

An Annotated Translation of Chapters 34 through 38
of Hilchot Kidushin Shulhan 'Arukh
volume Eben ha Ezer

by

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DIGEST

This thesis is composed of two sections. The first section is an original translation of chapters 34 through 38 of Hilchot Kidushin, Shulhan 'Arukh, volume Eben ha Ezer; written by Joseph Caro and annotated by Moses Isserles, both in the sixteenth century.

These five chapters are just a part of Hilchot Kidushin which deals with the laws of betrothal. Chapter thirty-four concerns itself with the details of the betrothal ceremony. The regulations with regard to specific blessings and witnesses in attendance are presented herein. Chapter thirty-five concentrates on the laws of agency for betrothal. These laws delineate the appropriate procedure for appointing an agent, the prerequisites for cancelling an agent's authority, and the responsibility of both the agent and the designator with regard to betrothal. This chapter specifically concentrates on those instances where a male is the designator. Chapter thirty-six details the laws governing those instances where a female appoints the agent. The rights of a woman, who is a minor, regarding betrothal are outlined in chapter thirty-seven. The responsibilities of the young girls' parents, siblings and suitor regarding betrothal are clearly delineated. One also finds the laws governing the actions of the

minor herself. The final chapter, thirty-eight, presents the rules for establishing a conditional betrothal. A conditional betrothal allows a man to finalize a betrothal with a woman only after he has fulfilled certain stipulations. The form and character of these stipulations are outlined in this section.

The second part of this thesis consists of explanatory footnotes. To preserve the original style and literal meaning of the text, notations made to clarify the meaning of words and/or phrases have been included in this section and not in the text itself. To insure clarity for the reader, annotations for a specific chapter are located directly after the translation of the chapter.

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Foreword

There are two essential components of the traditional Jewish marriage, Kidushin and Nissuin. The laws contained within this thesis deal specifically with the ceremony of Kidushin. It is difficult to find a corresponding word for Kidushin in English. It is more than "an engagement" in the modern sense, as it can be dissolved only by divorce. On the other hand Kidushin is similar to "betrothal" in that it represents a formal stage which is a preliminary to marriage proper. In this thesis Kidushin will be translated as betrothal or any of its various verbal equivalents.

It appears that very early in the development of Jewish marriage ceremonies, there was a distinction between Kidushin and Nissuin. The exact reason for two ceremonies is not readily discernible. However, it is plausible that because of the patriarchal and patrilocal systems of early Jewry, it was the two families, not the children, which arranged the marriage and its terms. Once the arrangements had been concluded, the father of the groom would, it appears, "set aside" the bride for the purpose of her marriage to his son by using the appropriate formula "Thou art sanctified." The Hebrew word which is used in this formula is Kidush, hence the nominal term Kidushin. In traditional Jewish practice Kidushin was

considered an act which changed the status of a man and a woman, i.e., from bachelorhood to married. The actual "betrothal" could be accomplished by means of the transfer of money, the presentation of a document or the act of sexual intercourse. When any one of these acts was accompanied by the phrase "Thou art betrothed unto me" and witnessed by at least two adults Jews, Kidushin was completed. Today Kidushin is usually represented in the wedding ceremony by two parts. These are the Birkhath Erushin which are Rabbinic in origin, and by the giving of a ring to the bride after the pronouncement of the betrothal formula. At a later time, another procedure evolved out of the practice of preliminary negotiations between the bride's and the groom's families. This custom known as Kidushin Al Tenai, conditional betrothal, in English, probably developed as a result of each family's desire to procure the best arrangement for their offspring. The Tenaim, conditions, often helped the parties to have some assurances as to the firm basis for the marriage.

It is impossible to discuss the laws of betrothal and not recognize that women are afforded a unique legal position. In the community of Jews who arranged their lives according to the Shulchan 'Arukh, all people had roles which were strictly defined. It is usually assumed that men and women were not considered equal under the law in traditional societies. This section of Shulchan 'Arukh, Kidushin 34-38, gives us a different picture of a woman's legal status and the societal response to her position regarding Kidushin. A girl not yet twelve

years old is considered a minor and is totally controlled by her father when it comes to Kidushin. She may not be betrothed without her father's permission. This is the general rule but there are statements which give one the impression that, in reality, the society did foster regard for the young girl. We find that it is strongly suggested that a father never betroth a daughter who is still a minor. Perhaps the strongest statement regarding a woman's rights is the one which forbids a father to declare, once the girl has reached the age of majority, that he either betrothed or divorced his daughter while she was still a minor. Since a Kohen may not be married to a divorcee, this prohibition is a permanent check on the father's ability to cast suspicion on the fitness of his daughter to marry a priest. The moment a girl reaches the age of maturity she achieves the same legal standing as a man with regard to Kidushin.

The Jewish communities of the Middle Ages were spread out from Europe to Asia. Often parents, separated by continents, would have their children betrothed. A system of agents was established so that the parent or child could accept betrothal without an extra journey. Women were allowed to appoint agents just as men were allowed to appoint an agent. The laws which apply to the appointment of an agent by a man are also binding on a woman. This area, appointment of an agent for betrothal, is one area where a man and woman are given equal legal status. Yet there are two instances where the rights of a woman were especially protected. One such

situation was where a man appointed an agent to betroth a woman for him, and the agent died before there was confirmation that the betrothal had been completed. In this case it was assumed that the betrothal had been completed. Since it would be impossible to know to which woman he was betrothed, he was therefore forbidden to all women who had female relatives. Once a man was considered betrothed, relations with the female relatives of his fiancée would be considered incestuous. This prohibition prevented a woman from inadvertently being drawn into an incestuous relationship. Another case of special legal consideration for women concerned the appointment by a woman of a woman to act as her agent. Since a man could have more than one wife (polygamy was still practiced by some in Caro's time), a female agent could, if she was not careful, become a co-wife. In an attempt to control the number of instances where female agents inadvertently became co-wives with their sender, the law was established that a woman's agent could only accept betrothal; she could not initiate betrothal.

Built into the legal formula of "conditional betrothal" is protection for the rights of the woman. In certain cases the community could make judgements as to whether the prospective groom had fulfilled the conditions. This enabled ambiguous conditions to meet the test of community standards rather than being decided solely on the testimony of a few. A man could only use money which was totally owned by him as fulfillment of a condition. One final example, of how women's

rights were protected by conditional betrothal, is that only the beneficiary of a condition could cancel it. Here, too, a woman had equal legal status with a man.

The area of betrothal provides one with a clue of how a woman was legally regarded in her society. In this area there are some instances where she had the exact same legal rights as a man. In other instances she received protective rights. In all cases it appears that women were given careful consideration.

The laws of Kidushin represent a small part of the vast legal literature of the Jewish people. As with all great literature it has a beauty which often transcends cultural differences. Though these laws represent a unique set of social circumstances, they reflect a universal concern for the sanctity of marriage and the dignity of all people. The laws of Kidushin do not make men and women equal in all respects, but they do reflect a concern of the Rabbi's for the welfare of women in a male-oriented society. It is recognition of their concern, not their solutions, which can be helpful to us as we deal with the religious needs of Jewish men and women today.

There are two people whose help and guidance I wish to acknowledge. Dr. Alexander Guttmann, my advisor, has throughout my student years encouraged me to look beyond the formality of Jewish legal literature and see the beauty and humor within.

Linda Weinberg, my wife, provided the emotional support which enabled me to undertake this project. She also has challenged me with regard to Jewish tradition. I thank her, knowing that support and challenge are two pillars upon which we will continually rely.

EBEN HAEZER

KIDUSHIN

34 The Blessings of the Betrothal and if
 it Requires Ten¹ 4 paragraphs

1 All who betroth a woman whether in person or through an agent recites a blessing (he or his agent) (Tur) [and there are those who say that another (R. Moses of Coucy and an anonymous commentator on the Mishnah) should recite a blessing and so it is customary]: "who sanctified us by his commandments and commanded us concerning Arayot² and prohibited to us relations with betrothed women,³ permitted to us women married under the Huppah⁴ and by the betrothal ceremony: "Blessed are you Lord who blesses Israel." [There are those who say the text of the blessing in different words by saying "and permitted to us marriage by means of Huppah and Kidushin" (Tur) and concludes⁵ it with "Blessed are Thou who sanctifies his people Israel through Huppah and Kidushin" (Thus wrote R. Asher Ben Yechiel) and thus it is customary in these lands] and after he finishes the blessing he shall betroth her.

2 It is customary to arrange this blessing over a cup of wine and bless upon it first⁶ and afterwards make this blessing,⁷ and if there is no wine or any intoxicating drink, he blesses it⁸ by itself.

3 If the man did not make the blessing of betrothal at the time of the betrothal he should not say it⁹ at the time of the marriage ceremony. [Note: There are those who say that one makes this blessing at the time of the marriage¹⁰ (Mordechai, Chapter 1, Ketubot), and thus it is customary (even if he had long since betrothed the woman) he should pronounce the blessing of betrothal under the Huppah. And there are those who say that he should again betroth her under the Huppah, in order that the betrothal should take place near the time of the blessing (R. Isaac Ben Sheshet #82; see below #36) and if the blessing of betrothal had already been pronounced at the time of the first betrothal there are those who say that one repeats the blessing under the Huppah without mentioning the name of God because of the onlookers (Ibid., "concerning the matter of betrothal through an agent" and so it appears to me correct.)]

4 The blessing of betrothal requires ten to exist *â priori*.

Notes to Chapter 34

1. The number ten refers to the number of male adults, ages 13 years or over, necessary for public synagogue service and certain other religious ceremonies. The Talmud derives this number from the term "edah" (community) which in the Torah is applied to the ten spies (Num. 14:27). Thus ten men constitute a congregation.

2. In Hebrew, the concept of incest is expressed in the word Arayot for which the punishment was death, the form depending upon the kind of incest. There is no literal translation of Arayot. It may be defined as any sexual act which is not considered moral and therefore is forbidden. There are certain relationships which have been prohibited either by Biblical or Rabbinic injunctions. They are:

BIBLICAL PROHIBITIONS

TALMUDIC EXTENSIONS

A. CONSANGUINITY

a. In the Ascending Line

- | | |
|-----------|---|
| 1. Mother | Grandmother (paternal as well as maternal). |
|-----------|---|

b. In the Descending Line

- | | |
|--|------------------------------------|
| 2. Daughter (implied in granddaughter). | |
| 3. Granddaughter (son's or daughter's daughter). | Son's or daughter's granddaughter. |

c. Collateral Consanguinity

- | | |
|--|-----------------------|
| 4. Sister and half-sister (either born in wedlock or not). | |
| 5. Father's sister. | Grandfather's sister. |
| 6. Mother's sister. | Grandmother's sister. |

B. AFFINITY

a. Through One's Own Marriage

- | | |
|------------------------------------|---|
| 7. Wife's mother. | Wife's Grandmother. Wife's stepmother not strictly prohibited, but objectionable. |
| 8. Wife's daughter (stepdaughter). | |
| 9. Wife's granddaughter. | |

10. Wife's sister (during the life time of the divorced wife).

b. Through Marriage of Near Blood Relation

- | | |
|--|---|
| 11. Father's wife (stepmother). | Father's or mother's step-mother. |
| 12. Father's brother's wife. | Mother's brother's wife; father's uterine brother's wife. |
| 13. Son's wife. | Grandson's or great grandson's wife. |
| 14. Brother's wife (except in the case of levirate). | |

3. (but).

4. Huppah--the term originally referred to the bridal canopy or bridal chamber and sometimes the wedding itself. In ancient times the Huppah was the tent or room of the groom into which, at the end of the betrothal period, the bride was brought for the consummation of the marriage. In later times it became simply a canopy which was erected out of four sticks and a piece of cloth. There is still debate as to the legal consequences of a Huppah. One view is that the Huppah represents the groom's home and this fulfills the need for the bride to be brought to the groom's home for Nissuin. Another view is that the Huppah embraces a private meeting for the consummation of the marriage proper. Today we use the Huppah in the ceremony and have the marriage consummated at a later time.

5. When a prayer begins with "Blessed art thou . . ." and concludes with "Blessed art thou . . ." it is called a long blessing. The words "Blessed art thou . . ." acts as the conclusion for the total blessing.

6. the wine.

7. See above, "by means of Huppah and Kidushin."

8. Ibid.

9. Ibid.

10. (ceremony).

35 The Laws of Agency for Betrothal 15 paragraphs

1 A man may appoint an agent to betroth for him a woman, whether it is any woman or a specific woman, and the agent should say to her, "Behold you are betrothed to Ploni."¹¹ However if it is possible for him to betroth her in person it is forbidden to betroth her through an agent, unless he knows her, lest afterward he find in her something reprehensible and she becomes reprehensible to him. In any case even though he knows her, it is a mitzvah¹² that he should betroth her in person if possible.

2 The agent¹³ becomes a witness, therefore if he appointed two agents to betroth for him a woman no other witnesses are necessary: To what does this refer? When there is no denial of money, as for example he betrothes her with a Shetar¹⁴ or even with money and she acknowledges that she received it from him, but if she says that she did not receive it for the sake of betrothal, but instead for the sake of a deposit. However, if there is a denial of money, and she does say that she did not receive money from them (or a writ worth the equivalent of a perutah)¹⁵ (Magid Mishnah, Chapter 3) behold this is a doubtful betrothal.

3 It is not necessary that witnesses be present when the man appoints an agent to betroth him a woman, only that the

agent and the sender acknowledge this (this is not considered acknowledgement unless he acknowledges in the presence of witnesses as is the rule for an admission) (R. Isaac Ben Sheshet, paragraph 193). However,¹⁶ an agent of a woman, where she appoints an agent to accept betrothal, it is necessary that there be witnesses and there are those who say that also when a man appoints an agent you need witnesses. [Note: There are those who say even if a woman appoints an agent without witnesses we must be stringent¹⁷ (Tur in the name of R. Jacob Ben Asher) and if there are no witnesses to the betrothal and the woman and the agent say that she was betrothed properly, if another comes and betrothes her, she needs a bill of divorce¹⁸ (R. Isaac Ben Sheshet, Chapter 83). And if there are no witnesses to the matter and the sender denies that he appointed him as an agent there are those who say this is a doubtful betrothal (R. Mordechai Ben Hillel, Halachot, Chapter "Haish Mekadesh") and there are those who say that she is not betrothed at all (R. Eliezer B. Joel Halevi and R. Judah Mintz) and this appears to be correct.]

4 There is one authority who says that even if he did not appoint an agent explicitly, merely revealed his opinion that he desired a specific woman, and told him to make the preliminary arrangements and the arranger of preliminary arrangements went and betrothed her for him without being appointed as the agent, behold she is betrothed.

5 There is one authority who says that if the father told his son that he was willing to betroth her for him, and the son remained silent, and the father went and betrothed her for him, behold she is betrothed.¹⁹ Due to his being ashamed in front of the father he remained silent and in effect appointed him an agent to betroth her for him. However in a similar case if it were another person²⁰ then the betrothal is doubtful.

6 All are fit to be an agent for betrothal except the deaf-mute,²¹ insane, and minor because they are lacking mental capacity, and the Gentile because he is not a son of the covenant²² and the slave for he is not within the laws of betrothal. [Note: There are those who say that the first agent is able to appoint a second agent (Halachot, R. Mordechai Ben Hillel, Chapter "Hamekabel" in the name of some anonymous Rabbis) if he transmits to him the betrothal money or object that the owner transmitted to him, but if the owner did not transmit to him the betrothal money but only commanded him to betroth with any money he might want, he cannot appoint an agent. And there are those who say that in all cases the first agent cannot appoint a second agent (Hagahot Mordechai, Chapter Haish Mekadesh). If he sends a document through a non-Jew to an Israelite friend who is in another place and appoints him to be an agent to betroth him a woman there are those who say that the law is like in Gittin;²³ and there are those who say that (as is explained below, Chapter 141)

(Rabenu Yerucham) all agree that with regard to kidushin she is consecrated according to biblical law. (Thus it is written in Bet Yosef.)]

7 If one says to an agent betroth me to a woman in a specific place and he betrothes her in another place, she is not betrothed. And likewise in all instances concerning a change; for if he said betroth me unconditionally and he was betrothed to her conditionally or if he said to him betroth her conditionally and he betrothed her unconditionally or the condition is changed, she is not betrothed.

8 If he should say to him²⁴ "betroth her to me and behold she is in such and such a place" and he betrothes her in a different place she is betrothed, because he does not insist²⁵ he merely points out to him the place.²⁶

9 If one appoints an agent to betroth for him a specific woman and the agent goes and betrothes her for himself, behold this is deceitful, and what is done is done²⁷ if he did not betroth her with the sender's money. Even if he²⁸ said to her first, "I was sent by Ploni to betroth you to him" (and at the hour of betrothal he said to her "you are betrothed unto me" behold she is betrothed to the agent) (Tur) provided that the woman heard and completely understood before she accepted the betrothal money or object²⁹ when he said "behold you are betrothed unto me," because otherwise she accepted the betrothal according to what was said at the beginning, i.e., to betroth

her to Ploni. However, if the agent erred and said, "you are betrothed unto me" there is nothing to fear as hekdes made by mistake is not considered hekdes.³⁰ There are those who are strict and require a bill of divorce.

10 If the woman, herself, did not want to be betrothed to the sender and was betrothed to the agent himself, there is no deceit.

11 If one says to his agent, go and betroth unto me a woman and the agent dies and it is not known if he betrothed a woman to him or did not betroth, behold he is to be presumed betrothed and it is to be presumed that the agent carried out his job.³¹ Since he does not know which woman he is betrothed to, behold he is forbidden to all women that have relatives, which are in the class of illicit relationships, for example: a woman who has a daughter or mother or a sister or anyone like them. For if you say he may marry this one, perhaps her mother was betrothed to him by his agent or her sister or her daughter. But it is permissible³² a woman who does not have relatives; (or) for example if she has a female relative as for example a mother or a sister, etc. anyone like them and this relative was a married woman when he appointed the agent, even though she was divorced before the death of the agent, behold he is permitted to her. And we do not say that perhaps the agent betrothed him to her relative after she was divorced because she was not fit³³ when the agent was appointed, and a man does not appoint an agent

to betroth for him a woman unless she is able to be betrothed at the time of the appointment of agency. [Note: And thus if her relatives³⁴ came and said we were not betrothed and proceed to get married he is permitted to this woman for behold certainly the relatives were not betrothed (R. Nissim B. Reuben Gerondi, Chapter Hamekabel, R. Isaac Ben Sheshet, Chapter 82). There are those who say that similarly it is a law if one commands³⁵ to betroth a certain woman and the agent dies he is immediately forbidden to her female relatives, for the reason that it is a presumption that the agent completed his mission (Tosaphot, Chapter Hamekabel) and there are those who differ with this.]

12 If one appoints an agent to betroth him to a specific woman and the agent departs and betrothes her for him, and the sender himself betrothes her mother or her daughter or her sister and it is not known which of them was betrothed first, both of them need a bill of divorce and are forbidden to him.

13 If the agent is appointed and his agency is cancelled before the betrothal, behold it³⁶ is null; however if it is not known whether his agency was cancelled before or after the betrothal, behold she is doubtfully betrothed.

14 (A priori the agent's status)³⁷ cannot be cancelled except in the presence of the agent himself, however if it is cancelled but not before him, it is still a valid cancellation.

15 If the agent is not confirmed by witnesses and he says, "I betrothed you for myself" and she says, "to the first."³⁸

And if the second said to the woman you are betrothed to me and she says, "I am not betrothed to you," then he is forbidden to all her relatives, but she is permitted to his relatives. If she says, "I was betrothed to the first" and he says, "I did not betroth you," or if she says, "I don't know," she is presumed to be betrothed to the second. If, however, the agent is confirmed by witnesses and he³⁹ says, "I betrothed her to myself," and she says, "to the first," it is presumed that she is betrothed to the first (even so, the second is forbidden to her relatives) (Magid Mishnah in the name of R. Aharan). If she says, "I don't know," then both of them give bills of divorce and if they consent one may give a bill of divorce and the other marries. [Note: There are those who differ and say that even if the agency is confirmed,⁴⁰ if the agent says that he withdrew from his agency, she is not betrothed to the first and similarly if the agency is not confirmed and the sender says that he appointed the agent, he is forbidden to her female relatives. (Tur in the name of R. Asher Ben Yechiel). However if afterwards the agent says, "I thought that I betrothed her for myself, but later I remembered that I betrothed her to my sender," we are to rely on the first opinion (of this paragraph) (Hagahot Mordechai in the name of the Tshuvouth of R. Meir). An agent that said, "I betrothed you to the sender," and she says, "you did not betroth me to the sender," then the sender is forbidden to her relatives on the words of the agent.

Notes to Chapter 35

11. The rabbinic equivalent of John Doe. It is used to indicate that a specific man must be designated. Its usage changes the general to the specific.

12. A commandment, precept or religious duty. The term is derived from the Hebrew "to command or to ordain." In common usage it has taken on the meaning of a good deed or a meritorious act as distinct from a commandment.

13. (automatically).

14. Formal legal document or deed, derived from the Akkadian sataru, meaning writing. In the presence of two competent witnesses, the bridegroom hands over to the bride a deed in which is written, besides the names of the parties and the other particulars required for Kidushin by Shetar, "Behold you are consecrated unto me with this deed according to the law of Moses and of Israel." Delivery to the bride and her acceptance constitute a legal marriage.

15. One of the Jewish coin denominations mentioned in Jewish sources. It is identified with the Hasmonean and Early Herodian coinage. The Hasmonian perutah had an average weight of 2 grams and an average size of 15 mm. The relation between Perutah and silver coinage is mentioned in the Talmud (Kidushin 2a,12a).

16. (in the case of).

17. i.e., the betrothal is valid.

18. Known in Hebrew as Get. The exact origin is unknown. In Mishnaic times it was a relatively simple document but later the document was expanded. The important features are the date, the place, the names of the parties, the signatures of the witnesses and the phrases which express separation. One of the most essential parts of the Get is the expression, "Thou art permitted to any man."

19. (For the reason).

20. i.e., not the father.

21. In Jewish legislation deaf and dumb persons are frequently classed with minors and insane people and are considered unable to enter into some transactions requiring responsibility and will. The deaf-mute as well as the deaf

or mute was not competent to be a witness to any transaction; for all testimony was given by word of mouth and the witnesses had to be able to hear the exhortation of the court.

22. This refers to one who is considered Jewish. The identifying mark of the male would be the circumcision. Circumcision is a religious rite performed on all male children of Jews on the eighth day after birth. It was commanded by God to Abraham (Gen. 17:10-14, Gen. 21:4) and his descendants as a "token of the covenant." The penalty for non-observance was "Karet," according to Rabbinic interpretation, a punishment by God.

23. Name of a treatise of the Mishnah, elaborated in the Palestinian and Babylonian Gemaras. It belongs to the third, out of six orders, "Nashim" (woman). While the name of the treatise signifies "documents" it is specifically applied to bills of divorce and only incidentally refers to other documents.

24. i.e., the agent.

25. (that it be the named place).

26. i.e., the place where she may be found.

27. i.e., valid.

28. the agent.

29. i.e., the king, etc.

30. Originally the term applied to property dedicated to the needs of the Temple. After the destruction of the Temple the term was principally used to signify the dedication of property for a charitable purpose or for the fulfillment of some other mitzvah.

31. Literally: his agentness.

32. (to marry).

33. (to be betrothed).

34. i.e., relatives of a certain woman.

35. i.e., the agent.

36. i.e., the betrothal.

37. (This is an addition to the text).
38. i.e., the sender.
39. i.e., the agent.
40. by witnesses.

1 The woman is permitted to appoint an agent to accept her betrothal but it is preferred that she be betrothed in person if possible. However there is no prohibition like there is for men. The man says to the agent, "behold the specific woman that sent you is betrothed to me," and the agent says, "I betroth her to you." And if he says, "yes," that is enough. Even if he was silent, if they had been engaged in this matter⁴¹ and he gave to the agent⁴² and did not expound or did not say a thing, that is enough. If she is betrothed with a document, he may only write it with the knowledge of the agent. There are those who say he may only write it with her knowledge.

2 In all matters of betrothal the law regulating the relationship of the man to her agent is the same as with the woman herself.

3 If she says to the agent, "accept the betrothal in a specific place," and he accepts it in another place, or in any matter that is changed from her charge to the agent, she is not betrothed.

4 If she says to him⁴³ behold he is in a specific place and he accepts in a different place, she is betrothed, for she only meant to tell the agent where he was.

5 There are those who say that the agent of betrothal is not able to appoint another agent since words cannot be given to another agent (see above number 35 paragraph 6 where it is explained).

6 One that is betrothed by means of an agent does not betroth her again at the time of the wedding ceremony, so that no discredit is cast upon the first betrothal, as some may say that the betrothal by the agent had no validity whatever (above, the end Chapter 34).

 If she cancels the agent's power before he accepts the betrothal behold it is null and she is not betrothed. If it is not known whether she cancelled the agent's power before or after she accepted the betrothal behold this is a doubtful betrothal.

7 If betrothal is accepted by her agent from one and she by herself accepts betrothal from another and it is not known if the betrothal which her agent accepted was before hers or if hers was first; she is forbidden to both of them and she needs a bill of divorce from them both. If they agree one may give a bill of divorce and one may marry (and betroth her with another betrothal) (Rabbenu Yerucham, Chapter 22). To what does this refer: non-relatives. However if the agent betrothed her to the father and she betrothed herself to the son or brother, both of them must give a bill of divorce and she is forbidden to both of them.

8 A woman may be appointed an agent for another woman to accept betrothal, even though she may become her rival,⁴⁴ in the event that he betrothes both of them. There are those who say that even if she says to her "accept it for me," and she does not respond "yes" but remains silent and accepts without specification then, for her⁴⁵ also she accepts.

9 A woman, that is an agent, to accept betrothal for another woman, when a man extends the betrothal and says to her, "you too" or "and thus you" both of them are betrothed. However if he did not say "to you" rather "and you" behold the one that accepts the betrothal is doubtfully betrothed. Perhaps his only intention was to see what was in her heart as if he said to her, "and what do you say in the matter?" and she accepted the betrothal since he was still asking to see what was in her heart.

10 There is one authority who says that the father may not become an agent to betroth his adult daughter--and there are those who disagree with him.

11 If one accepts betrothal for his adult daughter and was not appointed as an agent, there are those who say she needs a bill of divorce because of doubt.

12 A woman cannot appoint an agent to accept betrothal from the agent of her husband (but if she does, it produces a doubtful betrothal) (Bet Yosef) (See below Chapter 141, paragraph 1, section on bill of divorce).

Notes on Chapter 36

41. i.e., marriage.
42. money or an object.
43. i.e., the agent.
44. i.e., co-wife, a man could have two wives.
45. i.e., the other woman.

37 All the Laws concerning Betrothal of a Minor⁴⁶
27 paragraphs

1 The father may betroth his daughter without her consent, all the time she is a minor. Likewise when she is a na'arah⁴⁷ the father has control over her and the betrothal money belongs to him. Likewise he is entitled to her finds, to the production of her hands, and to her wedding contract.⁴⁸ If she be widowed or divorced from the betrothal, he is entitled to everything until she comes of age. Therefore the father accepts the betrothal money, etc. of his daughter from the day she is born until she comes of age. Even if she was a deaf-mute or insane and the father betrothed her, behold she is a fully married woman. If she were three years old and one day she may be betrothed by means of Bi'ah⁴⁹ with the consent of her father. If she is younger than this, if her father hands her over for intercourse, she is not betrothed. [Note: There are those who say that there is no binding betrothal with a non-viable infant,⁵⁰ if his father accepted for her a betrothal and the one who betrothes her later betrothes her sister, she needs a bill of divorce.] (Or Zarua)

2 When the daughter comes of age her father has no control over her, and behold she is like all other women that are not betrothed except by their own will. (If women are able to

testify that she is of age, see below Chapter 164 paragraph 11 and Chapter 155 paragraph 15.)

3 If she was married by her father and if she were to be widowed or divorced during her father's lifetime, behold she has control over herself, even though she is still a minor since she was married, her father no longer has control. However if she were betrothed and were to be widowed or divorced a few times before she came of age, control returns to her father.

4 If she were to be betrothed, before she came of age without permission of her father, it is not a valid betrothal.

5 If her father were to betroth her in the morning and she betrothed herself in the evening and both of them did it on the day that completed the six months of the days of her na'aruth and they examine and find her to be of age then she is considered to be adult and the betrothal of her father is not valid. There are those who say that⁵¹ even if she does not contradict him and say that the signs of maturity were there in the morning. However, there are those who say that this applies only if she contradicts him, but if she does not contradict him she needs a bill of divorce from both of them.

6 If during the six months of na'aruth she is betrothed by her father without her knowledge and she betrothed herself without her father's knowledge and she is found showing signs of maturity⁵² behold it⁵³ is doubtful and she needs a bill of divorce from both of them.

7 Just as the father is able to make a betrothal for her by himself, so too is he able to arrange a betrothal for her by means of his agent or by herself, that he would say to her go out and accept your betrothal. [Note: he is required to say this to her before witnesses because an agent who accepts the betrothal requires witnesses. (The Pesakim of R. Israel B. Petachian Isserlein, paragraph 50) as was explained above, Chapter 35 paragraph 3. And if it is visible to all that he is preparing her for the marriage ceremony and to accept betrothal it is as if he had spoken before witnesses (R. Isaac Ben Sheshet, #479) and there is no distinction between a na'arah and a minor (R. Nissim B. Reuben Gerondi, first Chapter of Kidushin) and this is the correct view. However, some disagree and say that a minor is not able to accept betrothal, rather her father by himself must accept for her (R. Isaac Alfasi and Mordecai b. Hillel in the name of R. Meir).

In order to remove himself from the controversy⁵⁴ the father should hold the hand of the minor at the exact moment she accepts the betrothal or stand next to her when she accepts so that it is as if he accepts by himself (Kol Bo and in T'rumat Hadeshen, #43). And it is more preferable than his accepting it alone, for behold there are those who say it is forbidden to betroth a minor daughter as will soon be explained. And when one does (same place as above in T'rumat Hadeshen) betroth a minor he says to her "Behold you are betrothed to me" (R. Nissim B. Reuben Gerondi in first Chapter

in Kidushin) and if he said "your daughter is betrothed to me" this is betrothal for behold she stands in place of her father even though he gives her⁵⁵ the betrothal (R. Isaac Ben Sheshet, paragraph 479).

If he betrothes her with a document, he writes in the document, "your daughter is betrothed to me" and at the moment that he gives it to her he says "behold you are betrothed to me" (Ibid. R. Nissim B. Reuben). And if he uses different words even so she is betrothed. And when they send the minor daughters to another place and the father is not with them, when they accept their betrothal since he⁵⁶ has prepared her to enter marriage and betrothal it is as if he is holding her hand at the moment she accepts [Pesakim of R. Israel B. Petachiak Isserlain #33).]

8 It is a mitzvah that one should not betroth his daughter while she is a minor, rather until she has grown and can say "I want so and so" [Note: There are those who say that it is customary in this time to betroth our minor daughters since we are in exile and there is not always sufficient money for the dowry and also we are few in number and we are not always able to find a worthy match (Tosaphot) and thus is the practice].

9 The father that gave permission to his agent to betroth his daughter and then goes out and betrothes her to another, if the agent betrothed her to a different one, which ever of them came first, this is betrothal. But if it is not known which

one was first she is forbidden to both of them and she needs a bill of divorce from both of them.

10 If you appoint another agent and do not cancel the agency of the first explicitly, and each of them goes out and betrothes, she needs a bill of divorce from both of them.

11 A minor or a na'arah that betrothes herself without the knowledge of her father or marries herself, this has no validity at all and even a mi'un⁵⁷ is not needed. This is the case even if the father originally made the match and even if the father explicitly consented after the betrothal. There are those who say that if the father consented when he heard, there is a betrothal from the exact moment of hearing even if he did not make the match. Even if he did not consent immediately upon hearing but rather was quiet and did not object and afterward was satisfied, "the end of the matter proves the beginning" and there is betrothal from the moment of hearing even if the money was spent before hearing. [Note: There are those who say that if the money is spent before⁵⁸ there is no betrothal, Mordecai Chapter Haish Mekadesh in the name of R. Samuel b. Meir and R. Eleizer b. Joel Halevi and R. Eliezer b. Nathan.]

To what does this refer: when she or her father did not object before he consented. However if she objected or her father objected before he consented there is no betrothal even if the father consents afterwards. [Note: There are those who say that if the father heard and was silent and did not object

immediately it is as if he had consented, but if the father did not hear or if he went away on a trip and the daughter grew and she was quiet and did not object, then the betrothal grew with her and she needs a bill of divorce (R. Isaac Ben Sheshet Chapter 479). And there are those who say that he must have intercourse with her after she has grown⁵⁹ (R. Solomon Ben Adret Chapter 1 #1219). There are those who are strict according to the first opinion.

12 A minor who betrothes herself to one whom the father had expressed his desire to have her betroth, we assume that he is satisfied.⁶⁰

13 She⁶¹ became betrothed with her father's consent, yet was married without his consent, whether her father is present or whether he⁶² was away, they are not married. (Thus) if she dies he⁶³ does not become her heir, he is not allowed to defile himself⁶⁴ on her behalf. (And there are those who say that this same ruling applies if the father dies before she is wed and⁶⁵ thus she is wed. This is the meaning in Mordechai, Chapter 2 of Kidushin, citing some rabbis).

14 A minor whose father went to a distant land, and⁶⁶ whose brothers and mother marry her off--this is valid betrothal, and requires mi'un.⁶⁷ And so when her father returns⁶⁸ no other betrothal is required. Yet there are those who claim that it is not considered a valid betrothal and she does not need even mi'un. In any case, we do not have

to prohibit her to him,⁶⁹ on the grounds that she could be considered as one who is a single woman living like a harlot with him, since she was with him in a situation akin to betrothal and marriage. [Note: Even if the father comes and objects, we should not prohibit her to him, and his intercourse with her is not considered fornication. Yet he⁷⁰ can keep her with him until she comes of age, and then her betrothal will be completed. However, in the case when the father betrothes her to another before she comes of age, she requires a bill of divorce from both men (Yizhak ben Sheshet, Chapter 193). And there it is written that she requires a bill of divorce from the second⁷¹ but Isserless ruled that she requires⁷² from them both. It is proper to rule strictly in accord with the first opinion.⁷³ There are those who rule even more strictly to say that in every case where her father is in a distant land, even if a minor betrothes herself we are concerned that if he were to find out, he would be satisfied, it being then a doubtful betrothal (Mordechai, Chapter Haish Mekadesh). There was a case of a man who divorced his wife and arranged with her that she should take care of his daughters--to feed them, to raise them, and to marry them off, and that is what she did. But along came the father and objected to the marriage of his minor daughters, and they ruled that if he ordered to have them raised and married off, whatever she did is post facto valid and that he has no right

to object, as long as he expressed his will in the presence of witnesses, since an agent who accepts betrothal on someone's behalf requires witnesses, as it is explained above in Chapter 35, Sec. 3. However, if he empowers her to marry them off when they come of age, and she married them off in their minority, her deeds are null and void and he can object because she deviated from what he requested of her. (Yizhak ben Sheshet, Chapter 493)].

15 If one betrothes an unspecified daughter, or⁷⁴ says to him: "one of your daughters is betrothed unto me," the grown daughter is not included, even if she gave him⁷⁵ permission to accept her betrothal⁷⁶ and that the money would belong to him, but only if she designated him as an agent to accept betrothals, in an unspecified way and did not specify "from Ploni." But if she did specify Ploni, she too is doubtfully betrothed, and the rest of the grown daughters are not included.

16 If he who has two daughters, even if they are both minors, and he arranges a match for one of them with an individual, and then after a while accepts from him a betrothal,⁷⁷ and⁷⁸ said: "Your daughter, unspecified, is betrothed unto me," even if both were busying themselves with her,⁷⁹ they⁸⁰ are forbidden to him, and they require a bill of divorce from him. [Note: And even if he corrected himself within a very short time⁸¹ and specified "your daughter named so and so," is of no help. (Mordechai, Beginning of Kidushin, citing R. Eliezer B. Joel Halevi). And in all cases like this, where

there is betrothal which cannot lead to consummation of the marriage, we compel him to divorce. (R. Solomon ben Adret, p. 236).] He who betrothes his daughter in an unspecified way--the grown one is not included.

17 He who has two sets of daughters from two wives, and all of them are within his jurisdiction to betroth, and he said to the betrother at the time of the betrothal:⁸² "I have betrothed unto you my eldest daughter, yet I do not know⁸³ if it is the older of the eldest set, or the elder of the younger set, or, whether it is the youngest of the eldest set, who is older than the oldest of the youngest set!"--they are all permitted⁸⁴ except for the oldest of the eldest set.

18 Similarly, if he⁸⁵ says to him: "I betrothed unto you my young daughter, yet I do not know if it was the youngest of the younger set or the youngest of the eldest set, or the oldest of the younger set, who is younger than the youngest of the older set!" they are all permissible except for the youngest of the younger set.

19 If one has five sons and they appoint their father as an agent to betroth for them⁸⁶ and the father of the sons says to one who has five daughters "One of your daughters is betrothed to one of my sons," and the father accepts the betrothal,⁸⁷ each one requires a bill of divorce from each brother. If one brother dies, all of them⁸⁸ require four bills of divorce and Halizah⁸⁹ from one of them.

20 The father who said, "I betrothed my daughter and I do not know to whom," she is forbidden to all until he⁹⁰ says: "It has become known to me to whom I betrothed my daughter!" even if he does not find out until she has come of age. [There are those who say that if the groom stood before him at first, and the father did not recognize him but afterward said that he⁹¹ did recognize him he is not believed. (Bet Yosef in the name of the Tosephot.)]

21 If one came and said (before the father) (Rabenu Nissim and Rabenu Yeruham) "I betrothed her," he is believed and she is permitted to him, since the father says "I don't know" and when he marries her he need not betroth her.⁹² However if the father contradicts him there are those who say that he⁹³ is not believed, even to require in her behalf a bill of divorce.

22 If two men come and each one of them says "I betrothed her" both of them give a bill of divorce. However if they want, one may give a bill of divorce and one may marry (and he needs a betrothal when he marries her inasmuch as she is divorced from another) (R. Nissim B. Reuben Gerondi and R. Solomon Ben Adret).

23 If one came and married her and afterwards another came and said "I betrothed her" he is not believed so as to forbid her to him.⁹⁴

 And there are those who say that even if he did not actually marry her but rather they only gave her license to marry, it is the same as marrying her.

24 A woman⁹⁵ says "I betrothed myself and I do not know to whom" and a man came and said "I betrothed you" he is believed.⁹⁶ Give her a bill of divorce, to make her available to all, but not⁹⁷ to marry her,⁹⁸ but if he married her, we do not take her from him.⁹⁹ [If there is one witness that he betrothed her, he is *â priori* permitted to marry (R. Nissim B. Reuben Gerondi, Chapter Haomer)].

25 The father that said, concerning his daughter while she was yet a minor or a na'rah, "I betrothed her and I divorced her," he is believed, to make her unfit to¹⁰⁰ the priesthood,¹⁰¹ only if he said "I divorced her" at the same time he mentioned "I betrothed her," but where she is presumed to be a man's wife according to his own mouth, he is not believed if he says after a while "I divorced her."

26 If after she came of age he said "I betrothed her and I divorced her while she was a minor," he is not believed.

27 A father that said that he betrothed his daughter, and afterward betrothed her to another, and he said the first betrothal was done in the presence of witnesses disqualified by the Torah, and had no validity whatever, then he is believed. (It appears to me that only if he said this within a very brief time¹⁰² is he believed, as was explained close by in paragraph 25.)

Notes to Chapter 37

46. A male is considered a minor at any time before the fourteenth year. For a female it would be prior to the thirteenth year. From the specific time period onward one was regarded as an adult and as responsible for one's actions in the community. In the case of females the following stages were recognized:

ketanah--from 3 years to 12 years and one day
na'aroh--the 6 months following that period
bogeret--from the expiration of these six months

47. op. cit., note 36.

48. Ketubah in Hebrew. A document recording the financial obligations which the husband undertakes toward his wife in respect of, and consequent to, their obligations, which are imposed upon him by law. The main component is the amount determined by law as the minimum that the wife is entitled to receive from her husband or his estate on dissolution of the marriage. The liability of payment is pentateuchal, Exodus 22:15-16 but the halakhah is that the Ketubah is rabbinical law.

49. If a man in the presence of two competent witnesses, says to a woman. "Behold you are consecrated to me with this act of sexual intercourse according to the law of Moses and of Israel," and in their presence the groom takes the bride into a private place for the purpose of Kidushin, she will upon completion of the act be betrothed.

50. In Hebrew Nephef. The term refers to an infant which has not survived a minimum of thirty days after birth. This concept developed so that all children could be considered to have had a full nine month gestation period.

51. That this is so.

52. i.e., puberty.

53. i.e., the validity of the betrothal.

54. So that the validity of his acts should not be questioned.

55. i.e., the daughter.

56. the father.

57. When a minor daughter who has no father is married by her mother or brother it is not fully valid. She may renounce the marriage upon reaching majority. The process of renunciation is called mi'un.

58. (his hearing).
59. Reached the age of maturity.
60. (ex post facto).
61. (If).
62. (at this time).
63. i.e., the husband.
64. i.e., mourn her death.
65. (afterwards).
66. (then).
67. If she desires to terminate the union.
68. (and approves the betrothal).
69. (in the future).
70. i.e., the father.
71. i.e., fiancée.
72. (a bill of divorce).
73. i.e., that it is a valid betrothal.
74. (another).
75. i.e., the father.
76. i.e., on her behalf
77. (betrothal money).
78. (that individual).
79. talking about same girl.
80. i.e., both daughters.

81. i.e., in a very brief length of time, the time it takes to say "hello Rabbi."

82. i.e., ceremony.

83. (I don't remember).

84. (to be chosen).

85. i.e., the father.

86. (a woman).

87. i.e., betrothal money.

88. i.e., the daughters.

89. When the levir does not marry the yevamah (see note 30) the ceremony of Halizah takes place, whereby the woman becomes released from the levirate tie and free to marry someone else. The ceremony is described in and originates from Deut. 25:7-10. The Halizah ceremony is designed to shame the levir for not building up his brother's house. The ceremony is completely described in Halchot Yevamot. (See article in the Encyclopedia Judaica vol. 13.)

90. i.e., the father.

91. i.e., the father.

92. (again).

93. i.e., the suitor.

94. i.e., the first man.

95. (In the case where a . . .).

96. (sufficiently to).

97. (enough).

98. (*â priori*).

99. (*ex post facto*).

100. (to marry into).

101. A priest may not marry a divorced woman.

102. op. cit., note 81.

38 One who Betroths Conditionally and all the Laws
 concerning Conditions: 39 paragraphs

1 One who betroths conditionally--if the conditions are
fulfilled she is betrothed, and if not she is not betrothed,
whether the condition shall be from the man or from the woman.

2 Every condition has to meet four requirements and they
are:

a) that it have a double formulation¹⁰³

b) that the affirmative clause be before the negative
clause

c) that the conditional should be expressed before the
actual action is expressed¹⁰⁴

d) that the conditions be a thing possible to fulfill
and if the condition is lacking one element, behold the con-
dition is null and void, as if there had been no condition
at all, rather she will become betrothed immediately as if
he had not stipulated at all. (If he mentioned a negative
before a positive, and then repeated the negative after the
positive, there exists a condition, as if he had mentioned
a positive before a negative.) (Rabbi Nissim B. Reuben
Gerondi Chapter Mi Sheahzo)

3 Anyone who says "from now" or "al menath"¹⁰⁵ need
not double his condition and¹⁰⁶ put the condition before the

act. However, he must conditionalize something that is possible to fulfill. There are those who disagree and say that even if he said "from now" or al menath all four elements in the condition are still needed. [Note: There are those who say that even if he does not express all the laws of conditions¹⁰⁷ but simply said that he makes a condition like the condition of the Gadites and the Reubenites,¹⁰⁸ behold this is a complete condition. (Hagahot Maimon Chapter 6)]

4 And one says further that these four elements are not required in a condition. Except, in an instance where the consequences are stringent, but not where the consequences are lenient. [Note: And there are those who say further, that even though there are all four elements in the matter, we also require that the condition should refer to one matter and the act to another, but if all refers to one matter it is not a valid condition. (R. Asher Ben Yechiel and Tur) And we have to consider his words in a stringent sense,¹⁰⁹ if he makes a condition with her that she should eat pork or anything else prohibited by the Torah,¹¹⁰ this is called "possible to fulfill" (Tur). But if he makes a condition with her that she should have sex with one prohibited to her, it is called impossible to fulfill, for afterwards he would not be reconciled to what happened with her (ibid). But if he makes a condition with her that Ploni should give him his property, or he should marry off his daughter to his son, this is called possible to fulfill since she could give Ploni much money

until he becomes reconciled to the matter. (this is also ibid) (See below section 143, paragraph 12)

5 If he stipulated at the time of betrothal that she will not receive sustenance and clothing his condition stands; he does not owe them to her. However if he stipulated that he is not obligated to marital duties¹¹¹ his stipulations are void and he is obligated to do this to her. [Note: Because anyone who makes a condition over and against what is written in the Torah and it does not involve money his condition is void (his opinion).] And there are those who say that all that which our Rabbis ordained is similar to that written in the Torah. (Hagahot Maimon, beginning of Hakotev).

6 If he gave her a Prutah and said to her "Be betrothed to me with this on the condition that I will give you a maneh."¹¹² When the condition is fulfilled the betrothal will take effect retroactively even if he did not say "from now." For anyone who says al menath it is as if he had said "from now." Yet if she accepts betrothal from another before the conditions are fulfilled and afterwards the conditions were fulfilled, the betrothal of the second man is void. But if he said to her "on the condition that I will give to you a maneh within 30 days," if he gave it to her within the thirty days behold it is a betrothal retroactively; if he did not give it within thirty days she is not betrothed, and if she accepts betrothal from another man during the thirty days she is betrothed but she is not betrothed¹¹³ until thirty days.

When the thirty days are completed if the conditions of the first man are not fulfilled the betrothal of the first man is cancelled and the betrothal of the latter is complete and she does not require a bill of divorce from the former. If the former fulfills his condition she does not require a bill of divorce from the latter.

7 If he did not say to her al menath but rather he said "if I give you a maneh within thirty days you will be betrothed to me by this Prutah," the betrothal takes effect only from the time that he gave it¹¹⁴ to her; therefore if another betrothed her before the condition is fulfilled she is betrothed to the second (see below the end of paragraph 9 nearby).

8 He who says to a woman "Behold you are betrothed to me on the condition that my father approves;" if the father approves she is betrothed, if he does not approve or is silent or died before he could hear the matter she is not betrothed.

9 "On the condition that my father will not protest," if he hears and protests she is not betrothed. If he does not protest or dies behold she is betrothed (see close to here end of paragraph 10), if the son dies and afterward the father hears,¹¹⁵ we instruct the father that he should say "I do not approve," in order that there will be no betrothal and that she will not be subjected to the position of Yibbum.¹¹⁶ There are those who say that one who says "on condition that he¹¹⁷ approves" has the same ruling as one who says that he will not

protest. There is one that says that the ruling is the same as one who says: "on condition that he be silent."

10 If he said on condition that he¹¹⁸ will say yes, even though he said at the beginning "I don't approve," as long as he reconsidered and said, "yes," the condition is fulfilled (therefore there is always doubt until the death of the father). And he who says on the condition that he is silent, if he is silent at the time of hearing she is betrothed even if he reconsidered and protested. [Note: However, if he was not in his house when he heard and when he came to his house he protested, it is a valid objection, since the reason he was silent at first was because he was not in his house (this is the implied meaning in R. Isaac Ben Sheshet Chapters 14 and 153).]

 If he protests at the time of hearing, even if he reconsiders and becomes reconciled to it she is not betrothed. If the father dies so that he never heard she is betrothed, and if he said on the condition that he¹¹⁹ will not protest, as long as he protests the condition is cancelled, and even if he accepted at the time of hearing. [There are those who say that if he says yes one time he is not again able to protest (Tur).]

11 If the son dies we instruct the father that he should protest in order that she not be bound to the Yibbum.

12 If he said to her "be betrothed to me by a Prutah on condition that I will work with you like a laborer," or "I

will speak¹²⁰ to the government," if there are witnesses that he worked with her like a laborer, or he spoke¹²¹ to the government she is certainly betrothed, but if there are no witnesses she is betrothed out of doubt.

13 If he did not give her anything and said to her "Be betrothed unto me" in lieu of the payment that I will work with you as a laborer, or I will speak about you to the government,¹²² she is not betrothed because a hiring extends from the beginning until the end of the work,¹²³ and thus one has a case of betrothing through a loan.

14 On condition that I have a maneh, if it is known by testimony of witnesses that he has a maneh she is certainly betrothed; if it is not known¹²⁴ she is betrothed due to the doubt, even if he says¹²⁵ I do not have the money.

15 "On condition that I have a maneh on deposit with Ploni," if it is known through witnesses that he has a maneh on deposit with Ploni she is betrothed certainly, but if it is not known, she is betrothed due to the doubt even if the same Ploni says "he has nothing on deposit with me."

16 "On condition that Ploni will say that I have a maneh deposited with him" if he said he has it deposited with me she is betrothed. If he did not say "he has it on deposit with me" she is not betrothed.

17 On condition that I have a maneh in a specific place, if he has it in that same place behold she is betrothed. If

he does not have it in that same place that he said behold she is doubtfully betrothed. Because perhaps he has it in that same place but he intends to harm her.

18 "On condition that I show you a maneh, she is not betrothed until he shows her the maneh of his. Even if he shows her a maneh that he has from dealing with others she is not betrothed. [Note: There are those who say that even if his portion of the profit comes to a maneh she is not betrothed for they still have not divided the profit. (R. Nissim B. Reuben Gerondi Chapter Haomer.) If he shows her a maneh of his own, and it is collateral to a creditor, she is betrothed. (Rabbi Yerucham in the name of R. Meir Ha Levi). If he did not have it at the time of betrothal, and earned it afterward and then showed it to her there are those who say she is betrothed (Tur). But if he said to her "on condition that I have it," in this case everyone agrees that she is not betrothed. (Sefar Ha Trumah.) And we do not fear it lest he shows her it afterward, so that it would be a doubtful betrothal (Tur). If he said to her on condition that he will bring her two hundred Zuz, the ruling is the same as "on condition that I show you a maneh," and it must be of his own (R. Solomon Ben Adret mitshuvah, cited in Bet Yosef).]

19 On condition that I have a bet khor of land¹²⁶ if there are witnesses that he has, behold she is betrothed, and if not, then she is betrothed out of doubt, lest he has it and says "I do not" in order to harm her.

20 "Behold you are betrothed to me with this," on condition that I have a bet khor of land in a specific place." If he has in that same place she is betrothed with certainty; if not she is betrothed out of doubt, lest he have it there and he intends to harm her.

21 "On condition that I show you a bet khor of land" she is betrothed but he must show it to her. And if he showed¹²⁷ rented from others or he took it as a share cropper she is not betrothed. [Note: But if he has land from which he pays taxes behold she is betrothed--For behold it is still his land, but provided that he has a bet khor of land which he does not pay taxes because "on condition that he have a bet khor of land," means that it should be entirely his. (R. Nissim B. Reuben Gerondi Chapter Haomer.)]

22 If he has a bet khor of land and there are ravines ten fists deep or boulders ten fists high; or gullies full of water, they are like boulders. They are not to be counted with it¹²⁸ since they are not suitable to plant.¹²⁹ If they are not filled with water they are measured with it since they are suitable for planting. And a cistern filled with water, even though it is not sowable it is measured with it.

23 A bet khor of land that he mentioned, must be in one place (boulders and ditches do not separate the land even though they are not measured with it) (R. Nissim B. Reuben Gerondi Chapter Haomer in the name of R. Solomon Ben Adret).

However if it¹³⁰ is in two or three completely different places they do not combine.

- 24 "On condition that I am rich, and found to be poor or poor and found to be rich"; "On condition that I am a Priest¹³¹ and found to be a Levite¹³² or a Levite and found to be a Priest;" Netin¹³³ and found to be a Mamzer¹³⁴ or Mamzer and found to be Netin; a town dweller and found to be a city dweller or a city dweller and found to be a town dweller; "on condition that my house is close to a bath" and it is found to be far, far and it is found close; "on condition that I have a slave girl" or "grown daughter or a baker" and he does not have, on condition that he does not have and he has; "on condition that he has a wife and sons"¹³⁵ and he does not, on condition that he does not have and he does have; in all of these, or if he said I betrothed you to me with this cup of wine and it is found to be honey or honey and it was found to be water, for example that it was covered and she did not recognize it until afterwards, in all these and similar events even if she said "in my heart I intended to be betrothed to him," even if the condition is not fulfilled she is not betrothed. It makes no difference if she accepts the betrothal; it makes no difference if she told the agent to accept for her with conditions and the agent changed it, and the same holds true if she deceived him, even if he said¹³⁶ "In my heart I intended to betroth her" even though she fooled me, she is not betrothed.

[Note: Except if afterwards she explicitly said so at the time of betrothal and the husband heard and was silent (Tur) and similarly if she deceived him (and he said explicitly, even if it was not the case) the betrothal is betrothal.] However if he married her¹³⁷ and he said "I thought that she was a Kohenet and she is a Levitess," or¹³⁸ a Levitess and she is a Kohenet, rich¹³⁹ and she is poor, poor¹⁴⁰ and she is rich behold she is betrothed.

25 "On condition that I know to read":¹⁴¹ it is necessary that he read the Torah and he translate according to the Targum of Onkelos the Proselyte.¹⁴² (There are those who say that if he knows to read and to translate three verses it is enough), yet if he said to her on condition that I am an expert in scriptural reading he needs to know Torah, Prophets¹⁴³ and Writings¹⁴⁴ accurately.

26 "On condition that I know to study Mishnah,"¹⁴⁵ it is necessary that he know the Mishnah (There are those who say that if he knows the talmudic midrashim she is betrothed) (Tur in the name of the Rabenu Asher) if he said on condition that I am an expert in Tannaitic Literature it is necessary that he know to read the Mishnah, Siphra,¹⁴⁶ Siphray¹⁴⁷ and the Tosephta of Rabbi Hiyah.

27 "On condition that I am a student,": they¹⁴⁸ ask him one thing that he studied and he says it¹⁴⁹ even of the laws of Hag,¹⁵⁰ that they are taught in public from the easier

subjects, close to Hag in order that all the people will be knowledgeable in them.

28 "On condition that I am a scholar": they¹⁵¹ ask a matter of wisdom that is dependant on thinking in any place¹⁵² and he said it.¹⁵³

29 "On condition that I am valiant": any person whom his friends fear because of his strength.

30 "On condition that I am rich": anyone whose fellow inhabitants of his town honor him because of his wealth.

31 "On condition that I am righteous":¹⁵⁴ even if he is completely wicked she is betrothed out of doubt, for perhaps he contemplated repentance in his mind.

32 "On condition that I am wicked": even if he is a completely righteous man she is betrothed out of doubt, for perhaps in his mind he contemplated idolatry.

33 "On condition that I am a town dweller," and he is found to be both a town and a city dweller; "on condition that I am a spice merchant," and he is found to be both spice merchant and a tanner (meaning one who is a craftsman who makes leather); "on condition that my name is Joseph" and if it is found that his name is Joseph and Simon; behold she is betrothed, but if he said "on condition that my name is only Joseph," and it is found that his name is Joseph and Simon; or "that I am a town dweller" and it is found he is a town dweller and a city dweller, or "that I am just a spice merchant"

and it is found that he is a spice merchant and a tanner; she is not betrothed.

34 He who betrothes a woman and immediately changes his mind¹⁵⁵ he or she, even though they changed their mind in the shortest possible span of time, their regrets are meaningless; and she is betrothed.

35 He who betrothes conditionally and changes his mind after a number of days and voided the conditions: even though he voided it just between himself and between her, not before witnesses, the condition is voided and she is simply betrothed, and thusly, if the condition was from the woman and she voided it just between herself and between him the condition is void. Therefore, he who conditionally betrothes, and then simply had intercourse¹⁵⁶ or just married in a simple manner requires a bill of divorce, even though the condition was not fulfilled, lest he voided the condition when he had sex or when he married her (and if another betrothed her she requires a bill of divorce from them both).

36 He said to her "become betrothed unto me with this Prutah on condition that I give you a maneh and afterward he said that he does not want to ever fulfill the condition, we do not force him to fulfill it, rather his betrothal is nullified and she does not require a bill of divorce; and in any case a worthy person¹⁵⁷ will not marry her without a bill of divorce lest afterwards (he¹⁵⁸ says he wants to fulfill

the conditions) to harm her because of the second, if he says that he still wants to fulfill it we are not able to force him all¹⁵⁹ twelve months according to the law of time that is given to a virgin; and from twelve months and onward we issue him a contempt citation;¹⁶⁰ and if he dies before he fulfilled the condition, even Halitza is not necessary and if she renounces the condition during the lifetime of the betrother, the betrothal is complete¹⁶¹ as if it were fulfilled, and all of this applies only if he did not marry her, but if he did marry her she is validly betrothed immediately, since generally at the moment of her entering the Huppah, she foregoes the condition and he is obligated to give her her Ketubah.

37 One that travels faraway and betrothes with one of the daughters from there saying on condition,¹⁶² "I return twelve months from now you will be betrothed from this moment," and before he left they both agreed to extend the time, and twelve months passed and he did not return, but he returned before the new deadline, there is a valid betrothal, for all deeds which are done on condition can cancel the condition (or to add or to subtract from it) (R. Asher Ben Yechiel and Rabbi Yerucham) and even if the money¹⁶³ has been spent, it is a valid betrothal retroactively when the second condition is fulfilled.

38 In betrothal, where the condition is to his advantage, for example: on condition that she has no blemishes or that

she is not under vows, he can cancel it. However if it is to the advantage of the woman, for example "on condition that I will give two hundred Zuz" granted that he can cancel the condition in¹⁶⁴ any case she is not betrothed if he does not give her two hundred Zuz.

39 If one says to a woman "Behold you are betrothed to me, except when it comes to Ploni" which is to say that she is not forbidden to him rather that she is a married woman in the eyes of the whole world, and to Ploni she is available, behold she is betrothed out of doubt. However if he said to her "behold you are betrothed to me on condition that you will be permitted¹⁶⁵ to Ploni," she is betrothed, and she will be as forbidden to him as she is to the rest of the people because he conditioned by a thing that is impossible to fulfill. [Note: There is a disagreement whether the condition can be fulfilled or not. There are those who say that in every condition that depends on action, no one party¹⁶⁶ is trusted to say that he fulfilled the condition that was upon him to fulfill; rather he needs witnesses. But where the condition is passive either of them is believed if the other party does not dispute it. (Rabbi Nissim Ben Reuben Gerondi Chapter Haomer in the name of the Aharonim).¹⁶⁷ There are those who say that even in active cases he is also believed as long as the opposing party does not dispute him (Rabbi Moses Ben Nachman and Rabbi Yizhak).]

Notes to Chapter 38

103. Both the positive and negative side of the stipulation must be stated.

104. "if" must precede the stipulation.

105. lit. "on condition."

106. (he need not).

107. i.e., he does not apply specifically all four elements required for a condition.

108. This term is used to describe the process whereby both alternatives to any condition are stated. The biblical passages Numbers 32:20-23, 29-30 provide the origins for the term.

109. (for example).

110. The first five books of the Hebrew Bible, Genesis, Exodus, Leviticus, Numbers, Deuteronomy.

111. i.e., sex.

112. Originally the shekel was a unit of weight for means of payment in gold and silver. In the third millennium BCE one finds this unit of weight in Babylonia. Sixty Babylonian shekels were a maneh. When this system of coinage was introduced into Israel the maneh generally consisted of only 50 shekels. The shekel as a unit of weight for gold is first mentioned in Jewish sources in Genesis 24:22 and Joshua 7:21. In Genesis 23:16 one finds mention of the shekel as a unit of weight for silver.

113. i.e., this is a pending situation.

114. i.e., the shekels.

115. of the proposed betrothal.

116. This refers to the marriage between a widow whose husband died without offspring (the yevamah) and the brother of the deceased (the yavam or levir) which is prescribed in Deuteronomy 25:5-6.

117. i.e., the father.

118. i.e., the father.
119. i.e., my father.
120. (on your behalf)
121. (on her behalf).
122. (there is a value accrued by his speaking on her behalf).
123. Payment is not due before the work is completed, in the meantime it assumes the character of a loan and one cannot use a loan to betroth.
124. (by testimony of witnesses).
125. (later).
126. A piece of land large enough to plant a khore of grain.
127. (the land).
128. Ibid.
129. They cannot be adequately watered.
130. i.e., the land.
131. The priest is the principle functionary in the divine services. They engage in cultic ceremonies which are conducted mainly in the Temple (in Jerusalem prior to 70 A.D.). In general the priest's post is authorized by hereditary right and they constitute a distinct class separate from the rest of the people. The Hebrew term used to designate a priest is Kohen. According to sections of the Torah the right or priesthood is maintained exclusively for one family of the levite tribe, the family of Aaron.
- In modern times the priest has the following privileges:
- a) the right to be called first to the reading of the Torah.
 - b) the privilege of having the phrase, bi-reshut Kohen (with the permission of the Kohen) added to the Grace after Meals.
 - c) the laws prohibiting contact with the dead except for close relatives and met mitsva are in full force.
 - d) the laws prohibiting marriage to a Zonah, a halalah, a proselyte, a divorcee, a widow who has received halizah are still in effect.

e) he is entitled to the priest's position at the ceremony of the redemption of the first born male.

Reform Judaism does not follow all the traditional laws applying to a Kohen.

132. The tribe of Levi was singled out as the servants of God in the Temple. They were chosen "in place of all the first born among the Israelite people" (Num. 3:40-43). Though priests came from one family of the tribe of Levi all Levites served as attendants to the Priesthood. The superiority of the family of Aaron over the Levites is clearly stressed in Exodus, Leviticus and Numbers. Since the destruction of the Temple the Levite has no special privileges except being called second after the Kohen to Torah, and washing the hands of the Kohen before the latter blesses the people. Their first born sons need not be redeemed.

133. Usually non-Jewish temple slaves. Traditionally they were considered descendants of the Gibeonites. This group was considered a second type of those in the prohibited category.

134. Usually translated as "bastard" but the true definition is found in Kidushin 3:12 "If she cannot contract a legally valid marriage to this man, but can contract a legally valid marriage to others, her offspring [from the former] is a mamzer. A mamzer is the issue of a couple whose sexual relationship is forbidden according to the Torah and is punishable by excommunication or death. A mamzer is also the descendant of a mamzer. According to Deut. 23:3: "A mamzer shall not enter the congregation of the Lord" and may not marry a legitimate Jew or Jewess. Legally the status of a mamzer is no different than any other Jew except with regard to marriage. The mamzer is eligible to hold any public office and he or she maintains their appropriate inheritance rights.

135. (children).

136. (afterwards).

137. (without conditions).

138. (I thought).

139. (I thought).

140. (I thought).

141. (Torah).

142. The Aramaic translation of the Torah which is usually considered most authoritative, is Targum Onkelos. This translation takes its name from Hebrew tirgem to translate and the name of the translator. It is considered so authoritative that the weekly portion of Torah is enjoined to be read privately "twice in the original and once in the Targum" (Berachot 8a).

143. The second section of the Hebrew Bible. This section is divided into Early Prophets and Later Prophets. The former includes the following books:

Joshua
Judges
Samuel I & II
Kings I & II

The latter includes:

Isaiah
Jeremiah
Ezekial and

The twelve minor prophets

Hosea
Joel
Amos
Obadiah
Jonah
Micah
Nahum
Habakkuk
Zephaniah
Haggai
Zechariah
Malachi

Unlike the Torah, which is traditionally considered to be a divine writing, these books are ascribed to the man for whom they are named. While they do not have the authority of Pentateuchal books they are revered by most because their authors are considered to have repeated God's words.

144. The third section of the Hebrew Bible. The books of this section are:

Psalms
Proverbs
Job
Song of Songs
Ruth
Lamentations
Ecclesiastes
Esther
Daniel
Ezra
Nehemiah
Chronicles I & II

5 scrolls

These books are believed to be the result of human inspiration. They were not considered part of the Prophets because they did not conform to the special ideological content or historical-philosophical framework of that body.

145. The verb shaneh means to (a) repeat (b) to study something handed down. In this text its meaning is the collection of oral lore made by Judah Ha Nasi (200 A.D.). Here the word is used to connote Tannaitic Literature in general.

146. "The Book" on Leviticus contains almost all legal material. The name Siphra, lit., "the book," is due to the fact that children began their study with the third book of the Torah, not the first. This book reflects the exegesis of Akiba who found scope in all sorts of linguistic peculiarities, the duplication of expressions, even particles and letters for arriving at new ordinances and deductions.

147. Also of the school of Akiba. It is an exegetic work on the strictly legal part of Deuteronomy, 12-26.

148. (he is betrothed whenever).

149. (correctly).

150. This is the rabbinic term for the holiday of Shavuot. Translated it means The Holiday. Shavuot is, traditionally, held in the spring season and the reception of the Ten Commandments by Moses is celebrated.

151. op. cit., 148.

152. (in the holy texts).

153. op. cit., 149.

154. A scholar who is also known for righteous deeds.

155. (out loud).

156. (with her).

157. (or a pious person).

158. i.e., the first.

159. (the following).

160. i.e., writ of rebellion.

- 161. i.e., immediately binding.
- 162. (if).
- 163. i.e., dowry.
- 164. (however in).
- 165. i.e., sexually.
- 166. (to the condition).
- 167. Usually refers to legal scholars who lived after 1500 C.E.

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11th and 12th Century

R. Isaac Alfassi (Rif), North Africa, Halachot.

R. Isaac Ben Asher Halevi (Ribah), Germany and Central Europe.

12th and 13th Century

R. Moses Ben Maimon (Rambam), Spain and Palestine and Egypt, Mishne Torah, Responsa, Sefer Hamitzvot, Mishnah Commentary.

R. Samuel Ben Meir (Rashbam), France.

13th and 14th Century

R. Moses Ben Nachman (Ramban), Spain and N. Africa, Torat Ha-Adam.

R. Solomon Ben Adret (Rashba), Spain and N. Africa, Torat Ha Bayit, Mishmeret Ha-Bayit.

R. Asher Ben Yechiel (Rosh), Germany, Halachot.

R. Moses of Coucy (Semag), France, Sefer Mitzvot Gadol.

R. Isaac Ben Moses (), Germany and Vienna, Or Zarua.

R. Eliezer B. Joel Halevi, (), Germany and Central Europe, Abi Ha Ezri.

R. Mordechai Ben Hillel, Germany and Central Europe.

14th and 15th Century

R. Jacob Ben Asher (Tur), Spain and N. Africa, Arbaa Turim.

R. Nissim B. Reuben Gerondi, Gerona.

R. Isaac Ben Sheshet (Rabash), Spain and N. Africa, Legal Decisions.

16th and 17th Century

R. Joseph Ben Ephraim Caro, Orient, Bet Yosef, Shulchan 'Arukh.

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17th and 18th Century

R. Joel Sirkes (Bach), Cracow, Bayit Chadash.

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