrothal gifts is recorded in both Jewish and Roman Law. In Jewish tradition, the giving of gifts appears to have been common and expected.[101] This practice may have been a partial response to the minuscule amount of money required for the act of betrothal itself.[102] The common Jews of the times seem to have turned the giving of gifts into a social norm.[103] The articles given were considered betrothal gifts and were not contingent on marriage in early rabbinic times. In later times, the tradition reversed itself and declared that gifts must be returned if the marriage does not take place. Worsening economic conditions may have contributed to this legal shift.[104]

The giving of betrothal gifts was an important consideration in Roman law because husbands were prohibited from giving gifts to their spouses once they were formally married.[105] The custom of giving a ring as an engagement gift is Roman in origin. Likewise, the Roman custom was to wear such a ring on the fourth finger.[106] The Jewish custom was to place the ring on the thumb.

CRITICAL COMMENTS (CC)

1. One historian suggests that this tradition may have been formulated in order to counter sentiment among the people that the giving of gifts was a required, legal part of betrothal.[107] If such an interpretation were valid, what would this intention say about the roles of the Jewish leadership and laity in the days of the Mishnah?

2. How are modern engagement and wedding gifts similar and/or different from the gifts described in this mishnah?

[7]If one betroths a woman and her daughter or a woman and her sister at once, they are not betrothed.

An occurrence [is reported] of five women, among whom were two sisters: a certain [man] collected a basket of figs which were from their [property], but it was the Sabbatical year, and he said: Now, all of you are betrothed to me by [virtue of] this basket [of figs], and one of them accepted on behalf of them all; and the Sages said: The sisters are not betrothed.

RABBINIC CONTEXT (RC)

A betrothal is not considered valid if incest would be involved (See mishnah 3:12). The examples that occur in the first sentence of this mishnah parallel the relevant biblical verses very closely (See BC). The occurrence cited here falls clearly under the general rule that begins the paragraph.

For a betrothal to be binding, the man must own the object that he gives to the woman. In the case presented in this mishnah, the man does own the basket of figs. During the sabbatical year, that which grows in the fields is considered ownerless (See BC). The first to make a claim to it becomes its owner.

BIBLICAL CONTEXT (BC)

Leviticus 18:17-18 Do not uncover the nakedness of a woman and her daughter; nor shall you marry her son's daughter or her daughter's daughter and uncover her nakedness: they are kindred; it is depravity. Do not marry a woman as a rival to her sister and uncover her nakedness in the other's lifetime.

Leviticus 25:2-7 Speak to the Israelite people and say to them: When you enter the land that I assign to you, the land shall observe a sabbath of the Lord. Six years you may sow your field and six years you may prune your vineyard and gather in the yield. But in the seventh year the land shall have a sabbath of complete rest, a sabbath of the Lord: you shall not sow your field or prune your vineyard. You shall not reap the aftergrowth of your harvest or gather the grapes of your untrimmed vines; it shall be a year of complete rest for the land. But you may eat whatever the land during its sabbath will produce--you, your male and female slaves, the hired and bound laborers who live with you, and your cattle and the beasts in your land may eat all its yield.

[8][If a priest] betroths [a woman] with his *portion*, whether from among *the most holy sacrifices* or *the less holy sacrifices*, she is not betrothed.

[If one betroths a woman] with *second tithe*, whether accidentally or intentionally, he has not betrothed [her], according to Rabbi Meir. Rabbi Judah says: If accidentally, he has not betrothed [her], if intentionally, he has betrothed [her].

[If one betroths a woman] with *an object dedicated to the Temple*, if intentionally, he has betrothed [her], if accidentally, he has not, according to Rabbi Meir. Rabbi Judah says: If accidentally, he has betrothed [her], if intentionally, he has not.

RABBINIC CONTEXT (RC)

The central point at issue in this mishnah is whether the man has the legal right to the use of at least a *perutah's* value of the item being exchanged to effect betrothal.[108] If he does, then the betrothal is binding. If not, there is no betrothal.

The priestly portion is intended only for food only.[109] Because it cannot be used for any other purpose, it has no value to its owner and cannot effect betrothal.

Rabbi Meir's opinion about *second tithe* is that it is sanctified for a specific purpose in Jerusalem and may only be used for food. Therefore it has no value and cannot be used for betrothal.[110]

However, Rabbi Judah appear to believe that the *second tithe* becomes sanctified only by an act of the original owner. Therefore, if the individual uses the tithe for a secular purpose intentionally, the tithe has value and the act is valid. However, if one uses *second tithe* accidentally, the inaccuracy in the act of betrothal invalidates it.

Items dedicated to the Temple can be effectively used for secular purposes, but one pays a penalty. Rabbi Meir believes that legally binding misuse occurs with intent. Without intent, the object remains sanctified and cannot effect betrothal. Rabbi Judah believes that legally binding misuse occurs without intent. One may not intentionally misuse something that has been dedicated to the Temple and thereby effect betrothal.

TECHNICAL TERMS (TT)

Portion--the Bible grants a part of any sacrifice a priest offers to him as food.

The most holy sacrifices-- or in Hebrew *kodshei kodashim*. Examples of these include sin offerings and guilt offerings (See BC). These seem to be required sacrifices.

The less holy sacrifices--or in Hebrew *kodashim kalim*. Examples of these include offerings of thanksgiving or of well-being. These seem to be voluntary sacrifices.

The second tithe--or in Hebrew *ma'aser sheni*. That part of one's yearly produce and livestock that must be brought up to Jerusalem and may only be eaten there. However, one may convert this tithe into money and bring the money to Jerusalem (See BC).

Object dedicated to the Temple--or in Hebrew *heiqdesh*. As soon as one verbally promises an object or animal to the Temple treasury it becomes the property of the Temple. From that point onward, the individual no longer owns it (See mishnah 1:6).

BIBLICAL CONTEXT (BC)

Leviticus 6:17-18 The Lord spoke to Moses, saying: Speak to Aaron and his sons thus: This is the ritual of the sin offering: the sin offering shall be slaughtered before the Lord, at the spot where the burnt offering is slaughtered: it is <u>most holy</u>.

Leviticus 7:1 This is the ritual of the guilt offering: it is <u>most holy</u>.

Deuteronomy 14:22-25 You shall set aside every year a tenth part of all the yield of your sowing that is brought from the field. You shall consume the tithes of your new grain and wine and oil, and the firstlings of your herds and flocks, in the presence of the Lord your God, in the place where He will choose to establish His name, so that you may learn to revere the Lord your God forever. Should the distance be too great for you, should you be unable to transport the, because the place where the Lord your God has chosen to establish His name is far from you and because the Lord your God has blessed you, you may convert them into money. Wrap up the money and take it with you to the place that the Lord your God has chosen.

Judges 17:1-3 There was a man in the hill country of Ephraim whose name was Micah. He said to his mother, "The eleven hundred shekels of silver that were taken from you, so that you uttered an imprecation(*) which you repeated in my hearing—I have that silver; I took it." "Blessed of the Lord be my son," said his mother. He returned the eleven hundred shekels of silver to his mother; but his mother said, "<u>I herewith consecrate the silver to the Lord</u>, transferring it to my son to make a sculptured image and a molten image. I now return it to you. (*) This phrase implies that she had uttered an imprecation cursing anyone who knew of the whereabouts of the money but did not disclose it.

⁸If he betroths [a woman] with:
(1)fruit of the first three years of a tree's growth,
(2)mixed seeds in a vineyard,
(3)an ox due to be stoned,
(4)a heifer whose neck is to be ceremonially broken,
(5)bird offerings for a *metzorah*,
(6)the hair of a *nazirite*,
(7)the first born of an ass,
(8)meat [cooked in] milk,
(9)meat of *an unconsecrated animal* slaughtered in the Temple precinct,
--she is not betrothed.
    If he sold them and betrothed [her] with the money, she is betrothed.

RABBINIC CONTEXT (RC)

Each of the items in this list is forbidden for use on some level. The bird offering, the hair, and the first born ass are all sacrificial items. The remainder of the list represents biblical prohibitions. Therefore, the objects themselves could not be used to effect betrothal because they have no value. If he were to sell them, the prohibition does not remain with the money or object exchanged for them. Therefore, their value, if recovered through sale, could be used for betrothal.

TECHNICAL TERMS (TT)

Metzorah--One who has contracted some kind of skin ailment. While the word is normally translated as "leper," the Hebrew term does not expressly refer to those afflicted with leprosy. Inanimate objects are also described as contracting the condition denoted by this term, though perhaps only by analogy.

Nazirite--One who took a vow to avoid any food or drink made from grapes, not to cut his or her hair and not to have contact with a corpse.

An unconsecrated animal--only those animals to be offered as sacrifices may be slaughtered in the Temple precincts. If an animal is slaughtered for food with no sacrificial purpose in the Temple, its meat is forbidden.

BIBLICAL CONTEXT (BC)

Leviticus 19:23-25 When you enter the land and plant any tree for food, you shall regard its fruit as forbidden. Three years it shall be forbidden for you, not to be eaten. In the fourth year all its fruit shall be set aside for jubilation before the Lord; and only in the fifth year may you use its fruit--that its yield to you may be increased: I the Lord am your God.

Leviticus 19:19 You shall observe my laws. You shall not let your cattle mate with a different kind; you shall not sow your field with two kinds of seed; you shall not put on cloth from a mixture of two kinds of material.

Exodus 21:28 When an ox gores a man or a woman to death, the ox shall be stoned and its flesh shall not be eaten, but the owner of the ox is not to be punished.

Deuteronomy 21:1-4,7-8 If, in the land that the Lord your God is assigning you to possess, someone slain is found lying in the open, the identity of the slayer not being known, your elders and magistrates shall go out and measure the distances from the corpse to the nearby towns. The elders of the town nearest to the corpse shall then take a heifer which has never been worked, which has never pulled in a yoke; and the elders of that town shall bring the heifer down to an overflowing wadi, which is not tilled or sown. There, in the wadi, they shall break the heifer's neck...And they shall make this declaration: "Our hands did not shed this blood, nor did our eyes see it done. Absolve, O Lord, Your people Israel whom You redeemed, and do not let guilt for the blood of the innocent remain among Your people Israel.

Leviticus 14:1-4 The Lord spoke to Moses, saying: This shall be the ritual for a leper at the time that he is to be cleansed. When it has been reported to the priest, the priest shall go outside the camp. If the priest sees that the leper has been healed of his scaly affection, the priest shall order two live clean birds, cedar wood, crimson stuff, and hyssop to be brought for him who is to be cleansed.

Numbers 6:18 The nazirite shall then shave his consecrated hair, at the entrance of the Tent of Meeting, and take the locks of his consecrated hair and put them on the fire that is under the sacrifice of well-being.

Exodus 13:12-13 You shall set apart for the Lord every first issue of the womb: every male firstling that your cattle drop shall be the Lord's. But every firstling ass you shall redeem with a sheep; if you do not redeem it, you must break its neck. And you must redeem every first-born male among your children.

[10]If one betroths [a woman] with *priests' due*, *tithes*, *gifts [to be given to the priest]*, *water of purification*, *or ashes of purification*--Now this one is betrothed, even if he be an Israelite.

TECHNICAL TERMS (TT)

Priests' due--or in Hebrew *terumah*. The first harvested crops from the field were to be given to the priests as they did not have land of their own. Though this offering has no set measure, the rabbis set a normative figure of two percent.(See BC)[111]

Gifts--Certain parts of the animal sacrifices which were became the property of the priest who performed the sacrifice (See BC).

Water of purification--when one became ritually impure through direct or indirect contact with a corpse, the only way to remove the impurity was having a priest sprinkle the water of purification over you. The water was mixed with ashes from the burnt sacrifice of the red heifer.

Ashes of purification--This term refers to the ashes of the red heifer that were necessary for the production of the water of purification (See BC).

RABBINIC CONTEXT (RC)

This short paragraph is difficult to construe. The idea that a woman may be betrothed with *priests'-due* or *gifts* seems to contradict the sense of mishnah 2:8. There are at least two possible explanations. 1) The Israelite who gives the gifts has the right to choose to which priest he will give them. This right of disposition has monetary value. If the value is sufficient, he may give this right of choice to the woman as a token of betrothal. 2) This paragraph may deal with a different case. An Israelite whose maternal grandfather was a priest could inherit such cultic objects as *priests'-due* from him. While the Israelite who inherited these things could not use them himself, he could sell them to priests. Therefore, to him, they would have value and could be used to affect betrothal. Based on either understanding of this paragraph, it is possible that the sense of the last clause of this mishnah is "but only if he were an Israelite."

BIBLICAL CONTEXT (BC)

Exodus 29:26-28 Then take the breast of Aaron's ram of ordination and offer it as an elevation offering before the Lord; it shall be your portion. You shall consecrate the breast that was offered as an elevation offering and the thigh that was offered as a gift offering from the ram of ordination—from that which was Aaron's and from that which was his sons'—and those parts shall be a due for all time from the Israelites to Aaron and his descendants. For they are a gift; and so shall they be a gift from the Israelites, their gift to the Lord out of their sacrifices of well-being.

Numbers 19:9-10 A man who is clean shall gather up the ashes of he cow and deposit them outside the camp in a clean place, to be kept for water of lustration for the Israelite community. It is for cleansing. He who gathers up the ashes of the cow shall also wash his clothes and be unclean until evening.

1 If one says to his fellow, "Go and betroth a certain woman to me," and [the agent] went and betrothed her to himself, she is betrothed.

And similarly, if one said to a woman, "You are hereby betrothed to me after thirty days time," and another comes and betroths her within the thirty days, she is betrothed to the second. If she is a common Israelite [becoming betrothed] to a priest, she may eat *priests'-due*.

[If a man says to a woman, "You are betrothed to me] from this moment after thirty days time," and another comes and betroths her within thirty days, she may or may not be betrothed. If she is a common Israelite [becoming betrothed] to a priest, or the daughter of a priest to a common Israelite, she may not eat *priests'-due*.

2 If one says to a woman, "You are hereby betrothed to me on the condition that I give you two hundred *zuzim*," she is betrothed, but he [must] give it.

"...On the condition that I will give it to you within thirty days time." If he gave it to her within thirty days, she is betrothed, but if not, she is not betrothed.

"...On the condition that I have two hundred *zuzim*," she is betrothed, but he [must] have it.

"...On the condition that I will show you two hundred *zuzim*," she is betrothed, but he [must] show [it to] her. But if he showed [it to] her on the money-changer's table, she is not betrothed.

3 "...On the condition that I have a *beit kor* of land," she is betrothed but he [must] have it.

"...On the condition that I have [the land] in such and such a place," If he has it, she is betrothed, but if not, she is not betrothed.

"...On the condition that I show you a *beit kor* of land," she is betrothed, but he must show [it to] her. If he showed it to her in a valley, she is not betrothed.

4 Rabbi Meir says: Any condition that is unlike the condition of the *Gadites* and the *Reubenites* is not a [valid] condition, as it is written, "Moses said to them 'If the *Gadites* and the *Reubenites* cross over,'" and it is written, "But if they do not cross over with you as shock-troops" (Numbers 32:29,30).

Rabbi Hananiah son of Gamliel says: This matter had to be stated, for had it not been, it could have meant that even in the land of Canaan they would not inherit.

[5]If one betroths a woman and [then] says:
I thought she was of *priestly descent*, but she is of *Levitical descent*,
...of *Levitical descent*, but she is of *priestly descent*,
...poor, but she is rich,
...rich, but she is poor,
she is betrothed because she did not deceive him.
If one says to a woman: You are betrothed to me after I convert, or after you convert,
...After I am freed from bondage or after you are freed from bondage,
...After your husband dies, or after your sister dies, or after the *levir* grants you the *rite of release*--
she is not betrothed.
And similarly one who says to his fellow: If your wife gives birth to a girl then she is betrothed to me--she is not betrothed.
If his fellow's wife was visibly pregnant--his words stand. If she gives birth to a girl, she is betrothed.

[6]If one says to a woman, "You are hereby betrothed to me on the condition that I will speak to the governor[112] on your behalf," or "...that I will work for your as a day-laborer,"--If he speaks on her behalf to the governor or works for her as a day-laborer, she is betrothed. If not, she is not betrothed.
"...on the condition that your father approves,"--If her father approves, she is betrothed. If not, she is not betrothed. If her father dies [before responding], she is betrothed. If the son dies, they instruct the father to say that he does not approve.

[7][One says,] "I gave my daughter in betrothal, but I do not know to whom I betrothed her,"
[If] another comes and says, "I betrothed her," he is to be believed.
[If] this one says, "I betrothed her," and this one says, "I betrothed her," both should give her a writ of divorce. If they wish, one may give her a writ of divorce and the other may marry her.

[8][If a man says,] "I gave my daughter in betrothal," or "I gave her in betrothal and accepted a writ of divorce for her while she was a *minor*," and she is yet a *minor*-- he is to be believed. [If he says,] "I gave her in betrothal and accepted a writ of divorce for her while she was a *minor*," and now she is of age--he is not to be believed.

[If he says,] "She was held captive and I redeemed her,"--whether or not she is of age he is not to be believed.

One who says at the hour of his death, "I have children," is to be believed. [If he says,] "I have brothers," he is not to be believed.

If one gives his daughter in betrothal without specifying [which one], those who are *adults* are not included.

[9]One [man] has two groups of daughters from two different wives:

[If] he says, "I gave my oldest daughter in betrothal, but I do not know if it was the oldest of the older ones, or the oldest of the younger ones, or the youngest of the older ones, who is older than the oldest in the younger ones,"--all of them are prohibited, except for the youngest of the younger ones, according to Rabbi Meir. Rabbi Jose says: all of them are permitted, except the oldest of the older ones.

[If he says,] "I gave my youngest daughter in betrothal, but I do not know if it was the youngest of the younger ones, or the youngest of the older ones, or the oldest of the younger ones who is younger than the youngest of the older ones,"--all of them are prohibited, except for the oldest of the older ones, according to Rabbi Meir. Rabbi Jose says: all of them are permitted, except the youngest of the younger ones.

[10]If one says to a woman, "I betrothed you," but she says, "You did not betroth me,"--he is prohibited [from marrying] among her relatives, but she is permitted [to marry] among his relatives.

If she says, "You betrothed me," but he says, "I did not betroth you,"--he is permitted [to marry] among her relatives, but she is prohibited [from marrying] among his relatives.

[If he says,] "I betrothed you," but she says, "You actually betrothed my daughter,"--he is prohibited [from marrying] among relatives of the older woman, but the older woman is permitted [to marry] among his relatives;

he is permitted [to marry among] relatives of the younger woman, and the younger woman is permitted [to marry] among his relatives.

[11][If he says,] "I betrothed your daughter," but she says, "You actually betrothed me,"--he is prohibited [from marrying] among the relatives of the younger woman, but the younger woman is permitted [to marry] among his relatives; he is permitted [to marry] among the relatives of the older woman, but the older woman is prohibited [from marrying] among his relatives.

[1]If one says to his fellow, "Go and betroth a certain woman to me," and [the agent] went and betrothed her to himself, she is betrothed.

And similarly, if one said to a woman, "You are hereby betrothed to me after thirty days time," and another comes and betroths her within the thirty days, she is betrothed to the second. If she is a common Israelite [becoming betrothed] to a priest, she may eat *priests'-due*.

[If a man says to a woman, "You are betrothed to me] from this moment after thirty days time," and another comes and betroths her within thirty days, she may or may not be betrothed. If she is a common Israelite [becoming betrothed] to a priest, or the daughter of a priest to a common Israelite, she may not eat *priests'-due*.

RABBINIC CONTEXT (RC)

This mishnah begins a unit dealing with questionable and conditional betrothals. In each of the three cases in this paragraph, there is doubt whether the betrothals described are valid. The first situation concerns an agent who acts for himself rather than according to his instructions. As long as he used a valid procedure for betrothal, the agreement is valid.

In the second case, the stated condition clearly delays the beginning of the betrothal for thirty days. Therefore, the immediate betrothal of the second man is considered valid. The sages rule therefore that if the second man were a priest, the woman has the right to eat of the *priests'-due*. The ability to partake of consecrated food was very important socially. After the Temple fell, one could prove he had priestly status by showing that he had been allowed to eat *priests'-due*.[113]

In the third case, the woman is not allowed to eat *priests'-due* because it is unclear to whom she is married. The phrasing of the condition made by the first man is difficult to understand. Therefore she may be married to him. If she is not, then she is married to the second man. While her status is in doubt, she does not eat *priests'-due*. The solution suggested for this final case is that one of the men should give her a divorce and the other should marry her. It would appear that the second has a better claim to marriage.[114]

TECHNICAL TERMS (TT)

Priests'-due--or in Hebrew *terumah*. The first harvested crops from the field were to be given to the priests as they did not have land of their own. Though this offering has no set measure, the rabbis set a normative figure of two percent.[115]

BIBLICAL CONTEXT (BC)

Deuteronomy 3:3-5 This then shall be the priest' due from the people: Everyone who offers a sacrifice, whether an ox or a sheep, must give the shoulder, the cheeks, and the stomach to the priest. You shall also give him the first fruits of your new grain and wine and oil, and the first shearing of you sheep. For the Lord your God has chosen him and his descendants, out of all your tribes, to be in attendance for service in the name of the Lord for all time.

CRITICAL COMMENTS (CC)

1. The *priests'-dues* retained importance after the fall of the Temple because they were one of the only ways that the higher status of priests could be maintained.[116] Is there a modern parallel for a segment of a community whose niche is gone but still receives certain privileges?

[2]If one says to a woman, "You are hereby betrothed to me on the condition that I give you two hundred *zuzim*," she is betrothed, but he [must] give it.

"...On the condition that I will give it to you within thirty days time." If he gave it to her within thirty days, she is betrothed, but if not, she is not betrothed.

"...On the condition that I have two hundred *zuzim*," she is betrothed, but he [must] have it.

"...On the condition that I will show you two hundred *zuzim*," she is betrothed, but he [must] show [it to] her. But if he showed [it to] her on the money-changer's table, she is not betrothed.

RABBINIC CONTEXT (RC)

In the case of conditional betrothal, the act is considered invalid if the condition is not met. To evaluate such cases, one must identify the legal range of meaning of stated conditions. The last situation cited in this mishnah takes up such an issue. Money on the money-changer's table does not belong to him. While he has fulfilled the letter of his condition, he has violated its spirit. She is legally justified in assuming that a promise to "show her two hundred *zuzim*" implies that he possesses the money himself.[117] The amount mentioned in this mishnah is the standard rabbinic sum for the *ketubbah*, or marriage settlement, of a virgin (See TT).

TECHNICAL TERMS (TT)

Zuzim--plural of *zuz* which was a fairly substantial unit of money. It was equivalent in value to the silver *dinar* (See TT to mishnah 1:1). Two hundred of them seems to have been a large sum of money.

Ketubbah--Today the word "*ketubbah*" is used to refer to the Jewish marriage document. The word originally referred to the amount of money that the woman would receive should she be divorced or upon the death of her husband. The *ketubbah* document took its name from this central provision contained in it.

[3] "...On the condition that I have a *beit kor* of land," she is betrothed but he [must] have it.

"...On the condition that I have [the land] in such and such a place," If he has it, she is betrothed, but if not, she is not betrothed.

"...On the condition that I show you a *beit kor* of land," she is betrothed, but he must show [it to] her. If he showed it to her in a valley, she is not betrothed.

RABBINIC CONTEXT (RC)

This mishnah is a duplication of the one that preceded it but is stated in agricultural rather than monetary terms. Likewise in this case, the land in the valley is not his and therefore he has not fulfilled his condition (See RC mishnah 3:2). These two *mishnayot* and the one that follows are found in the Tosefta as part of a larger, more detailed corpus.[118]

TECHNICAL TERMS (TT)

Beit kor--*a kor* is a specific amount of produce. A *beit kor* is an area of land sufficiently large to yield a harvest of a *kor*. This method of measurement of land is an indication of the agricultural nature of society in mishnaic times.

HISTORICAL CONTEXT (HC)

The most common profession among Jews in mishnaic times was agriculture.[119] The majority of the economic activity in which they participated probably took the form of barter rather than monetary transactions (See RC mishnah 1:6).

The possession of land had great significance in early rabbinic times. After the destruction of the Temple, the Romans confiscated much of the land in Judea. Such action would have undermined the Jewish economy because land had acted as security.[120] The sages sometimes acted specifically to keep land in Jewish hands.[121] Ownership of land was at least as important to the average Jew of the day as it was to the sages.

CRITICAL COMMENTS (CC)

1. If the Mishnah was intended to be a law book for a limited readership, this mishnah and the one before it may have been chosen to cover the widest number of cases. If the Mishnah was intended as a teaching work to be communicated by a limited readership to a more general audience, this mishnah and the one before it may have been chosen to appeal to different elements of Jewish society. Which seem more likely?

[4]Rabbi Meir says: Any condition that is unlike the condition of the *Gadites* and the *Reubenites* is not a [valid] condition, as it is written, "Moses said to them 'If the *Gadites* and the *Reubenites* cross over,'" and it is written, "But if they do not cross over with you as shock-troops" (Numbers 32:29,30).

Rabbi Hananiah son of Gamliel says: This matter had to be stated, for had it not been, it could have meant that even in the land of Canaan they would not inherit.

BIBLICAL CONTEXT (BC)

Numbers 32:28-30 Then Moses gave instructions concerning them to Eleazar the priest, Joshua son of Nun, and the family heads of the Israelite tribes. Moses said to them, "If every shock-fighter among the *Gadites* and the *Reubenites* crosses the Jordan with you to do battle, at the instance of the Lord, and the land is subdued before you, you shall give them the land of Gilead* as a holding. But if they do not cross over with you as shock-troops, they shall receive holdings among you in the land of Canaan."

*Gilead was located on the eastern bank of the Jordan, not in the Land of Canaan.

RABBINIC CONTEXT (RC)

Rabbi Meir and Rabbi Hananiah son of Gamliel disagree with each other in this mishnah.[122] Rabbi Meir believes that it is possible to generalize from this biblical example to other conditional statements. Rabbi Hananiah does not.

Rabbi Meir understands the relevant example found in the biblical verses to be as follows: If the *Gadites* and *Reubenites* help conquer the land, then they receive the Gilead as an inheritance. If the *Gadites* and *Reubenites* fail to help conquer the land, they will not receive the Gilead as an inheritance. For a condition to be legally valid, it must be clear and decisive. The biblical condition is of valid form because both sides are explicitly stated.[123] The conditions listed in the last few *mishnayot* fit such a pattern.

Rabbi Hananiah holds that, because of the complexity of the situation in Scripture, one may not generalize from this particular verse. The clear statement of Moses in the Biblical text serves a function that is unnecessary in most conditional situations. According to the verse, the future status of the Gilead is conditional. Nevertheless, the *Gadites* and *Reubenites* will receive land in Canaan even if they do not help to conquer it. Such a condition might be described as follows: If A, then B; If Not A, then C. However, the conditions quoted in the Mishnah are of a different form: If A, then B; If Not A, then Not B. Rabbi Hananiah argues that, because the conditions placed on betrothal are simple either/or stipulations, this particular verse is not a proper paradigm for them.

TECHNICAL TERMS (TT)

Gadites—members of the tribe of Gad

Reubenites—members of the tribe of Reuben. These two groups were interested in settling on land on the east side of the Jordan river because they had many cattle and the grazing lands were better there than in the land of Canaan.

[5]If one betroths a woman and [then] says:

I thought she was of *priestly descent*, but she is of *Levitical descent*,

...of *Levitical descent*, but she is of *priestly descent*,

...poor, but she is rich,

...rich, but she is poor,

she is betrothed because she did not deceive him.

If one says to a woman: You are betrothed to me after I convert, or after you convert,

...After I am freed from bondage or after you are freed from bondage,

...After your husband dies, or after your sister dies,

or after the *levir* grants you the *rite of release*--

she is not betrothed.

And similarly one who says to his fellow: If your wife gives birth to a girl then she is betrothed to me--she is not betrothed.

If his fellow's wife was visibly pregnant--his words stand. If she gives birth to a girl, she is betrothed.

RABBINIC CONTEXT (RC)

The first section of this mishnah considers unstated assumptions. If a misunderstanding results from lack of communication rather than active deception, then the betrothal is valid.

The remainder of the mishnah deals with the interaction between personal status and betrothal. Betrothal with the stipulation that one of the partners will undergo some transformation is not valid. One must contract betrothal based on his or her identity at the moment of betrothal. If one affected betrothal with the condition that there would be a later change in personal status, the betrothal is invalid, even if the condition is fulfilled.[124]

The last two paragraphs of this mishnah describe an extreme case. One cannot become betrothed to a non-person. According to this mishnah, once a fetus is visibly present inside its mother, it represents a person in potential and betrothal is possible. However, the status of a fetus is limited. A fetus is only considered to be a life of its own independent of the mother at the time of birth.[125]

CRITICAL COMMENTS (CC)

1. In some manuscripts of the Mishnah, the last two paragraphs of this mishnah are absent. The Talmud suggests that these lines may be a later addition to the text. Tradition recognizes some parts of the Mishnah as later additions even though the Mishnah as a document is considered canonical.

TECHNICAL TERMS (TT)

Levir--or *yavam* in Hebrew. If a married man died before having any children, the brother of the deceased, called the *levir*, had the responsibility of either marrying the widow or performing the *rite of release* with her. If he chose the marry her, the first-born child was considered the descendent of his late brother.

Rite of Release--or *chalitzah* in Hebrew. If the *levir* did not wish to marry the widow of his late brother, she and the *levir* would go together to the local tribunal of judges. There she would remove his sandal, say, "Such shall be done to the one who does not build up his brother's house," and spit. Afterward, she was free to marry another.

Priestly descent--or *kohein* in Hebrew. One descended from the line of Aaron, brother of Moses, who was of the tribe of Levi. The *kohanim* (plural) were in charge of the sacrificial service in the Temple. Certain tithes offered by the people provided sustenance for the priests and their families. Even after the Temple's destruction, the tithes continued to be collected and delivered to the priests.

Levitical descent--One descended from the tribe of Levi but not of the line of Aaron. The Levites served in the Temple in a lesser capacity and were also supported by the people by a tithing system.

[6]If one says to a woman, "You are hereby betrothed to me on the condition that I will speak to the governor[126] on your behalf," or "...that I will work for your as a day-laborer,"--If he speaks on her behalf to the governor or works for her as a day-laborer, she is bet-othed. If not, she is not betrothed.

"...on the condition that your father approves,"--If her father approves, she is betrothed. If not, she is not betrothed. If her father dies [before responding], she is betrothed. If the son dies, they instruct the father to say that he does not approve.

HISTORICAL CONTEXT (HC)

The conditions described in the first paragraph of this mishnah are fitting for the times in which the traditions found in this document were created. From the destruction of the Temple onward, economic conditions grew steadily worse. A people who had been owners of their land became tenants who could be evicted with a moment's notice.[127] The people were at the mercy of the Roman governor. However, this mishnah may be in response to a biblical example rather than the historical conditions of mishnaic times (See BC).

Because of the poverty of the people many of them became day-laborers. Such workers were often employed seasonally to harvest a particular crop. Normally, they received meals and a wage agreed upon in advance.[128] The concept of doing work to contract betrothal is not new in the Mishnah (See BC).

RABBINIC CONTEXT (RC)

The second paragraph of this mishnah assumes that the woman is of legal age. Otherwise, the father would contract betrothal for her.[129] The sages recognized the complexity of the family relationships involved in betrothal and marriage. This mishnah asserts that if her father disapproves, then the betrothal is null and void. The Tosefta disagrees, suggesting that even if the father objects, the betrothal is valid because the father will come to accept it at a later time.[130]

In another source, the rabbis express disapproval of a man or woman who enter a betrothal in response to pressure applied by their partner's family.[131]

BIBLICAL CONTEXT (BC)

I Kings 2:17-18 He replied, "Please ask King Solomon—for he won't refuse you—to give me Abishag the Shunammite as wife." "Very well," said Bathsheba, "I will speak to the king in your behalf."

Genesis 29:16-18 Now Laban had two daughters; the name of the older one was Leah, and the name of the younger was Rachel. Leah had weak eyes; Rachel was shapely and beautiful. Jacob loved Rachel; so he answered, "I will serve you seven years for your younger daughter Rachel."

CRITICAL COMMENTS (CC)

1. Both of the examples found in this mishnah may represent allusions to Biblical examples, pieces of contemporary realia from mishnaic times, or a combination of the two. Which explanation seems more likely?

[7][One says,] "I gave my daughter in betrothal, but I do not know to whom I betrothed her,"

[If] another comes and says, "I betrothed her," he is to be believed.

[If] this one says, "I betrothed her," and this one says, "I betrothed her," both should give her a writ of divorce. If they wish, one may give her a writ of divorce and the other may marry her.

RABBINIC CONTEXT (RC)

This mishnah describes two possible situations that might arise if a father gives his daughter in betrothal but is unsure to whom he gave her. While this situation may sound odd, the practice of betrothal through agents could provide the kind of confusions discussed in this paragraph.

In the first case, the man is to be believed because he has voluntarily placed himself under an obligation. In situations where neither witnesses nor conflicting testimony are available, one is to be believed when saying something that could be to one's disadvantage(See below).[132] Once he has married her, if another comes and claims to have been the one to betroth her, his words have no weight.[133]

However, in reference to the second case, if two men simultaneously testify that each was the one to betroth her, neither of them is to be believed more than the other. Nevertheless, because the sages took betrothal so seriously, each must grant her a divorce. Therefore, they must both pay her a *ketubbah* or marriage settlement. This mishnah also offers another method of resolution that is less severe than the first.

The requirement to grant a writ of divorce even in a case of a questionable betrothal reflects the rabbinic viewpoint that human ritual actions have cosmic consequences.[134]

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[8] [If a man says,] "I gave my daughter in betrothal," or "I gave her in betrothal and accepted a writ of divorce for her while she was a *minor*," and she is yet a *minor*-- he is to be believed. [If he says,] "I gave her in betrothal and accepted a writ of divorce for her while she was a *minor*," and now she is of age--he is not to be believed.

[If he says,] "She was held captive and I redeemed her,"--whether or not she is of age he is not to be believed.

One who says at the hour of his death, "I have children," is to be believed. [If he says,] "I have brothers," he is not to be believed.

If one gives his daughter in betrothal without specifying [which one], those who are *adults* are not included.

RABBINIC CONTEXT (RC)

The daughter is considered under the aegis of the father only as long as she is a *minor*. Therefore, he may only make claims that he accepted betrothal or divorce on her behalf while she is under his authority.

Only she can make reliable statements that she was taken captive.[135] Any declarations made by the father that she was taken captive or had an illicit sexual union carry no weight.[136] The difference between the first and second cases may be based on the fact that biblical evidence is only available concerning betrothal, not captivity (See BC).

The concern at a man's hour of death is whether or not his wife will be required to participate in either the levirate marriage or the rite of release (See TT to mishnah 1:1). If he were to say that he had sons, that would release his wife from such obligations. Without such a statement, she would be bound to perform either the levirate marriage or the rite of release. He is given the authority to improve the situation of his widow. If he were to say that he had brothers, that would obligate his wife to perform either the levirate marriage or the rite of release. Without such a statement, she would be free to marry whomever she wishes after his death. He is not given the authority to worsen the situation of his widow.

The final paragraph of this mishnah asserts that a father has no authority to give his adult daughter in marriage. Therefore, any general statement of betrothal by the father could only include his *minor* daughters.

TECHNICAL TERMS (TT)

Minor--in rabbinic terminology, the daughter can be classified in three ways. A girl under the age of twelve is a *ketanah*--literally, a little one. This is the word used here. The term *ne'arah* refers to a young woman who is between the ages of twelve and twelve and one-half and has not yet shown physical signs of maturity.

Adult--or in Hebrew *Bogeret*. This term refers to a woman more than twelve years old if she has shown physical signs of maturity or any woman more than twelve and one-half years old.

BIBLICAL CONTEXT (BC)

Deuteronomy 22:16   And the girl's father shall say to the elders, "I gave this man my daughter to wife, but he has taken an aversion to her."

CRITICAL COMMENTS (CC)

1.   The sages appear to be placing specific limits upon the father's authority over his daughter and the husband's authority over his wife. What does this say about the sages' understanding of such relationships?

[8]"One [man] has two groups of daughters from two different wives:

[If] he says, "I gave my oldest daughter in betrothal, but I do not know if it was the oldest of the older ones, or the oldest of the younger ones, or the youngest of the older ones, who is older than the oldest in the younger ones,"--all of them are prohibited, except for the youngest of the younger ones, according to Rabbi Meir. Rabbi Jose says: all of them are permitted, except the oldest of the older ones.

[If he says,] "I gave my youngest daughter in betrothal, but I do not know if it was the youngest of the younger ones, or the youngest of the older ones, or the oldest of the younger ones who is younger than the youngest of the older ones,"--all of them are prohibited, except for the oldest of the older ones, according to Rabbi Meir. Rabbi Jose says: all of them are permitted, except the youngest of the younger ones.

RABBINIC CONTEXT (RC)

The issue of daughters being "permitted" or "prohibited" refers to their ability to become betrothed to whomever they wish. If a woman is betrothed to one man, she cannot become betrothed to another without resolving the first relationship. If there is a doubt about a specific woman's status, she is considered betrothed.[137]

In this mishnah, Rabbis Meir and Jose disagree as to which daughters are of doubtful status. Rabbi Meir applies the doubt as widely as possible while Rabbi Jose assumes the most limited understanding.

Rabbis Meir and Jose lived in the same generation. Later rabbinic traditions report the following about these two rabbis: Rabbi Meir held the official position of Chief Counsel among the sages. This position was appointed by the patriarch, the titular head of the Jewish people. After a significant clash with the sages of his day, Rabbi Meir resigned his office.[138] Though he was not officially replaced, Rabbi Jose become one of the new close confidantes of the patriarch.[139]

CRITICAL COMMENTS (CC)

1. The seriousness with which a sage takes cases of doubtful betrothal may indicate the weight he attributes to human words uttered as part of religious ritual.[140] Could the difference in their opinions here represent an ideological shift among the sages or is it only a logical disagreement?(See RC)

[10]If one says to a woman, "I betrothed you," but she says, "You did not betroth me,"--he is prohibited [from marrying] among her relatives, but she is permitted [to marry] among his relatives.

If she says, "You betrothed me," but he says, "I did not betroth you,"--he is permitted [to marry] among her relatives, but she is prohibited [from marrying] among his relatives.

[If he says,] "I betrothed you," but she says, "You actually betrothed my daughter,"--he is prohibited [from marrying] among relatives of the older woman, but the older woman is permitted [to marry] among his relatives; he is permitted [to marry among] relatives of the younger woman, and the younger woman is permitted [to marry] among his relatives.

RABBINIC CONTEXT (RC)

Once a couple is married, they are forbidden ever to marry certain of the other's relatives. Once they are married, he is forbidden from ever marrying her mother, grandmother, daughter, and her granddaughter. He could marry her sister after she dies. His brothers are still permitted to marry those on this list. She is forbidden from ever marrying his father, paternal grandfather, son, grandson, brother, or nephew. [141]

The situations described in this mishnah apply to a situation where there were not witnesses or where the witnesses are no longer available to testify. In such a case, each individual involved must accept the stringencies of the statement they made. In this case, the statement of the woman is given equal weight with the statement of the man. However, a mother does not have the authority to affect the status of her minor daughter that a father does (See mishnah 3:8 RC and BC).

[11][If he says,] "I betrothed your daughter," but she says, "You actually betrothed me,"--he is prohibited [from marrying] among the relatives of the younger woman, but the younger woman is permitted [to marry] among his relatives; he is permitted [to marry] among the relatives of the older woman, but the older woman is prohibited [from marrying] among his relatives.

RABBINIC CONTEXT (RC)

The rabbis clearly assigned great significance to one's testimony, one's word. When witnesses were given an oath by judges, the warning that they were given is reported as follows: Be aware that the entire world shook at the moment that "You shall not swear [falsely by the name of the Lord your God for the Lord will not clear one who swears falsely by His name."]. About all other transgressions in the Torah it is written, "He will clear" [one who violates them], but for this one, "He will not clear." Regarding all other transgression in the Torah, the [sinner] is punished, but regarding this one, he and everyone [is punished], and the iniquity of the whole world depends upon it...[142]

CRITICAL COMMENTS (CC)

1. The division between the previous mishnah and this one is artificial. They appear to be one unit of text that has been separated into two paragraphs. The practice of dividing the chapters of the Mishnah into individual paragraphs is not original to the document.

[12]In any case where there is [valid] betrothal and no transgression, the [status of] the offspring follows the father. And which [case] is this? This is a *priest, Levite,* or *Israelite* woman who is married to a *priest, Levite,* or *Israelite.*

But in any case where this is [valid] betrothal but there is a transgression, the [status of] the offspring follows the [parent of] lower status. And which [case] is this? This is a widow [married] to a high *priest,* a divorcee or one who has undergone the *rite of release* [married] to an ordinary *priest,* a *mamzeret* or *netinah* to an *Israelite,* or an *Israelite* woman to a *mamzer* or a *natin.*

But in any [case] where she cannot become betrothed to him, but could become betrothed to others, the [status of] the child is *mamzer.* And which [case] is this? This is one who engages in an act of incestuous intercourse forbidden in the Torah.

But in any [case] where she cannot become betrothed to him, nor could she become betrothed to others, the [status of] the child is like her. And which [case] is this? This is the case of a female *slave* or a non-Jewish woman.

[13]Rabbi Tarfon says: *Mamzerim* can be purified [of their genealogical blemish]. How? If a *mamzer* married a female *slave,* the child would be a bondman. If [his master] freed him, the son would turn out to be a free man.

Rabbi Eliezer responds: This is a bondman who is a *mamzer.*

[4:1]Ten castes came up from Babylonia: *1)Priests 2)Levites 3)Israelites 4)Priests of impaired lineage 5)Converts 6)Freed slaves 7)mamzerim 8)netinim 9)shetuqim* and *10)foundlings.*

1)Priests 2)Levites and *3)Israelites* are permitted to marry each other.

2)Levites 3)Israelites 4)Priests of impaired lineage 5)Converts and *6)Freed slaves* are permitted to marry each other.

5)Converts 6)Freed slaves 7)mamzerim 8)netinim 9)shetuqei and *10)foundlings* are permitted to marry each other.

[2]Who are these *shetuqim?* Anyone who knows his mother but does not know his father.

[Who are these] foundlings? Anyone who is discovered in the market and does not know his mother or his father. Abba Saul would call the *shetuqim: beduqim.*

[3]All those forbidden to enter the congregation are permitted to marry each other. Rabbi Judah prohibits.

Rabbi Eliezer responds: If one of certain status with one of certain status, they are permitted [to marry each other]; if one of certain status with one of uncertain status or one of uncertain status with one of certain status or one of uncertain status with one of uncertain status, it is prohibited.

And which ones are of uncertain status? A *shetuqi*, *foundling*, or a *Samaritan*.

[4]If one marries a woman of *priestly descent*, he must investigate her [lineage] for four [generations of] mothers, which are actually eight [individuals]:
1)her mother
2)her mother's mother
3)the mother of her father's mother and 4)her mother; 5)her father's mother and 6)her mother
7)the mother of her father's mother and 8)her mother.

[In the case of marriage to] a female *Levite* or *Israelite*, add to these one more [generation].

[5]One need not investigate from the altar and onward, nor from the *Dukhan* and onward, nor from a *Sanhedrin* and onward.

And anyone whose ancestors were accepted among the managers that lead the community or collectors of *tzedakah*, they may marry into the priesthood and one need not investigate them.

Rabbi Jose responds: Also one who was signed as a witness in the old recorder's office in Sepphoris.

Rabbi Chaninah son of Antigonos responds: Also one who was listed in the King's army.

[6]The daughter of a male of *impaired priestly stock* is unfit to [marry into] the priesthood forever.

If an *Israelite* married a female of *impaired priestly stock*, his daughter is fit for [marrying into] the priesthood.

If one of *impaired priestly stock* married the daughter of an *Israelite*, his daughter is unfit to [marry into] the priesthood.

Rabbi Judah says: The daughter of a male *convert* is like the daughter of a male of *impaired priestly stock*.

[7]Rabbi Eliezer son of Jacob responds: If a male *Israelite* marries a female *convert*, his daughter is fit for [marrying into] the priesthood, and if a male *convert* marries the daughter of an *Israelite*, his daughter is fit for [marrying into] the priesthood.

But if a male *convert* marries a female *convert*, his daughter is unfit for [marrying into] the priesthood.

Whether a male *convert* or *freed slaves*, even after ten generations [of sons], [the daughter of that son is unfit to marry into the priesthood] until his mother is an *Israelite*.

Rabbi Jose says: even if a male *convert* marries a female *convert*, his daughter is fit for [marrying into] the priesthood.

[8]If one says: This son of mine is a *mamzer*--he is not to be believed. Even if the two of them say concerning the fetus that is within her: It is a *mamzer*--they are not to be believed.

Rabbi Judah says: They are to be believed.

QIDDUSHIN 3:12-4:8

[12]In any case where there is [valid] betrothal and no transgression, the [status of] the offspring follows the father. And which [case] is this? This is a *priest*, *Levite*, or *Israelite* woman who is married to a *priest*, *Levite*, or *Israelite*.

But in any case where this is [valid] betrothal but there is a transgression, the [status of] the offspring follows the [parent of] lower status. And which [case] is this? This is a widow [married] to a high *priest*, a divorcee or one who has undergone the *rite of release* [married] to an ordinary *priest*, a *mamzeret* or *netinah* to an *Israelite*, or an *Israelite* woman to a *mamzer* or a *natin*.

But in any [case] where she cannot become betrothed to him, but could become betrothed to others, the [status of] the child is *mamzer*. And which [case] is this? This is one who engages in an act of incestuous intercourse forbidden in the Torah.

But in any [case] where she cannot become betrothed to him, nor could she become betrothed to others, the [status of] the child is like her. And which [case] is this? This is the case of a female *slave* or a non-Jewish woman.

RABBINIC CONTEXT (RC)

This mishnah describes the varieties of genealogical status inherited by offspring expressed as a function of the quality of the betrothal between the parents. Who is actually permitted to marry whom is expressed more precisely in mishnah 4:1. The rules laid out in this mishnah are reflected consistently in other traditions of the same period. For example, if an individual born of two Jewish parents has a half brother with whom he shares a Jewish father, that person is not considered a "brother" if his mother is a non-Jew.[143] However, there clearly was some controversy over the authority of this tradition. An anonymous opinion in the Tosefta holds that the child of a non-Jewish man and a Jewish woman is a *mamzer*.[144] However, such a classification defies the definition of the term given above, which itself is mishnaic in origin.[145] The genealogical position of the *ger*, or Jew-by-choice, is suspiciously absent from this mishnah, though it is considered in a slightly different light in mishnah 4:1 (See CC). That mishnah states that the *ger* is not of significantly "lower status" than a *Levite* or an *Israelite*. However, the Tosefta records another opinion that if a female of one of these three groups marries a male *ger*, the child is a *ger*.[146] This argument would imply that there was a minority who thought marriage between a *ger* and an Israelite involved a transgression, if read under the rules of this mishnah.(See CC below and MC and RC to 4:1). Another minority opinion places the status of *gerim*, Jews-by-choice, on an entirely equal level with *priests*, *Levites*, and *Israelites*. Later tradition followed the middle path described by mishnah 4:1.

HISTORICAL CONTEXT (HC)

Some of the castes mentioned in this mishnah had parallels in Roman Law and some did not. The Roman law on this subject is more complex than its Jewish counterpart. However, the Roman Law does contain four categories of offspring that share the same four basic principles as those found in this mishnah. Under Roman Law, children of "normal" unions receive the status the father. Children of an alien father and a Roman mother follow the inferior parent. Children of an illicit union are not subject to the father's authority but are illegitimate. Children born of a slave mother follow the status of the mother regardless of the status of the other parent.[147]

TECHNICAL TERMS (TT)

Priest--or *kohein* in Hebrew. One descended from the line of Aaron, brother of Moses, who was of the tribe of Levi. The *kohanim* (plural) were in charge of the sacrificial service in the Temple. Even after the Temple's destruction, the tithes continued to be collected and delivered to the priests.

Levite--or *levi* in Hebrew. One descended from the tribe of Levi but not of the line of Aaron. The Levites served in the Temple in a lesser capacity and were also supported by the people by a tithing system.

Israelite--or *yisrael* in Hebrew. An individual of Jewish descent who neither qualified as a *priest* or a *levite*.

Rite of Release--or *chalitzah* in Hebrew. If the brother of the deceased did not wish to marry the widow of his late brother, then the widow and the surviving brother would go together to the local tribunal of judges. There she would remove his sandal, say, "Such shall be done to the one who does not build up his brother's house," and spit. Afterward, she was free to marry another (See BC).

Mamzer--usually translated as "bastard." In Jewish law, the term refers to children of an incestuous union, not those born out of wedlock. The feminine form of the term is *mamzeret*.

Natin--children of foreign slaves owned by Israelites. Biblical law gives these children to their Israelite owners. Their descendants became a lowly caste in Jewish society.[148] Later rabbinic tradition holds that this term may instead represent a nation of individuals known as Gibeonites who converted en masse in the time of Joshua but were forbidden since the days of King David to intermarry with the rest of the Jewish population. The feminine form of the term is *netinah*.

Slave--a person who had no legal rights but was owned by an Israelite like chattel (See BC).

BIBLICAL CONTEXT (BC)

Leviticus 21:14 A widow, or a divorced woman, or one who is degraded by harlotry--such he (the high priest) may not marry. Only a virgin of his own kin may he take to wife.

Leviticus 21:7 They (the priests) shall not marry a woman defiled by harlotry, nor shall they marry one divorced from her husband. For they are holy to their God.

Leviticus 25:44-46 Such male and female slaves as you may have--it is from the nations round about you that you may acquire male and female slaves. You may also buy them from among the children of aliens resident among you, or from their families that are among you, whom they begot in your land. These shall become your property: you may keep them as a possession for your children after you, for them to inherit as property for all time. Such you may treat as slaves. But as for your Israelite kinsmen, no one shall rule ruthlessly over the other.

Deuteronomy 25:5-10 When brothers dwell together and one of them dies and leaves no son, the wife of the deceased shall not be married to a stranger, outside the family. Her husband's brother shall unite with her: take her as his wife and perform the levir's duty. The first son that she bears shall be accounted to the dead brother, that his name may not be blotted out in Israel. But if the man does not want to marry his brother's widow, his brother's widow shall appear before the elders in the gate and declare, 'My husband's brother refuses to establish a name in Israel for his brother; he will not perform the duty of a levir.' The elders of his town shall then summon him and talk to him. If he insists, saying, 'I do not want to marry her,' his brother's widow shall go up to him in the presence of the elders, pull the sandal off his foot, spit in his face, and make this declaration: Thus shall be done to the man who will not build up his brother's house.

CRITICAL COMMENTS (CC)

1. The contents of this mishnah do not appear to be new or controversial in mishnaic times, though some disagreement remained. Nevertheless, the tradition offers no reasons why the genealogical heritage follows a given parent in a given situation. The myth that one's status comes from the mother in the fourth category because "at least we know who the mother is" has no evidence to support it. We can only guess why these cases are decided as they are. More relevant information for such a discussion can be found in MC to 4:1.

2. One scholar dates the contents of this mishnah before the destruction of the Temple.[149] The same scholar dates the contents of mishnah 4:1 in the mid second century. Does our mishnah here represent an earlier, more "racial" doctrine than the opinion found in 4:1?

[13]Rabbi Tarfon says: *Mamzerim* can be purified [of their genealogical blemish]. How? If a *mamzer* married a female *slave*, the child would be a bondman. If [his master] freed him, the son would turn out to be a free man.

Rabbi Eliezer responds: This is a bondman who is a *mamzer*.

RABBINIC CONTEXT (RC)

The female *slave* mentioned here is not a Jew. A son that she would have while serving a Jewish master would belong to that master. Therefore, the son would properly be termed a Canaanite bondman (See 1:3). The son would be a bondman rather than a *mamzer* because the former is of lower genealogical status. Rabbi Eliezer does not accept this "purifying" use of the caste distinctions as legitimate.

TECHNICAL TERMS (TT)

Mamzer--usually translated as "bastard." In Jewish law, the term refers to children of an incestuous union, not those born out of wedlock. The plural form of the term is *mamzerim*.

Slave--a person who had no legal rights but was owned by an Israelite like chattel (See BC).

BIBLICAL CONTEXT (BC)

Leviticus 25:44-46 Such male and female slaves as you may have--it is from the nations round about you that you may acquire male and female slaves. You may also buy them from among the children of aliens resident among you, or from their families that are among you, whom they begot in your land. These shall become your property: you may keep them as a possession for your children after you, for them to inherit as property for all time. Such you may treat as slaves. But as for your Israelite kinsmen, no one shall rule ruthlessly over the other.

$^{4:1}$Ten castes came up from Babylonia: 1)*Priests* 2)*Levites* 3)*Israelites* 4)*Priests of impaired lineage* 5)*Converts* 6)*Freed slaves* 7)*mamzerim* 8)*netinim* 9)*shetuqim* and 10)*foundlings*.

1)*Priests* 2)*Levites* and 3)*Israelites* are permitted to marry each other.

2)*Levites* 3)*Israelites* 4)*Priests of impaired lineage* 5)*Converts* and 6)*Freed slaves* are permitted to marry each other.

5)*Converts* 6)*Freed slaves* 7)*mamzerim* 8)*netinim* 9)*shetuqei* and 10)*foundlings* are permitted to marry each other.

TECHNICAL TERMS (TT)

Priest--or *kohein* in Hebrew. One descended from the line of Aaron, brother of Moses, who was of the tribe of Levi. The *kohanim* (plural) were in charge of the sacrificial service in the Temple. Certain tithes offered by the people provided sustenance for the priests and their families. Even after the Temple's destruction, the tithes continued to be collected and delivered to the priests.

Levite--or *leivi* in Hebrew. One descended from the tribe of Levi but not of the line of Aaron. The Levites served in the Temple in a lesser capacity and were also supported by the people by a tithing system.

Israelite--or *yisrael* in Hebrew. An individual of unimpaired Jewish descent who neither qualified as a *priest* or a *levite*.

Priests of impaired lineage--offspring of a union where the father was a *priest* and the mother was a women forbidden to him such as a divorcee (See 3:12).

Converts--or *geirim* in Hebrew. Those who go through an approved religious process to become Jews.

Freed Slaves--Canaanite bondmen or women who are freed by their Jewish masters (See mishnah 1:3). Upon manumission, they receive some level of Jewish status.

Mamzer--usually translated as "bastard." In Jewish law, the term refers to children of an incestuous union, not those born out of wedlock. The plural form of the term is *mamzerim*.

Natin--children of foreign slaves owned by Israelites. Biblical law gives these children to their Israelite owners. Their descendants became a lowly caste in Jewish society.[150] Later rabbinic tradition holds that this term may instead represent a nation of individuals known as Gibeonites who converted en masse in the time of Joshua but were forbidden since the days of King David to intermarry with the rest of the Jewish population. The plural form of the term is *netinim*.

Shetuqim--which means "silenced ones;" any offspring whose mother is known but whose father's identity is subject to question.

Foundling--any offspring whose parents' identities are unknown.

HISTORICAL CONTEXT (HC)

Jewish social history acts as background to this mishnah. It is phrased in terms of those who "came up from Babylonia" because of the significant impact the Exile had on Jewish social development. During the First Temple period, prior to 586 B.C.E., the Israelite people was a territorial, tribal society rather than a religion; conversion of an outsider was not possible.[151] One of the results of the Exile was the creation of an established diaspora community. This and other factors contributed to the "conversion" of Judaism from a purely inherited identity to a religious one.[152] However, many caste distinctions remained part of Jewish society in the Second Temple period. Some circles were meticulous in avoiding marriages with "families of inferior status."[153] The priesthood was very concerned with matters of genealogy. With the fall of the Second Temple in 70 C.E., such distinctions began to fall away, though the priests opposed such changes.[154] When attempting to create a genealogically unified Jewish people, the leaders of the community had to decide which borderline groups were to be included and which were to be eliminated. Categories five through ten in this mishnah represent such groups, though only converts may have posed a real question. The discussion of the other groups is theoretical. This social adjustment continued throughout the mishnaic period and so was probably still in process when this tradition was formulated.[155] The status of Jews-by-choice seem especially fluid in this period. This mishnah includes them in the second and third marital groups, but another version in the Tosefta reports a disagreement about the status of *converts* between Rabbi Meir and Rabbi Judah, who were two of the most influential sages of the mid second century.[156]

RABBINIC CONTEXT (RC)

This mishnah attempts to make two separate distinctions. One is between *priests* and all other castes of Jews. The proper continuation of priestly descent receives special consideration here and in the *mishnayot* that follow.

The second distinction is based on a biblical category and is between those who may and may not be admitted to the congregation of Israel(See **BC**). In biblical times, this classification was based on one's genealogical affiliation, i.e., Moabite or Egyptian. By mishnaic times, Rabbi Aqiva stated that deciding who may or may not be admitted to the congregation was no longer a matter of national origin.[157] Instead, the sages state this division in terms of the personal status of the parents.

A case is cited as an example of the *shetuqei* category.[158] If a woman is pregnant and claims that a certain person who is a *priest* is the father, be he does not accept it and there are no witnesses, the child is placed in this caste.

BIBLICAL CONTEXT (BC)

Deuteronomy 23:1-5,8 No *mamzer* shall be admitted into the congregation of the Lord; none of his descendants, even in the tenth generation, shall be admitted into the congregation of the Lord. No Ammonite or Moabite shall be admitted into the congregation of the Lord; none of their descendants, even in the tenth generation, shall ever be admitted into the congregation of the Lord, because they did not meet you with food and water on your journey after you left Egypt, and because they hired Balaam son of Beor, from Pethor of Aram-naharaim to curse you...You shall not abhor an Edomite, for he is your kinsman. You shall not abhor an Egyptian, for you were a stranger in his land. Children born to them maybe admitted into the congregation of the Lord in the third generation [of residence in Israel's land].

CRITICAL COMMENTS (CC)

1. The situation of Jews-by-choice seems to have been in flux in mishnaic times. Is the social status of Jews-by-choice in transition today? What is the present level of acceptance of converts as opposed to born Jews?

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²Who are these *shetuqim*? Anyone who knows his mother but does not know his father.

[Who are these] foundlings? Anyone who is discovered in the market and does not know his mother or his father. Abba Saul would call the *shetuqim*: *beduqim*.

RABBINIC CONTEXT (RC)

These two castes represent cases where there is a doubt about the genealogy of the offspring. Because their status is unknown, there is a suspicion that the child may be a *mamzer* (See TT to 3:12).

Abba Saul requires that *shetuqim* be checked out. If the mother of the child is known, then there is room for a reasonable investigation. With the foundling, there is nowhere to begin such an inquiry.

TECHNICAL TERMS (TT)

Shetuqim--which means "silenced ones;" any offspring whose mother is known but whose father's identity is subject to question.

Beduqin--which means "ones requiring investigation."

³All those forbidden to enter the congregation are permitted to marry each other. Rabbi Judah prohibits.

Rabbi Eliezer responds: If one of certain status with one of certain status, they are permitted [to marry each other]; if one of certain status with one of uncertain status or one of uncertain status with one of certain status or one of uncertain status with one of uncertain status, it is prohibited.

And which ones are of uncertain status? A *shetuqi*, *foundling*, or a *Samaritan*.

RABBINIC CONTEXT (RC)

This mishnah discusses the allowable marriage partners for those who the sages place in the biblical category of "forbidden to enter the congregation." (See BC) This list includes 7)mamzerim 8)netinim 9)shetuqim and 10)foundlings from mishnah 4:1. The initial anonymous statement beginning the mishnah follows these guidelines expressed in mishnah 4:1. Rabbi Eliezer disagrees, allowing only mamzerim and netinim to intermarry, because their status is certain. He is unwilling to allow the last two groups to intermarry because their status is uncertain. If one of them were actually of Israelite heritage, then the marriage should not be allowed. Rabbi Eliezer forbids marriage to those of uncertain status because of this possibility.

The anonymous opinion at the end of the mishnah includes the Samaritans within the lowest genealogical circle of Jewish society(See TT).

The rulings expressed in this mishnah were hardly fixed in mishnaic times. Contradictory traditions abound. One opinion excludes converts from this list.[159] Another forbids converts to marry each other. A third allows converts, freed slaves, and priests of impaired lineage to marry the daughter of a priest.[160]

TECHNICAL TERMS (TT)

Shetuqi--which means "silenced one;" any offspring whose mother is known but whose father's identity is subject to question.

Foundling--any offspring whose parents' identities are unknown.

Samaritan--A separate people who lived in the land of Israel who had their own version of the Jewish Bible. At various times in Jewish history, the sages expressed different opinions about the status of *Samaritans*. Even those most accepting of them realized that their traditions varied significantly from the rabbinic norm.[161]

BIBLICAL CONTEXT (BC)

Deuteronomy 23:1-5,8   No *mamzer* shall be admitted into the congregation of the Lord; none of his descendants, even in the tenth generation, shall be admitted into the congregation of the Lord.   No Ammonite or Moabite shall be admitted into the congregation of the Lord; none of their descendants, even in the tenth generation, shall ever be admitted into the congregation of the Lord, because they did not meet you with food and water on your journey after you left Egypt, and because they hired Balaam son of Beor, from Pethor of Aram-naharaim to curse you...You shall not abhor an Edomite, for he is your kinsman. You shall not abhor an Egyptian, for you were a stranger in his land. Children born to them maybe admitted into the congregation of the Lord in the third generation [of residence in Israel's land].

CRITICAL COMMENTS (CC)

1.   This mishnah contains different understandings of the borderline between the Jewish people and those outside of it.   Is such a division substantially clearer today than it was at that time?

2.   The parameters of the Jewish community are expressed here in terms of marriage.   Does the institution of Jewish marriage continue to serve that function?

⁴"If one marries a woman of *priestly descent*, he must investigate her [lineage] for four [generations of] mothers, which are actually eight [individuals]:
1)her mother
2)her mother's mother
3)the mother of her father's mother and 4)her mother;
5)her father's mother and 6)her mother
7)the mother of her father's mother and 8)her mother.

[In the case of marriage to] a female *Levite* or *Israelite*, add to these [above] one more [generation].

RABBINIC CONTEXT (RC)

This mishnah reflects the special concern for genealogical purity among the priests. Because priests are assumed to carefully guard their pedigrees, one less generation of investigation is required before marriage, in comparison to *Levites* or *Israelites*.

This paragraph and those that follow it show that lineage remained an extremely important Jewish social factor, at least to the rabbinic leadership, at the time that these traditions were created.

The focus on female genealogy in this mishnah implicitly includes that of males as well. Once a woman's genealogy is investigated at the time of marriage, no reason remains to investigate her sons(See CC #1).¹⁶² Additional reasons why the lineage of male priests or *Levites* need not be investigated are presented in the next mishnah.

TECHNICAL TERMS (TT)

Priestly descent--One descended from the line of Aaron, brother of Moses, who was of the tribe of Levi. The *kohanim* (plural) were in charge of the sacrificial service in the Temple. Certain tithes offered by the people provided sustenance for the priests and their families. Even after the Temple's destruction, the tithes continued to be collected and delivered to the priests.

Levite--or *leivi* in Hebrew. One descended from the tribe of Levi but not of the line of Aaron. The Levites served in the Temple in a lesser capacity and were also supported by the people by a tithing system.

Israelite--or *yisrael* in Hebrew. An individual of unimpaired Jewish descent who neither qualified as a *priest* or a *levite*.

CRITICAL COMMENTS (CC)

1. The investigation of genealogy through female ancestors suggests at least two possible sources for this mishnah. One is that it represents a practice initiated by the rabbis to maintain certainty of pedigree. Another is that Jews had been tracing their lineage in this fashion and the rabbis are reporting that tradition. Which option seems more likely?
2. What does one's answer(s) to the previous question say about the possible purpose(s) of the Mishnah as a document?

[5]One need not investigate from the altar and onward, nor from the *Dukhan* and onward, nor from a *Sanhedrin* and onward.

And anyone whose ancestors were accepted among the managers that lead the community or collectors of *tzedakah*, they may marry into the priesthood and one need not investigate them.

Rabbi Jose responds: Also one who was signed as a witness in the old recorder's office in Sepphoris.

Rabbi Haninah son of Antigonos responds: Also one who was listed in the King's army.

RABBINIC CONTEXT (RC)

The three categories in the first paragraph make an interesting comparison. Those "at the altar" were the priests who had to be genealogically sound before serving in the Temple. The Levites, who sang or played instruments on the *Dukhan*, likewise had carefully guarded pedigrees. The third category, a *Sanhedrin*, probably represents an institution of the sages (See HC). Its inclusion in this list may imply that investigation was required for membership or that its members where exempted from it.

The second paragraph of this mishnah seems to name specific social groups who did not require investigation. The same two implications may be intended as described for the previous paragraph.

HISTORICAL CONTEXT (HC)

Sepphoris was a strongly Jewish city throughout the mishnaic period and had been the capital of the Galilee (northern Israel) during the latter days of the Second Temple.[163] Sepphoris survived the War of Destruction (of the Temple) better than some other cities because it opposed the rebellion and made peace with Rome early on. Therefore, stability and accurate preservation of records may have been more likely in that location. This Rabbi Jose is Jose son of Halafta who lived around the time of the Bar Kokhba rebellion in Sepphoris. Sepphoris probably remained on the sidelines during this war also.[164]

Rabbi Haninah son of Antigonos lived before the destruction of the Temple in 70 C.E.[165] He is reported to have seen the musicians in the Temple and recognized them as Levites.[166] The Roman army is certainly not the subject of his statement as it was an instrument of Romanization and very few Jews entered its ranks.[167] He may be referring to a Biblical category rather than an example from his own time(See BC).

It has been noted that mishnaic times were a period of transition for the social organization of the Jewish community.[168] The inclusion in this mishnah of exceptions that may be based on social standing rather than lineage would reflect such a movement. However, such evidence could also imply that the genealogy of these social groups had been investigated.

Though containing statements from sages of very different times, this tradition as a completed unit has been dated in the latter half of the second century.[169]

TECHNICAL TERMS (TT)

Dukhan—The name of a platform in the Temple upon which the Levites stood to perform liturgical music. The priests also stood on this platform to bless the people. The practice of those of priestly descent blessing the congregation in the synagogue in later times took on this name (Dukhanen). This practice continues today in some congregations.

Sanhedrin—this term probably refers to the high court of the Jewish people, whose collective membership is referred to in the Mishnah as the "Sages."

Tzedakah—this terms does not refer to "charity" in the modern sense but rather to self-imposed community taxes collected to support Jewish institutions and the poor.

BIBLICAL CONTEXT (BC)

I Chronicles 7:40 All of these men of Asher, chiefs of the clans, select men, men of substance, heads of the chieftains. And they were registered by genealogy according to fighting force; the number of the men was 26,000 men.

(The first eight chapters of I Chronicles lists the genealogies of the tribes of Israel up to the Babylonian exile. Only in reference to the tribe of Asher is there a reference to registration according to fighting force.)

CRITICAL COMMENTS (CC)

1. This mishnah may reflect a perpetuation of the importance of genealogy in the times of the Mishnah or an attempt by sages of the time to begin to shift the form of Jewish society away from such an emphasis. Which seems more likely based on the mishnah and its contextual commentaries?

[6]The daughter of a male of *impaired priestly stock* is unfit to [marry into] the priesthood forever.

If an *Israelite* married a female of *impaired priestly stock*, his daughter is fit for [marrying into] the priesthood.

If one of *impaired priestly stock* married the daughter of an *Israelite*, his daughter is unfit to [marry into] the priesthood.

Rabbi Judah says: The daughter of a male *convert* is like the daughter of a male of *impaired priestly stock*.

RABBINIC CONTEXT (RC)

The first three paragraphs of this mishnah represent examples based on the general rules expressed in mishnah 3:12 and mishnah 4:1. In the first sentence, the word "forever" refers to the male and implies that even if he is the son or grandson or great-grandson of a man of *impaired priestly stock*, his daughter still receives this genealogical taint through him and cannot marry a priest. The impairment is passed down because a marriage between an *Israelite* and one of *impaired priestly stock* involves no transgression; therefore, the status of the offspring follows the father. The third paragraph states this rule more clearly.

The second case presents the opposite results based on the same rule. Here the male is an Israelite and so his daughter inherits his status because the marriage involved no transgression.

Rabbi Judah's statement assumes that a priest may not marry a *convert*, as mishnah 4:1 states. Its reasoning is similar to that which precedes it.

TECHNICAL TERMS (TT)

Israelite--or *yisrael* in Hebrew. An individual of unimpaired Jewish descent who neither qualified as a *priest* or a *levite*.

Impaired priestly stock--the result of a union where the father was a *priest* and the mother was a women forbidden to him such as a divorcee (See 3:12).

Convert--or *ger* in Hebrew. Those who go through an approved religious process to become Jews.

*Each of the above represents one of the ten castes in Jewish society named in 4:1.

[7]Rabbi Eliezer son of Jacob responds: If a male *Israelite* marries a female *convert*, his daughter is fit for [marrying into] the priesthood, and if a male *convert* marries the daughter of an *Israelite*, his daughter is fit for [marrying into] the priesthood.

But if a male *convert* marries a female *convert*, his daughter is unfit for [marrying into] the priesthood.

Whether a male *convert* or *freed slaves*, even after ten generations [of sons], [the daughter of that son is unfit to marry into the priesthood] until his mother is an *Israelite*.

Rabbi Jose says: even if a male *convert* marries a female *convert*, his daughter is fit for [marrying into] the priesthood.

RABBINIC CONTEXT (RC)

This mishnah is a direct continuation of the one that precedes it. Rabbi Eliezer is responding to and disagreeing with Rabbi Judah. In his statement and the third paragraph of this mishnah, having a mother who is an Israelite can affect the status of the offspring.

Together with the middle paragraph, this mishnah says that once one parent is an *Israelite*, if the other is a convert or a freed slave, regardless of which is which, the child is an *Israelite*. Rabbi Jose does not accept this genetic requirement. He accepts the offspring of two *converts* as an Israelite.

The tradition preserved in the Tosefta does not reflect the opinion of this Mishnah. There, it is necessary for the *Israelite* parent to be the father before the daughter may marry into the priesthood. [170]

TECHNICAL TERMS (TT)

Israelite—or *yisrael* in Hebrew. An individual of unimpaired Jewish descent who neither qualified as a *priest* or a *levite*.

Converts—or *geirim* in Hebrew. Those who go through an approved religious process to become Jews.

Freed Slaves—Canaanite bondmen or women who are freed by their Jewish masters (See mishnah 1:3). Upon manumission, they receive some level of Jewish status.

*Each of the above represents one of the ten castes in Jewish society named in 4:1.

HISTORICAL CONTEXT (CC)

There were two sages named Eliezer son of Jacob. One lived before the destruction of the Temple and the other during and after the Bar Kokhba rebellion. [171] Because this one argues with Rabbi Judah, he is probably the second one. That latter lived in the first generation which truly realized that the Temple would not be rebuild and that hope of return to sovereignty was lost. [172] For this reason, the sages of that period may have intensified their efforts to create a Judaism that could survive without independence.

[8]If one says: This son of mine is a *mamzer*--he is not to be believed. Even if the two of them say concerning the fetus that is within her: It is a *mamzer*--they are not to be believed.

Rabbi Judah says: They are to be believed.

RABBINIC CONTEXT (RC)

The disagreement here is over the legal rights of parents to make statements that reduce the status of their offspring and limit the choices available to that child. When in a case such as this one, where there are no witnesses, the sages say that the parents are not to be believed.[173] Rabbi Jose is cited in the Tosefta as asserting the same rule as Rabbi Judah offers in this mishnah.[174]

[9]If one granted authority to his agent to give his [minor] daughter in betrothal, and then he himself went and gave her in betrothal, if his action preceded--his betrothal is valid; but if his agent's action preceded--his [agent's] betrothal is valid. If it is unknown [who was first], both of them give a writ of divorce, but if they wish, one may give a writ of divorce and the other may marry [her].

Similarly, if a woman gave authority to her agent to give her in betrothal, and then she went and gave herself in betrothal, if her action preceded--her betrothal is valid; but if her agent's action preceded--his betrothal is valid. If it is unknown [who was first], both of them give her a writ of divorce, but if they wish, one may give her a writ of divorce and the other may marry [her].

[10]If a man and his wife travelled abroad, and then he and his wife and his children returned, and he said, "This is the same woman who travelled abroad with me, and these are her children,"--he does not need to bring proof concerning the wife nor concerning the children.

[If he returns and says,] "She died and these are her children,"--he needs to bring proof concerning the children, but not concerning the wife.

[11][If a man says,] "I took a wife while abroad; this is she and these are her children,"--he must bring proof concerning the woman, but he does not need to bring proof concerning the children.

"She died and these are her children,"--he must bring proof concerning the woman and concerning the children.

[12]A man should not be alone with two women, but one woman may be alone with two men.

Rabbi Simeon responds: Even one man may be alone with two women whenever his wife is with him, and he may sleep with them as their host because his wife will watch over him.

A man may be alone with his mother or with his daughter, and may sleep with them with flesh touching. But if they are grown, she should sleep in her garment and he should sleep in his garment.

[13]An unmarried man may not teach children, nor may a woman teach children.

Rabbi Eliezer responds: Even one who does not have his wife [with him] may not teach children.

[14]Rabbi Judah says: An unmarried man should not shepherd animals, nor should two unmarried men sleep under one sheet; but the sages permit.

Anyone whose occupation is with women may not be alone with women, nor should a man teach his son a trade [that is practiced] among women.

Rabbi Meir says: A man should always teach his son an honest and simple trade, and should pray to the One to whom all riches and possessions belong. For with every trade there is [both times of] poverty and wealth, because poverty does not [come] from one's trade, nor does wealth [come] from one's trade; rather, everything is according to one's merit.

Rabbi Simeon son of Eleazar says: Have you ever seen beasts or birds that have a trade? And they are sustained without difficulty. Were they not created to serve me? And was I not created to serve my Maker? Is it not logical that I should be sustained without difficulty? Instead, my deeds have brought evil upon me and ruined my sustenance.

Abba Guryan of Tzidon says in the name of Abba Gurya: One should not teach his son to be an ass driver, a camel driver, a barber, a sailor, a shepherd or a shopkeeper, because their trade is one of thievery.

Rabbi Judah says in his name: Most ass drivers are evil, but most camel drivers are proper; most sailors are pious, but the best of doctors go to *Gehenna*, and the best of butchers are partners of *Amalek*.

Rabbi Nehorai says: I should leave all worldly trades and only teach my son Torah, for a man enjoys its reward in this world, and the principal remains for the world to come, but the remaining trades are not so. When a man becomes sick or old or suffers, and is not able to toil at his work, he dies of hunger. But the Torah is not so; rather, it guards him from all evil in his youth, and gives him a future and hope in his old age. Regarding youth, what does it (Scripture) say? "But they who trust in the Lord shall renew their strength." (Isaiah 40:31) Regarding old age, what does he say? "In old age, they still produce fruit." (Psalm 92:15) And similarly [Scripture] says of our ancestor Abraham, peace be upon him, "Abraham was now old, advanced in years, and the

Lord had blessed Abraham in all things." (Genesis 24:1) We find that our ancestor Abraham observed the entire Torah before it was given, as it is written, "Inasmuch as Abraham obeyed Me and kept My charge: My commandments, My laws, and My teachings (*torotai*)." (Genesis 26:5)

[9]If one granted authority to his agent to give his [minor] daughter in betrothal, and then he himself went and gave her in betrothal, if his action preceded--his betrothal is valid; but if his agent's action preceded-- his [agent's] betrothal is valid. If it is unknown [who was first], both of them give a writ of divorce, but if they wish, one may give a writ of divorce and the other may marry [her].

Similarly, if a woman gave authority to her agent to give her in betrothal, and then she went and gave herself in betrothal, if her action preceded--her betrothal is valid; but if her agent's action preceded--his betrothal is valid. If it is unknown [who was first], both of them give her a writ of divorce, but if they wish, one may give her a writ of divorce and the other may marry [her].

RABBINIC CONTEXT (RC)

This paragraph contains no ideas that are new to the tractate. The right to appoint an agent was asserted in mishnah 2:1. The solution to the dilemma created in this situation was offered in mishnah 3:7.

The two cases presented here share the same logical foundation. Since a woman can only be married to one man, the situation must be resolved. Such a situation is parallel to the one in mishnah 3:7 for which the same solution is suggested.

CRITICAL COMMENTS (CC)

1. This mishnah begins the last "unit" of text, yet adds nothing new to the tractate. The final section of the tractate does not seem to be a united whole. Paragraphs 9-11 contain additional rulings concerning cases of doubt. Paragraphs 12-14 attend to ethical or midrashic concerns, which is typical of endings of tractates.

[10]If a man and his wife travelled abroad, and then he and his wife and his children returned, and he said, "This is the same woman who travelled abroad with me, and these are her children,"--he does not need to bring proof concerning the wife nor concerning the children.

[If he returns and says,] "She died and these are her children,"--he needs to bring proof concerning the children, but not concerning the wife.

RABBINIC CONTEXT (RC)

The proof referred to here is genealogical. Regarding the wife, it is assumed that she was investigated at the time of marriage (See mishnah 4:4). If there is no reason to doubt the wife, and she had prior legal standing, no investigation is required.

In the first case, one reason that one may not need to investigate the children is that it is unlikely that the wife will accept the falsehood concerning their parentage.[175]

In the second case, because the woman was investigated before leaving, there is no reason to assume anything other than what the husband suggests. However, lacking the presence of the wife, the children require investigation.

HISTORICAL CONTEXT (HC)

This paragraph may deal with a hypothetical rather than an actual situation. However, the consideration of how to handle cases where people go abroad was not an idle concern for the sages of the mishnah. During economic hard time, those who were able sometimes went abroad to try to better their lot.[176]

[11][If a man says,] "I took a wife while abroad; this is she and these are her children,"--he must bring proof concerning the woman, but he does not need to bring proof concerning the children.

"She died and these are her children,"--he must bring proof concerning the woman and concerning the children.

RABBINIC CONTEXT (RC)

This mishnah is a continuation of the one that preceded it. In this case, the wife has no pre-existing legal standing. Therefore, in any situation, her genealogical status must be examined.

The assumption present in the previous mishnah is present here also. If the woman is present, it is accepted that she will not participate in deception concerning the parentage of the children. If she is not present, the children themselves must be investigated.

HISTORICAL CONTEXT (HC)

In this case, as in the previous mishnah, the issue addressed by the sages may have been hypothetical or real. Substantial diaspora communities existed during mishnaic times in Babylonia, Egypt, and many other places as well.[177] If the issue of lineage was to be taken seriously, cases such as this one required consideration.

[12]A man should not be alone with two women, but one woman may be alone with two men.

Rabbi Simeon responds: Even one man may be alone with two women whenever his wife is with him, and he may sleep with them as their host because his wife will watch over him.

A man may be alone with his mother or with his daughter, and may sleep with them with flesh touching. But if they are grown, she should sleep in her garment and he should sleep in his garment.

RABBINIC CONTEXT (RC)

The above statements apply to all of the genealogical castes mentioned in mishnah 4:1.[178] Anyone associated with the Jewish community, even including Samaritans and slaves, is considered to be trustworthy in the permitted situations described. However, the sages did not extend the same courtesy to non-Jews.[179]

HISTORICAL CONTEXT (HC)

The sages were not kind in their evaluation of the moral standards of non-Jews. While this position may have been based partly in personal experiences of persecution, it does not represent an accurate understanding of the sexual mores expressed in Roman law. For example, some sages believed that Roman law allowed sexual relations during betrothal while it did not, in actuality.[180] This is a tame example compared to the statement cited above (See RC).

[13]An unmarried man may not teach children, nor may a woman teach children.

Rabbi Eliezer responds: Even one who does not have his wife [with him] may not teach children.

RABBINIC CONTEXT (RC)

The phrase that is translated as "teaching children" would literally translate as "teaching scribes." The term scribes refers to one who teaches Bible to small children.[181] The idiom appears to mean "one who teaches what scribes teach."

Rabbi Eliezer's statement in this mishnah is cryptic. Its translation is derived from a similar, less elliptical tradition in the Tosefta.[182]

Following on the heels of the previous mishnah, this paragraph is probably concerned with situations where the teacher may end up alone with one or more parents of the children they teach. In addition, the sages believed that adults were not always embarrassed to engage in sexual behavior before very young children.[183]

[14]Rabbi Judah says: An unmarried man should not shepherd animals, nor should two unmarried men sleep under one sheet; but the sages permit.

Anyone whose occupation is with women may not be alone with women, nor should a man teach his son a trade [that is practiced] among women.

Rabbi Meir says: A man should always teach his son an honest and simple trade, and should pray to the One to whom all riches and possessions belong. For with every trade there is [both times of] poverty and wealth, because poverty does not [come] from one's trade, nor does wealth [come] from one's trade; rather, everything is according to one's merit.

Rabbi Simeon son of Eleazar says: Have you ever seen beasts or birds that have a trade? And they are sustained without difficulty. Were they not created to serve me? And was I not created to serve my Maker? Is it not logical that I should be sustained without difficulty? Instead, my deeds have brought evil upon me and ruined my sustenance.

Abba Guryan of Tzidon says in the name of Abba Gurya: One should not teach his son to be an ass driver, a camel driver, a barber, a sailor, a shepherd or a shopkeeper, because their trade is one of thievery.

Rabbi Judah says in his name: Most ass drivers are evil, but most camel drivers are proper; most sailors are pious, but the best of doctors go to *Gehenna*, and the best of butchers are partners of *Amalek*.

Rabbi Nehorai says: I should leave all worldly trades and only teach my son Torah, for a man enjoys its reward in this world, and the principal remains for the world to come, but the remaining trades are not so. When a man becomes sick or old or suffers, and is not able to toil at his work, he dies of hunger. But the Torah is not so; rather, it guards him from all evil in his youth, and gives him a future and hope in his old age. Regarding youth, what does it (Scripture) say? "But they who trust in the Lord shall renew their strength." (Isaiah 40:31) Regarding old age, what does he say? "In old age, they still produce fruit." (Psalm 92:15) And similarly [Scripture] says of our ancestor Abraham, peace be upon him, "Abraham was now old, advanced in years, and the Lord had blessed Abraham in all things." (Genesis 24:1) We find that our ancestor Abraham observed the entire Torah before it was given, as it is written, "Inasmuch as Abraham obeyed Me and kept My charge: My commandments, My laws, and My teachings (*torotai*)." (Genesis 26:5)

TECHNICAL TERMS (TT)

Gehenna--the Hebrew word for the nether world. The origin of the word is *"Gei Hinom"* the valley of [the family of] Hinom, which is located just outside the old city of Jerusalem.

Amalek--The biblical character (and nation) who embody evil. The person Amalek held to be the grandson of Esau. The Amalekites attacked Israel as she left Egypt. The evil Haman is considered to be of the seed of *Amalek*.

Torotai--The word can be read as, "My Torahs." The traditional Pharisaic interpretation of this verse is that its phrasing implies that Abraham observed both the written and oral Torahs even before Sinai.

NOTES

[1]Boaz Cohen, Jewish and Roman Law, New York: Jewish Theological Seminary of America, 1966, pp. 286-87.

[2]Tosefta Yevamot, 2:1.

[3]Mishnah Ketubot, 4:6.

[4]Tosefta Qiddushin, 2:1.

[5]Mishnah Eduyot 4:7 and elsewhere.

[6]Mishnah Ketubot 1:5 and elsewhere.

[7]Tosefta Qiddushin, 4:1.

[8]B. Cohen, p. 289.

[9]Tosefta Shabbat, 16:22.

[10]Mishnah Eduyot, 1:1 or Mishnah Bava Metzia, 4:7.

[11]Tosefta Yevamot, 2:1.

[12]Chanokh Albeck, "Introduction to Tractate Yevamot," in Shisha Sidrei Mishnah, vol. 3, p. 7-8.

[13]S. J. D. Cohen, From the Maccabees to the Mishnah, Philadelphia: The Westminster Press, 1989, p. 125ff.

[14]B. Cohen, p. 294.

[15]Ibid., p. 298.

[16]Ibid., p. 304-5.

[17]Ibid., p. 305.

[18]J. Neusner, "From Scripture to Mishnah: The Origins of Mishnah's Division of Women," in Journal of Jewish Studies, Vol. 30, #2, 1979, p. 143.

[19]B. Cohen, p. 178.

[20]Gedaliah Alon, <u>The Jews in Their Land in the Talmudic Age</u>, Cambridge, MA: Harvard University Press, 1989, p. 160.

[21]B. Cohen, p. 160.

[22]Ibid., p. 171.

[23]Ibid., p. 169.

[24]Alon, p. 643.

[25]Abraham Weiss, "An Analysis of Tractate Qiddushin," in <u>Concerning the Mishnah</u> (Hebrew), Abraham Weiss ed., Tel Aviv: Bar-Orin Publishing, 1969, p. 219.

[26]B. Cohen p. 166.

[27]Extrapolated from B. Cohen, p. 329.

[28]Chanokh Albeck, <u>Introduction to the Mishnah</u>, Tel Aviv: D'vir Publishing, 1959, p. 93.

[29]Mishnah Gittin 4:4-5.

[30]Pinchas Kahati, <u>*Mishnayot Mevoarot*</u>, Jerusalem: Keter, 1977, Vol. 6, p. 279.

[31]Mishnah Bava Metzia 1:5.

[32]Mishnah Gittin 1:6.

[33]A. Weiss, p. 274.

[34]G. Alon, p. 156-7.

[35]Ibid., p. 162.

[36]Ibid., p. 279.

[37]Mishnah Bava Batra 5:7.

[38]P. Kahati, Vol. 6, p. 280.

[39]Tosefta Bava Metzia 3:13 and Tosefta Bikkurim 2:16.

[40]Mishnah Shevu'ot 6:1.

[41]Mishnah Shevu'ot 6:5.

[42]Mishnah Bava Metzia 4:1-2.

[43]This understanding of this sentence is based on the explanation of the economic terminology involved found in A. Weiss, p. 273-274.

[44]G. Alon, p. 48.

[45]C. Albeck, Introduction..., p. 89.

[46]Tosefta Qiddushin 1:10-11.

[47]Tosefta Qiddushin 1:11.

[48]G. Alon, p. 485, where he cites her opinions as they appear in Tosefta Kelim Bava Metzia 1:6 and Bava Qamma 4:17.

[49]Quoted in translation (and in the original) by B. Cohen, p. 130. The original source quoted there is Papinian in Digest I 5, 9.

[50]Mishnah Pesachim 5:6.

[51]Tosefta Zevachim 3:3.

[52]Talmud Bavli Eruvin 96b quoting the Sifrei to Numbers.

[53]Mishnah Menachot 5:5.

[54]Tosefta Ketubbot 4:11.

[55]Tosefta Qiddushin 1:12.

[56]Tosefta Orlah 1:8.

[57]Mishnah Orlah 3:9.

[58]Tosefta Qiddushin 1:13.

[59]Tosefta Qiddushin 1:16 refers to "*kol ha'oseik...*"

[60]Mishnah Yadayim 3:5.

[61]Tosefta Sotah 7:20.

[62]Referenced in Blackman's Mishnayot, p. 458.

[63]Mishnah Sanhedrin 10:1.

[64]G. Alon, p. 152.

[65]Jacob Neusner, The Economics of the Mishnah, Chicago: The University of Chicago Press, 1990, p. 141.

[66]Tosefta Qiddushin 4:1, assuming the acceptance of the opinion of the School of Hillel.

[67]Mishnah Ketubot 4:4.

[68]Tosefta Qiddushin 2:1.

[69]This understanding of the case based on Tosefta Qiddushin 2:3.

[70]B. Cohen, p. 287.

[71]Ibid., 284-5. For example, Abraham appoints Eliezer as an agent to find Isaac a wife.

[72]Ibid., 286.

[73]Ibid., p. 347.

[74]G. Alon, p.166.

[75]A. Weiss, p. 202.

[76]J. Neusner, The Philosophical Mishnah, Vol. I, p. 144.

[77]Tosefta Qiddushin 3:10.

[78]Tosefta Qiddushin 2:5.

[79]Tosefta Qiddushin 3:8.

[80]A. Weiss, p. 202.

[81]G. Alon, p. 27.

[82]Ibid., p. 26-7.

[83]Shimon Applebaum, <u>Judaea in Hellenistic and Roman Times</u>, New York: E.J. Brill, 1989, p. 159.

[84]Tosefta Gittin 8:4 indicates that this was the case in the coastal cities.

[85]S. Applebaum, p. 160.

[86]Ibid., p. 163.

[87]Mishnah Gitin 6:3.

[88]Tosefta Qiddushin 4:2.

[89]Mishnah Ketubbot 7:7-10.

[90]Otherwise, the betrothal would be considered a *meqach ta'ut*, see Mishnah Ketubbot 7:8.

[91]Tosefta Ketubbot 7:8.

[92]Tosefta Ketubbot 7:8.

[93]Mishnah Ketubbot 7:6.

[94]Mishnah Ketubbot 7:10.

[95]Mishnah Ketubot 7:10.

[96]Mishnah Ketubbot 7:10.

[97]G. Alon, p. 680.

[98]J. Neusner, "From Scripture..." p. 148.

[99]Ibid., p. 151.

[100]Tosefta Bava Kamma 10:20.

[101]B. Cohen, p. 306.

[102]Ibid., p. 307.

[103]Ibid., p. 307.

[104]Ibid., p. 309-10.

[105]Ibid., p. 310.

[106]Ibid., p. 312.

[107]Ibid., p. 307.

[108]Tosefta Qiddushin 3:7.

[109]C. Albeck, Shisha Sidrei..., Vol. 3, p. 319.

[110]Mishnah Ma'aser Sheni 2:1 contains this opinion presented anonymously.

[111]Mishnah Terumah 4:3.

[112]Neusner renders the word as "government." Blackman and Danby translate it as "governor." The entry in Jastrow's *Sefer Hamilim* agrees with Blackman and Danby.

[113]Tosefta Ketubot 3:1.

[114]Tosefta Qiddushin 4:3.

[115]Mishnah Terumah 4:3.

[116]G. Alon, p. 103.

[117]Tosefta Qiddushin 3:3.

[118]Tosefta Qiddushin 3:1-7.

[119]G. Alon, p. 162.

[120]Ibid., p. 63.

[121]Ibid., p. 120.

[122]C. Albeck, Introduction..., p. 230.

[123]Tosefta Qiddushin 3:2 supports this understanding of a two-sided condition. There, the term *kaful*, which means "double" is used.

[124]Tosefta Qiddushin 4:9.

[125]Mishnah Ohalot 7:6.

[126]Neusner renders the word as "government." Blackman and Danby translate it as "governor." The entry in Jastrow's *Sefer Hamilim* agrees with Blackman and Danby.

[127]G. Alon, p. 63.

[128]Ibid., p. 159.

[129]Mishnah Qiddushin 2:1.

[130]Tosefta Qiddushin 3:6.

[131]Tosefta Sotah 5:11.

[132]Mishnah Ketubbot 2:5.

[133]Tosefta Qiddushin 4:10.

[134]J. Neusner, "From Scripture...", p. 140.

[135]Mishnah Ketubot 2:5.

[136]Tosefta Qiddushin 4:12.

[137]Tosefta Qiddushin 4:12.

[138]G. Alon, p. 670.

[139]Ibid., p. 670.

[140]J. Neusner, "From Scripture...", p. 140.

[141]Mishnah Yevamot 4:7.

[142]Tosefta Sotah 7:2.

[143]Mishnah Yevamot 2:5.

[144]Tosefta Qiddushin 4:16.

[145]Mishnah Yevamot 4:13.

[146]Tosefta Qiddushin 4:15.

[147]B. Cohen, p. 134-136.

[148]G. Alon, p. 27.

[149]J. Neusner, A History of the Mishnaic Law of Woman: Part Five The Mishnaic System, Leiden: E. J. Brill, 1980, p. 173.

[150]G. Alon, p. 27.

[151]S.J.D. Cohen, p. 21.

[152]Ibid., p. 21.

[153]G. Alon, p. 26.

[154]Ibid., p. 27.

[155]Ibid., p. 26.

[156]Tosefta Qiddushin 5:1 contains the disagreement. The importance of these sages is described in G. Alon, p. 668-670.

[157]Tosefta Qiddushin 5:4.

[158]Tosefta Ketubbot 1:6.

[159]Tosefta Qiddushin 5:1.

[160]Tosefta Qiddushin 5:2.

[161]G. Alon, p. 563.

[162]Tosefta Qiddushin 5:4.

[163]G. Alon, p. 148.

[164]Ibid., p. 598.

[165]C. Albeck, Introduction..., p. 221.

[166]Tosefta 'Arakhin 1:15.

[167]S. Applebaum, p. 162.

[168]G. Alon, p. 26.

[169]J. Neusner, A History..., p. 172.

[170]Tosefta Qiddushin 5:3.

[171] C. Albeck, Introduction,..., p. 220, 229.

[172] G. Alon, p. 680.

[173] The opinion is attributed to the sages in Tosefta Qiddushin 5:5.

[174] Tosefta Qiddushin 5:5.

[175] C. Albeck, Mishnayot, Vol 3, p. 328.

[176] G. Alon, p. 661.

[177] Ibid., p. 616.

[178] Tosefta Qiddushin 5:9.

[179] Tosefta Qiddushin 5:9.

[180] B. Cohen, p. 342.

[181] C. Albeck, Mishnayot, Vol. 3, p. 329.

[182] Tosefta Qiddushin 5:10.

[183] Tosefta Qiddushin 5:9.

The true test of a new format for translation comes when the reactions of the target audience to this new document are compared with their reactions to existing translations. Such a comparison is yet to be attempted. However, lacking this data, certain summary remarks are appropriate. First, I shall attempt to anticipate some of the reactions that the target audience may have to the new format, and then I shall compare the product that resulted from this new approach to translation to the less audience-specific translations found in the Danby, Blackman, and Neusner editions of the Mishnah.

Before describing possible responses that the target audience may have, the character of the intended audience must be specified. This project was not intended to turn the Mishnah into commonplace reading material or to make it attractive to the general audience. The readers for whom this translation is designed are liberal Jews who would choose, of their own accord, to attend an adult education text class. As described in Chapter One, such learners are attracted by the sociological and spiritual lessons that they can draw from the text and apply to their own lives. However, they need to feel that they are independent, active participants in deriving these ideas and that the life experiences that they as adults have are relevant to the discussion. This theoretical

description of the target audience was supported by data gathered from the focus groups, as described in Chapter Three. Now that a prototype of this new "adult-learner-friendly" translation has been created, is it likely to meet the needs of this audience?

I think that there is reason to believe that this new style of translation will prove valuable to adult learners. The actual format used in presenting this new translation is much more extensive than the one originally proposed for this project. The breadth and depth of the commentary present in this translation may be its greatest strength and weakness simultaneously.

By providing the reader access to relevant biblical, early rabbinic, and historical sources, this format makes it easier for the reader to identify his or her own experiences with the cases presented by the Mishnah. The extent of the commentary should help to limit the erroneous identifications that occurred regularly in the focus groups. While no written commentary could free the learner of dependence on an instructor, the contextual commentaries may lessen such reliance and help learners to express their own expertise in other fields in relation to the text. However, such positive results as these are only likely if the reader proves willing to read through the lengthy annotation provided.

If the extent of the commentaries proves intimidating to the average Jewish adult learner, then the apparatuses will not have

the opportunity to function. Their effectiveness may also be hindered by their presentation in this project. Professional typesetting would not shorten the commentaries but might make them seem more approachable to the learner. While the reader may choose not to take advantage of the complete commentaries, even a partial reading of the annotations may provide the learner with an improved opportunity to "translate" this text. However, only actual use of this translation can provide adequate data to judge the effectiveness of this new format for translation.

Anticipating audience reactions to a new translation is a speculative venture. Comparisons to present translations stand on more firm footing. This project was not intended to replace any of the translations currently available but rather to provide an alternative that is better suited to a specific target audience. Each of the three extant translations has serious handicaps in an adult learning situation. The Neusner translation appears to be designed for specialists rather than interested lay readers, as I argued in Chapter Two. His version of the Mishnah contains no explanatory notes whatsoever. The average adult learner requires background information other than the limited amount present within the cryptic phrases of the Mishnah text itself. The outline format of his translation is likely to make a difficult text seem even more foreign. Neusner's method of translation preserves some of

the formal, rhetorical qualities of the original document, but only by limiting the ability of the translation to communicate the content of the text. Such a choice is not appropriate for the target audience chosen for the present project.

The Danby and Blackman translations are also unfit for the readership for whom this prototype is designed. While these translations are accompanied by limited annotations, the form and content of such apparatuses may not be very effective. Research and experience in the focus groups described in Chapter Three have shown that adult learners often choose to ignore material presented as footnotes. More specifically, the footnotes in Danby are very limited in scope and are printed in a very small type. The footnotes in Blackman commonly make reference to other resources not conveniently provided, such as appendices and biblical quotations. His notes also include words in Hebrew, which may make an interested reader who has limited Hebrew skills feel inadequate.

The content of the footnotes printed in the Danby and Blackman editions may be as problematic for the target audience I have chosen as is their form. This translation is designed specifically for the liberal Jewish community. The annotations in the Danby and Blackman translations are based in traditionalist Jewish assumptions. They are concerned with informing the audience which opinions found in the Mishnah became authoritative in later Jewish

law. As a result, they fail to clearly explain the reasons underlying the disputes found in the document. When they do offer explanations for the arguments in or phrasing of the Mishnah, they rely on later Talmudic explanations, rather than going to sources that are more contemporary to the Mishnah. Danby and Blackman translate the Mishnah as if it may not be read independent of other Jewish legal literature. Such a focus is quite different from the one I have chosen, as evidenced by my introduction to the Mishnah found in Chapter Five. The commentaries found in this prototype are based in scientific, historical research into the Mishnah itself. The modern scholarship available concerning the Mishnah is sizeable but has never been made available to the adult learner along with the text being studied. The introduction of the products of critical biblical research into liberal Jewish adult education settings has been successful, as described in Chapter One. I believe that such an approach to the Mishnah will meet the needs of the target audience of this translation better than have the traditional assumptions.

Further, neither the Blackman nor the Danby translation attempts to portray the document in its own historical context. The talmudic reasoning upon which they rely often comes from a later time and a different geographical location. By presenting relevant historical detail and parallels from Roman Law, the reader

may be better able to translate the text for her or himself. The modern reader is accustomed to viewing documents in a historical context and will assume one where none is provided. This kind of assumption by the reader was evident in the focus groups described in Chapter Three. The participants in those groups specifically requested more historical information.

This new translation also presents biblical references and technical terms more precisely than do the Danby and Blackman translations. With readers unlikely to use footnotes, merely listing the biblical verses that are relevant is inadequate. The adult learner is more likely to consider the biblical context behind the Mishnah when full quotations are presented on the page. In the focus groups, the subjects had difficulty determining when the translation was rendering a technical term and when it was not. Such confusion should be eliminated in this new translation, which presents technical terms in italics and provides an explanation of them on the page.

With a passing glance at this new format for translation, one can easily see that it differs significantly from previous translations. It is not intended to replace them. The review of translation theory presented in Chapter Two clearly states that there is no such thing as the one best translation for all situations. The study translation format created for this project

has the potential to meet the needs of the target audience of modern Jewish adult learners in a classroom situation. Whether or not it will do so in actuality will only become known when this study translation is actually used in adult education.

APPENDIX A

The following materials were used in the focus groups described in Chapter Three. Mishnah Tractate Qiddushin 1:1-2 are taken from the Blackman translation of the Mishnah. 2:1-2 come from the Danby translation. The last two pages of this appendix contain the Blackman and Danby translations of Qiddushin 3:12 presented together in parallel columns. The format of the pages that follow is identical with that of the materials used in the focus groups. Audio tapes of the focus groups themselves are available upon request.

Mishnah 1 The woman is acquired[1] by three means and she regains
her freedom[2] by two methods. She is acquired by money,[3] or by
document,[4] or by sexual connection.[5] By money--the School of
Shammai say, By a <u>denar</u>[6] or by a <u>denar's</u> worth;[7] but the School of
Hillel say, By a <u>perutah</u>[8] or by a <u>perutah's</u> worth.[7] And how much
is a <u>perutah?</u>--One eighth part of an <u>Italian issar</u>.[9] And she
recovers her freedom by a <u>letter of divorce</u>[10] or on the death of the
husband. The widowed sister-in-law[11] is acquired by sexual
intercourse[12] and she obtains her release by <u>chalitzah</u> or on the
death of her brother-in-law.[13]

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[1]The expression <u>the man acquires the woman</u> is not used, to
show that she cannot be betrothed without her full consent.

[2]Literally <u>and she buys herself out.</u>

[3]The man hands her the money (or coin or equivalent) saying,
<u>Be thou betrothed to me by virtue of this money</u>.

[4]He delivers to her a writ whereon is stated <u>Be thou betrothed
to me.</u>

[5]Compare בְּתֻבּוֹת 4[4]. There must be witnesses that they had
been alone together and that he had said to her <u>Thou art betrothed
to me because of this sexual connexion.</u> But this means is severely
discouraged by the Sages for an obvious reason (visual evidence of
copulation would lead to moral deterioration).

[6]דִּינָר = זוּז = 1/2 שֶׁקֶל . See זְרָעִים, INTRODUCTION, Tables.

[7]Traditional reading

[8]192 פְּרוּטוֹת = דִּינָר . The opinion of the School of Hillel
is accepted.

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[9]8 פְּרוּטוֹת = אִיסָר .

[10]See גִּיטִּין INTRODUCTION.

[11]See יְבָמוֹת INTRODUCTION.

[12]She cohabits with the brother of her deceased husband.

[13]The brother of the dead husband.

Mishnah 2   A Hebrew bondman[14] is acquired by money[15] or by document;[16] and he regains his freedom by years[17] or on the advent of the Jubilee[18] or by his outstanding worth.[19]   The Hebrew handmaid[20] has the advantage of him in that she recovers her release also through the tokens.[21]* He that has his ear bored through[22] is acquired by the act of boring, and he regains his freedom at the year of Jubilee or on the death of his master.[23]

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[14]Exodus **21**, 2; <u>Leviticus</u> **25**, 39.

[15]He becomes a bondman on the receipt of the money from his future master.

[16]He becomes a bondman when he hands his coming owner a writ stating <u>Lo, I am sold to thee</u>.

[17]After six years' service. <u>Exodus</u> **21**, 2.   (Theשׁמִטה year, if in the six years' period, is of no advantage in this case).

[18]<u>Leviticus</u>, **15**, 40.   The יוֹבֵל cuts the six years short.

[19]<u>i.e.</u> he redeems himself or buys his freedom with a sum in proportion to the number of years he had still to serve.

[20]Or <u>maidservant, female slave, bondwoman</u>.

[21]By manifesting her tokens of puberty on attaining the age of twelve years and one day (<u>Exodus</u> **21**, 8-11).

[22]<u>Exodus</u>, **21**, 6.

[23]This applies to the נִרְצָע.   But in the case of a נִמְכָּר, <u>one who sold himself</u> for six years, he becomes free if the master left no son, but if a son survived the deceased then the נִמְכָּר must complete the six years.

2. 1. A man may betroth a woman either by his own act or by that of his agent,
and a woman may become betrothed either by her own act or by that of her agent
A man may give his daughter in betrothal while she is still in her girlhood[1]
either by his own act or by that of his agent. If a man said to a woman, 'Be
thou betrothed to me this date, or be thou betrothed to me with this', and one
of them was worth a *perutah*, her betrothal is valid; otherwise it is not valid.
If [he said, 'Be thou betrothed to me] with this and with this and with this',
and they were together worth a *perutah*, her betrothal is valid; otherwise it is
not valid. If she was eating them one after the other, her betrothal is not
valid unless one of them was worth a *perutah*.

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[1]While she is a *naarah*, i.e. during six months after she has become of age,
twelve years and a day. Cf. Ket. 3[1].

2. 2. [If he said,] 'Be thou betrothed to me with this cup of wine', and it was found to be honey; or 'with this cup of honey', and it was found to be wine, or 'with this silver *denar*', and it was found to be gold; or 'with this golden *denar*', and it was found to be silver; or [if he said, 'Be thou betrothed to me on the condition that I am rich', and he was found to be poor; or 'that I am poor', and he was found to be rich; her betrothal is not valid. R. Simeon says If he deceived her to her advantage her betrothal is valid.

Mishnah 12 In every case where there is licit betrothal and there befell no transgression, the status of the offspring follows that of the male. And which is such? This refers to a priestess, a Levitess or an Israelitess that is wed to a priest, or to an Israelite. But in any case where there is valid betrothal, but transgression occurred, the standing of the offspring follows that of the inferior party. And which is such? This refers to a widow wedded to a High Priest, or a divorced woman or one who had performed *chalitzah* wed to a common priest, or a bastard woman or a Gibeonite woman descendant married to an Israelite, or the daughter of an Israelite wedded to a bastard or to one of Gibeonite descent. And in the case of any woman whose be-trothal with such is not valid, but whose betrothal with others would be licit, the offspring is a bastard. And which is such? In the case of a man who has sexual inter-course with one of the *prohibited degrees of marriage* set out in the Law. And in the case of any woman whose betrothal with such is not

3. 12 If the betrothal was valid and no transgression befell [by reason of the marriage] the standing of the offspring follows that of the male [parent]. Such is the case when a woman that is the daughter of a priest, a levite, or an Israelite is married to a priest, a levite, or an Israelite. If the betrothal was valid but transgression befell [by reason of the marriage] the standing of the offspring follows that of the blemished party. Such is the case when a widow is married to a High Priest, or a divorced woman or one that had performed *halitzah* is married to a common priest, or a bastard or a *Nethinah* to an Israelite, or the daughter of an Israelite to a bastard or a *Nathin*. If her betrothal with this man was not valid, but her betrothal with others would be valid, the offspring is a bastard. Such is the case when a man has connexion with any of the forbidden degrees prescribed in the Law. If her betrothal with this man was not valid, and her betrothal with others would also not be valid, the offspring is of her own

licit, and whose betrothal with others would also not be valid, the offspring is of her own status. And which is such? In the case of the offspring of a bondwoman or a non-Jewess.

standing. This is the case when the offspring is by a bondwoman or a gentile woman.

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