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PROPER PROCEDURE: A GUIDE TO LEARNING AND TEACHING ABOUT
JEWISH APPROACHES TO BIRTH CONTROL

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Abstract

As a rabbi and an educator, I did not want to spend a year producing a thesis that was simply a coalescence of other authors' works; I wanted to use my strengths of pedagogy and creativity to make something different and useful. What resulted was Proper Procedure: A Guide to Learning and Teaching About Jewish Approaches to Birth Control.

I found that in order to understand the rabbinic approach to birth control, much had to be explained; therefore, I set up this 9 chapter 10 lesson thesis accordingly. I first established that the Rabbis of the Mishnah and Talmud were proponents of marital intercourse regardless of if procreation was the intent of the act. This required demonstrating the biblical basis for such an argument, the Talmudic extrapolation thereof, and the repercussions to spouses who neglect the marital bed. After having established the mutual responsibility for sexual gratification in a marriage, I wanted to show the limits of this requirement; the safeguards put in place to protect women from unwanted sexual advances by their husbands. Next, I sought to debunk the belief that the woman is *halakhically* required by Torah law to produce offspring. Once this was established, there was a base to begin the discussion of birth control.

The discussion of Jewish approaches to birth control had to begin with our most ancient sources, the Torah and Talmud. While our Rabbis held some erroneous beliefs, which are discussed in chapter 5, two major forms of birth control were prominent: the *mokh*, or sponge, and the sterilizing potion known as the cup of roots. The Talmudic discussions of these two forms of birth control serve as the basis for the permissibility of all other forms of birth control. Therefore, I wanted the reader to really understand the arguments surrounding these forms of contraception so they would be able to apply the same logic to modern methods of avoiding pregnancy.

By using this as a basis for a course, the teacher, will have the tools, not only to teach a class on birth control through a Jewish lens, but will expose their students to the rabbinic world. The students will not only read for the Torah, Talmud, commentators, and responsa literature, they will discover how they are related. The goal for the student is not only to learn the visible curriculum, but too begin to understand rabbinic thought and argumentation in the process.

I learned a great deal putting this thesis together. Hopefully, this learning does not stop with me.

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Preface

What makes this thesis different from all the books on this topic?

There are many wonderfully written books on Judaism and birth control. These scholars have spent years researching and compiling detailed collections of texts on birth control and are frankly, much better writers than I am. However, in general, these books have been written for other Jewish scholars, and not for the lay Jew, and these books have been written for the purpose of learning about these topics, not teaching about these topics. I take a different approach.

This thesis will take the readers on a trip through the evolution of the Jewish views on birth control. In the thesis, the readers will encounter many of the same texts they would encounter in other similar books; however, the analysis will be written to speak to the scholar and non-scholar alike, and each chapter will include a lesson plan on how to teach these texts, not to other scholars, but to your average Joe-Jew.

How can I use this thesis?

Readers will find that this thesis employs examples from the Bible, Mishnah, Talmud, Tosefta, Mishnah Torah, Shulkhan Arukh, Zohar, commentaries on these texts, as well as responsa literature and more. Simply by reading through the chapters of this thesis, readers will be exposed to a wide variety of perspectives on the issues surrounding birth control and explore what our masters have had to say about the issue of birth control.

As a rabbi, cantor, or educator, one could use this thesis in a variety of ways. Readers may use this thesis for their own personal learning on Jewish views of birth

control, more of a *Torah lishmah*, “learning for the sake of learning,”¹ approach. Readers may find that certain lessons will be applicable to other topics they are teaching, for example, if one was teaching about marriage and divorce, one might want to use lessons that explore the right of one partner to demand a divorce if their partner refuses to have children, or asks them to do demeaning work (Lessons 3 and 4). For those in the field who are teaching confirmation, many of lessons would apply, but most especially the lesson on myths about birth control (Lesson 5). One might also want to add some of these lessons to a yearlong Hebrew High School class that is covering the Union for Reform Judaism’s “Sacred Choices” curriculum.

When doing marriage counseling, one might find using the lessons about the right of the woman to demand a divorce from her husband should he neglect her sexually, or should he switch to a job that requires him to be away from home frequently to be helpful in getting the couple to open up (Lessons 1,2, and 3). In premarital counseling, these lessons might be ways to allow the couple to explore ideas about children and intimacy through the use of Jewish text.

Another way this may be used is to simply offer a course on the issue of birth control. This would be ideally suited for a couples class, perhaps keeping those “Introduction to Judaism” students involved in life-long learning, or a class offered to recently engaged or married couples who might be interested to learn about the Jewish views on having a sexual relationship in which they did not want to have an unlimited amount of children, or simply opening up a learning opportunity to all adults in the congregation who are curious about rabbinic views on these issues. This might also be

¹ Cyril Houle. The Inquiring Mind. (Madison: University of Wisconsin Press, 1961) 13.

easily adjusted to suit a class of mothers and their teen-aged daughters, or a Rosh Hodesh group might use this as a curriculum for the year. This material could easily be used in a Hebrew High School class.²

Another option, and one I highly suggest, would be to offer the class to a women's study group. There is a tendency to assume that any aspect of the ancient Jewish religion is sexist. While in many cases this is true, there are aspects of the Jewish approach to birth control that are very liberal. The fact that a woman has sexual rights and can demand a divorce should they not be fulfilled, the fact that the primary party to make choices over the use of birth control and when to have and when to abstain from procreation is arguably more the woman's role than the husband's. In addition, the fact that the husband cannot demand of his wife to perform any sexual act that she does not wish nor can he demand that she use contraception if she does not wish, also reflects a respect for women and empowers of the role of the woman in the Jewish tradition.

As an educator, targeting this group is a good idea for many reasons. First, adult learning is very important to accomplish the goal of life long Jewish learning. As Patricia Cranton suggests in her guide for adult education, transformative learning experiences encourage adults to engage in dialogue with others, reflect on old assumptions, see learning as continuous throughout the life cycle, and build community through collaborative inquiry and discussion.³ Research has shown that the more adults learn,

² Note that some of the materials are sensitive and the teacher would have to have certain amount of discretion on which texts they will use.

³ Patricia Cranton. Understanding and Promoting Transformative Learning: A Guide For Educators of Adults. (San Francisco: Jossey-Bass, 1994.)

the more they seek additional learning⁴ specifically about aspects of Judaism and Jewish life.⁵ As females, learning about issues of sexuality and birth control would adhere to the findings of these researchers, that adults prefer content that is relevant to their current lives, equips them with a sense of mastery, and has immediate application.⁶

While Cohen and Davidson found in their research that only 10-20% of adult Jewish learners engage in “structured Jewish learning activities” such as attending a lecture, taking a class, going to a study group, or studying Jewish texts,⁷ they also found that “structured programs that demand commitment to regular classes over a substantial period of time” are increasingly popular with Jewish learners.⁸

Dr. Lisa Grant has noted that the rise of feminist consciousness and the impact of the Jewish counter-cultural movement in the latter part of the 20th century, primed women to seek access both to the study table of the Great Tradition and to demand that this tradition respond to their experiences.⁹ She states “women want to claim their place at the study table to deepen their knowledge, to strengthen their own Jewish identity, to learn how to be better transmitters of Jewish tradition, and to enrich the ritual observances they choose to perform.”¹⁰ Stuart Schoenfeld’s research, primarily done in the late 80’s and early 90’s, reflected the widely held feminist belief that full equality for

⁴ K.P. Cross. Adults as Learners: Increasing Participation and Facilitating Learning. (San Francisco: Jossey-Bass, 1981.)

⁵ Steven M. Cohen, A. Davidson. Adult Jewish Learning in America: Current Patterns and Prospects for Growth. (New York: Heller, JCCA Research Center, 2001).

⁶ Malcolm Shepherd Knowles. The Modern Practice of Adult Education: From Pedagogy to Andragogy. (Chicago: Follett, 1980.)

⁷ Steven M. Cohen & Aryeh Davidson. 10.

⁸ *Ibid.* 22.

⁹ Lisa D. Grant. “Finding Her Right Place in the Synagogue: The Rite of Adult Bat Mitzvah,” in Riv Ellen Prell, editor, *Women Remaking American Judaism*. (Detroit: Wayne State University Press, 2007.)

¹⁰ *Ibid.* 4.

women will only be achieved when “ mainstream Judaism incorporates new ideas and rituals which reflect female as well as male experiences.”¹¹

Today, we find that regardless of employment status, women surpass men in their frequency of participation in Jewish learning activities.

This curriculum offers women a chance to engage in serious study. They will explore an issue pertinent to them and the modern world, learn to read our texts, be introduced to a wide range of Jewish literature, and apply their learning to modern situations.

This is meant to be a tool, a guide for instructors. I hope that you will find it helpful and engaging. Let's begin our studies together.

ברוך אתה יי אלהינו מלך העולם, אשר קדשנו במצותיו, וצונו לעסוק בדברי תורה

Barukh atah Adonai, Eloheinu melekh ha-olam, asher kid'shanu b'mitzvotav

v'tzivanu la-asok b'divrei Torah.

We praise You, Eternal God, Sovereign of the Universe: You hallow us with the gift of Torah and command us to immerse ourselves in its words.

¹¹ Stuart Schoenfeld. “Interpreting Adult Bat Mitzvah: The Limits and Potential of Feminism in a Congregational Setting,” Jewish Sects, Religious Movements, and Political Parties, ed. Menachem Mor. (Omaha, NE: Creighton University Press, 1991) 207.

Chapter 1: Sex, for procreation and recreation

“Wherever intimacy as a mitzvah is found – there the Shekhinah dwells. (Zohar, Vayishlach 176a)

When a man unites with his wife in holiness – the Shekhinah dwells among them.

(Rambam, based on tractate Sotah 17a)

Know my children, that there is no holiness of all the types of holiness comparable to the holiness of marital intimacy if a person sanctifies himself in intercourse in accordance with the instructions of our Sages. (Shloh, Shaar HaOtiyot, at the letter quf.)¹²

It was a Wednesday, which meant I was teaching another Introduction to Judaism class at the URJ. One of the most beautiful things about teaching an Introduction to Judaism class is the variety of people you get in the class. There were students from Argentina, South Africa, Delaware . . . lapsed Reform Jews, Catholics who were curious, Orthodox Jews who knew they could not live that way but knew they were still Jewish. . . We were discussing the *Brit Milah* service when one of those Orthodox rebels said, “If you’re not making babies, you shouldn’t be having sex.”

I could tell by her intonation that this was not a declaration of her faith, but a declaration of what she thought were the teachings of the Jewish faith. I asked her what she meant and she explained that her sister’s orthodox rabbi told her that when she went through menopause she and her husband should refrain from intercourse since it would be spilling the seed in vain since they could no longer produce children.

“I’m sorry, but that rabbi has been misinformed,” I replied.

This woman and her sister’s rabbi are not alone in their impression. Many people, knowing the emphasis in Judaism on fulfilling the mitzvah of procreation, assume that this is the sole purpose of intercourse; however, this is not the case.

¹²Translation provided by Michael Gold in Does God Belong in the Bedroom. (Philadelphia, PA: The Jewish Publication Society, 1992.)

This chapter explores the Jewish approach to sex for non-procreative purposes. While there are many injunctions to have children throughout scripture, our rabbis never thought that sex should only be for the purpose of procreation. Sex, in their opinion, was the most intimate act a couple could perform. The Torah calls it “knowing,” implying that the two partners experience a unique closeness through the conjugal act. Ideas such as *Shalom Bayit* - peace in the home, teach that sex serves a larger purpose than procreation, it binds the two to one another, allows them to give one another joy and pleasure, and creates a deeper intimacy that helps them get through times of trouble.

Onah: A Woman's Right

The Hebrew word *onah* literally means “time period.” It is used in various forms throughout our literature to mark different time periods of the day and more. For our purposes, the *onah* we are concerned with is *mitzvat onah*, which refers to a husband's conjugal obligations to visit his wife at certain intervals; to put it simply, it is the marital obligation of conjugal relations.¹³ Other forms of *onah* include, but are not limited to, *onah perishah*, the “time of separation” in which a woman separates herself from her husband in anticipation of menses, and *onah beinonit*, or “average interval” which refers to the length of a woman's menstrual cycle. Yet it is only the conjugal obligation that is referred to as *mitzvah onah*.

As Avraham Peretz Friedman notes:

The Rabbis also singled out sexual intimacy for special attention. Only two mitzvot are repeatedly referred to throughout the Talmud and rabbinic literature as “mitzvah,” simply ‘the commandment.’ This nomenclature implies a certain centrality and preeminence among all the other mitzvot. What mitzvot did the Rabbis consider so fundamental and paradigmatic

¹³ Marcus Jastrow. Dictionary of the Targumim, the Talmud Babli and Yerushalmi, and the Midrashic Literature. (Hendrickson Publishers, 2006) 1054.

that they designated them, simply, 'mitzvah'? Those mitzvot are 'p'ru urvu' (procreation) and 'Onah' (A husband's obligation to satisfy his wife's desire for marital intimacy) – the two sexually based positive mitzvot.”¹⁴

Onah, as a marital obligation, first appears in the Torah in Exodus 21:10, which states: “If he takes for himself another woman, he may not reduce her sustenance, her clothing, or her (*onah*) conjugal rights.”

To get the accepted meaning of the verse, it is helpful to look at Rashi's commentary to the verse.

רש"י שמות פרק כא פסוק י

אם אחרת יקח לו - עליה:
שארה כסותה וענתה לא יגרע - מן האמה שיעד לו כבר:
שארה - מזוגות:
כסותה - כמשמעו:
ענתה - תשמיש:

If he takes another [wife] for himself in addition to her.
he shall not diminish her sustenance, her clothing, or her marital relations from the maidservant whom he had already designated.
her sustenance Heb. Sh'ayrah, [referring to] food.
her clothing Heb. K'sutah, lit., her covering. As its apparent meaning [namely her clothing].
her marital relations Heb. Onahah, [meaning physical] intimacy.¹⁵

From this we learn that *onah* refers to the man's obligation to be physically intimate with his wife. This is supported by many other texts, for example:

תלמוד בבלי מסכת פסחים דף עב עמוד ב

והאמר רבא: חייב אדם לשמח אשתו בדבר מצוה!

“Rava said: A man must please his wife with intimacy (Pesachim 72b).”¹⁶

¹⁴ Avraham Peretz Friedman. Marital Intimacy: A Traditional Jewish Approach. (Northdale, NJ and London: Jason Aronson Inc, 1996) 20-21.

¹⁵ Translation from Chabad.org.

<http://www.chabad.org/parshah/rashi/default_cdo/aid/15564/jewish/Mishpatim.htm>

רמב"ם הלכות אישות פרק יד הלכה ז

אסור לאדם למנוע אשתו מעונתה ואם מנע כדי לצערה עבר בלא תעשה שבתורה שנאמר שארה כסותה ועונתה לא יגרע.

It is forbidden for a man to refrain from satisfying his wife's needs for intimacy. And if he transgressed and refrained in order to afflict her – he has transgressed a Torah prohibition, as it says “. . . he may not diminish her allowance, clothing, or conjugal rights” (Rambam, Hichot Ishut 14:7).

שולחן ערוך אורח חיים סימן רמ סעיף י

אם היה לו כעס עמה, אסור לשמש עד שיפייסנה; ויכול לספר עמה תשמיש, כדי לרצותה.

And if . . . he realizes that she is enticing him and trying to please him and adorning herself for him so that he should notice her – he must approach her sexually” (Shulkhan Arukh, Orakh Haim 240:1).

As these texts demonstrate, in a marital relationship, the man is obligated to be sexually intimate with his wife. The Torah, our foundational legal document, teaches that a man must be intimate with his wife and that he is bound by their marriage to maintain regular conjugal relations with her and satisfy her should she indicate she is interested.

What is the extent of a man's obligation of *Onah*?

We have learned from the Torah that a man is obligated to his wife for food, clothing, and conjugal relations, and yet we do not know to what extent these obligations are required. We learn from the Mishnah, that a woman can forfeit her right to food and clothing, but not her rights to the sex act:

¹⁶ Unless otherwise noted, all translations of rabbinic material, excluding Talmudic passages, has been taken from David M. Feldman. Birth Control in Jewish Law: Marital Relations, Contraception and Abortion as Set Forth in the Classical Texts of Jewish Law. (New York: New York University Press, 1968).

תלמוד בבלי מסכת כתובות דף ז' עמוד א

הרי זו מקודשת ותנאו - דתניא: האומר לאשה הרי את מקודשת לי על מנת שאין ליך עלי שאר כסות ועונה
!בטל, דברי רבי מאיר, ר' יהודה אומר: בדבר שבממון תנאו קיים

For was it not taught: If a man said to a woman, 'Behold thou art consecrated unto me on condition that you shall have no [claim] upon me [for] food, raiment or conjugal rights', she is consecrated, but the stipulation is null; so Rabbi Meir. Rabbi Yehudah, however, said: In respect to monetary matters his stipulation is valid!

Ketubbot 56a: (this citation can also be found in these other locations:

Kiddushin 19b, Baba Batra 226b, and Baba Metzia 94a)

תלמוד בבלי מסכת בבא מציעא דף נא עמוד א

דתניא: האומר לאשה הרי את מקודשת לי על מנת שאין ליך עלי שאר כסות ועונה - הרי זו מקודשת, ותנאו
בטל, דברי רבי מאיר. רבי יהודה אומר: בדבר שבממון תנאו קיים. - אמר ליך רב: אנא דאמרי - אפילו לרבי
יהודה; עד כאן לא קאמר רבי יהודה התם - אלא ידיעה וקא מחלה

For it has been taught: If one says to a woman, 'Behold thou art consecrated unto me on condition that you shall have no claims upon me of sustenance, raiment and conjugal rights' — she is betrothed, but the condition is null: this is Rabbi Meir's view. But Rabbi Yehudah said: In respect of civil matters, his condition is binding! — Rab can answer you: My ruling agrees even with Rabbi Yehudah. Rabbi Yehudah states his view there only in that case, because she knew [of her rights], and renounced them;

Baba Metzia 51a

In fact, we see in Mishnah, Ketubbot 5:6, there is a discussion of if a man can keep a vow he makes not to have intercourse with his wife. While the rabbis are not desirous of annulling vows in general which would result in taking the name of God in vain, they do not want to keep the couple from being intimate. In this passage not only do the rabbis say that a man cannot have an unending vow of celibacy, he is required to have relations with his wife a minimum number of times as determined by his livelihood.

משנה מסכת כתובות פרק ה' משנה ו'

המדיר את אשתו מתשמיש המטה ב"ש אומרים שתי שבתות בית הלל אומרים שבת אחת התלמידים יוצאין
לתלמוד תורה שלא ברשות שלשים יום הפועלים שבת אחת העונה האמורה בתורה הטיילין בכל יום הפועלים
שחים בשבת החמרים אחת בשבת הגמלים אחת לשלשים יום הספנים אחת לששה חדשים דברי רבי אליעזר

If a man made a vow not to have intercourse with his wife, Beit Shammai ruled [she must consent to deprivation for] two weeks. Beit Hillel rules for one week.

Students may go away and study the Torah without permission [of their wives] for a period of 30 days; but laborers only for one week.

The times for conjugal duty as proscribed by the Torah are:

- For men of independence – every day.
 - For laborers – twice a week.
 - For ass-drivers – once a week.
 - For camel-drivers – once a month
 - For sailors – once in six months
- these are the rulings of Rabbi Eliezer.

Ketubbot 5:6

It is additionally significant that a man may not switch his job without the wife's consent.

תלמוד בבלי מסכת כתובות דף סב עמוד ב

א"ל רבה בר רב חנן לאביי: חמר ונעשה גמל, מאי? א"ל: רוצה אשה בקב ותיפלות מעשרה קבין ופרישות.

Said Rabbah son of R. Hanan to Abaye: What [is the law where] an ass-driver becomes a camel-driver? — The other replied: A woman prefers one *kab* with frivolity to ten *kab* with abstinence. (Ketubbot 62b)

The above text asks what is the law when a man wants to switch jobs from being an ass-driver, where his sexual obligation to his wife would be once a week, to a camel-driver, where his sexual obligation would only be once a month. Rashi comments that the real question is if a woman prefers wealth or frequent intimacy. If the answer is increased wealth, then the husband would require his wife's permission to switch jobs, but if the answer is that she prefers intimacy, than he would not be able to change occupation to one that would keep him away from home longer, even if he will earn more money. The answer is that a woman would prefer less wealth and more intimate time

with her husband than a husband who provides lavishly for her but whom she never sees.¹⁷

In fact, the Rabbis are so concerned with the home, that they view both a man and a woman who refuse the sex act as “rebellious” and the abstinent partner is subject to legal action and divorce (note that a man cannot force his wife to have sex).¹⁸

Abstaining, in any form, from legally accepted behaviors is frowned upon.

תלמוד בבלי מסכת תענית דף יא עמוד א

אמר שמואל: כל היושב בתענית נקרא חוטא. סבר כי האי תנא, דתניא: רבי אלעזר הקפר ברבי אומר: מה תלמוד לומר +במדבר ו'+ וכפר עליו מאשר חטא על הנפש, וכי באיזה נפש חטא זה? אלא שציער עצמו מן היין, והלא דברים קל וחומר: ומה זה שלא ציער עצמו אלא מן היין נקרא חוטא, המצער עצמו מכל דבר ודבר - על אחת כמה וכמה.

Shmuel said: Whoever fasts (observes a voluntary personal fast) is called a sinner. Shmuel held, like the Tannaitic author of the following baraita: ‘R. Elazar HaKappar says, Why does the Torah state [regarding the *nazir*]: ‘And the Cohen will make atonement for him for that he sinned against his soul’ (Bamidbar 6:11)? Against which soul did the *nazir* sin? - Rather, [he is called a sinner because] he has distressed himself [by abstaining] from wine. Now, how much the more so: If this *nazir*, who distressed himself from abstaining from wine only, is called a sinner, then one who distresses himself by abstaining from all [non-forbidden] things, how much the more so should he be considered a sinner!

*Ta'anit 11a*¹⁹

The Rabbis believe that God made everything in the world for a purpose, and that God has given us things for pleasure. While everything in life should be done in moderation, completely refraining from activities of enjoyment is not a goal in Judaism.

¹⁷ This text would be excellent to use in marriage counseling when issues arise over a spouse putting work before family.

¹⁸ As Maimonides States in his Mishnah Torah, Laws of Marriage, 14:9. “The wife is not a captive taken by sword to please her master’s desires.” This will be discussed in more detail in Chapter Three.

¹⁹ The text would also be a good text to use when teaching about eating disorders, or for Hebrew High School and Youth Group students when going to college to talk about the importance of moderation.

Below, a lesson plan is provided on the idea of *onah* that will introduce learners to the different forms of rabbinic material available to them. This lesson will give them the groundwork for understanding where future texts come from and how they relate to one another. They will also explore the idea of *onah*, and learn that it is a requirement of the husband to be sexually intimate with his wife.

Lesson 1:
The Masorah²⁰ of Torah

INTRODUCTION:

Rabbinic Judaism revolutionized our religion after the Bar-Kokhbah revolt (132 CE). Without the Temple in Jerusalem and the ability to offer sacrifice, Judaism shifted its focus from that of ritual and sacrifice, to worship and study. Through the compilation and recording of the Oral Torah and the establishment of prayer, Judaism dramatically changed.

This lesson teaches the evolution of the Oral Torah in its historical context. Through the use of texts based upon the biblical injunction of *onah*, a man's obligation to be intimate with his wife, the students will see the evolution of the Oral Torah. Students will be introduced to the different forms of rabbinic literature and how they relate to one another. Through this enticing topic, we will lay the groundwork for understanding the role of intercourse in the marital relationship as well as learn to work with classic Jewish texts. In addition, they will discover how Oral Torah made Torah livable in Diaspora communities.

TIME

1 hour

ENDURING UNDERSTANDINGS

- Judaism has a tradition of interpretation.
- I can reinterpret ancient Jewish texts to make them relevant to my daily life.
- The Jewish religion has a rich history of evolving to suit the needs of the times.

ESSENTIAL QUESTIONS

- What do I believe is meant by the Torah?
- How can I find meaning in Jewish texts?
- How can I reinterpret ancient Jewish texts to make them relevant to my daily life?
- What role does the Oral Torah play as an authority in my life?

QUESTIONS TO BE ADDRESSED

- What is the Oral Torah?
- How did the Oral Torah come to be?
- Who wrote the Oral Torah?
- What are the different forms of rabbinic writings that are most influential today?
- What does the Torah mean when it says a man is obligated to *onah*?

EVIDENCE OF UNDERSTANDING

- Students will display understanding of how rabbinic literature evolved by examining passages from the Torah, Mishnah, Gemara, Midrash, and bible commentaries that all examine the same issue.

²⁰ Masorah or mesora, (Hebrew מסורה) refers either to the transmission of religious tradition or to the tradition itself. In the sense above, and in a broad sense in general, it refers to the entire chain of Jewish tradition; also the Oral Torah.

LESSON OVERVIEW

- Welcome
- Set the Stage
- Oral Torah
- Codes
- Text
- Review, Close

MATERIALS NEEDED

- Torah, or picture of a Torah
- Copies of Handout 1 from Appendix B
- A Siddur
- A Tikkun

LESSON PLAN:

Welcome (5 minutes)

- Welcome everyone as they come in the door.
- Hand out snacks. Say and/or teach the blessings over the food.
- Teach and/or say the blessing for Torah study.

Set the Stage

- Hold up the Torah or picture of the Torah and ask the class: What is this? (*The Torah, the teaching of our people, the law book*)
- Read from Exodus 20:8-11 (or alternatively have a student read it from a Tanakh).
“Remember the Sabbath day, to keep it holy. Six days you will labor, and do all your work: But the seventh day is the Sabbath of the LORD your God: in it you will not do any work, neither you, nor your son, nor your daughter, your manservant, nor your maidservant, nor your cattle, nor the stranger that is within your gates: For in six days the LORD made heaven and earth, the sea, and all that is in them, and rested on the seventh day: and the LORD blessed the Sabbath day, and hallowed it.”
- Ask: How do we keep Shabbat? (*Don't do any work.*) And how do you define work? Is watching TV work? Is driving in your car? Where do we get these ideas? (Allow time for the students to answer these questions.)
- Ask: What do you illicit concerning Shabbat ritual from this passage? Is there any mention of candles? Hallah?
- Say: There are many laws stated in the Torah without much explanation. If all you had was this passage for keeping Shabbat, you would know nothing about going to services and reading Torah, about lighting candles, making *kiddish*, and serving *hallah*. As you can see, while the Torah tells us how to live, it doesn't give many details.

Oral Torah – Torah She-Be'alpeh

- Say: According to Jewish legend, when Moses was on Mount Sinai receiving the written Torah, God also spoke to Moses, telling him how to interpret what he was writing. Moses told this to Aaron who told his sons who told the priests. The priests told one another down through the generations and eventually the rabbis received the

information from them. Our Torah scroll is known as the written Torah, and the oral instruction on how to interpret the Torah is known as the Oral Torah, however, as we shall see, this is not all that is contained in the oral Torah. And so, this legend claims that both the Written Torah and the Oral Torah were divinely revealed by God to Moses on Mount Sinai.

- Write: Oral Torah, Torah She Be'alpeh, on the board.

- *Mishnah* (from Shana, to repeat)

Say: The rabbis had been teaching the Oral Torah to one another for thousands of years through memorization. As you can imagine, many stories got inserted, embellished, and different interpretations were added to this body of knowledge. However two facts made it so the Oral Torah needed to be written down.

1. After the Bar Kokhba's revolt in 132 CE, Jews were scattered all over the Near East and no longer had one central authority to which they could turn in questions of law. A need arose for an ordered structure of Jewish law.
2. (As you might imagine by the length of this game of telephone,) Oral Law had expanded so much it was getting impossible to memorize.

Therefore Rabbis set out to write down the oral law. These rabbis were known as the *tannaim*, an Aramaic word meaning to teach. The rabbi credited with the compilation of the Mishnah is Rabbi Yehudah Ha-Nasi.

- The Mishnah was compiled in year 200 C.E. (You may want to note that this was supposedly thousands of years since it was received on Mount Sinai as well as well over 600 years from when Ezra first read Torah in Jerusalem in the year 444BCE). It is the first written collection of the oral law and is considered just as sacred as written Torah (but even more authoritative). It was written in Hebrew, which gave it authority since it was the language of the written law.
- The Mishnah is divided into 6 orders (*sederim*), each order deals with a broad area of Jewish life and is subdivided into 63 tractates called *masechot*. The Mishnah includes legal discussions, commentaries, insights, interpretations, stories, and lore. Often both sides of an argument are presented without declaring a final decision.

Orders:

1. *Zera'im* (seeds) – agricultural rules
2. *Mo'ed* (festivals) – holidays
3. *Nezikin* (Damages) – civil and criminal law
4. *Nashim* (women) – issues between the sexes such as marriage and divorce
5. *Kodashim* (holiness) – sacrifice and ritual
6. *Tohorot* (purity) – laws on purity and impurity

- *Gemara* (completion)

It was necessary to comment upon and elucidate the *Mishnah*; this commentary was called the *Gemara* and was compiled by rabbis known as the *amora'im* (from the Hebrew "to tell").

Two distinct commentaries arose at roughly the same time. One was from Palestine and was completed by about 400 while in Babylonia (Iraq) they were creating their own

Gemara which was completed about 500 CE. The Babylonian Gemara became dominant in the Jewish world and is the accepted interpretation today.

The amora'im would comment line-by-line on the Mishnah and would often add materials to the Mishnah while expanding the basic corpus of relevant *tannaitic* material. The material from the tana'im that was added was known as *baraita* – because it came from outside the Mishnah. Some baraitot were collected in what is known as the Tosefta (Hebrew “addition”).

- (Write this equation on the board) **Talmud** (from the root “to learn”) = Mishnah + Gemara
Gemara too was now part of the Oral Law. It is written in Aramaic. The Talmud is the combination of the mishnah and the Gemara commentary.
- **Midrash** (from Hebrew *Derosh*, meaning to search out or examine)
Midrash is a method through which deeper meaning of biblical text can be extracted. Today we refer to a *midrash*, meaning one story and the *Midrash*, a collection of *Midrashim*. *Midrash* fills in gaps in the biblical text.
 - Midrash Aggadah (Aggadah – to tell, like haggadah) refers to non-halakhic material.
 - Midrash Halakhah was developed around Halakhic literature. Written during Tannaitic period (about 200CE) throughout the medieval period.

Medieval period (600-16th century)

Talmudic commentaries

- Rashi – Solomon ben Isaac (1040-1104). Believed to be medieval Judaism's greatest philosopher. Lived in France and had a vineyard. Rashi provided punctuation for the Talmud, identified speakers when unclear, and explained the plain meaning of obscure passages. He supplied historical data, determined the location of geographic places. He and other commentators all made comments upon, discussed, and made decisions about points of law based on the Talmud. Rashi's commentary is noted for its clarity and succinctness.
- Tosafot – This commentary is found opposite Rashi's on the page of Talmud. This commentary was put together over two centuries and is dominated by the voices of Rashi's two sons in law and three grandsons.
- Rabbenu (Jacob) Tam – One of Rashi's grandsons, the leader of the French-Jewish community, a decisive leader and a first rate scholar.
- Rishonim – (first ones) applies to all Jewish scholars who lived before Josef Karo, the author of the Shulchan Arukh. They include: Rashi, Rabbenu Tam, Rambam, Ibn Ezra, Nachmanides, and the Tosafot.

Responsa literature – After close of Talmudic period, text still needed elucidation. People would send questions to the most learned scholars and rabbis and they were answered in the form of a ☐ response. In this way, Talmudic law was able to be adapted to the particular needs of the day.

The Codes

Codifiers sought to reorganize all the relevant Halakhic material into one corpus, stating the laws briefly and decisively, providing clear cut rules. Therefore, even someone who was not a scholar would know what the law was.

Codes were written throughout the Geonic period.

- **Maimonides (Rambam) – (1135-1204).** First person to write a systematic code of Jewish law. The first comprehensive code was the Mishnah Torah (second law to the Torah) written by the Rambam – Moses Maimonides in 1180; written in Hebrew rather than Aramaic. Rambam also wrote one of the great philosophical statements about Judaism (The Guide for the perplexed), published a commentary on the Mishnah, served as a physician to the sultan of Egypt, wrote books on medicine and was the leader of the Cairo Jewish community. His *Mishnah Torah*, also known as the *Yad haHazakah* was intended to be a guide to show all Jews how to behave.
- The *Beit Yosef* by Joseph Caro and the *Shulkhan Arukh* (prepared table), it's abbreviated form, published in 1555 was based on three earlier codes by Maimonides, Alfasi, and Jacob ben Asher. This is now the accepted authority on the law by traditional Jewry after some slight alterations mostly provided by Moses Isserles (*mapah* – table cloth). His success was largely due to the publication coinciding with the invention of the printing press.
- **Masoretes (from Masorah – tradition) –** These scholars standardized the Hebrew text; they invented vowel signs, punctuation marks and cantillation.
- **Pass around the tikkun and show the Torah verse what the Masoretes wrote.**
- **Biblical Commentaries –** Biblical commentaries became very important as a response to both Christian scholarship and Karaite Jews who viewed their sect of Judaism as above rabbinic Judaism because while the rabbis derived their authority from the Talmud, the Karaites derived theirs from the Torah itself. The rabbis needed to defend the *halakhah* against the Karaites and show the proper interpretation of Torah to the Christians, and did so by providing commentaries to the bible. All contradictions were explained, all repetitions were provided different explanations since no word of Torah could be redundant. The rabbis defined difficult words. Their work was different from Midrash in that the goal was to get to the plain meaning of the text (this was to serve against the Christian interpretations of the text). Rashi's Bible commentary is considered to be the greatest commentary to the Bible.
- **Mysticism –** communing with God. Mystical books begin to appear starting in the Geonic period.
 - **Kabbalah** – Mystical teachings, which emanate from the Torah, contain secrets about the ultimate meaning of existence. Kabbalists emphasize a state of mystical ecstasy as path to knowing God.
 - **Zohar, or Sefer HaZohar** – the Book of Splendor. Major Kabbalistic book. Contains mystical explanations to the Torah.
- **The Siddur (order of the service) –**
 - First known prayer book was composed in a responsum by Ga'on Amram in the 9th century, became known as Seder Rav Amram. (Spain).
 - In 10th century Sa'adia Gaon wrote the second known prayer book
 - Kabbalat Shabbat service came from Kabbalists
 - Blessing for Shabbat candle lighting was composed during the Geonic period
 - 1st Reform prayer book was the Hamburg prayer book published in 1818.

Text – As a class look at Handout 1 to see evolution of rabbinic writings.

- First look at the Torah verse itself. Ask: What questions might you have about this verse?
- Look at the Midrash. Ask: What aspect of the Biblical verse does this comment upon?
- Look at the Mishnah. Ask: What aspect of the Biblical verse does this comment upon? Note that since it was compiled at the same time as the early Midrash was being created, there is often overlap.
- Look at the Talmud. Ask: What does this add? Note the different commentaries.
- Look at the Biblical commentaries. Note Rashi's style of weaving the verse into his commentary.

Get the reactions of the class to the materials we are discussing. Are they surprised?

Closing (5 minutes)

- Review what we have done today. We learned about the different forms of rabbinic literature and the evolution of the interpretation of a Biblical verse through the Mishnah, Talmud, Midrash, and commentaries. We have also learned that a man is obligated to his wife in three areas: food, clothing, and conjugal rights.
- Take any last minute questions.

Chapter 2: The Rebellious Wife

There are many reasons why parents cry at their children's Bar/Bat Mitzvah. The primary reason is that they know their child is growing up, and maybe mixed in with this is the knowledge and fear that it is only a matter of time before their child enters the dreaded rebellious phase. In the Talmud, rebellion is not reserved for teenagers; in fact, rebellion is primarily discussed as an issue within marriage itself.

The rebellious spouse is a man or woman who refuses to be intimate with their wife or husband. This chapter will focus on a passage from the Babylonian Talmud, Ketubbot 63a-64a, which deals with the proper course of action to take when dealing with the "rebellious wife." This passage struggles with defining the Mishnaic term "rebellious wife," while exhibiting many different rationales for legal change. This material, while demonstrating the emphasis placed on physical intimacy within the marital relationship, also teaches us some rhetorical terms used to describe legal change. Thus, it is an excellent text for teaching how laws change in Judaism and emphasizing the importance of sex within the marriage. As we shall see later, this text may also be used as source for the legitimacy of marital counseling.

תלמוד בבלי מסכת כתובות דף סג עמוד א

המורדת על בעלה - פוחתין לה מכתובתה שבעה דינרין בשבת, ר' יהודה אומר: שבעה טרפעיין. עד מתי הוא פוחת? עד כנגד כתובתה, ר' יוסי אומר: לעולם הוא פוחת והולך, עד שאם תפול לה ירושה ממקום אחר גובה הימנה. וכן המורד על אשתו - מוסיפין על כתובתה שלשה דינרין בשבת, ר' יהודה אומר: שלשה טרפעיין.

MISHNAH: The wife who rebels against her husband – take from [the worth of] her *ketubah* seven *dinari* each week. Rabbi Yehudah said: seven *tropaics*.

For how long may this reduction be made? Until it is equal to [the worth of] her *ketubah*. Rabbi Yose said: Continually the reductions can be made, even until if an inheritance should fall to her from elsewhere, [her husband] will be able to collect from her.

And similarly, for the husband who rebels against his wife – add onto her *ketubah* three *dinari* each week. Rabbi Yehudah said: Three *tropaics*.²¹

The Mishnah above introduces the idea that rebellious spouses must somehow be penalized for their rebellion. The Mishnah, while arguing a bit over whether the sum should be in *dinari* or *tropaics*, clearly states that the penalty should be a financial penalty, and that the guilty party should be penalized every week that the undesirable behavior continues. While our text goes on to focus on the rebellious wife, it does recognize that husbands too can be rebellious and subject to penalty.

The question of how long this penalty should go on is also addressed in the Mishnah. The anonymous author suggests that, for a woman, this penalty continue until her *ketubah* is rendered valueless. This would allow the husband to divorce his wife without suffering any financial consequences. However, Rabbi Yose takes this one step further; he says the reductions can be made even beyond the value of her *ketubah* so that, if the woman were to ever come into any money through an inheritance, the husband would be able to continue to collect from her. While we cannot know the precise reasoning of Rabbi Yose, we can see that this arrangement may give the husband incentive to stay married to his wife even beyond the point that he would be able to divorce her without financial consequence. As we will see in further analysis of this topic, the Rabbis seem to want to give these marital relationships every possible chance to succeed. Here we see the first way the Rabbis try to insure a healthy, happy home. They say if a man or a woman is not fulfilling the marital duties and has earned the title

²¹ Please note that all Talmudic translations, unless otherwise noted, are my own with a heavy reliance on The Schottenstein Edition of the Talmud, (Mesorah Publications, 2005); The Soncino Talmud, Isidore Epstein, (Soncino Press) The Talmud of Babylonia: An American Translation, Jacob Neusner, Tzvee Zahavy, others. Atlanta: Scholars Press for Brown Judaic Studies, 1984-1995); and for transliteration help The Talmud: The Steinsaltz Edition Adin Steinsaltz, (Random House).

of being a rebellious spouse, he or she will receive a financial penalty, thus giving the rebellious partner an incentive to stop their unacceptable behavior.

The Talmud picks up this conversation by struggling with the Mishnaic term “*mored/moredet*.” The Rabbis attempt to define what it means to be a “rebellious” spouse before they turn to discuss the consequences of this rebellion.

תלמוד בבלי מסכת כתובות דף סג עמוד א

מורדת ממאי? רב הונא אמר: מתשמיש המטה, ר' יוסי ברבי חנינא אמר: ממלאכה. תנן: וכן המורד על אשתו; בשלמא למ"ד מתשמיש - לחיי, אלא למאן דאמר ממלאכה - מי משועבד לה?

GEMARA: “Rebellious,” from what? Rav Huna said: From the business of the bed [conjugal relations]. Rabbi Yose the son of Rabbi Hanina said: From work. We learned (from the Mishnah), “And similarly, for the husband who rebels against his wife . . .” According to him who said “From [conjugal] business”- it is logical. But according to him who said “From work,” must he work for her? Yes, [rebellion is possible] if he says, “I will not sustain or support [her].” But didn’t Rav say: “If he says ‘I will not sustain or support [her]’ – he must divorce her and give her *ketubah* to her?” - Is it not necessary to consult him?

We see here various arguments over the meaning of “rebellious.” In the Babylonian Talmud, Ketubbot 61a we are told that the woman is obligated in three aspects towards her husband: 1) to pour his wine; 2) to make the bed; and 3) wash his hands and feet. Refraining from any of these three acts might place the woman in the category of a “rebellious wife.” In our *Gemara* passage, Rav Huna argues that the rebellion is that she refrains from her duties towards the marital bed. Rav Huna, like the modern day reader of Ketubbot 61a, may have noted that her required responsibilities are all acts that may lead to a conjugal union. We also know that one of the man’s obligations to his wife is to fulfill her sexually. The Stamma states that Rav Huna’s argument is logical because both are obligated towards the other for sex. While Rabbi

Jose son of Rabbi Hanina attempts to make an argument that work is the defining characteristic of a rebellious spouse, this argument is overturned by noting the argument put forth by Rav, that a man cannot rebel against his wife by saying he will not support her because she would then be awarded her *ketubah* and he would be forced to divorce her and, if this were the case, the entire institution of a rebellious spouse would be worthless.

Now that the rebellion has been defined as sexual refusal, the *Gemara* goes on to discuss how to suppress these types of rebellions. Looking further in the passage, the Rabbis turn to a discussion of how to penalize a rebellious wife. Here, we see our first change in the law beginning with the word “*gufa*” used to introduce a new tangent related to a text cited above (meaning - now that we have finished what we were talking about, let’s return to the case at hand).

תלמוד בבלי מסכת כתובות דף סג עמוד ב

גופא: המורדת על בעלה - פוחתין לה מכתובתה שבעה דינרים בשבת. רבי יהודה אומר: שבעה טרפעיין. רבותינו חזרו ונמנו, שיהו מכריזין עליה ארבע שבתות זו אחר זו, ושולחין לה ב"ד: הוי יודעת, שאפי' כתובתך מאה מנה הפסדת. אחת לי ארוסה ונשואה, אפילו נדה, אפי' חולה, ואפי' שומרת יבם. אמר ליה ר' חייא בר יוסף לשמואל: נדה בת תשמיש היא? אמר ליה: אינו דומה מי שיש לו פת בסלו למי שאין לו פת בסלו. אמר רמי בר חמא: אין מכריזין עליה אלא בבתי כנסיות ובבתי מדרשות. אמר רבא: דיקא נמי, דקתני: ארבע שבתות זו אחר זו, ש"מ.

[To return to] the main text, (this is now the quote from the Mishnah) the wife who rebels against her husband - take from [the worth of] her *ketubah* seven *dinari* each week. Rabbi Yehudah said: Seven *tropaics*.

Our Masters, returned and voted that an announcement shall be made about her on four *Shabbatot*, one after the other and the court shall send to her (this message): “Let it be known to you that even if your *ketubah* is for a hundred *maneh*, you have forfeited it.” The same law is for a betrothed woman, a married woman, or even to a menstruating woman, even to a sick woman, and even to one who is awaiting her levirate marriage.

Said Rabbis Hiyya ben Yoseph to Samuel: "Can a menstruating woman have conjugal relations?" – He said to him: "One who has bread in his basket is not like one who has no bread in his basket."²²

Rami son of Hama said: "The announcement concerning her is made in the synagogues and the houses of study. Said Rava: This may be proved by a deduction; as it was taught, "four *Shabbatot*, one after the other" learn from this.

Ketubbot 63b

Here we see our first legal change introduced by a rhetorical term utilized by our Rabbis to describe a legal change; "*hazru v' nimnu*," they returned and voted. "*Hazru*" is a commonly used term to show a change in legal position. "*Nimnu*" shows how the new law was created, by a vote. The law thus moved from one phase to another. Phase 1) the law previously stated that the amount of the *ketubah* would be lessened until the *ketubah* was rendered worthless, this would then carry on for an indeterminate amount of time. Phase 2) the law has now changed so that the longest the rebellion can take place is for up to four *Shabbatot* - one month. The woman will then lose her *ketubah* completely. In addition to speeding up the financial penalty for her rebellion, an additional penalty was added, a social penalty. With the second formation of the law, we see that the rebellion has an additional consequence of public humiliation. Word of the unhappy standing of their home life will be announced at both the synagogue and the house of study. As these were the gathering places for everyone in the Jewish community, her rebellious behavior would become the talk of the town. We can imagine in today's world, that an announcement in the synagogue that so-and-so was refusing to have

²² This is a euphemism. A man with bread in his basket knows that later he will be able to eat. Therefore, while a menstruant is not available for sex, in a happy marriage, the man knows that when she is rendered pure again there will be the option of intercourse. The man who does not have bread in his basket would not know when, if ever, he will eat again, so too, a man with a wife who refuses to be intimate, even if she were menstruating and therefore rendered not fit for intercourse, would still not know if they will ever be intimate again.

conjugal relations with her husband would spread like wild-fire, giving the woman every incentive to try and prevent such an embarrassing event from taking place; all the more so, in the 5th century when the synagogue served as a community center and therefore a place for public gathering and announcements, a woman would want to avoid this type of embarrassing disclosure from occurring.

In this case, the change was rendered by a vote. The Rabbis do not give a reason for the change, just that the majority felt that a time limitation should be set so that the unhappy state of the marriage would not drag on for years and years. They are able to make this change because it is a rabbinic law to have a *ketubah*, not a biblical law, and therefore it may be altered. Perhaps the point of divergence that was the impetus for this change in law was a result of an increase in wealth. Perhaps more women were acquiring wealth, or were entering marriage with more valuable *ketubbot* than previous generations, or perhaps the *dinar* and *tropaic* had gone down in value. It would not be hard to imagine that a reduction of seven *dinari* or *tropaics* may not seem like that much of a penalty to a very wealthy woman. If a woman's *ketubah* was worth 1000 *tropaics*, for example, she could continue this rebellious behavior for up to 143 weeks, or about 2.75 years before her husband would divorce her. When the life expectancy was only that someone would live into his or her 30's or 40's you can imagine that this amount of time would be much too long to stay in an unhealthy marital situation.

There are also probably some sociological and psychological reasons for shortening of the length of time until divorce is necessary. As Karen Jean Prager describes in The Psychology of Intimacy, if issues are not addressed and, instead, are

allowed to fester, they can escalate, resulting in much larger problems.²³ Going for years without any sexual intimacy within the marriage will no doubt lead to even greater problems in the relationship. For it is not just that sex is not taking place, as we see with the additional argument made about betrothed wives and menstruating women, it is that these women are telling their husbands that they never plan on being intimate with them again. And so the man feels as if he “has no bread in his basket.”

Financial penalties would be very extreme for a woman living in this patriarchal society. However, there may be cases in which a woman’s family would have enough money to be able to take her back and support her in her divorced state. This woman may be perfectly willing to forgo her *ketubah* in order to prove to her husband that she truly has no desire for him, or that whatever it was they began fighting about that has led to this situation, she does not have to talk to him about it because she has the means to support herself. The public humiliation that this type of an announcement would bring may be enough for a woman to rethink her actions. For a wealthy woman from a wealthy family, it is easy to imagine that the money might not be enough to push her to work things out with her husband, but the public humiliation, which would embarrass both her and her family by extension, may have enough social consequences to give her pause. Her family, hearing the announcement, might be inclined to talk to her and make her try and work things out with her husband. Bringing the issue into the public arena adds a whole layer of social embarrassment and a cadre of people thinking that this is now their business and that they are allowed to give their opinion on the matter.

²³ Karen Jean Prager. The Psychology of Intimacy. (New York: The Guilford Press, 1995) 275-276.

A final note on the shortening of the length from indefinite to one month is that this may also be an illustration of the importance that the Rabbis placed on sex within the marriage. As we will see in future chapters, the Rabbis will permit the use of birth control for those women who might be placed in danger by becoming pregnant rather than have a couple abstain from the conjugal act. While one month of celibacy may not seem like that long, the Rabbis are aware that this is a sign of an unhealthy sex life and note that if this lack of intimacy is not a result of sickness or menstruation, but a matter of outright refusal by the partner to ever be intimate with their spouse, then the relationship should be terminated. There is also no requirement to report a rebellious spouse; therefore, if the problem has escalated to the point of needing to involve others, it may have been going on for quite some time.

Continuing on in Kettubot 63b:

אמר רמי בר חמא: פעמים שולחין לה מבית דין, אחת קודם הכרזה ואחת לאחר הכרזה. דרש רב נחמן בר רב חסדא: הלכה כרבנן. אמר רבא: האי בורכא! אמר ליה רב נחמן בר יצחק: מאי בורכתיה? אנא אמריתיה גיהליה, ומשמיה דגברא רבה אמריתיה גיהליה, ומנן? רבי יוסי בר' חנינא. ואיהו כמאן סבר? כי הא דאחמר רבא אמר רב ששת, הלכה: נמלין בה; רב הונא בר יהודה אמר רב ששת, הלכה: אין נמלין בה

Said Rami son of Hama: "Twice the Beit Din sends [the warning] to her, once before the announcement is announced and once after the announcement."

Rav Nahman son of Rav Hisda explained: The *halakhah* is in agreement with our Masters.

Rava said: "This is senseless."

Rav Nahman son of Isaac said to him: "Why is it senseless? I told it to him, and it was in the name of a very great man that I told it to him." And who is it? Rabbi Yose son of Rabbi Hanina. And whose view is he holding? The first of the mentioned. Rava said in the name of Rav Sheshet, "The *halakhah* is that she is to be consulted." Rav Huna son of Yehudah said in the name of Rav Sheshet, "The *halakhah* is that she is not consulted."

While this part of the text does not deal directly with a legal change, it does discuss a change in the treatment and approach used with the rebellious wife. The

discussion here is concerning warning the woman that she is about to be publicly humiliated when the announcement goes out in both the house of study and the synagogue. The woman will then have time to reconsider. If the practice was in accordance with the wishes of Rami son of Hama, then someone would be sent to talk with the woman both before and after the announcement. It is possible that this indicates a very advanced way of thinking; it gives the woman time to reconsider her actions, a chance to protect herself from public embarrassment, but it may also be the first chance that the woman has to discuss what is going on in her relationship.²⁴ It is possible that the court appointed *shaliach* served as a counselor for her. This person may have allowed the woman to discuss the problems in her marriage, let her air out some of her issues, and certainly would have wanted to persuade her to try and talk and reconnect with her husband. This *shaliach* would then come again after the message was sent to see if she had changed her ways. Again, it is easy to imagine that the *sheliach* would want to rehash the experience with the woman, and that she would share the embarrassment she felt when her private issues were made public.

The frequency and timing of this consultation is debated in the passage above.

We learn that Rami son of Hama wants the woman to be consulted once before and once after each of the four announcements,²⁵ but then it is stated that the law should follow our Masters – this would mean that there would not be the two meetings with the wife before

²⁴ Therefore, this text may be one that a rabbi might use with a couple in counseling.

²⁵ The Hebrew might be read as saying that one consults the woman once before the first announcement and then only returns after the four announcements on the successive *Shabbatot*, however, I believe the correct reading is that the *shaliach* consults her each of the four times sense she may not continue her “rebellious” behavior after the first announcement is made and the proper people would need to be informed of this in order for the announcements to cease.

and after the announcement. However, we are told that when Rava heard this he said it was “senseless.” Rava argues that we should go back each week to speak with the woman and he attributes his ruling to Rav Sheshet; thereby hanging his opinion on a “big tree,” meaning he attributes his opinion to someone others would be reluctant to oppose.

So, the second stage of law is that when there is a case of a rebellious wife, there is a four-week time period allotted to resolve the issue. During this time, an announcement is made in the synagogue and in the house of study, but the Beit Din sends a representative to discuss the issue with the woman during this month-long process. She may at any point stop her rebellious behavior. However, if, at the end of the month, she still refuses her husband, then she forfeits her *ketubah*. This stage shows an attempt at marriage counseling via some engagement with the aggravated party. It also shows that the Rabbis would exert both economic and social pressures on a couple to try and ensure *Shalom Bayit*. From a pragmatic point of view, this policy towards a rebellious wife reflects the higher moral principle of *Shalom Bayit*.

The *Gemara*, after proving that the situation is not one in which the woman is not attracted to her husband,²⁶ further defines a rebellious wife as one who wants to remain married but is deliberately trying to torture her husband by refusing him. The rebellion then is very intentional and it is not so much **what** she is physically doing that is wrong,

²⁶ We learn in the Mishnah of the Talmud Bavli Tractate Ketubbot 77a that certain men can be compelled by the court to give their wives a divorce should she demand one: “A man who is afflicted with boils, or has a polypus, or gathers [objectionable matter] or is a copper smith or a tanner, whether they were such before they married or whether they arose after the had married. And concerning all these R. Meir said: Although the man made a condition with her she may nevertheless plead. ‘I thought I could endure him, but now I cannot endure him.’”

it is **how** she is doing it – by playing mind games. She is intentionally harming their marital relationship in order to gain the upper hand.²⁷

Finally, the discussion goes on to a tangent in which the Rabbis are discussing property rights for a woman who is divorced as a result of her rebellious behavior. While this is not of interest to the topic of this chapter, the end of the discussion gives a third phase of the law. In brief, following a decision that if a woman has in her possession some of the worn-out items from her dowry she does not have to forfeit those items to her husband, the Gemara states:

תלמוד בבלי מסכת כתובות דף סד עמוד א

משום דרב זביד גברא רבה הוא אפכיתו ליה לדינא עילויה? האמר רב כהנא: מיבעיא בעי לה רבא ולא פשיט. השתא דלא אתמר לא הכי ולא הכי, תפסה - לא מפקינן מינה, לא תפסה - לא יהבינן לה, ומשהינן לה תריסר ירחי שתא אגיסא, ובהנך תריסר ירחי שתא לית לה מזוני מבעל.

“Is it because Rav Zebid is such a great man that you turn the law against him? Surely,” Rav Kahana said, “Rava has raised the question but has not resolved it.” Since it has not been stated what the law is, [the items in question] are not to be taken away from her if she has already taken them, but if she hasn’t taken them we do not give them to her.

We also make her wait twelve months, a year, for her divorce, and during these twelve months she receives no maintenance from her husband.

Ketubbot 64a

We now get our third stage of the law, an adjustment tagged onto the end of what seemed to be a tangential discussion. In this third phase, the woman waits twelve months before receiving her *get*. This gives the couple more time to work on the relationship.

²⁷ This additional nuance makes the discussion very relevant to the modern couple. Every couple has disagreements from time to time, but the law here is showing that purposefully hurting your spouse is unacceptable behavior. We see that we should not use sex to control our partners, that this is unhealthy and that the partner who does such a thing should be punished.

One month is not a long period of time, and divorce at the end of one month may be a bit hasty. Extending the deadline to one year both prevents the problem found in the first phase of the law - that the fight and negative situation could continue indefinitely - while allowing enough time for the couple to work through things. However, the Rabbis felt they still needed incentive for the woman to come around before the one-year time limit expired, and so they added the penalty that the husband would not have to provide for his wife's maintenance during this year. For a woman of little means, this would be a great penalty. While some women did work during the 4th and 5th century, and other women may have been able to get support from relatives, the majority of women would be reliant on their husbands for maintenance and this kind of penalty would make resolution of the problem very pressing.

Throughout the three phases of the law, we see that the Rabbis remain concerned over *shalom bayit*, peace within the home. The laws are given in order to promote resolution of marital problems. While in today's world, we tend to keep our private lives very private, and would not necessarily welcome the rabbi weighing in on the situation of our marital sex lives, our Masters before us felt that this issue was so important that something had to be done to make sure that sexual manipulation would not be present in a marriage for years and years with no resolution.

While a woman is not obligated to have sex with her husband by law and can refuse him, the discussion here demonstrates that there is a clear difference between saying "not right now" and using sex as a tool to control your spouse. The laws also show that the Rabbis took into consideration financial penalties and their benefits and

deficiencies, as well as social penalties (and their benefits and deficiencies) in persuading a rebellious wife to change her ways.

In Ketubbot 63a-64a, we see that the law concerning a rebellious wife changes three times. First, the law states that we simply take a financial penalty from the value of her *ketubah* every week that she continues to rebel, meaning the time to divorce would be dependant on the worth of her *ketubah*. Second, after a vote, the law changes so that the wife loses her *ketubah* entirely after only one month, and then is divorced, and that a social penalty is added, in which her rebellious status will be announced in both the synagogue and the house of study. One may argue that a further change in the law is enacted when the Rabbis decide that the *Beit Din* will also send someone to discuss the situation with the woman before and after the announcement. Yet, a definitive change, the third state of the law, adjusts the time limit to one year before divorcing, and changes the financial incentive for resolution to one in which the woman is receiving no sustenance from her husband. While a woman with independent means may not need to receive aid from her husband, the one-year time limit ensures an end to the conflict.

Another text that emphasizes the fact that neither spouse is allowed to make a vow of abstinence is provided by Seder Eduyot of the Mishnah, chapter 4 Mishnah 10 which states: "If one abstains by vow from sexual intercourse with his wife, he is allowed by Beth Shammai to keep the vow for two weeks, by Beth Hillel for but one." This is reinforced by later rulings and is codified by the Rambam in Hilchot Ishut 14:7 where he states:

רמב"ם הלכות אישות פרק יד הלכה ז

אסור לאדם למנוע אשתו מעונתה ואם מנע כדי לצערה עבר בלא תעשה שבתורה שנאמר שארה כסותה ועונתה לא יגרע.

It is forbidden for a man to refrain from satisfying his wife's needs for intimacy. And if he transgressed and refrained in order to afflict her – he has transgressed a Torah prohibition, as it says “. . . he may not diminish her allowance, clothing, or conjugal rights.”

In this way, our tradition ensures that both man and woman do not use sex to control one another within the relationship, aspiring towards the Jewish ideal of *Shalom Bayit*.

Lesson 2: **Make Love Not War**

INTRODUCTION:

In contrast to many other religions, Judaism sees sex in marriage as more than a means for procreations. Our tradition teaches that in order for there to be peace in the home, both the husband and wife need to have their sexual needs satisfied. Judaism protects both partners from sexual neglect and sees marital intimacy as something to bring lovers together, not something to be used to control the other person.

This lesson explores Jewish texts that designate the number of times a man, based on his occupation, is obligated to be intimate with his wife. It discusses the issue of the rebellious spouse as one who refuses sexual intercourse and highlights the modern sensibility of these texts.

TIME

1 hour 45 minutes. You may want to break this into two sessions.

ENDURING UNDERSTANDINGS

- Judaism recognizes that sexual intimacy is an important part of any marriage.
- I can reinterpret ancient Jewish texts to make them relevant to my daily life.
- Jewish law has a rich history of being reinterpreted to suit the needs of the times.

ESSENTIAL QUESTIONS

- How are ancient Jewish texts relevant to my daily life?
- What role does sexual politics play in my marriage? Should it play in marriage in general?
- What does Judaism teach about a sexless marriage?
- How do laws change in a tradition that is thousands of years old?

QUESTIONS TO BE ADDRESSED

- What is the definition of a “rebellious wife” or husband?
- How do the Rabbis suggest we deal with a rebellious wife?
- What are the dangers of using sex as a weapon in a marriage?

EVIDENCE OF UNDERSTANDING

- Students will review texts that obligate a man to fulfill his wife sexually and be introduced to more through *hevrutah* study.
- Students will learn of a woman’s obligation through a text study accompanied with questions for discussion.
- Students will understand the pain of a sexless marriage by doing a bibliodrama to enact the feelings of Keturah and her relationship with Moses.
- They will demonstrate their grasp of rabbinic materials that speak against abstinence by putting Moses on trial for spousal neglect using texts to argue their case.

LESSON OVERVIEW

- Welcome
- Our Obligation to the Sex Act
- Bibliodrama
- Court Case

- Review, Close

MATERIALS NEEDED

- Copies of Handout 1, 2, 3, 4, and 5 in Appendix B
- Tanakh
- Optional: a gavel and other items to make room look like a courtroom.

LESSON PLAN:

Welcome (10 minutes)

- Welcome everyone as they come in the door.
- Hand out snacks. Say the blessings over the food.
- Teach and/or say the blessing for Torah study.
 - Say: on October 21, 2004, ABC News aired, "POLL: American Sex Survey: A Peek Beneath the Sheets,"²⁸ with analysis by Gary Langer with Cheryl Arnedt and Dalia Sussman.
 - Hand out Handout 2.

| | Married < 3 years | Married > 10 years |
|--|-------------------|--------------------|
| Have sex at least several times a week | 72% | 32 |
| Sex life very exciting | 58 | 29 |
| Enjoy sex a great deal | 87 | 70 |

- Ask: Are you surprised? Why or why not? (*You should get some responses about how sex diminishes after marriage.*)
- Is sex important in a marriage?
- Say: It is a common belief that sex naturally diminishes over the years; and yet today we often hear from doctors that sex is an important factor of a healthy marriage. Believe it or not, this is not a recent discovery. The Rabbis of the Talmud, taught sometime before it's compilation in 400 CE, that sex is very important in marriage and these rabbis even mandated a frequency of intimacy. Today we will look at some of these texts and apply it to the relationship of a very famous man, Moses, and his wife, Tziporah.

Frequency of Intimacy: (20 minutes)

- Review the texts about the frequency of intimacy that is determined by a man's livelihood from the first lesson (handout 1).
- Give handout 3, 4, and 5. Break into *hevrutah* groups and read the texts and answer the questions. After about 10 minutes, come back together as a class and ask for any interesting items that came up in their discussions.

²⁸ Gary Langer with Cheryl Arnedt and Dalia Sussman, "POLL: American Sex Survey: A Peek Beneath the Sheets," ABC News, October 21, 2004.

<<http://abcnews.go.com/Primetime/PollVault/Story?id=156921&page=3>>.

- Say: We have seen many examples of a man's obligation to fulfill his wife sexually, but none of wife's obligation. While Judaism teaches that a man may never force his wife and that the wife may say no from time to time, if she refuses to ever be intimate with her husband she earns herself a title. Ask: Any guesses? (frigid)
- Our next text is about the *isha moredet*, "rebellious wife." Note that a man can also be an *ish mored*, a rebellious husband.
- Read text allowed.
- Note that a *ketubah* traditionally outlines protections for the wife in case of her husband's death or a divorce. It was a form of a prenuptial agreement in which the parties entered into the marriage only after signing a contract that made the husband responsible for providing specific things for his wife and if he should divorce her, it stipulated how much money she would be rewarded.
- Go over the questions provided.
- Go onto the second page and answer the questions provided.
- Explain that the analogy of comparing men whose wives refuse them to men with and without "bread in their baskets" refers to the fact that in a healthy sexual relationship, man knows that if his wife is sick or menstruating, they will not have sex that night, but he is comforted by knowing that he still has "bread in his basket" meaning, they will have the opportunity to satisfy their "appetites" in the future. However if a woman says she will never have sex with her husband again, it is as if he has no bread in his basket.
- Read the final text on page 3 by Moses Maimonides.
- Ask: What is the real issue with her rebellion? Is it common for partners to try and control one another by withholding sex? Do you think this is healthy? What ideas from the texts we have studied thus far might be helpful in dealing with such a relationship?

Bibliodrama: (15 minutes)

- Summarize the story of Moses and his rise to power. Focus on his marriage to Tziporah and the fact that he was, when she married him, working as a shepherd, but then was called upon by God to a much more demanding job.
- Explain that we are about to enact a bibliodrama. A bibliodrama is when you take on the characters of the bible; we put ourselves in their shoes and try and capture their emotions.
- Ask everyone to try and place himself or herself in the mindset of Tziporah. Read Exodus 2:16-21. Ask how Tziporah might have felt about Moses; have the students speak in first person. What do you like about him? What attracts you to him?
- Now, explain that Moses was a good husband, he worked for Tziporah's father and they had two children together. Tell Tziporah that one day Moses comes home and tells her that they are going to Egypt where he will demand that Pharaoh free the Israelites and that Moses is claiming to have been called by God to lead them. What are your reactions? Your feelings? Is there any fear of neglect?
- Hand out copies of Rashi's commentary to Numbers 12:1 (handout 5).
- Explain that we read in Exodus that in order for the Israelites to receive revelation they have to refrain from sexual intimacy with their spouses for three days. Ask them

to imagine what it was like for Tzipporah whose husband was constantly talking to God. Do you think Moses neglected her?

Divorce Court (25 minutes)

- Break the class up into teams.
- Explain that team A will be defending Moses in his divorce proceedings. They should use what they know of Moses and Judaism to defend his actions in his relationship with his wife.
- Team B will be representing Tzipporah. Ask them to use the many texts they have been introduced to today to make an argument that Moses was negligent.
- Either you can sit as judge or you can appoint a class member as judge.

Closing (5 minutes)

- Review what we have done today. Take any last minute questions

Chapter 3: “No” Not “Never”

We have learned that neither a man, nor his wife can refuse all future sexual contact with their spouse. This is outlined for a man in the restrictions he can make on a vow of abstinence and discussed for a woman in regards to the proper treatment of a rebellious spouse. While these laws seem to obligate both partners to engage in intercourse, the Jewish tradition does much to protect the woman from unwanted sexual advances from her husband. This chapter will look at the woman's right of refusal within the marriage and the proper way that a husband should approach his wife for intercourse.

First, we will look at texts that protect a woman from marital rape. While this issue is still one that courts have trouble prosecuting in our modern society, the Rabbis of the Talmud recognized that forcing a woman to participate in the sexual act was wrong. While proper sexual intercourse can fulfill two mitzvot, the Rabbis argue that when it is done against a woman's will, the mitzvah of *onah* is not fulfilled and even if the mitzvah of reproduction ensues, the children will be “unworthy.”

תלמוד בבלי מסכת עירובין דף ק עמוד ב

ואמר רמי בר חמא אמר רב אסי: אסור לאדם שיכופף אשתו לדבר מצוה, שנאמר ואין ברגלים חוטא. ואמר רבי יהושע בן לוי: כל הכופה אשתו לדבר מצוה הויין לו בנים שאינן מהוגנין. אמר רב איקא בר חיננא: מאי קראה - +משלי י"ט+ גם בלא דעת נפש לא טוב, תניא נמי הכי גם בלא דעת נפש לא טוב - זה הכופה אשתו לדבר מצוה. ואין ברגלים חוטא - זה הבעל ושונה. - איני? והאמר רבא: הרוצה לעשות כל בניו זכרים יבעול וישנה! - לא קשיא; כאן - לדעת, כאן - שלא לדעת

Rami bar Hama citing Rav Assi further ruled: A man is forbidden to compel his wife to the mitzvah, since it is said in Scripture: ‘And he that hastens with his feet sins.’²⁹

Rabbi Yoshua ben Levi similarly stated: Whoever compels his wife to the mitzvah will have unworthy children. Said Rabbi Ika ben Hinena: What is the Scriptural proof? “Also without consent the soul is not good.”³⁰ So it was also taught: “Also without consent the soul is not good” refers to a man who compels his wife to the mitzvah;

²⁹ Proverbs 19:2.

³⁰ Proverbs 19:2.

“And he that hastens with his feet sins” refers to a man who has intercourse twice in succession. But, surely, this cannot be right! For did Raba not say: “He who desires his children to be males should cohabit twice in succession?” This is no difficulty, since here it is with the woman’s consent while there (the former case) it is without her consent.
Eruvin 100b

In his work *Ba’alei Ha-Nefesh*,³¹ Rabbi Abraham ben David states that children of nine categories of women will have unworthy children. Amongst those listed, he lists the rape victim and goes on to clarify that this rape may have taken place within marriage.

These are the children of nine categories [of women]: children of (an acronym is used here which stands for) Rape, Hatred, *Niddah*, Substitution. Rebellious wife, Drunkenness, Intended Divorce, Confusion, and Brazenness. Interpretation: The children of a raped woman: You do not need to interpret this to mean that he raped some woman and had a child by her, but simply that he raped his wife in intercourse! And thus we learn in Tractate Kallah: Why does a man have children who are crippled? Because he demands and she does not reciprocate, that is, she does not turn around and desire him too, and nevertheless he satisfies his need for her. Rabbi Joshua says: Because she says to him during intercourse: “I am being raped [compelled]” and it [intercourse] occurs between them with him wanting it and her not wanting it. And thus they said in Tractate Eruvin: anyone who compels his wife to a matter of mitzvah is called wicked as it says: “Without consent the soul is not good.”³²

He continues by declaring, “We find that rape is forbidden in the case of his wife as well.

Rather, if he is in need of the [sex] act let him persuade her first and then he may cohabit.” This demonstrates that the act is only allowable with the woman’s consent.

While we learned above that a woman is thought to be rebellious if she continually refuses her husband, the husband never has the right to force his wife into the act. A man

³¹ Meaning “The Book of the Conscientious,” the *Sefer Ba’alei Ha-Nefesh* was a treatise on the laws relating to women and was published in 1602.

³² Abraham ben David (d.1198). *Ba’alei HaNefesh, Sha’ar HaKedushah*. (Jerusalem: Masorah, 1955.) All translations for this work are provided by: David Feldman.

must respect his wife and her choices and any form of physical pressure is strictly prohibited. "A Jew must honor his wife more than he honors himself. If one strikes his wife, one should be punished more severely than for striking another person, for one is enjoined to honor one's wife, but one is not enjoined to honor another."³³

Even in a case where a woman continually refuses her husband, there are no physical repercussions, only monetary penalties as we saw above. In fact, Maimonides, a contemporary of Abraham ben David who was not familiar with *Ba'alei HaNefesh*³⁴ ruled that if a woman is refusing her husband because he has become "repugnant" to her, the authorities are able to compel him to give her a divorce, "because she is not like a captive, to be subjected to intercourse with one who is hateful to her."

As we have learned, the mitzvah of *onah* requires that the man fulfill the wife sexually. As Abraham ben David teaches, "*Onah* specified by the Sages is for the purpose of fulfilling the wife's desire, and he is not at liberty to do less without her consent . . . He should not be over zealous in conquering his own desire, lest this result in the neglect of the mitzvah."³⁵ It is clear that if the sexual act is against the woman's consent, than it cannot fulfill the mitzvah of satisfying her. Further, this teaches that a man should try and regulate his own desire even as he has to be willing to satisfy his wife's desire; that a man should take a position of moderation for oneself and generosity towards one's wife.

³³ Meir of Rothenberg. Maharam Rotenberg. (Berlin, 1891) Even HaEzer, #297.

³⁴ *Ba'alei HaNefesh* was not widely known before it was published for the first time in Venice in 1602, long after Maimonides' death.

³⁵ Ben David, p.139.

Igeeret Ha-Kodesh, The Holy Letter is a 13th century Kabbalistic work attributed to Nahmanides.³⁶ The work is broken down into five sections: 1) the nature of intercourse, 2) the time of intercourse, 3) the proper diet prior to intercourse, 4) the intent of intercourse, and 5) the techniques of intercourse. Here, too, we find that a man is warned not to force the sexual act upon his wife. In fact, if the sexual act is done properly, it results in the union, not just of man and wife, but of man, woman, and the *Shekhinah*.

A man should never force himself upon his wife and never overpower her, for the Divine Spirit never rests upon one whose conjugal relations occur in the absence of desire, love, and free will. The *Shekhinah* does not rest there. One should never argue with his wife, and certainly never strike her on account of sexual matters. The Talmud in Yoma (correctly Pesachim 49a) tells us that just as a lion tears at his prey and eats shamelessly, so does an ignorant man shamelessly strike and sleep with his wife. Rather act so that you will warm her heart by speaking to her charming and seductive words. Also speak of matters that are appropriate and worthy, so that both your intentions and hers will be for the sake of heaven. A man should not have intercourse with his wife while she is asleep, for then they cannot both agree to the act. It is far better, as we have said, to arouse her with words that will placate her and inspire desire in her.³⁷

This begins to move us from what a man may not do - force his wife - to what a man should do: arouse his wife. Further, we see that with the proper intention, the *Shekhinah* will be part of the act. Elsewhere, the author describes what the ideal union would entail.

³⁶ It has historically been attributed to Nahmanides but there remains a scholarly debate concerning the authorship. While who wrote this work might be up for debate, it is still considered a legitimate source and is continually referenced by rabbinic scholars as a guide to the proper sexual relationship between a husband and wife. For more on the authorship debate, please read the preface found in Seymour J. Cohen. The Holy Letter: A Study in Medieval Jewish Sexual Morality ascribed to Nahmanides. (New York: Ktav Publishing House Inc, 1976.)

³⁷ Cohen, 142-144.

So it is fitting that he must calm his wife's mind, cause her to rejoice and prepare her with joyous things that delight the heart so that she shall be drawn with pure and fitting thought, and both of them shall be as one in the matter of the deed. Then they shall unite in thought, the *Shekhinah* will rest between them, and they will bring forth a son according to the pure form which they have fashioned in their minds. Do not be surprised concerning this matter, for it is a simple matter even in the eyes of philosophers, for according to the thought in the mind of the husband and wife at the time of coitus, the child will be prepared and fashioned for good or for evil, for handsomeness or for ugliness.³⁸

Before we turn to how a man gets his wife in the right state of mind, let us touch briefly on the proper state of mind for the man. First, a man should not constantly be trying to arouse his wife, "It is not fitting for a man to be constantly near his wife like a rooster."³⁹ In Does God Belong in the Bedroom, Rabbi Gold compares *kashrut* laws to the laws surrounding the sexual union. He argues that in both Jews "are guided by a discipline. The act of eating is sanctified through the discipline of dietary laws. In a parallel way, the act of sex is sanctified through discipline. In Judaism, not having sex whenever one desires with whomever one desires, but limiting it instead to certain times and certain contexts, makes sexual intercourse a holy act."⁴⁰ Through this approach, we see that only through proper preparation and intention can an otherwise animalistic act be made holy.

Feldman summarizes many requirements for the proper state of mind in his book, Marital Relations, specifically when discussing the Abraham ben David text.⁴¹ Some include:

³⁸ *Ibid.* 109-101.

³⁹ *Ibid.* 68.

⁴⁰ Translation provided by Michael Gold, 22.

⁴¹ Rabbi Abraham ben David is also known by the acronym Ravad.

... the exhortations against sexual relations with one's wife in a state of enmity, because such is harlotry rather than conjugality; against relations in a state of intoxication, because no conscious love can be present; when his mind has been made up to divorce her, for similar reasons; while his mind is on another woman for this is adultery. And, Ben David adds in conclusion with regard to these exhortations: "Even if the marital act is necessary for procreation, such as when she is not pregnant and needs to become so," he should not undertake the act under such immoral conditions.⁴²

After discussing that a man should not be forceful with his wife, the *Iggeret Ha-Kodesh* outlines that foods such as onions, which are natural aphrodisiacs, may be eaten at dinner, but that a man must make sure not to eat too little or too much because his body needs to be at the correct temperature. "When a man has relations and his body is at a moderate point between hot and cold, then his nature or organs will not be at heat, and he will not ejaculate quickly. Then the woman will become excited and have her emission before hand."⁴³

That it is desirable for a woman to climax first comes from the rabbinic interpretation of the following verse from Leviticus 12:2: "When a woman brings forth seed and has a male child." The Rabbis interpret this to mean that if a woman orgasms first, a male child will be born, something the couple would desire. The full Talmudic passage states:⁴⁴

תלמוד בבלי מסכת נדה דף לא עמוד א

אמר רבי יצחק אמר רבי אמי: אשה מזרעת תחילה - יולדת זכר, איש מזריע תחילה - יולדת נקבה, שנאמר +ויקרא י"ג+ אשה כי תזריע וילדה זכר. תנו רבנן, בראשונה היו אומרים: אשה מזרעת תחילה - יולדת זכר, איש מזריע תחילה - יולדת נקבה, ולא פירשו חכמים את הדבר, עד שבא רבי צדוק ופירשו: +בראשית מ"ו+ אלה בני לאה אשר ילדה ליעקב בפדן ארם ואת דינה בתו - תלה הזכרים בנקבות, ונקבות בזכרים +דברי הימים א' ח'+ ויהיו בני אולם אנשים גבורי חיל דורכי קשת ומרבים בנים ובני בנים, וכי בידו של אדם

⁴² Feldman. Birth Control, 72-73.

⁴³ Cohen, 78.

⁴⁴ Translation provided by Gold, 97.

להרבות בנים ובני בנים? אלא, מתוך שמהשין עצמן בבטן כדי שיזריעו נשותיהן תחלה, שיהיו בניהם זכרים - מעלה עליהן הכתוב - כאילו הם מרבים בנים ובני בנים. והיינו דאמר רב קטינא: יכולני לעשות כל בני זכרים.

Rabbi Isaac, citing Rabbi Ammi, stated: If the man emits his semen first she bears a female child; for it is said: "When a woman brings forth seed and has a male child."⁴⁵ Our Rabbis taught: At first it used to be said that if the woman emits her semen first she will bear a male, and if the man emits his semen first she will bear a female, but the sages did not explain the reason until Rabbi Zadok came and explained it: "These were the sons whom Leah bore to Jacob in Paddan-aram, in addition to his daughter Dinah."⁴⁶ Scripture thus ascribes the males to the females and the females to the males.

"The descendants of Ulam – men of substance, who drew the bow, had many sons and grandsons."⁴⁷ Now is it within the power of a man to increase the number of sons and grandsons? But the fact is that because they contained themselves during intercourse, in order that their wives should emit their semen first, so that their children shall be males, Scripture attributes to them the same merit as if they had themselves caused the increase of the number of their sons and sons' sons. This explains what Rabbi Kattina said: "I can make all my children to be males."

Niddah 31a-b

It is apparent that, not only do these texts want the woman to consent to the sexual act; they want the woman to climax. In order to do this, we are taught that a man must talk to his wife to get her in the mood. One of the best examples of this is a story drawn from the Talmud in which a student hides under a master rabbi's bed to see how to properly conduct himself in matters concerning the bedroom. The story appears in multiple locations.

תלמוד בבלי מסכת חגיגה דף ה עמוד ב

מאי מה שיחור? - אמר רב: אפילו שיחה יתירה שבין איש לאשתו מגידים לו לאדם בשעת מיתה. איני? והא רב כהנא הוה גני תותי פורייה דרב, ושמעיה דסח וצחק ועשה צרכיו, אמר: דמי פומיה דרב כמאן דלא טעים ליה תבשילא, אמר ליה: כהנא, פוק, לאו אורח ארעא!

⁴⁵ Leviticus 12:2.

⁴⁶ Genesis 46:15.

⁴⁷ 1 Chronicles 8:40.

What is the meaning of “What were his words?” [It was said that this rabbi never spoke in vain his entire life.] Rav said: Even the extra talk between man and his wife is recounted to a person at the time of his death. But is this so? This Rav Kahana once lay under the bed of Rav and he heard how [Rav] spoke to her [his wife] and laughed and [only then] fulfilled his need. He said (Rav Kahana from under the bed) “The mouth of Rav is like one that has not tasted food!” (He is behaving as if it were their first time.) [Rav] said to him: “Kahana go out, it is not proper!”

Hagigah 5b.

Elsewhere in the Talmud, Berakhot 62a adds that Kahana replied: “It is a matter of Torah, and I am required to learn.” This amusing story illustrates that the sexual act is a holy act and one that must be done in the proper way; additionally, it provides the reader with a model of how a man should act towards his wife when engaging in intercourse; a man should talk to her, make her happy, act as if it was their first time. Only after pleasing his wife is the man allowed to please himself.

Now we will begin to see what the Rabbis had in mind when they suggest a man talk lovingly to his wife before coitus.

When you and your wife are engaged in sexual union, do not behave lightheartedly and regard this act as vain, idle, and improper. Certainly, be not lighthearted in the presence of your wife. Do not speak of empty things with her, for you know already what our sages have said in the Tractate Pesahim (correct reading Hagigah 8b). Even for a simple conversation between man and wife during intercourse, a man must give his reckoning in the time to come. Therefore, when engaged in the sex act, you must begin by speaking to her in the manner that will draw her heart to you, calm her spirits, and make her happy. Thus your minds will be bound upon one another as one, and your intention will unite with hers. Speak to her so that your words will provoke desire, love, will, and passion, as well as words leading to reverence for God, piety, and modesty. Tell her how pious and modest women are blessed with upright, honorable, and worthy children, students of Torah, God-fearing and people of accomplishment and purity, worthy of the highest crown, masters of the Torah, and having the fear of God, great and holy men, as was Kimhit (T.Y. Megillah 11:12), who merited having seven sons who served as high priests. And when they asked her, “How is it that you merited this?” She said to them, “Never did the beams of my house see

my hair.” All this story emphasizes all of her virtue, modesty, and purity of deed.

Therefore, a husband should speak with his wife with the appropriate words, some of erotic passion, some words of fear of the Lord. He must speak with her in the middle of the night, and close to the last third of the night, as our sages have said in Tractate Berakhot (3a). In the third watch, a woman talks with her husband and the chills suck from the breast of his mother.⁴⁸

While the author’s idea of pillow talk may not be what today’s woman would want to hear, his conclusion is one that would be very well received.

To conclude, when you are ready for sexual union, see that your wife’s intentions combine with yours. Do not hurry to arouse her until she is receptive. Be calm, and as you enter the path of love and will, let her insemination come first, so that her seed be the substance and your seed the design, as in the verse where it is said, “When a woman has an emission and gives birth to a male child” (Leviticus 12:2).⁴⁹

These texts demonstrate that for intercourse to be maximally beneficial, meaning a male child will result from the union, a man must woo his wife. Even the words used to describe the act show that her pleasure must be taken into account. The Talmud’s alternation between *d’var mitzvah*, the matter of the mitzvah, and *simhat onah*, the joy of *onah*, as well as Ben David’s use of *simhat ishto*, which may be translated “his wife’s pleasure” to describe this marital act demonstrates that the obligation of marital sex must be qualified by containing *simhah* – joy.⁵⁰ Gordis summarizes this best when he states that:

Judaism regards it [sex] not merely as permissible but as mandatory for a man and his wife to derive pleasure from the sexual act, which has been ordained by God and, by that token, is holy. Thus Jewish tradition established the practice of the husband’s reading the Song of Songs on the

⁴⁸ Cohen, 138-142.

⁴⁹ *Ibid.* 144.

⁵⁰ Idea from Feldman. Birth Control, 71.

Sabbath eve, and the *halakhah* spells out the woman's conjugal rights in marriage, which are explicitly indicated in the biblical text.⁵¹

⁵¹ Robert Gordis. Love and Sex: A Modern Jewish Perspective. (New York, NY: Farrar, Straus & Giroux, 1978) 101.

Lesson 3: **In the Mood**

INTRODUCTION:

Living a Jewish life is about taking everyday acts and elevating them to holy acts. We elevate eating, seeing a rainbow, passing a strange looking person all through saying blessings. The conjugal union, the closest that one person can physically be to another person, was not overlooked by Jewish tradition. While other religions might look at sex as an embarrassing act, and act not to be discussed, or an act to be avoided, Judaism celebrates the marital union and takes this act, which could be performed simply as an animalistic act, and elevates it to the status of holy.

In this lesson students will discover that the sex act is perceived by Jewish tradition as a holy act and one to be performed with specific intention. They will explore the proper state of mind of the couple - that both should derive pleasure from the act - and get tips from our tradition on how to set the mood.

TIME

1 hour 45 minutes. You may want to break this into two sessions.

ENDURING UNDERSTANDINGS

- Judaism recognizes that sexual intimacy is an important part of any marriage.
- I can reinterpret ancient Jewish texts to make them relevant to my daily life.
- Jewish law has a rich history of being reinterpreted to suit the needs of the times.

ESSENTIAL QUESTIONS

- How are ancient Jewish texts relevant to my daily life?
- How might a man get this wife in the mood?

QUESTIONS TO BE ADDRESSED

- Do traditional Jewish texts discuss sex?
- If so, what does Judaism teach in regard to:
 - Spousal rape?
 - The proper state of mind during the act?
 - Pillow talk?
 - Women's pleasure?
- Does our tradition give us any pointers for getting "in the mood?"

EVIDENCE OF UNDERSTANDING

- Students will understand that even sex acts were thought to be a matter of Torah by performing a skit based on the Talmudic passages about Rav Kahanah hiding under the bed of his master teacher Rav.
- Students will be able to explain why intercourse should only happen with the woman's consent, while the couple is sober, not fighting, etc. through completing a text study and through a question and answer session.
- Students will learn about the difference through they and their spouse's ideas of foreplay and that of the rabbis by making their own lists, comparing them to one another, and then comparing these to that of the rabbis.
- Students will see how these guidelines are part of living a Jewish life by reading excerpts from Proverbs 31 and Song of Songs that are typically read on Friday night.

LESSON OVERVIEW

- Welcome
- Skit
- Review, Close

MATERIALS NEEDED

- Copies of Handouts 6 and 7.
- Copies of Proverbs 31 (Handout 8).
- Tanakhim or copies of excerpts from the Song of Songs

LESSON PLAN:

Welcome (5 minutes)

- Welcome everyone as they come in the door.
- Hand out snacks. Say the blessings over the food.

Set Induction (15 minutes)

- Say: We have learned in past classes that a man is obligated to have sex regularly with his wife and that a wife should not withhold sex to control her husband. You may have been surprised that the Torah and Talmud address these issues. Today, we will see that our tradition goes even further than saying when one should have sex, but actually gives guidelines as to how to properly approach the act.
- Pass out Handout 6. Say: The following skit is based on a story found in the Babylonian Talmud in both Hagigah 5b and Berakhot 62a.
- Cast characters and perform the skit.
- Say: today we will get our own view from under the bed about how to properly approach the sex act. But before we turn to what should happen, let's take a few minutes to look at what should never happen.

Don't Do (25 minutes)

- Hand out copies of Handout 7.
- Read the text and answer the questions.
- For question number four, explain that the other 8 sexual situations that the text lists as resulting in "unworthy children" include: Hatred, *Niddah*, Substitution, Rebellious wife, Drunkenness, Intended Divorce, Confusion, and Brazenness. Ask if they feel that sex is okay in each of the following situations, get their reasoning, and then explain why it is not.
 - While mad at one another – "for such is harlotry rather than conjugality" (this is the category of Hatred)
 - When one hates the other person – for the same reasoning as above
 - When drunk – "no conscious love can be present" (Drunkenness)
 - When you have decided (but not yet told your partner) that you are going to separate. – Again because no love is present. (Intended Divorce.)
 - While thinking about someone else – "this is adultery." (Substitution)
 - While one partner is asleep – "for then they cannot both agree to the act" (Rape and/or Confusion)
- Do you agree that sex under these circumstances is "immoral"?

Break (10 minutes)

Do Do (30 minutes)

- Break the group into two groups, one of just men and one of just women. Have the men write what they imagine would be the proper preparations for the sex act and have the women write what they feel the man's proper preparation for intercourse should be. There will be a lot of giggling.
- Have the two groups go back with their partners and compare notes. Or, if you have a brave class, ask them to be read aloud.
- Ask them to remember what they wrote as we learn what the rabbis teach.
 1. A man should neither eat too much nor too little nor consume too spicy of food before intercourse. "When a man has relations and his body is at a moderate point between hot and cold, then his nature or organs will not be at heat, and he will not ejaculate quickly. Then the woman will become excited and have her emission before hand.⁵²" Say: Some of you might be able to relate to the idea that it's not optimal to be over stuffed.
 2. Don't act a fool. "When you and your wife are engaged in sexual union, do not behave lightheartedly and regard this act as vain, idle, and improper. Certainly, be not lighthearted in the presence of your wife. Do not speak of empty things with her, for you know already what our sages have said in the Tractate Pesahim (correct reading Hagigah 8b). Even for a simple conversation between man and wife during intercourse, a man must give his reckoning in the time to come.⁵³"
 3. Tell her the things she wants to hear. "Therefore, when engaged in the sex act, you must begin by speaking to her in the manner that will draw her heart to you, calm her spirits, and make her happy.⁵⁴"
 4. Read the following exert from The Holy Letter, a mystical guideline to proper intercourse:
 - "Speak to her so that your words will provoke desire, love, will, and passion, as well as words leading to reverence for God, piety, and modesty. Tell her how pious and modest women are blessed with upright, honorable, and worthy children, students of Torah, God-fearing and people of accomplishment and purity, worthy of the highest crown, masters of the Torah, and having the fear of God, great and holy men, as was Kimhit (Megillah 11:12), who merited having seven sons who served as high priests. And when they asked her, "How is it that you merited this?" She said to them, "Never did the beams of my house see my hair." This entire story emphasizes all of her virtue, modesty, and purity of deed."

⁵² Cohen, 78.

⁵³ *Ibid.* 138.

⁵⁴ *Ibid.*

- Ask: What would be today's equivalent? (*talented, smart, humble, philanthropic . . .*)
 - He continues: "Therefore, a husband should speak with his wife with the appropriate words, some of erotic passion, some words of fear of the Lord."
5. The woman is to orgasm first. "Be clam, and as you enter the path of love and will, let her insemination come first, so that her seed be the substance and your seed the design."

How Does Our Tradition Promote This?

(15 minutes)

- One way that these guidelines have been made part of the tradition is thorough our Friday night Shabbat rituals.
 1. We have already learned that a scholar is obligated to the se act once a week. This is typically done on Shabbat. Having intercourse with one's wife on Shabbat is said to be a "double mitzvah," because it also fulfills the mitzvah of making Shabbat an *oneg* – a joy.
 2. On Shabbat, it is traditional for a husband to recite either a portion from Proverbs 31 known as Eishet Chayil, a woman of valor, or read sections from the Song of Songs.
- Hand out copies of Eishet Chayil and ask a man to read it to his wife. Open Tanakhim to the Song of Songs and do the same. Ask for other suggestions, such as poetry, song lyrics, etc.

Closing (5 minutes)

- Review what we have done today: We have learned that the rabbis considered sex to be a matter of Torah, meaning that there is a proper way for the act to be done. We learned that a man can never force his wife to have sex, that he should rather get her in the mood by saying words of praise, passion, and piety, that it is ideal for the woman to orgasm first, and that our tradition has built in a Shabbat tradition of reciting parts of scripture that are both of praise and eroticism to get both in the mood.
- Take any last minute questions.

Chapter 4: Be Fruitful and Multiply: Whose obligation is it?

בראשית פרק א פסוק כח

ויברך אתם אלהים ויאמר להם אלהים פרו ורבו ומלאו את הארץ וכבשה ורדו בדגת הים ובעוף השמים ובכל חיה הרמשת על הארץ.

"God blessed them; and God said to them, 'Be fruitful and multiply, and fill the earth, and subdue it; and rule over the fish of the sea and over the birds of the sky and over every living thing that moves on the earth.'"

Genesis 1:28

"In Judaism, procreation is not merely a life-style option; it is a commandment."⁵⁵

It is common to find that traditional Jews have many children. Just walk down the street in certain parts of Brooklyn and you will see how seriously some Jews take the commandment to be fruitful and multiply. God's first words to man are a blessing in which man told to fill the earth. We are blessed by God with fertility and sexual instincts. Yet, oddly enough, the Talmud and most commentators teach that the obligation to propagate⁵⁶ falls solely on the man, not the woman.

This oddity is explained in various Talmudic passages that we shall shortly examine. The basic premise for such a reading is possible by deriving the commandment to be fruitful and multiply, not from the story of creation and God's first words to man, but rather, but rather from the charge to the Sons of Noah after the flood⁵⁷ or to Jacob.⁵⁸

בראשית פרק ט פסוק א

ויברך אלהים את נח ואת בניו ויאמר להם פרו ורבו ומלאו את הארץ

"And God blessed Noah and his sons, and said unto them, Be fruitful, and multiply, and replenish the earth."

Genesis 9:1

בראשית פרק ט פסוק ז

ואתם פרו ורבו שרצו בארץ ורבו בה

And you, be ye fruitful, and multiply; bring forth abundantly in the earth, and multiply therein.

Genesis 9:7

⁵⁵ Gold, 95.

⁵⁶ Yevamot 65B.

⁵⁷ Genesis 9:1 and 7.

⁵⁸ Genesis 35:11.

בראשית פרק לה פסוק יא

ויאמר לו אלהים אני אל שדי פרה ורבה גוי וקהל גוים יהיה ממך ומלכים מחלצריך יצאו:

And God said unto him, I am God Almighty: be fruitful and multiply; a nation and a company of nations shall be of thee, and kings shall come out of thy loins;

Genesis 35:11

While the verse in Genesis 1 is clearly spoken to both man and woman, these other verses are spoken only to men. This allows the Rabbis to interpret the commandment as only applying to men and not to women. In this chapter, we will examine the arguments the Rabbis make to ensure that the obligation of procreation only falls on the man; this will give the foundation to our discussion of birth control.

First, we will examine Talmudic passages that attempt to explain how God's first words to human kind were meant only for the man. The following passage from Yevamot clearly states that it is only the man's obligation to procreate. The Rabbis then go on to have a discussion about how this could be.

תלמוד בבלי מסכת יבמות דף פה עמוד ב

מתני'. האיש מצווה על פריה ורביה, אבל לא האשה; רבי יוחנן בן ברוקה אומר, על שניהם הוא אומר: +בראשית א' + ויברך אותם אלהים ויאמר להם [אלהים] פרו ורבו.

גמ'. מנא הני מילי? אמר ר' אילעא משום ר' אלעזר בר' שמעון, אמר קרא: +בראשית א' + ומלאו את הארץ וכבשוה, איש דרכו לכבש, ואין אשה דרכה לכבש. אדרבה, וכבשוה תרתי משמע! אמר רב נחמן בר יצחק: וכבשה כתיב. רב יוסף אמר, מהכא: +בראשית ל"ה + אני אל שדי פרה ורבה, ולא קאמר פרו ורבו. ואמר רבי אילעא משום ר' אלעזר בר' שמעון: כשם שמצוה על אדם לומר דבר הנשמע, כך מצוה על אדם שלא לומר דבר שאינו נשמע. רבי אבא אומר: חובה, שנאמר: +משלי ט' + אל תוכח לץ פן ישנאך הוכח לחכם ויאהבך. וא"ר אילעא משום רבי אלעזר בר' שמעון: מותר לו לאדם לשנות בדבר השלום, שנאמר: +בראשית ו' + אביך צוה וגו' כה תאמרו ליוסף אנא שא נא וגו'. ר' נתן אומר: מצוה, שנאמר: +שמואל א' ט"ז + ויאמר שמואל איך אלך ושמע שאול והרגני וגו'. דבי רבי ישמעאל תנא: גדול השלום, שאף הקדוש ברוך הוא שינה בו, דמעיקרא כתיב: +בראשית י"ח + ואדוני זקן, ולבסוף כתיב: ואני זקנת.

Mishnah: A man is commanded concerning the duty of propagation but not a woman. However, Rabbi Yohanan ben Baroka said: Concerning both of them it is said, "And God blessed them and God said to them 'Be fruitful and multiply.'"

Gemara: From what is this deduced? Rabbi Ile'a replied in the name of Rabbi Eleazar son of Rabbi Simeon: Scripture stated, "And replenish the

earth, and subdue it" - It is the nature of man to subdue but it is not the nature of woman to subdue.

On the contrary! "And subdue it," implies two! Rabbi Nahman ben Isaac replied: It is written, "And thou subdue it."

Rabbi Yoseph said: This may be deduced from the following, "I am God almighty, be thou (plural) fruitful and multiply," and it is not stated, "Be you (singular) fruitful and multiply."

Now, what is the decision? - Come and hear what Rabbi Aha ben Hanina stated in the name of Rabbi Abbahu in the name of Rav Assi: Such a case once came before Rabbi Yohanan at the synagogue in Caesarea, and he decided that the husband must divorce her and also pay her the amount of her *ketubah*. Now, if it be suggested that a woman is not subject to the commandment, how could she have any claim to her *ketubah*?

It is possible that this was a case where she submitted to a *special* plea; as was the case with a certain woman who once came to Rabbi Ammi and asked him to order the payment of her *ketubah*. When he replied, "Go away, the commandment does not apply to you," she exclaimed, "What shall become of a woman like myself in her old age?" "In such a case, the Master said, "we certainly compel (the husband)."

A woman once came before Rabbi Nahman. When he told her, "The commandment does not apply to you," she replied, "Does not a woman like myself require a staff in her hand and a hoe for digging her grave?" "In such a case," the Master said, "we certainly compel (the husband)."

Yevamot 65b

This long text is significant for many reasons and can be applied in various contexts.

First, this text shows to what extent the Rabbis work to alter the plain meaning of the verse from Genesis 1:28. The Rabbis do not want the obligation of procreation to fall upon the woman and therefore go out of their way to read the Genesis text as only applying to the man while it seems from the plain meaning of the verse that God is addressing both man and woman. The first argument made is that since God uses the word "subdue," and it is the role of man, not woman, to subdue, that God must only be talking to man with this statement. However, the *stammaitic* author argues that the Hebrew word "subdue" (*v'khivshuha*) is in the plural form and therefore must refer to both man and woman. Rabbi Nahman ben Isaac then uses the midrashic technique of

seeking out the same word in another context in order to apply it's meaning to the present verse. He finds that a similar statement was said by God to Jacob, "And God said unto him, I am God Almighty: be fruitful and multiply; a nation and a company of nations shall be of you, and kings shall come out of your loins."⁵⁹ Here the statement is clearly being made only to a man. Rabbi Nahman ben Isaac deduces that since the phrase as it appears here only applies to man, it must also apply only to man in this other occurrence. His argument is supported by the fact that the original Hebrew text was not vocalized and could therefore be read in alternative ways, one - *ve-chivshah*, makes the statement second person singular masculine, meaning it would have been addressed only to Adam. Rashi supports this argument. In his commentary to Genesis 1:28 Rashi⁶⁰ reads the grammar as follows:

AND SUBDUE IT. The "*vav*" [in *v'khivshuha* is missing – this allows it to be read in the masculine singular imperative] to teach you that the male subdues the female that she should not be one who gallivants. And it is also meant to teach you that the man, whose way it is to subdue, is commanded to propagate, but not the woman.

And he repeats this in his commentary to Shabbat 111a.

Rather, [the reference is] to a woman. There is no commandment to be "fruitful and multiply" for her, as I have said in Yevamot. "Be fruitful and multiply and fill the earth and subdue it" [refers to] man. It is his way to subdue and it is not the way of the woman to subdue.

Now that the Rabbis have concluded that women are not obligated to propagate, individual cases in which women have sued for divorce because they were unable to have children with their husband and were given their *Ketubbot* are brought into question. The argument is that it does not make sense that a woman should have the right to a divorce

⁵⁹ Genesis 35:11.

⁶⁰ Translation provided by Chabad.org. <
http://www.chabad.org/parshah/rashi/default_cdo/aid/7781/jewish/Bereishit.htm>.

and her *ketubah* if her husband cannot give her children if she is under no legal obligation to have children in the first place.

In the above case, the woman who came to Rabbi Yohanan in Caeserea won a divorce and her *ketubah* because her husband could not give her children. This could be used as an argument that a woman must be obligated to propagate because otherwise she would have no grounds for divorce. To explain this inconsistency another case is brought in which a woman had submitted a special plea stating that she required children to take care of her in her old age. A third and parallel case is also brought into the conversation in which a woman argues, “Does not a woman like myself require a staff in her hand and a hoe for digging her grave?” Meaning: she needs a child to support her in her old age and bury her when she dies. In both cases the presiding Rabbi clearly stated that the women were not obligated to procreate, yet when they argued that they needed a child to take care of them in their old age, the Rabbis saw this as sufficient grounds for compelling a divorce.

This shows that while procreation is not an obligation for a woman, it is a right. While the commandment to be fruitful and multiply is not one that women are required to fulfill, a woman who wants a child has the right to divorce a man who withholds this right from her. As Walter Jacob, a 20th century Reform rabbi, points out in a responsum in The Fetus and Fertility in Jewish Law,⁶¹ a major biblical concern “was human survival in the often hostile natural world,” where sweeping natural disasters could devastate a community. He notes that for the Rabbis of the Talmud, children were “part of the labor

⁶¹ Walter Jacob and Moshe Zemer. The Fetus and Fertility in Jewish Law: Essays and Responsa. (Pittsburgh and Tel Aviv: Rodef Shalom Press. Freehof Institute of Progressive Halakhah. 1995) 1-18.

force, so helping a family to prosper. They represented a way of transferring property from one generation to another and so an assurance that one's efforts would continue into the future." And as we see in the above text, "Children also provided care in old age and a safety net throughout life."⁶²

In Yevamot we are told the story of Judith, the wife of Rabbi Hiyyah. Judith had a very difficult and agonizing labor. A clever woman, she disguises herself and goes and asks her rabbinic husband if she is required to propagate. When he says no, she drinks a potion of roots that renders her sterile. When she reveals her actions to her husband he cries out in lament but does not argue that what she has done is in any way against Jewish law.

תלמוד בבלי מסכת יבמות דף סה עמוד ב

יהודה וחזקיה תאומים היו, אחד נגמרה צורתו לסוף תשעה, ואחד נגמרה צורתו לתחלת שבעה; יהודית דביתהו דר' חייא הוה לה צער לידה, שנאי מנא ואתיא לקמיה דר' חייא, אמרה: אחתא מפקדא אפריה ורביה? אמר לה: לא. אזלא אשתיא סמא דעקרתא, לסוף איגלאי מילתא, אמר לה: איכו ילדת לי חדא

Yehudah and Hezekiah were twins. One was completely developed at the end of nine months, and the other at the beginning of the seventh month [the implication is that the two were born three months apart]. Their mother Judith, wife of Rabbi Hiyyah, suffered agonizing pains during childbirth. When she recovered, she disguised herself and appeared before Rabbi Hiyyah. "Is a woman commanded to propagate the race?" she asked. "No," he answered. As a result of this conversation, she drank a sterilizing potion so that she would have no more children. When her actions finally became known, he exclaimed, "Would that you bore me only one more issue of the womb."

Yevamot 65b

This story shows to what extent the Rabbis of the Talmud would go to not obligate the woman. Their effort may have been a response to how fervent they were in insisting a man fulfill obligation.

⁶² *Ibid.* 1.

The minimum number of children a man must have in order to fulfill the obligation of propagation is discussed in Yevamot 6:6.

משנה מסכת יבמות טרקו משנה ו

לא יבטל אדם מפריה ורביה אלא אם כן יש לו בנים בית שמאי אומרים שני זכרים ובית הלל אומרים זכר ונקבה שנאמר (בראשית ה') זכר ונקבה בראם:

A man should not abstain from the performance of the mitzvah of the propagation of the race unless he already has children. (As to the number of children) Beit Shammai says, "Two males; but Beit Hillel says, "A male and a female, as it is said: 'Male and female He created them.'"

Further, while a man may have fulfilled the mitzvah at this point, the Talmud suggests that a man continue to have children for as long as he has the strength.

תלמוד בבלי מסכת יבמות דף סב עמוד ב

מתניתין דלאו כרבי יהושע; דתניא, רבי יהושע אומר: נשא אדם אשה בילדותו - ישא אשה בזקנותו, היו לו בנים בילדותו - יהיו לו בנים בזקנותו, שנא': +קהלת י"א+ בבקר זרע את זרעך ולערב אל תנח ירך כי אינך יודע אי זה יכשר הזה או זה ואם שניהם כאחד טובים;

Our Mishnah cannot represent the opinion of R. Yehoshua. For it was taught: R. Yehoshua said, "If a man married in his youth, he should marry again in his old age; if he had children in his youth, he should also have children in his old age; for it said, 'In the morning sow thy seed and in the evening do not withhold your hand;' for you do not know which will prosper, whether this or that, or whether they shall both be alike good."

Yevamot 62b

And this indeed becomes the *halakhah*.

Despite the fact that he has fulfilled [the obligation of] propagation, he is forbidden to remain without a wife and he needs to marry a woman capable of having children if he has enough in his hand.⁶³ Even if he has many children and if he does not have enough in his hands to marry a woman who is capable of producing children unless [his only means of acquiring the dowry] he were to sell a Torah scroll, if he does not have children he sells in order to marry a woman capable of bearing children. However, if he has children he does not sell [the Torah], rather he marries a woman who is not capable of producing children and does not remain without a wife. There are those that say that even if he has children he

⁶³ Having "enough in his hands" means that he has enough wealth to provide the bridal price.

should sell the Torah scroll in order to marry a woman who can bear children.

Shulchan Arukh, Even HaEzer 1:8

It is the obligation of each and every man to marry a woman in order to "Be fruitful and multiply." Anyone who does not involve himself in [the Mitzvah] of "*piryah v'rivyah*" – fathering children – is considered as if he sheds blood, and he diminishes the Divine Image, and he causes the Divine Presence to depart from Israel.⁶⁴

This is not to suggest that all men fulfilled the obligation of producing children. There are cases recorded in the Talmud of great Rabbis who neglected this duty. The text does not look favorably upon them.

And Isaiah the prophet, son of Amoz, came to him and said to him, "So says the Lord, 'Set thy house in order, for you shall die and not live etc.'" What is the meaning of "you shall die and not live?" You shall die in this world and not live in the world to come. He said to him, "Why so bad?" He replied, "Because you did not try to have children." He said, "The reason was because I saw by the holy spirit that the children issuing from me would not be virtuous." He said to him, "What have you to do with the secrets of the All-Merciful? You should have done what you were commanded, and let the Holy One, blessed be He, do that which pleases Him."

Berakhot 10a

It was taught: R. Eliezer stated, "He who does not engage in propagation of the race it is as though he sheds blood; for it is said, 'Whoso sheds man's blood by man shall his blood be shed,' and this is immediately followed by the text, 'And you, be fruitful and multiply.'" R. Jacob said, "As though he has diminished the Divine Image; since it is said, 'For in the image of God made He man,' and this is immediately followed by, 'And you, be fruitful etc.'" Ben Azzai said, "As though he sheds blood and diminishes the Divine Image; since it is said, 'And you, be fruitful and multiply.'"

They said to Ben Azzai, "Some preach well and act well, others act well but do not preach well; you, however, preach well but do not act well!" Ben Azzai replied, "But what shall I do, seeing that my soul is in love with the Torah; the world can be carried on by others."

Another [Baraita] taught: R. Eliezer said, "Anyone who does not engage in the propagation of the race is as though he sheds blood; For it is

⁶⁴ Joseph ben Ephraim Karo (d.1575). *Shulchan Arukh*. (Vilna: Romm, 1911) *Siman* 1, *Seif* 1.

said, 'Whoso sheds man's blood,' and close upon it follows, 'And you, be fruitful etc.'" R. Eleazar ben Azariah said, "As though he diminished the Divine Image." Ben Azzai said etc. They said to Ben Azzai, "Some preach well etc."

Yevamot 63b

While the Talmud allows for the interpretation that the injunction to be fruitful and multiply does not fall upon the woman, modern rabbinic commentators, while not being able to make it a requirement, have attempted to show the importance of women fulfilling this responsibility as well as men. As Rabbi Walter Jacob states, "Our numbers, which would normally have increased along with other people around us, have been diminished through continual persecutions. . . We must therefore increase our numbers and limit birth control and, within our own circles, correct this imbalance which will be almost negligible in the population of all humanity." Later he makes his feelings more explicit, "The Holocaust decimated us and assimilation has not permitted sufficient recovery. There are various ways of correcting the imbalance. One of the easiest and most likely to succeed is an increased birth rate . . ."⁶⁵ Indeed, Rabbi Eugene Borowitz, a professor at Hebrew Union College Jewish Institute of Religion who is a leading Reform Jewish theologian notes that we have "a post-Holocaust Jewish legal duty to procreate."⁶⁶ As Rabbi Pinchas Horowitz⁶⁷ has said, while only man is obligated to procreate, the commandment of populating the world is the obligation of both sexes.⁶⁸

⁶⁵ *Ibid.* 4.

⁶⁶ Eugene Borowitz. "The Second Phase of Reform Jewish Piety." Address given at the 2005 URJ Biennial.

⁶⁷ Pinchas Halevi Horowitz. *Panim Yafot al HaTorah*. (Mishor Publ.) Numbers 26:59.

⁶⁸ Joseph ben Ephraim Karo (d.1575). *Shulhan Arukh*. (Vilna: Romm, 1911) Even HaEzer 1.

Lesson 4:
To Be Fruitful and Multiply, or Not To Be Fruitful and Multiply; That is the Question

INTRODUCTION:

Among the first words God says to humankind is a blessing to be fruitful and multiply. The obligation to have children is one of the better known of the 613 mitzvot, however, very few people realize that this commandment is required of men but not of women. This lesson will expose the students to texts which explain the rabbinic argument as to why a woman is not obligated to reproduce, while at the same time, showing that the desire for some women to have children is so strong, and so respected by the Rabbis, that while they do not obligate women to have children, they support the right of women to reproduce.

TIME

1 hour.

ENDURING UNDERSTANDINGS

- Judaism recognizes that sexual intimacy is an important part of any marriage.
- I can reinterpret ancient Jewish texts to make them relevant to my daily life.
- Jewish law has a rich history of being reinterpreted to suit the needs of the times.

ESSENTIAL QUESTIONS

- What does it mean to be commanded?
- What does it mean to have a “right” to something?
- How do rabbis reinterpret texts to reflect modern values and concerns?

QUESTIONS TO BE ADDRESSED

- Why is there such an emphasis on having children in the Jewish religion?
- Where does the commandment to have children come from?
- Are both men and women required to have children according to Jewish tradition? If not, what is the difference and what does this difference reflect?
- How are rabbinic views on reproduction lived out in the real world?

EVIDENCE OF UNDERSTANDING

- Students will be introduced to the biblical command to be fruitful and multiply by studying the Torah text.
- Students will demonstrate their knowledge of rabbinic argument by debating which Talmudic interpretation of a woman’s obligation to reproduce holds the most water.
- Students will empathize with Judith and her husband, Rabbi Hiyyah, by reading their story and answering the discussion questions. (Maybe compare this to the Catholic woman from Grey’s Anatomy who wants to get her tubes tied without her husband’s permission and ask how they’re similar and different.)
- Students will identify that the final ruling was that a woman was not obligated to reproduce by listing rabbinic arguments for and against a woman’s obligation on the board.

OBJECTIVES

- To gain text study skills.

- To gain familiarity looking up biblical texts.
- To understand where the commandment to reproduce stems from.
- To practice using rabbinic argumentation
- To expose the students to the idea that reproduction is an obligation for the man but not for the woman.

LESSON OVERVIEW

- Welcome
- Opening – obligations verses rights
- Tanakh search

MATERIALS NEEDED

- Every student should have a Tanakh, preferably with Hebrew and English.
- Copies of Handouts 9, 10, and 11.

LESSON PLAN:

Welcome (1 minute)

- Welcome everyone as they come in the door.
- Hand out snacks. Say the blessings over the food.
- Teach and/or say the blessing for Torah study.

COMMANDED VS. HAVING THE RIGHT (9 minutes)

- Ask the group what the difference is between having the obligation to do something and having the right to do something.
- Have them list thing they have the right to do as an American (they have the right to assembly, the right to bare arms, etc.)
- Have them list things that they are obligated to do as American citizens (pay taxes, obey the law, etc.)
- Ask: What are the differences between the two? What happens if you don't do something you have the right to do? What happens if you don't do something you are obligated to do?
- Ask the students if they think that, according to Jewish tradition, one has the obligation to have children? Is it an obligation or just a right? Is it the same for everyone? What might be some obstacles?
- Clarify that in Reform Judaism, we view commandments between God and the individual as non-obligatory but rather a matter of informed choice. Therefore, it is our duty to learn about the tradition and then make an educated choice to keep it or not. Today, we will be learning about the obligation to have children.

TO BE FRUITFUL AND MUTLIPLY (35 minutes)

- Have the students open their Tanakh to Genesis 1:28 and read the passage.
- Ask:
 1. Who is God addressing in this passage? (Is it both man and woman? If the group is of the appropriate Hebrew level, have them look at this in the Hebrew.)
 2. What does God say?
 3. Does this sound like a command or a right?
- Say: This is the first thing that God says to mankind. But this is not the only place where God tells mankind to be fruitful and multiply. Have them look up:
 1. (Genesis 9:1) "And God blessed Noah and his sons, and said unto them: Be fruitful, and multiply, and replenish the earth. "

2. (Genesis 9:7) And you, be ye fruitful, and multiply; bring forth abundantly in the earth, and multiply therein.
 3. (Genesis 35:11) And God said unto him, I am God Almighty: be fruitful and multiply; a nation and a company of nations shall be of thee, and kings shall come out of thy loins;
- Answer the same questions:
 - Who is God addressing in this passage? (Is it both man and woman? If the group is of the appropriate Hebrew level, have them look at this in the Hebrew.)
 - What does God say?
 - Does this sound like a command or a right?
 - What are the differences between these passages and the passage in the creation story? (*These are addressed only to men; some say "god said" instead of "God blessed" . . .*)
 - Say: Now we are going to look at how the rabbis of the Talmud interpreted these verses.
 - Pass out handout 9. Either in *hevrutah*, or as a class, answer the questions.
 - Page 1:
 1. What are the two opinions in the above text? (*1 – That women are not required to have children 2 – that the command to be fruitful and multiply applies to both.*)
 2. What are the arguments on each side? What are they basing their arguments upon? (*1 – women are not included because it is not in a woman's nature to "subdue" while it is in a man's and therefore God was talking only to the man. 2- That God speaks in the plural and therefore was speaking to both.*)
 3. What opinion would you follow if you were only given the stated arguments? (*Place the group into teams and have them argue for and against requiring women to reproduce.*)
 - Page 2:
 1. According to the above text, do the rabbis believe that women are obligated to be fruitful and multiply? (*No, they repeatedly say that women are not obligated.*)
 2. Why do the women in the above texts want a divorce? (*Their husbands are not giving them children and they want to have kids.*)
 3. What is the ruling of the courts? (*That they will uphold the desire of the woman for the divorce and will force the man to divorce her and give her her ketubah.*)
 4. What does this imply about a woman's right to have children? (*That while they are not obligated to have children, they have the right to children and if their husband will not or cannot give them children they have a right to a divorce.*)
 - Summarize the text study: In this passage we see that women are not obligated to have children but that it is a right that women have. However, the argument that a woman is not required to have children being based on the opinion that it is "not in the nature of woman to subdue" is not the strongest of arguments. Now we will look at some better arguments for a why the rabbis believe a woman is not required to have children.

- Hand out Handout 10 and read together as a class. Point out the Hebrew differences and how in the un-vocalized Torah text how plural and singular words may be confused.
- Refer back to the verses we read earlier:
 1. (Genesis 9:1) "And God blessed Noah and his sons, and said unto them, 'Be fruitful, and multiply, and replenish the earth.'"
 2. (Genesis 9:7) And you, be ye fruitful, and multiply; bring forth abundantly in the earth, and multiply therein.
 3. (Genesis 35:11) And God said unto him, I am God Almighty: be fruitful and multiply; a nation and a company of nations shall be of thee, and kings shall come out of thy loins;
- Note that in these texts God is only referring to man and therefore, these other verses are used to support the idea that women are not obligated to reproduce.

THE PAIN OF CHILDBIRTH (10 minutes)

- Ask for reasons that a woman might not want to have children. List them on the board with one side being medical and safety reasons and the other side being the more personal preference type of responses.
- Say: Rabbis have been asked to rule on all of these kinds of situations, and we will look at many of these in later classes, right now, we are going to look at a story that has to do with the physical safety of the woman.
- Hand out copies of Handout 11 and go over the role play.

Closing (5 minutes)

- Review what we have done today. "Today we have learned that a man is obligated to reproduce while a woman is not obligated but has the right to have children. We have seen arguments based on different biblical verses and different interpretations of the Hebrew that support the idea that women are not obligated to reproduce."
- Foreshadow: "Today, we saw one example of a woman who took a potion that made her sterile in order to prevent any future pregnancies. In the remaining lessons, we will look at other approaches to birth control as described in traditional Jewish texts. Any permissiveness of the use of birth control is based on the ruling that women are not obligated to reproduce. For men, reproduction is not an option, it is a requirement; this fact will also come into play when ruling on differing forms of birth control.
- Take any last minute questions.

Chapter 5: Urban Legends and the Rabbinic View of Pregnancy

While we cannot know for sure why the Rabbis of the Talmud did not obligate the woman to propagate and instead of reading the Genesis injunction as a blessing to both man and woman, they read it as only an obligation on the man and supported this through other citations; by obligating only the man and not the woman, the Rabbis left room for the permissibility of birth control. While a woman has the right to have children, she also may have certain rights not to have children. In the remaining chapters, we will be introduced to different approaches to birth control within the Jewish tradition. The first of which are methods discussed in the Talmud.

It is a good thing that my classmates and I were forced to take health in high school because there were some strange urban legends about how one could have sex in order to avoid pregnancy. Thomas French writes in The St. Petersburg Times that,

Despite intensive efforts to educate students about sex, the age-old myths persist. Year after year, health teachers and social workers run into students who still cling to the same misconceptions. They still believe that they can't get pregnant if they have sex standing up (wrong) or if they remember to douche after sex with Coca-Cola (wrong again) or if they're having intercourse for the first time (absolutely incorrect). They still tell themselves that if they only engage in oral sex, there's no way they can get herpes or other diseases. (This is not only blatantly false, but in the age of AIDS, it's potentially deadly.)⁶⁹

As French notes, modern science has proved these urban legends wrong, but believe it or not, many of these strange ideas, such as the idea that a woman will get pregnant on her first time or that she should jump up and down after sex to avoid pregnancy, are ideas that Rabbis of the Talmud seemed to believe. This chapter will look at some of this faulty thinking.

⁶⁹ French, Thomas. "Mis-conceptions Series: Discovery." St. Petersburg Times. October 12, 1993, D1.

A popular belief in my hometown was that a young woman could not become pregnant the first time she had intercourse. This idea did not originate in Fort Wayne, Indiana; in fact, this idea is found in the Talmud. In the Talmud Bavli, Yevamot 34a we read, "Surely, no woman conceives from first contact!"

This statement is repeated on Yevamot 34b. The text, in its context, is discussing why the Mishnah insists that a woman must wait three months after the death of her husband or following a divorce before entering into a second marriage. The idea behind the law is that by waiting they will insure that, should the woman become pregnant, there is no confusion as to who is the father of the child. In the above discussion, the Gemara asks why a couple is required to wait three months to consummate a marriage through the act of intercourse when everyone knows that "no woman becomes pregnant in the first act of intercourse."

There remains the question, at this point of the argument, of if the Rabbis of the Talmud believed that a woman could not become pregnant with her first sexual encounter with a man, even if she had previous partners. The text continues by demonstrating that the above situation might be referring to a minor who never consummated the marriage, or someone who had used other methods of birth control. Either way, the Rabbis are aware that some women did seem to get pregnant upon the first act of intercourse, and so they sought to explain this. One explanation was that women who appeared to get pregnant after only one sexual encounter became pregnant because the initial sex act was followed shortly thereafter by a second. "Surely, no woman conceives from the first contact! Rabbi Nahman replied in the name of Rabbah ben Abuha: Where contact was

repeated.”⁷⁰ Later commentators clear up the ambiguous language used in this passage of the Talmud by making it clear that the idea that a woman cannot get pregnant in the first act only applies to virgins. Both the Rabbis of the Talmud and later commentators seem to, mistakenly, believe that a woman cannot get pregnant from the first act of intercourse because her hymen would not have previously been ruptured.

Even the biblical examples of pregnancy upon first encounter cannot persuade our Rabbis that their logic may be faulty. The first example we will examine is that of Tamar. Tamar was raped by her brother Absalom⁷¹ and became pregnant. This story is raised as an objection to the idea that a woman cannot become pregnant upon her first sexual encounter in the Talmud.

תלמוד בבלי מסכת יבמות דף לד עמוד ב

והא תמר בביאה ראשונה איבערא! א"ל: תמר באצבע מעכה, דאמר רבי יצחק: כל מועכות של בית רבי - תמר שמן, ולמה נקרא שמן תמר? ע"ש תמר שמעכה באצבעה

Surely Tamar conceived from a first contact! The other answered him: Tamar exercised friction with her finger; for R. Isaac said: All women of the house of Rabbi who exercise friction are designated Tamar. And why are they designated Tamar? — Because Tamar exercised friction with her finger.

Yevomot 34b

Here, we see that while one cannot argue that it is not the first time Tamar and Absalom have sexual contact, the Rabbis hold fast to the belief that a virgin cannot become pregnant upon first encounter and argue that Tamar's hymen had been ruptured and that this was the reason she was able to become pregnant. This argument is used again in a second biblical example of virgins becoming pregnant upon the first sexual act. When Sodom is destroyed, Lot and his two daughters escape and flee to a small cave.

⁷⁰ Yevamot 34a.

⁷¹ 2 Samuel 13.

The girls mistakenly believe that the entire world has been destroyed and, according to the text, get their father drunk and have sex with him in order to propagate the planet.

בראשית רבה (וילנא) פרשה נא

ט ותהרין שתי בנות לוט מאביהן, אמר ר"א לעולם אין האשה מתעברת מביאה ראשונה, אחיבין והא כתיב ותהרין שתי בנות לוט מאביהן, אמר ר' תנחומא שלטו בעצמן והוציאו ערותן ונתעברו כמביאה שניה

"Thus were both daughters of Lot with child by their father."⁷² R. Leazar said, "A woman never conceives by her first intimacy." The sages raised an objection, "Surely it is written, 'Thus were both the daughters of Lot with child by their father?'" R. Tanhuma said, "They put pressure on themselves and brought forth their virginity and thus conceived at the first act of intercourse."

Genesis Rabbah 51:9

Here, the same argument is used, that while the women were virgins, they had both performed acts to rupture their hymen and, therefore, were able to become pregnant. Here, we see that the previous argument that a man and a woman who is not a virgin could not become pregnant upon first encounter would no longer hold water. However, the belief that a virgin with her hymen intact could not become pregnant is also an erroneous belief.

The second urban legend we will address is that one cannot become pregnant in a standing position. The fertility experts at Epigee™ Women's Health suggest that:

If you are having difficulty becoming pregnant, you and your partner may want to experiment with different conception positions during intercourse. In order to become pregnant, your partner must deposit his sperm as close as possible to your cervix. Certain positions will allow this to happen more easily. Avoid having sex while standing, sitting, or with you on top, as this can cause semen to leak out of your body. Instead, try the missionary position, which allows for deeper penetration.⁷³

⁷² Genesis 19:36.

⁷³ "Helping Fertility Naturally." Epigee™ Women's Health.
<<http://www.epigee.org/guide/infert.html>> October 31, 2007.

While fertility experts may inform a couple that having sex in the missionary position will give them a stronger likelihood of successful conception, science and human experience have shown that fertilization is possible in any position. However, our Rabbis, here again, held erroneous beliefs. “We know by tradition that a woman cannot conceive in a standing position.”⁷⁴ גמירי שאין האשה מתעברת מעומד

I remember watching an episode of *Rosanne*, a sitcom no longer on the air, with my mother many years ago. Darleen, the daughter, returned from an uneventful date and joked to her mother that she had to go to her room to “jump up and down.” Darleen was always sarcastic and bitinglly witty. I felt I was missing something when my mother couldn’t stop laughing so I asked her what I missed. This is when I learned the “old wives tale” that you should jump up and down after sex to avoid pregnancy. Here again, our Rabbis have beaten Darleen to the punch. While they do not say that women should jump up and down to avoid impregnation, they do describe a similar method that was used by the local prostitutes to avoid pregnancy.

In *Yevamot* 35a, the Rabbis are discussing what type of birth control “women playing the harlot” use to avoid pregnancy. One Rabbi believes that a harlot should use an absorbent sponge to avoid pregnancy while another argues that this is unnecessary since these women, twirl, or turn over to avoid insemination. “Rather, said Abaye,⁷⁵ a woman playing the harlot turns over in order to prevent conception. And [what is the reasoning of] the other? -There is the fear that she might not have turned over properly.” And so we see that the Rabbi who argues that one should use an absorbent sponge in fact

⁷⁴ Sanhedrin 37b.

⁷⁵ Note that in this parallel text the practice of the prostitutes is noted by Abaye, not Rabbah.

still believes that she can avoid pregnancy by “turning over,” he simply warns that one should use a second form of birth control as a contingency method.

The final method of erroneous birth control we will examine in this chapter is that of coitus interruptus. While this is the oldest form of birth control known to mankind, it cannot safeguard a couple against pregnancy. Failure rates, although somewhat difficult to ascertain, are thought to be as high as 25 percent. The problem is that pre-seminal fluid leaks from the penis prior to ejaculation; even a small amount of pre-seminal fluid contains live sperm.⁷⁶ As we shall see, this method of birth control is one that is regarded as a sin; a sin so great it has been compared to shedding blood by our sages. However, it is still mentioned as a method of birth control in the Talmud.

The following text discusses that during the period of 24 months in which a woman breastfeeds her child, she should avoid becoming pregnant. We will discuss the rabbinic argument as to why a nursing mother should avoid pregnancy in more detail in the next chapter.⁷⁷ One of the methods mentioned as being used to prevent pregnancy during this period is coitus interruptus. Here, the question is raised as to how this is any different from the sins of Er and Onan in Genesis 38 who spilled their seed to avoid pregnancy, a case we shall turn to shortly. The answer is that Er and Onan were acting in an unnatural way while in our case it is in the woman’s best interest to refrain from pregnancy.

⁷⁶ National Center for Health Statistics. "Use of Contraception and Use of Family Planning Services in the United States: 1982-2002." 2004. Centers for Disease Control and Prevention. <<http://www.cdc.gov/nchs/data/ad/ad350FactSheet.pdf>> November 18, 2006.

⁷⁷ The 24 months refers to the period in which a mother is nursing her child. There is a question about whether a woman is not to become pregnant at this time because it will make her breast milk spoil or if she will wean her child before the 24 month period is completed.

An objection was raised: During all the twenty-four months one may thresh within and winnow without⁷⁸ - these are the words of R. Eliezer. The others said to him: Such actions are only like the practice of Er and Onan!⁷⁹ - Like the practice of Er and Onan, and yet not [exactly] like the practice of Er and Onan. Like the practice of Er and Onan: for it is written in Scripture, "And it came to pass, when he went in unto his brother's wife, that he spilt it on the ground;" and not [exactly] like the practice of Er and Onan: for whereas there it was not according to her way (the normal way), here it is done according to her way.

Yevamot 34b

Here we begin to see that there is a debate amongst the Rabbis of the Talmud as to whether or not the sin of Er and Onan was, in fact, coitus interruptus. Pulling out before ejaculation is not debated as an effective method of birth control, what is debated is whether or not this act is considered a sin. In this biblical story, Yehudah's son Er marries Tamar however,

Er, Yehudah's first-born, was wicked in the sight of the Lord, and the Lord slew him. And Yehudah said to Onan, "Go unto your brother's wife and perform the Levirate duty and raise up offspring for your brother." Now Onan knew that the offspring would not be his; and it came to pass that when he went into his brother's wife, that he would spill [his seed] on the ground, lest he should give his seed for his brother. And the thing that he did was very evil in the sight of the Lord and He slew him also.

Genesis 38:7-10

While the Church has used this passage as the basis for the prohibition against masturbation, calling this "onanism," the sin of Onan was not necessarily masturbation. In Jewish tradition, spilling the seed is strictly forbidden. In order to differentiate between the act of Er and Onan, a brief discussion of the sin of spilling the seed merits some discussion.

⁷⁸ This is an agricultural term that the rabbis would have understood as an act of coitus interruptus. To put it in today's terms, the man would have sexual intercourse with his wife and ejaculate outside of her body.

⁷⁹ The sin of Er and Onan was also that of coitus interruptus. Neither fulfilled their obligation to Tamar to impregnate her.

SPILLING THE SEED

There are many names given in the Jewish tradition for masturbation: *Pgam* *Habrit* refers to the act of committing sexual sins especially masturbation; *zera levatala* is the wasting seed, or the act of masturbation; *ha-sh'cha'tat zerah* refers to the "improper emission of seed,"⁸⁰ in particular ejaculation outside of the vagina; *ma'aseh Er ve-Onan*, "the act of Er and Onan" is taken by the Midrash to mean coitus interruptus, and by the Talmud to either mean unnatural intercourse or masturbation; two very different acts. All of these terms refer to the emission of seed from the body in a way not permissible according to *halakhah*. The different names for masturbation demonstrate the reasoning behind the prohibitions against this act. We can attribute both the sin of wasting seed and the sin of sexual misconduct to the most commonly cited biblical passage against masturbation: The story of Onan mentioned above.

As we see in the biblical passage, the sin of Onan was not masturbation, but that he failed to fulfill his responsibility of Levirate marriage and produce an offspring with his deceased brother's wife. Instead, Onan practiced coitus interruptus as a means of birth control to avoid fathering a child for his deceased brother. God killed Onan for this sin. Although Onan's act was not truly masturbation, Jewish law takes a very broad view of the acts prohibited by this passage, and forbids any act of *ha-sh'cha'tat zerah*. So, while this passage may not explicitly be against masturbation, this biblical account is the basis for later rabbinic prohibitions against such an act.

A second text that argues against masturbation is found in the Torah laws that mark those who come into contact with exposed semen as impure. Exposed semen

⁸⁰ David M. Feldman. "Onanism," Encyclopedia Judaica, 2nd ed.

somehow contaminates the environment. In the Torah, impurity results whenever there is a loss of life energy. The extreme case of impurity, therefore, is a dead body. Impurity also arises when bodies deviate in any way from their wholeness. This happens even when what is going on is perfectly normal and natural, such as a woman's menstrual flow or a man's ejaculation.

Lev. 22:4-7 articulates the ritual impurity that results from the loss of life energy.

Whoever of the seed of Aaron is a leper or has an issue; he shall not eat of the holy things, until he is clean. Whoever touches anything that is unclean by the dead, or a man whose seed goes from him; or whoever touches any creeping thing, whereby he may be made unclean, or a man of whom he may take uncleanness, whatever uncleanness he has; the person that touches any such shall be unclean until the evening, and shall not eat of the holy things, unless he bathes his body in water. When the sun is down, he shall be clean; and afterward he shall eat of the holy things, because it is his bread.

Leviticus 15:16-18 refers specifically to uncleanness resulting from an emission of semen:

And if a man has an emission of semen, he shall bathe his whole body in water, and be unclean until the evening. And every garment and every skin on which the semen comes into contact shall be washed with water, and be unclean until the evening. If a man lies with a woman and has an emission of semen, both of them shall bathe themselves in water and be unclean until the evening.

Similarly, Deuteronomy 23:10 discusses the impurity caused by contact with semen:

If there is among you any man who is unclean because of a nocturnal emission, then he must go outside the camp; he may not reenter the camp. But it shall be when evening approaches, he shall bathe himself with water, and at sundown he may reenter the camp.

With these naturally occurring discharges, the woman or man is declared to be in a state of impurity, which means that she/he is unfit to engage in public rituals until a

prescribed time has passed and a ritual of ablution, later transformed into immersion in a *miqvah*, has been fulfilled.

Maimonides links semen to a person's life force, and discusses the dangers of excessive emissions in the following passage:

Semen constitutes the strength of the body, its life, and the light of the eyes. Its emission to excess causes physical decay, debility, and diminished vitality. Thus Solomon, in his wisdom, says: "Do not give your strength to women" (Proverbs 31:3). Whoever indulges in sexual dissipation becomes prematurely aged; his strength fails; his eyes become dim; a foul odor proceeds from his mouth and armpits; the hair of his head, eyebrows, and eyelashes drop out; the hair of his beard, armpits, and legs grow abnormally; his teeth fall out; and besides these, he becomes subject to numerous other diseases. Great physicians said that one out of a thousand dies from other diseases, while nine hundred and ninety-nine die from sexual indulgence. Therefore, a man should exercise self-restraint.

Code 150:17⁸¹

Jewish mystics took their cue from Onan's wasting of seed in the biblical account and asserted that since a man who masturbates prevents the use of that semen from conceiving a child, he is guilty not only of murder but of the murder of his own (potential) children. He is therefore a criminal more reprehensible than any other.⁸² The Zohar, therefore, refers to masturbation as "a sin more serious to all the sins of the Torah."⁸³ This idea is echoed in Maimonides' *Mishneh Torah*, in *Hilchot Issurei Biya* 21:18, where he states that it is forbidden to expend semen to no purpose. Maimonides rules that masturbation is strictly forbidden and is regarded as equivalent to killing a human being.

⁸¹ Maimonides. The Code of Jewish Law.

⁸² Eliot N. Dorff, "Masturbation: A Touchy Subject," MyJewishLearning.com, ed. Daniel Septimus, 1998, 9 April 2007, <http://www.myjewishlearning.com/ideas_belief/sex_sexuality/Overview_Judaism_And_Sexuality/Sex_Masturbation_Dorff.htm>.

⁸³ Feldman. Birth Control, 114.

It is forbidden to discharge semen in vain. This is a graver sin than any other mentioned in the Torah. Those who practice masturbation and cause the issue of semen in vain, not only do they commit a grave sin, but they are under a ban, concerning whom it is said: "Your hands are full of blood,"⁸⁴ and it is equivalent to killing a person. See what Rashi wrote concerning Er and Onan in the *Sidrah of Vayeshev*,⁸⁵ that both Er and Onan died for the commission of this sin. Occasionally, as a punishment for this sin, children die when young, God forbid, or grow up to be delinquent, while the sinner himself is reduced to poverty.

Code 151:1⁸⁶

Likewise, in Kallah Rabbati chapter 2, Rabbi Eliezar ben Jacob said: "Whoever masturbates is like one who has committed murder." A similar prohibition is found in the Code of Jewish Law Even HaEzer 23:5, as well as in other codes of Jewish law.

In the Talmud, Erubin 18b, we are told that Adam formed demons, ghouls, and lilin as a result either of masturbation or of nocturnal emissions. Later, mystics took this as a warning of the dangers of masturbation for the man and the larger community.

תלמוד בבלי מסכת עירובין דף יח עמוד ב

ואמר רבי ירמיה בן אלעזר: כל אותן השנים שהיה אדם הראשון בנדיוי הוליד רוחין ושידין ולילין, שנאמר +בראשית ה'+ ויחי אדם שלשים ומאת שנה ויולד בדמותו כצלמו, מכלל דעד האידנא לאו כצלמו אוליד. מיתבי, היה רבי מאיר אומר: אדם הראשון חסיד גדול היה, כיון שראה שנקנסה מיתה על ידו ישב בתענית מאה ושלשים שנה, ופירש מן האשה מאה ושלשים שנה והעלה זרזי תאנים על בשרו מאה ושלשים שנה? כי קאמרינן ההוא - בשכבת זרע דחזא לאונסיה.

Rabbi Jeremiah ben Eleazer said, "During those years (after their expulsion from the Garden) in which Adam, the first man was separated from Eve, he became the father of ghouls and demons and lilin." Rabbi Meir said, "Adam, the first man, being very pious and finding that he has caused death to come into the world, sat fasting for 130 years, and separated himself from his wife for 130 years, and wore fig vines for 130 years. His fathering of evil spirits, referred to here, came as a result of wet dreams."

Erubin 18b

⁸⁴ Isaiah 1:15.

⁸⁵ Genesis 37.

⁸⁶ Maimonides. The Code.

While the biblical warnings against masturbation are gleaned from the prohibitions against the wasting of seed and from uncleanness as a result of an emission, the Talmud is very explicit in prohibiting masturbation. While there are few explicit references to female masturbation (the above concerning Tamar and Lot's daughters, while mentioning "friction" are not often interpreted by scholars as referring to masturbation), including one found in Megilla 12a where Rava mentions a popular saying "He masturbates with a large pumpkin and his wife with a small pumpkin," there are many explicit prohibitive behaviors for men to follow so as to stay far away from any form of masturbation.

THE HAND THAT TOUCHES SHOULD BE CUT OFF

The following text states that the hand that touches the male-member should be cut off. This text demonstrates the strength of the opposition to masturbation. Here, it is not indicated that an emission has occurred; instead, it appears as though the mere act of touching the genitals calls for extreme caution.

He [R. Muna] used to say: If the hand [be put] to the eye, let it be cut off; the hand to the nose, let it be cut off; the hand to the mouth, let it be cut off; the hand to the ear, let it be cut off; the hand to the vein [opened for blood letting], let it be cut off; the hand to the membrum, let it be cut off; the hand to the anus, let it be cut off;

Shabbat 108b

A similar passage is found in Niddah 13b:

(Mishnah)"But in the case of men it ought to be cut off. (Gemara) The question was raised: Have we learned a law from this or merely a condemnation? "Have we learned a law from this" as in the case where R. Huna cut off one's hand; "or merely a condemnation?" — Come and hear what was taught: R. Tarfon said, "If his hand touched the membrum let his hand be cut off upon his belly." "But," they said to him, "Would not his belly be split?"

"It is preferable," he replied, "that his belly shall be split rather than that he should go down into the pit of destruction." Now if you should think

that we have here learned a law one can well understand why they said, "Would his belly not be split." But if you maintain that we have only learned of a condemnation, what could be meant by "His belly is split"? — What then would you suggest, that we have learned here a law, would it not suffice, [it may be objected, that the cutting off shall] not be done on his belly? — The fact, however, is that it was this that R. Tarfon meant: "Whosoever puts his hand below his belly that hand shall be cut off." They said to R. Tarfon, "If a thorn stuck in his belly, should he not remove it?"

"No," he replied.

"But [they said] would not his belly be split?"

"It is preferable," he replied, "that his belly shall be split rather than that he should go down to the pit of destruction."

The Rabbis felt so strongly that a man should not touch himself that they said that a man should neither touch himself in order to examine himself nor in order to urinate, as is demonstrated by the following passages.

How does R. Yohanan expound the text of Resh Lakish? — He requires it for those described in the Book of Ben Sira: "There are three [types] that I hate, four that I do not love: A Scholar who frequents wine-shops, a person who sets up a college in the high parts of a town, one who holds the membrum when making water, and one who enters his friend's house suddenly." R. Yohanan observed: "Even his own house."

R. Simeon b. Yohai observed: "There are four [types] which the Holy One, blessed be He, hates, and as for me, I do not love them: The man who enters his house suddenly and all the more so his friend's house, the man who holds the membrum when he makes water . . ."

Niddah 16b

The following text, from Niddah 13a, not only comments upon avoiding touching the penis during urination, but also the need to avoid touching for examination. The prohibition for touching the penis during self-examination is placed in stark contrast to the praise received for a woman who checks herself frequently. The Rabbis do not seem to fear that the woman will derive sexual pleasure from this act, or, are not concerned. The Mishnah and its exegesis begin as such:

מתני. כל היד המרבה לבדוק, בנשים - משובחת, ובאנשים - תקצץ.
גמ'. מ"ש נשים ומאי שנא אנשים? נשים לאו בנות הרגשה נינהו - משובחות, אנשים דבני הרגשה נינהו -
תקצץ. אי הכי, מאי איריא מרבה? כי לא מרבה נמי!

MISHNAH. "Every hand that makes frequent examination is – in the case of women praiseworthy, but in the case of men it ought to be cut off."

GEMARA. How do women differ from men? — Women are not sensitive, hence they are praiseworthy; but in the case of men who are highly sensitive, [their hands] ought to be cut off.

But, if so, what was the point in saying "makes frequent" [seeing that the same reason applies] also where [the examinations are] infrequent? —

When "makes frequent" was mentioned it was intended to refer to women only.

We see from the above discussion that a man is thought to be more sensitive to touch than a woman and any contact he may have with his genitalia may result in emission of semen. In contrast, a female is thought not to be sensitive enough to emit a discharge from a quick touch; the only prohibition for her involves frequently touching herself. The passage goes on to discuss how a man should examine himself if he is not to touch himself during the process.

One taught: This applies only to the emission of semen but as regards flux a man also is as praiseworthy as the women. And even in regard to the emission of semen, if he desires to make the examination with a splinter or with a potsherd he may do so. May he not, however, do it with a rag, seeing that it was taught: A man may examine himself with a rag or with any other thing he wishes? — As Abaye stated elsewhere: With a thick rag. So also here it may be explained: With a thick rag. In what connection was Abaye's statement made? In connection with the following: If a priest, while eating terumah, felt a shiver run through his body he takes hold of his membrum and swallows the terumah. Takes hold! But has it not been taught: R. Eliezer said: Whoever holds his membrum when he makes water is as though he had brought a flood on the world?

The issue here is that one must be in a state of ritual purity to eat terumah. If an accidental emission were to take place, it would invalidate the terumah; therefore, the priest takes hold of his membrum in an attempt to prevent the emission. Discussion of this difficult text occurs a second time in Niddah 43a. With this textual reference in mind, our text returns to the debate as to what materials are permissible to use in order to check oneself. The question of material is an important question, as one might be able to stimulate oneself by using certain types of materials such as silks and linens, while potshards would not be a highly pleasurable stimulant.

תלמוד בבלי מסכת נדה דף מג עמוד א

אביי: במטלית עבה. רבא אמר: אפילו תימא במטלית רכה, כיון דעקר - עקר. ואביי - חייש דילמא אתי לאוסופי, ורבא - לאוסופי לא חייש. והתניא: למה זה דומה - לנותן אצבע בעין, שכל זמן שאצבע בעין - מדמעת וחוזרת ומדמעת! ורבא - כל אחמומי והדר אחמומי בשעתא לא שכיח.

To this Abaye replied, "With a thick rag." Raba replied, "It may even be said to apply to a soft rag for once the semen has been detached the subsequent touch no longer matters." And Abaye? He made provision against the possibility of an additional discharge. And Raba? He does not consider the possibility of any additional discharges. But does he not, seeing that it was taught, "To what may this be compared? To the putting of a finger upon the eye where, as long as the finger remains on it, the eye continues to tear." Now Raba? It is quite uncommon for one to get heated twice in immediate succession.

The question here became whether a man could use a thin cloth (which would still allow feeling) to examine himself after a seminal discharge. The Rabbis here make it clear that they are aware that a man may be able to arouse himself a second time by this form of stimulation or prolong his ejaculation (this is the comparison to making the eye continue to tear), both of which would be prohibited. Raba, however, seems to think that

the use of a thin rag would be appropriate because “It is quite uncommon for one to get heated twice in immediate succession.”⁸⁷

Having debated this issue, they move to discuss the issue of not touching oneself while urinating. Niddah 16b indicates that the practice of touching the penis while urinating was looked down upon; here, the Rabbis discuss the possible problems that may arise from not directing your urine stream and simply say that it is better to urinate somewhere you do not intend than to touch yourself to guide the stream.

Reverting back to the body of the text: R. Eliezer said, “Whoever holds his membrum when he makes water is as though he has brought a flood on the world.” “But,” they said to R. Eliezer, “would not the spray bespatter his feet and he would appear to be maimed in his privy parts so that he would be the cause of casting upon his children the reflection of being illegitimate?”

“It is preferable,” he answered them, “that a man should be the cause of casting upon his children the reflection of being illegitimate than that he should make himself a wicked man, even for a while, before the Omnipresent.”

Another [Baraita] taught: R. Eliezer replied to the Sages: “It is possible for a man to stand on a raised spot and to make water or to make water in loose earth and thus to avoid making himself wicked, even for a while, before the Omnipresent.”

Which did he tell them first? If you might think that it was the first mentioned statement that he gave them first [is it likely, it may be objected] that after he spoke to them of a prohibition he would merely offer a remedy? — The fact is that it was the last mentioned statement that he gave them first, and when they asked him, “What is he to do when he can find no raised spot or loose earth,” he answered them, “It is preferable that a man should be the cause of casting upon his children the reflection of being illegitimate than that he should make himself a wicked man, even for a while, before the Omnipresent.”

The Gemara now raises the question of why one would take all of these precautions while urinating. The answer comes from our biblical story of Onan and his

⁸⁷ It is interesting to note how the different perspectives given here and in other texts might reflect on the men’s personal sexual experience.

spilling of the seed. The passage then draws the parallel between spilling the seed in vain and murder, a belief we discussed above and which is supported by Niddah 13b when it states: "R. Eleazar stated: Who are referred to in the Scriptural text, 'Your hands are full of blood?' Those that commit masturbation with their hands."

But why all these precautions? — Because otherwise one might emit semen in vain, and R. Yohanan stated: Whosoever emits semen in vain deserves death, for it is said in Scripture, "And the thing which he did was evil in the sight of the Lord, and He slew him also."⁸⁸

R. Isaac and R. Ammi said: It is as though he shed blood, for it is said in Scripture, "You that inflame yourselves among the terebinths, under every leafy tree, that slay the children in the valleys under the clefts of the rocks."⁸⁹ Read not "that slay" but "that press out." R. Assi said: He is like one who worships idols; for here it is written, "Under every leafy tree" and elsewhere it is written, "You shall surely destroy all the places, in which the nations that you will dispossess served their gods, upon the high mountains, and upon the hills, and under every leafy tree."⁹⁰

We now get a story in which Rav Yehudah uses his hands in order to urinate off the roof of a building; this complicates the discussion since surely Rav Yehudah would be a strict adherent to the law.

Rav Yehudah and Samuel once stood upon the roof of the Synagogue of Shaf-weyathib in Nehardea. Rav Yehudah said to Samuel, "I must make water." "Keen-witted one," the other replied, "take hold of your membrum and make the water outside [the roof]." But how could he do so, seeing that it was taught: R. Eliezer said, "Whoever holds his membrum when he makes water is as though he brought a flood on the world?" — Abaye replied: "He treated this case as that of a reconnoitering troop, concerning which we learnt, 'If a reconnoitering troop has entered a town in time of peace the open wine jars are forbidden and the closed ones are permitted, but in times of war the former as well as the latter are permitted because the troops have no time to offer libations.' Thus it clearly follows that owing to their being in a state of fear they do not think of offering libations, and so also in this case, since he was in a state of fear he would not think of lustful matters."

⁸⁸ Genesis 8:10.

⁸⁹ Isaiah 57:5.

⁹⁰ Deuteronomy 12:2.

But what fear could there be here? — If you wish I might reply: The fear of the night and of the roof. Or if you prefer I might reply: The fear of his Master. Or if you prefer I might say: The fear of the Shechinah. Or if you prefer I might say: The fear of the Lord that was upon him, for Samuel once remarked of him “This man is not born of woman.” Or if you prefer I might say: He was a married man, and concerning such R. Nahman ruled, “If a man was married, this is permitted.” Or if you prefer I might say: It was this that he taught him, vis-à-vis, that which R. Abba the son of R. Benjamin b. Hiyya learned: But he may support the testicles from below. And if you prefer I might say: It was this that he taught them vis-à-vis that which R. Abbahu stated in the name of R. Yohanan: It has a limit; from the corona downward [touch] is permitted⁹¹ but from the corona upwards it is forbidden.

A parallel of the above discussion is found in Niddah 43a which discusses a Mishnaic verse about what to do if a man feels the coming of an emission while he is eating terumah. The discussion repeats itself as to questioning if he can touch his membrum, with what, and why one may not touch the membrum even after an emission of semen. The passage does vary from the above in that it progresses to a debate concerning what kind of a seminal discharge is considered clean or unclean. Samuel wants to limit the title of uncleanness only to emissions that are 1) felt throughout the body, and 2) “shot forth like an arrow.” Samuel goes onto argue that this type of discharge is the only type of seminal discharge that has reproductive power and therefore would be the only type that would be spilling the seed in vain.⁹²

Samuel ruled: Any emission of semen that is not felt throughout one's body causes no uncleanness.

What is the reason? — The All Merciful has said, “The flow of seed,” implying that the text deals only with what is fit to produce seed.

An objection was raised: If a man was troubled with unchaste thoughts in the night and when he rose up he found his flesh heated, he is unclean. R. Huna explained this as applying to a man who dreamt of indulging in sexual intercourse, it being impossible to indulge in the act without experiencing the sensation.

⁹¹ The next few words are from Niddah 13b.

⁹² Note that this is yet another example of a false belief.

Another interpretation: Samuel ruled: Any semen which does not shoot forth like an arrow causes no uncleanness.

What is the practical difference between the latter reading and the former reading?

The practical difference between them is the case where the detachment of the semen was perceived but the emergence was not felt. Now this ruling, which was quite obvious to Samuel, was a matter of enquiry for Rava.

Rava asked: What is the law where the detachment of the semen was perceived but its emergence was not felt?

Come and hear: If a man who emitted semen performed immersion before he had made water, his uncleanness is resumed when he makes water. —

There it is different, since the emergence of most of the semen was perceived.

Others have a different reading: Samuel ruled: Any semen which does not shoot forth like an arrow causes no fructification. It is only fructification that it does not cause but it does cause uncleanness, for it is said in Scripture: "If there be among you any man, that is not clean by reason of that which chances upon him," which implies: Even a chance emission, whatever its nature.

WILLFUL MASTURBATION

While the above texts discuss the prohibitions against touching oneself and the accidental emission of semen, the purposeful touching of oneself is likened to murder (as we have seen above) and adultery, "It was taught at the school of R. Ishmael, 'Thou shalt not commit adultery' implies: Thou shalt not practice masturbation either with hand or with foot."⁹³ In Niddah 13b, Rav suggests that one who willfully gives oneself an erection should be excommunicated. The discussion ensues about what the punishment would be for such an act:

תלמוד בבלי מסכת נדה דף יג עמוד ב

אמר רב: המקשה עצמו לדעת יהא בנדוי, ולימא אסור! דקמגרי יצה"ר אנפשיה. ורבי אמי אמר: נקרא עברייין, שכך אומנתו של יצר הרע, היום אומר לו עשה כך, ולמחר אומר לו עשה כך, ולמחר אומר לו לך עבודת כוכבים - והולך ועובד. איכא דאמרי, אמר רבי אמי: כל המביא עצמו לידי הרהור אין מכניסין אותו במחיצתו של הקב"ה, כתיב הכא +בראשית ל"ח+ וירע בעיני ה' וכתוב התם +תהלים ה'+ כי לא אל תפץ רשע אתה לא יגורך רע.

⁹³ Niddah 13b.

Rav stated: "A man who willfully causes an erection should be placed under the ban." But why did he not say, "This is forbidden"? Because he merely incites his evil inclination against himself.

R. Ammi, however, stated: "He is called a renegade, because such is the art of the evil inclination: Today it incites man to do one wrong thing, and tomorrow it incites him to worship idols and he proceeds to worship them."

There are others who read: R. Ammi stated, "He who excites himself by lustful thoughts will not be allowed to enter the division of the Holy One, blessed be He. For here it is written, 'Was evil in the sight of the Lord,'⁹⁴ and elsewhere it is written, 'For Thou art not a God that has pleasure in wickedness; evil shall not sojourn with Thee.'"⁹⁵

As we have seen, the rabbinic mind looked down upon male masturbation, so much so that the purposeful touching of oneself was cause for *herem*⁹⁶ and should be avoided to the extent that one should not even use one's hand to guide one's urine stream. While women are permitted to check themselves with seemingly little concern that they will take pleasure in this touch, the Rabbis are aware that women produce a discharge when sexually excited. In Niddah 42a, the Rabbis debate whether female ejaculation is a cause for uncleanness.

R. Samuel b. Bisna enquired of Abaye: "Is a woman who is ejecting semen regarded as observing a discharge or as coming in contact with one?" The practical issue is the question of rendering any previous counting void, and of conveying uncleanness by means of the smallest quantity and of conveying uncleanness internally as well as externally. But what is the question? If he heard of the Baraita [he should have known that] according to the Rabbis she is regarded as observing a discharge while according to R. Simeon she is regarded as coming in contact with one; and if he did not hear of the Baraita, is it not logical that she should be regarded as coming in contact with one? — Indeed he may well have heard of the Baraita and, as far as the Rabbis are concerned, he had no question at all; his question only concerned the view of R. Simeon. Furthermore, he had no question as to whether uncleanness is conveyed internally as externally; what he asked was whether any previous counting

⁹⁴ Genesis 38:10.

⁹⁵ Psalms 5:5.

⁹⁶ *Herem*, as defined by the Jastrow Dictionary, means excommunication.

is rendered void and whether uncleanness is conveyed by means of the smallest quantity.

The issue then is not if a woman's ejaculate makes her impure, for they have already ruled on this, but the question becomes a concern over the amount of ejaculate required to result in impurity.

When R. Simeon ruled: It is enough that she be subject to the same stringency of uncleanness as the man who had intercourse with her; he meant it only in respect to conveying uncleanness internally as externally but as regards rendering any previous counting void and conveying uncleanness by means of the smallest quantity she is regarded as one observing a discharge. Or is it possible that there is no difference? There are others who read: Indeed he may never have heard of the Baraitha, but it is this that he asked in effect: Since the All Merciful has considered it proper to impose a restriction at Sinai on those who emitted semen, she must be regarded as one who observed a discharge, or is it possible that no inference may be drawn from Sinai, since it was placed under an anomalous law, seeing that *zabs*⁹⁷ and lepers who are elsewhere subject to major restrictions were not subjected by the All Merciful to that restriction?

The other replied: She is regarded as one who has observed a discharge. He then came to Rava and put the question to him. The latter replied: She is regarded as one who observed a discharge. He thereupon came to R. Yoseph who also told him: She is regarded as one who observed a discharge. He then returned to Abaye and said to him: You all spit the same thing. The other replied: We only gave you the right answer. For when R. Simeon ruled that it is enough that she be subject to the same stringency of uncleanness as the man who had intercourse with her, it was only in respect of conveying uncleanness internally as externally, but in respect of rendering any previous counting void and in respect of conveying uncleanness by means of the smallest quantity she is regarded as one who observed a discharge.

As you can see from the above passage, the quantity of seminal discharge was a matter of importance to the Rabbis. Not surprisingly, we see in Niddah 4b that Samuel again claims that there should be at least a certain amount of semen for it to render one impure "Samuel ruled: [the discharge of] a *zab* must be such a quantity as would stop the

⁹⁷ According to Jastrow, 377, a *zab* is one afflicted with gonorrhea.

orifice of the membrum, for it is said in Scriptures 'Or his flesh be stopped from his issue.'"

The question is also debated as to what amount of semen must be present to render someone else who comes into contact with it impure.

R. Hanilai citing R. Eliezer son of R. Simeon ruled: Semen conveys uncleanness to the man who emitted it, however small its quantity; but as regards the man who touched it, its quantity must be of the bulk of a lentil. But did we not learn (from the Mishnah), "And the discharges convey uncleanness however small the quantity," which applies, does it not, to the case of one who touched semen? — No, it applies only to one who emitted it.

It is clear by the above discussions that the emission of semen was regarded as a serious undertaking. While in our modern world, scientists and doctors have argued that masturbation can be healthy and, when done in private and in moderation, is nothing to be ashamed of, this was not the belief of our Rabbis.

The ancient world recognized that semen was the source of a man's seed, his way of passing on life, and therefore, the squandering of this seed was frowned upon. While it was permissible to have intercourse with a barren woman (which one might argue was the wasting of seed), the biblical writers saw the nocturnal emission of semen as something that lessened a man's life force, something that cause him to be in a state of impurity and something that required a ritual ablution to clean him of it's taint.

For the world of the Talmud, masturbation took on a whole new life. While the Bible does not explicitly discuss masturbation, the Talmud speaks out against it. For the a man who is accidentally aroused, he must be sure to take every precaution not to touch himself, as this might result in either the emission of semen or the prolonging of an emission. For the man who purposefully arouses

himself, the Rabbis suggest *herem*. The idea of masturbation is so repulsive to the Rabbis of the Talmud that they go to the extent of prohibiting the man from even touching his member in order to urinate or for self-examination.

For something with little biblical comment, masturbation was of much concern for the Rabbis who were said to have based their prohibitions against the act on the word of God.

UNNATURAL INTERCOURSE

The story of Er and Onan is interpreted by the Midrash⁹⁸ to be a classic case of coitus interruptus and the basis for the rules against masturbation. However, the Talmud claims that the sin the brothers committed was not that they withdrew, but that they had sex with Tamar in an “unnatural” way. Yevamot 34b simply states, “Er and Onan indulged in unnatural intercourse.”

So, what constitutes “unnatural” intercourse? In Hebrew natural intercourse is referred to as “*k'darkha*,” literally – “as is her way,”⁹⁹ and is believed to refer to vaginal intercourse. The opposite of this, “*lo k'darkha*,” or “not according to her way,” is generally believed to refer to non-vaginal sex.¹⁰⁰ Yet, we see elsewhere that a man is permitted to have non-vaginal sex with his wife.

A woman once came before Rabbi and said, “Rabbi, I set a table before my husband, but he overturned it.” Rabbi replied: “My daughter, the Torah has permitted you to him — what then can I do for you?” A woman once came before Rav and complained. “Rabbi, I set a table before my

⁹⁸ *Genesis Rabbah*. (Vilna: Romm, 1921) 85:5-6.

⁹⁹ “As is her way” is referring to intercourse way. Intercourse is a feminine word in Hebrew and this expression refers to the normal way of intercourse, not the woman’s preferred method.

¹⁰⁰ This term is defined by Jastrow, p.323, as an unnatural satisfaction of the sexual appetite.

husband, but he overturned it.” Rav replied: “How does it differ from a fish?”

Nedarim 20b

In the above passage, we see two cases in which a woman comes to a Rabbi, either Rabbi or Rav, and says that she “set a table before my husband, but he over turned it.” This means that the woman was prepared to have intercourse in the missionary position, but her husband altered the position. According to Feldman,¹⁰¹ “usually three types of variation are implied: (1) *hi l’ma’alah*, the dorsal position; (2) *panim k’neged oref* or *derekh m’kom hatashmish me’ahorayim* – ‘retro’; (3) *pi hataha’at*, i.e., *shello bim’kom zera* – ‘a tergo,’¹⁰² (and sometimes including *derekh evarim*.)” Both of the Rabbis who are approached respond that it is permitted to have sex in this manner. Rabbi argues that since she is permitted to her husband by the Torah, he can have her in any manner that pleases him. Rav adds the comparison of sex to fish, meaning that just as a man can have his fish prepared in many different ways, so too he can enjoy sex with his wife in many different ways. This is articulated more fully in Nedarim 20b:

R. Yohanan said: The above is the view of R. Rohanan b. Dahabai; but our Sages said: The halakhah is not as R. Yohanan b. Dahabai, but a man may do whatever he pleases with his wife [during intercourse]. A parable: Meat that comes from the abattoir, may be eaten salted, roasted, cooked or seethed; so too with fish from the fishmonger.

While there are arguments made by the Rabbis in the Talmud that one should not have sex in a non-vaginal method or in a non-missionary position, permissibility wins the day.

Moses Maimonides maintains this permissive stance in his Mishnah Torah.

¹⁰¹ Feldman. Birth Control, 155.

¹⁰² In the backside.

A man's wife is permitted to him. Therefore a man may do whatever he wishes with his wife. He may have intercourse with her at any time he wishes and kiss her on whatever limb of her body he wants. He may have natural or unnatural sex, as long as he does not bring forth seed in vain. However, it is a sign of piety not to show too much levity but to sanctify himself at the time of intercourse... A man should not depart from the way of the world and its custom because its ultimate purpose is procreation.

Mishnah Torah Issurei Biah 21:9

In fact, sex "*lo k'darkha*" is one of the few things that is prohibited for the heathen but permitted for the Jew. In Sanhedrin 58b we read, "R. Eleazar said in R. Hanina's name: If a heathen had an unnatural connection with his wife, he incurs guilt; for it is written, 'and he shall cleave,' which excludes unnatural intercourse. Raba objected: Is there anything for which a Jew is not punishable and a heathen is?" Raba questions how it is possible that there is something that is permitted to a Jew and not to a heathen. While this would be an interesting question to explore, for our purposes, the important part of this piece is that Raba clearly states the permissibility of this act.

We have now seen that it is permissible to have non-vaginal sex; yet, the Rabbis insist that the intent must be for pleasure, not to avoid pregnancy. The clearest voice on the issue comes from R. Isaiah de Trani, in his Talmudic commentary called *Tos'fot RiD* in which he writes:

And if you ask how the Sages permitted [unnatural intercourse, which involved] emission of seed like the act of Er and Onan, the answer is: What is the act of Er and Onan that is forbidden by the Torah? When his intent is to avoid pregnancy so as not to mar her beauty and/or so as not to fulfill the mitzvah of procreation. But if his intent is to spare her physical hazard, then it is permitted. So also if he does so for his own pleasure but not to avoid pregnancy [for the above reasons]; as implied by Nedarim 20b. Er and Onan, whose intent was to avoid pregnancy, sinned; but he whose intent is for pleasure, does not sin. For "a man may do with his wife what he will" and it is not called destruction of seed. If it were, then

he would not have been permitted to have relations with the minor, the pregnant, or the sterile woman.¹⁰³

Here the argument is that while this form of intercourse will not result in a pregnancy, it is still a permissible act. R. Isaiah de Trani differentiates between those who have sex in this manner for pleasure and those who perform these acts to avoid pregnancy. He fully permits the act to those who engage in it for pleasure while those who are avoiding pregnancy fall into two categories. If one is avoiding vaginal sex so as to not fulfill the mitzvah of procreation, then this is not permitted. If one is avoiding vaginal sex so that his wife will not become pregnant and, thereby, less attractive, then this is, again, not permitted. However, if one is avoiding vaginal sex because a pregnancy might somehow put his wife in physical danger, then it is permitted.

In fact, while we have seen that a man may have sex in any manner with his wife, Rabbi Ben David restricts this right,¹⁰⁴ saying this form of intercourse would not be allowed if it caused the woman any pain, *innui*. The biblical injunction against causing pain during intercourse is derived from the story of the rape of Dinah. Genesis 34:2 reads: "When Shechem son of Hamor the Hivite, the ruler of that area, saw her, he took her and lay with her by force." Commentators picked up on the wording of the passage, specifically where it says he lay with her by force – *vayishkav otah vay'annehah* – and questioned what *vay'annehah* meant in this case. Rashi noted that the root *innui*, meaning pain, means that he both violated her vaginally (*vayishkav*) and then commenced to have unnatural intercourse with her which caused her pain, *innui*. Ben David uses this biblical injunction to conclude that, while a couple may engage in

¹⁰³ Translation provided by Feldman. Birth Control, 162.

¹⁰⁴ Abraham ben David, 138.

unnatural intercourse, the act is forbidden if it causes the woman any pain. While the Talmud may permit a couple to engage in unnatural intercourse, many rabbis were embarrassed by the brazenness of these acts and sought to restrict them. As we saw in the above discussion of masturbation, the Zohar views the act of wasting the seed as akin to murder. Joseph Karo, the compiler of the *Shulhan Arukh* in the 15th century, notes the permissible stance of the RI, R. Yitzhak of Dampierre, Rashi's great-grandson, (from the 12th century) on the issue of unnatural intercourse, yet his Kabbalistic orientation led him to conclude that: "Had the RI seen what the Zohar says about the gravity of *hash-hata zera*, namely that it is the most severe of sins, he never would have written what he did write."¹⁰⁵ The *Sefer Harédim* gives a second demonstration of a rabbi going out of his way to demonstrate that "there is no sanction at all for unnatural intercourse."¹⁰⁶ It tells of a man who is excommunicated when his wife reports that her husband engaged in this kind of behavior.¹⁰⁷ However, non-mystic rabbinic authorities, including Maimonides and the RI, continue to affirm the permissibility of these acts as they view this as the opinion of the Talmud.

And so, amongst our urban legends of how one cannot get pregnant, we find a method that is permitted to a man that will successfully avoid pregnancy – intercourse *lo k'darkha*. However, if one were to use this practice as a birth control method, it would be considered the sin of Er and Onan. This begs the question: Is there a form of birth control mentioned in the Talmud that is 1) permitted and 2) effective? The remaining chapters will seek to answer this question.

¹⁰⁵ *Bedek HaBayit* to Beit Yosef, E.H. 25. Translation provided by David Feldman.

¹⁰⁶ Rabbi Elazar Azkari. *Sefer Harédim*. (Venice, 1601) Part III, Chapter 2.

¹⁰⁷ *Ibid*.

Lesson 5:
Even Rabbis Can Get It Wrong

INTRODUCTION

Birth is often called a miracle; even in our highly scientific and technical world, there is a mystery that surrounds reproduction. This mystery has led to ancient peoples worshipping goddesses of fertility and to women today taking pills and herbal roots in attempt to further their chances of becoming pregnant.

While science has led to more proven ways to both increase fertility and to avoid an unwanted pregnancy, the mystery still remains. While we have proven methods of birth control, many of today's teens believe the same things their great grandparents did about home grown ways to avoid an unwanted pregnancy.

This lesson plan looks at some of our urban legends about avoiding an unwanted pregnancy and shows that many of these can be found in the Talmud. This shows how far back these ideas go and will serve to begin the discussion of birth control in Jewish tradition.

It also looks at one of the more proven ways of avoiding pregnancy, non-vaginal sex, through a rabbinic lens.

ENDURING UNDERSTANDINGS

- While the rabbis of the Talmud were geniuses, on occasion they were subject, as we all are, to faulty logic.
- Many of our beliefs today are traceable to rabbinic tradition.

ESSENTIAL QUESTIONS

- How does my personal experience fit into a Jewish framework?
- How have my beliefs changed since I was a teen/young adult?
- How do my peers affect my beliefs?
- How can I still respect the Talmud while recognizing that the Rabbis in the Talmud were sometimes wrong?

QUESTIONS TO BE ADDRESSED

- What are things I believed about reproduction as a teen/young adult?
- What is the faulty science surrounding birth control of the Rabbis of the Talmud?
- Is non-vaginal sex permissible according to tradition? If so, can it be used as a form of birth control?

EVIDENCE OF UNDERSTANDING

- Students will connect common misinformation about pregnancy that is believed today to the faulty thinking of Talmudic Rabbis.

LESSON OVERVIEW

- Set Induction (10 minutes)
- Text Study (40 minutes)
- Review (5 minutes)
- Wrap-up and journal assignment (5 minutes)

MATERIALS NEEDED

- Chalkboard or Dry-erase board and chalk/markers
- Copies of Handouts 12, 13, and 14.

LESSON VOCABULARY

- *K'darkha* – Heb. Literally, “according to her [intercourse’s] way.” This is popularly referred to as vaginal intercourse.
- *Lo k'darkha* – Heb. Literally, “not according to her way.” This is popularly referred to as non-vaginal intercourse.

LESSON PLAN

Set Induction (10 minutes)

- Say: “Today we will begin our discussion of birth control. In future lessons we will examine the debates surrounding popular birth control methods. In today’s lesson, we will be looking at some of the faulty thinking of those rabbinic geniuses who wrote and compiled the Talmud and compare them to some of the faulty thinking we still hear today.”
- Ask: When you were a teenager, what were some of the things you believed about pregnancy and getting pregnant? What were some of the things your friends believed? What did you/they believe were the secrets about how to not get pregnant?
- List their responses on the board. (*You can’t get pregnant on your first time; you should jump up and down after sex to avoid pregnancy; you can only get pregnant if the man is on top . . .*)
- Today we will look at each of these urban myths and see that many of them were things our Sages also believed. For example – the belief that a woman cannot get pregnant in a standing position is found in Sanhedrin 37b
- Hand out copies Handout 12. Simply read the first text box to the class: “We know by tradition that a woman cannot conceive in a standing position”
- Say: We will now look at some other of these misconceptions.

LEARNING ACTIVITIES

- Put the second text into context (for a more advanced Hebrew crowd use the page of Talmud in place of the handout) by telling the class that in Yevamot 35a, the rabbis are discussing what type of birth control “women playing the harlot” use to avoid pregnancy. One rabbi believes that a harlot should use an absorbent sponge to avoid pregnancy while another argues that this is unnecessary since these women, twirl, or turn over to avoid insemination.
- Read the second text box and answer the questions.
Set up the third text by telling the story of Er and Onan from Genesis 38:7-10. You may have your students turn to the story in their Tanakhs or simply read it to them. (Note you may need to explain levirate marriage; this is a biblical requirement that if a man dies without leaving children, the next of kin – most often the brother – is to have a child with the widow in order to have someone to inherit and carry on his brother’s name. If the man does not want to perform this duty, he must undergo the ritual of *halitza* in which the woman hands him a sandal and spits in his face. He is then referred to as “the un-sandaled one.”)
“Er, Yehudah’s first-born, was wicked in the sight of the Lord, and the Lord slew him. And Yehudah said to Onan, ‘Go unto your brother’s wife and perform the levirate duty and raise up offspring for your brother.’ Now Onan knew that the offspring would not be

his; and it came to pass that when he went into his brother's wife, that he would spill [his seed] on the ground, lest he should give his seed for his brother. And the thing that he did was very evil in the sight of the Lord and He slew him also."

- The 24-month period being referred to in the third text refers to a nursing mother. The rabbis believed that a mother should nurse for 24 months and that during this time period she should avoid becoming pregnant. They felt that pregnancy would either make her milk go sour, or, that if she had another child, she might wean the elder prematurely and it might suffer from malnutrition and die.
- Read the text and answer the questions.

UNNATURAL INTERCOURSE

- Note that in the third text, there is a debate as to whether the sin of Er and Onan was that they spilled the seed or if they performed "unnatural" intercourse. The terms used by the passage are *k'darkah* – which means literally "according to her way" and *lo k'darkah* – which means not according to her way. In general *k'darkah* is thought to refer to vaginal intercourse while *lo k'darkah* may refer to non-vaginal intercourse as well as intercourse in positions other than standard missionary.
- Confirm that our rabbis discussed such issues. (Perhaps you may want to discuss the arguments made by the Ri and by Azkari in the chapter.)
- Hand out Handout 13. Read and discuss the texts. Are they surprised? Offended? How does Maimonides discourage this practice while still permitting it?

YOU CAN'T GET PREGNANT ON YOUR FIRST TIME

- Say: "There is one last myth to address and that is that you can't get pregnant the first time you have intercourse."
- In the Talmud Bavli Yevamot 34a we read: "Surely, no woman conceives from the first contact!"
- "However, there are biblical stories in which women get pregnant on their first encounter."
- Read/tell (dependant on time) the story of Tamar (2 Samuel 13). Tamar was a virgin and her half brother, Amnon, fell in love with her. He knew he could not have her and so he worked out a plan with a close friend to get alone with his sister. He pretended to be sick and then asked his father, King David, to send Tamar to him to help him feel better. When the two were alone, Absalom raped Tamar. After the act he was disgusted with her.
- In this situation, Tamar was a virgin. The rabbis of the Talmud know this as well.
- Hand out Handout 14 and read the first passage.
- Tell/read the story of Lot's daughters (Genesis 19). During the destruction of Sodom and Gomorrah, Lot and his daughters escape to the hills. Once there they hide in a cave. The girls, thinking that the whole world had been destroyed, felt it was their duty to repopulate the world; so, the two get their father intoxicated and become pregnant by him. In this case as well, the two were virgins and become pregnant upon the first sexual act.
- Read the second text from the Midrash.
- Answer the questions.

REVIEW (5 minutes)

- Say: Today we saw that many of the myths we grew up hearing about how women cannot get pregnant under certain situations were also things that the Rabbis of the Talmud believed. We also learned that one form of birth control, unnatural intercourse, while being both effective against pregnancy and permitted, is not permitted if you are actually engaging in it with the intention of preventing a pregnancy. In the next sessions, we will look at other forms of birth control and see if there are any forms that are both permitted by the rabbis and effective against pregnancy.
- Answer any remaining questions.

Chapter 6: Methods of Birth Control

The *Mokh*

Thus far, we have established that intimacy is a mitzvah in a marital relationship whether or not procreation is the result. We have learned that the Rabbis believed that one could not get pregnant if the woman was a virgin with an intact hymn, while having sex in a standing position, through unnatural intercourse, and that a woman can prevent a pregnancy by “turning over” after intercourse. However, the bulk of the massive amount of literature and responsa on birth control focuses on a different Talmudic text; a *baraita* concerning three women and a device called the *mokh*.

As we saw in the above passage from Yevamot 65b, Judith, the wife of Rabbi Hiyyah, is permitted to use contraception because of the danger she suffered during childbirth. Danger and suffering during childbirth is a major factor in consideration of the permissibility of birth control. The fact that women are not required to procreate removes a major hindrance from the use of contraception, but it is not only the life of the woman that can legitimize the use of birth control.

The following passage appears no fewer than five times in the Talmud¹⁰⁸ and once more in the Tosefta.¹⁰⁹ To make this easier to read and understand, I have added questions and explanation markers throughout the translation of the Talmudic conversation, these additions are italicized.

Who may use birth control?

¹⁰⁸ Yevamot 12b and 100b, Ketubot 39a, Niddah 45a, and Nedarim 35b.

¹⁰⁹ Niddah Ch. 11, with emendation of Rabbi Elijah Gaon.

Rav Bebai taught in the presence of Rav Nahman: Three [categories of] women use a *mokh*¹¹⁰ in intercourse: A minor, a pregnant woman, and a nursing woman.

Why can they use birth control?

The minor - because she might become pregnant, and as a result might die. A pregnant woman - because she might cause her fetus to degenerate into a sandal.¹¹¹ A nursing woman, because she might wean her child [prematurely] and cause him to die.¹¹²

Who falls into the category of a minor?

And who is a minor? From the age of eleven years and one day until the age of twelve years and one day. One who is under, or over this age must carry on her intercourse in the usual manner.¹¹³ This is the opinion of Rabbi Meir. The Sages say: The one as well as the other carries on her marital intercourse in the usual manner, and mercy will be vouchsafed from heaven, for it is said [in the Scriptures], "The Lord preserves the simple (Psalms 116:6)."¹¹⁴

Why these age limitations?

Reason 1:

Since it has been stated, 'because she might become pregnant and as a result might die' it may be implied that it is possible for a minor to be pregnant and not die.

Refutation of Reason 1:

But, if so, one could imagine a case where a mother-in-law should be in a position to make a declaration of refusal,¹¹⁵ whereas we learned [in the

¹¹⁰ *Mokh* – Defined by Jastrow as an absorbent material such as a piece of cotton, hackled wool, or flax.

¹¹¹ Sandal– According to the Dictionary, the sandal refers to 'a flat fish', i.e., a flat, fish-shaped abortion due to superfetation. Superfetation refers to the formation of a fetus while a fetus is already in the uterus. The idea behind this is the fear that the sexual act will result in a pregnancy that will crush the fetus already in her womb, making the miscarried child appear flat like a sandal.

¹¹² The rationale here is that when the second child is born, the mother will only have enough breast milk for one child and will therefore allow the other child to starve from malnourishment.

¹¹³ This means that a married woman below the age of 11 and 1 day old is required to have sex without an absorbent sponge as well as married women above the age of 12 and 1 day.

¹¹⁴ While Rabbi Meir claims that young women who are between the ages of 11 and 1 day and 12 and 1 day should be able to use a sponge to prevent pregnancy, the Sages believe that these young women should not use protection, but rather should rely on God's mercy to protect them from death which might result from giving birth at such a young age.

¹¹⁵ The case above describes a situation in which the minor at the tender age of 11 or 12 becomes pregnant and gives birth and no death occurs. Now, the minor, as a parent, has the right to arrange the marriage for her baby and thereby become a mother-in-law

Mishnah], "One cannot say of a man's mother-in-law - the mother of his mother-in-law and the mother of his father-in-law - that they were found to be barren of that they made a declaration of refusal.

Reason 2:

Rather, read: Because she might become pregnant and die. Rabbah ben Liwai said: She is subject to an age limitation.¹¹⁶ Prior to that period she does not conceive at all; during that period she dies and her embryo dies; after that period both she and her embryo survives.

Refutation of Reason 2:

But is it really so? Surely Rabbah ben Samuel said: One cannot say of a man's mother-in-law, the mother of his mother-in-law and the mother of his father-in-law that they were found to be barren or that they made a declaration of refusal, since they have already given birth to children!¹¹⁷ — But [the reading], in fact, is: because she might become pregnant and as a result might die. But, [then, the previously mentioned] difficulty remains!

How else might we determine if a woman is a minor?

Rav Safra said: Children are like marks of puberty.

Others Say: Children are more conclusive proof than the marks of puberty. What practical difference is there between the two statements? That even for those who follow Rabbi Yehudah who stated, "Until the black predominates"¹¹⁸ admits [they are no longer minors] in the case of [bearing] children.¹¹⁹

The above section from the Yevamot 12b tells us two things: 1) There was a well-known form of birth control known as a *mokh* which was some sort of absorbent sponge,

herself. With her new status as a mother-in-law, she has a right to make a declaration of refusal that would contradict a law found elsewhere in the Mishnah. This argument is given to show one reason, other than the physical danger, why a child of this age should avoid pregnant.

¹¹⁶ Again, the age limitation here is between the ages of 11 and one day and 12 and one day.

¹¹⁷ He is using the same *mishnaic* verse to make a second argument. The first use of this passage was to show that a minor should not be allowed to have a child while she is still able to give a writ or refusal, in this case the same passage is being used to show that it is possible for some minors to bear children and we cannot call them incapable of having children if this is the case.

¹¹⁸ This refers to the appearance of pubic hair as the mark of puberty for a child.

Elsewhere Rabbi Yehudah argues that until the growth of pubic hair a child can exercise the writ of refusal.

¹¹⁹ This states that even those who normally agree with Rabbi Yehudah (in that pubic hair is the mark of adulthood) believe that if a child gives birth before the appearance of pubic hair, than the child is no longer considered a minor.

likely made of pressed cotton, which would be inserted into the vagina, much like a tampon, that could be used to absorb sperm and prevent pregnancy; and 2) the *baraita* taught that three categories of women should use the sponge to prevent pregnancy as well as the negative effects that might result should they become pregnant. These women include:

1. A minor, because she might die.
2. A pregnant woman, because she might become pregnant with a second child and have two children growing in her womb. This would result in a dangerous situation in which one fetus may crush the other in the womb.¹²⁰
3. A nursing woman, because if she gives birth to another child she may wean her first child prematurely and allow it to die of malnutrition.

The Rabbis then go on to debate whom exactly is a minor. The definition of a minor being between the ages of 11 and 1 day and 12 and 1 day is debated because some children go through puberty at earlier ages. An argument is made that this age limit should stand to ensure that a 12 year old does not become a mother-in-law while she is still able to make a writ of refusal, but the fact remains that some children do become pregnant before the age of 12 and 1 day.¹²¹ Other arguments are put forth; that a child is no longer considered a minor once pubic hair has appeared and that even a child who has no pubic hair is no longer considered a minor should she become pregnant. While the discussion of having sex with any child under the age of maturity is disturbing, this is not

¹²⁰ While this is extremely unlikely, there have been documented cases of women with two uteri who have become pregnant with children in both wombs.

¹²¹ Tamar Lewin. "In Bitter Abortion Debate, Opponents Learn to Reach for Common Ground." February 17, 1992. The New York Times. <
<http://query.nytimes.com/gst/fullpage.html?res=9E0CE7DF103BF934A25751C0A964958260>>. November 7, 2007.

the focus of our concern. Elsewhere in the Talmud there are passages that discourage sex with minors; here, however, the focus is a legal discussion that attempts to define who a minor is for the purposes of using a sponge as birth control.

In the case of a minor, the concern over pregnancy is with the safety of the mother. Pregnancy at such a young age would put the life of the mother in danger and therefore, it may be permissible to use a *mokh* to prevent pregnancy. In the remaining two situations the concern is not that of the health of the mother, but of the health of her offspring.

While for the vast majority of women, once you are pregnant, there is no chance that you could become pregnant simultaneously with a second child, there is a rare condition known as uterus didelphys in which a woman has two wombs.¹²² Our Rabbis describe such a case when discussing Judith, the wife of Rabbi Hiyyah:

¹²² This condition is very rare, according to BBC news ("Triplets for Woman With Two Wombs." BBC News. December 21, 2006. < <http://news.bbc.co.uk/go/pr/fr/-/2/hi/health/6199363.stm> > November 7, 2007) it affects one in 1,000 women in the UK. It is even rarer for these women to become pregnant in both wombs at the same time, an estimated 5 million to one, and yet there have been 70 recorded cases of women who have become pregnant in both wombs at the same time. In these rare cases, there is a real danger to the developing fetus should the woman become pregnant in her second womb (no matter how unlikely this may be).

Twenty-five percent of the time, a woman who is pregnant in both wombs simultaneously who makes it to 30 weeks will have to deliver prematurely, usually by cesarean section, before it gets so tight in each womb that the babies can't continue their growth. In most cases, neither womb can stretch enough to accommodate a full-term fetus.

This type of simultaneous pregnancy is quite different having twins from a single womb. In a case of a double pregnancy in two wombs, a woman can deliver the babies days, weeks or months apart since the wombs are totally separate. This can cause problems considering that a scheduled, premature cesarean section is a likely delivery method. Few obstetricians would want a woman to undergo abdominal surgery twice in a month. So if at least one baby has to be delivered via Cesarean section, the doctor will usually recommend delivering both babies at the same time. The result, in that case, is much like having twins -- the woman goes into the hospital and eventually leaves with two babies

Yehudah and Hezekiah were twins. One was completely developed at the end of nine months, and the other at the beginning of the seventh month [the implication is that the two were born three months apart]. Their mother Judith, wife of Rabbi Hiyyah, suffered agonizing pains during childbirth. When she recovered, she disguised herself and appeared before Rabbi Hiyyah. "Is a woman commanded to propagate the race?" she asked. "No," he answered. As a result of this conversation, she drank a sterilizing potion so that she would have no more children. When her actions finally became known, he exclaimed, "Would that you bore me only one more issue of the womb!"

The passage above from Yevamot 65b discusses the pain and anguish of Judith; however the argument for use of a *mokh* in situations of uterus didelphys is that of the danger to the fetus. The Rabbis permit the *mokh* to "a pregnant woman - because she might cause her fetus to degenerate into a sandal." The danger here is that a second fetus would press the already existing fetus to the point where it becomes flat like a sandal; this may refer to the shoe or a sandal-fish that is so named because of its flat body. In order to avoid this horrible situation, the *baraita* seems to allow for a pregnant woman to use an absorbent sponge to prevent any second impregnation.

The third category of woman who is permitted to use a *mokh* is a nursing mother. Here, the concern is not for the mother, but for the nursing child. The concern is that the nursing mother "might wean her child [prematurely] and cause him to die." The Rabbis stipulate that the normal nursing period is 24 months. During this time, a second pregnancy would endanger the infant and therefore should be avoided. According to Feldman, the fear behind the above law requiring the use of contraception during the nursing period is the fear that a second pregnancy may occur and affect her breast milk, resulting in either damage to the infant or weaning the child prematurely. This threat was

who are the same age. (Julia Layton. "If a Woman Has Two Wombs, Can She Get Pregnant in Both?" HowStuffWorks, Inc. < <http://health.howstuffworks.com/double-womb1.htm>> November 7, 2007.)

taken so seriously that Rabbi Eliezer, as we saw above in Yevamot 34b, recommended coitus interruptus during the two-year period; the suggestion is repeated by Rabbi Meir in the Tosefta.

Three kinds of women have intercourse with a *mokh*: a minor, a pregnant woman, and a nursing mother. A minor, because she may become pregnant and die. Who is a minor? A girl from 11 year and 1 day until 12 years and 1 day. One younger or older than that – one has intercourse in the normal way and he does not worry about it. A pregnant woman, because she may cause her fetus to become a sandal. A nursing mother, because she may kill her infant. For Rabbi Meir said, “The entire period of 24 months one threshes inside and scatters seed outside.”¹²³ And the Sages say, “One has intercourse in the normal way, and the Omnipresent will look out for him, as it is said, ‘The Lord protects the innocent.’”¹²⁴

Tosefta Niddah 2:6

The danger to the infant was believed to be so great, that Rabbi Yehudah Ayyas of early eighteenth-century North Africa and Italy argued that a woman could have an abortion to prevent pregnancy while nursing. As Feldman describes,¹²⁵ the rabbi was asked:

May a woman who has become pregnant during her nursing period be permitted an abortion to forestall the danger to her existing infant? He answered in the affirmative: The Sages differed with R. Meir on the likelihood of pregnancy at this time; now that that likelihood is a reality, she may take steps to avoid imminent risk.¹²⁶

Many responsa have been written on the above three categories of women which deal when it is appropriate for them to use contraception. Before we can look at any of these responsa and how they might apply to our modern world, we must first do a close examination of the text to determine the following: 1) if these three women are required

¹²³ The Rabbis are using familiar agricultural terms to describe the practice of coitus interruptus as a means to prevent pregnancy.

¹²⁴ Psalms 116:6.

¹²⁵ Feldman, *Birth Control*, 189.

¹²⁶ Judah Ayyas. *Responsa Beit Yehudah* (Leghorn, 1746) E.H., No. 14.

to use a *mokh* or merely permitted, 2) if other women are permitted to use this form of contraception, and 3) how would a woman use this device?

For this discussion, a close examination of the wording of Yevamot 12b is required. We see that Rabbi Meir says that three women “use a *mokh*” during intercourse. The question remains as to whether these three women **must** use a *mokh* or **may** use a *mokh*. We also see that the Sages disagree with him. However, we cannot ascertain the opinion of the Sages (which would be the accepted position) until we determine the position of Rabbi Meir. If Rabbi Meir meant that these three women must use a *mokh*, then the majority opinion would be that they are not required to use a *mokh*. If Rabbi Meir was saying that they may use a *mokh*, then the majority would be saying that these three women may not use a *mokh*. The reading of this passage has led to very lenient and very strict rulings on the use of birth control. Two rabbinic authorities, Rashi and Rabbenu Tam, provide different interpretations of the ruling.¹²⁷

In Rashi’s commentary to Yevamot 12b, he states:

“Has intercourse with a sponge.” [They are] permitted to place a sponge in the place of intercourse (into the vaginal canal) when they have intercourse in order that they do not become pregnant.

This text is significant in that it answers the question of if these three women **must** use the sponge or if the verse should be read they **may** use a sponge but have the option not to. Rashi reads Rabbi Meir as stating that these three women **may** use a *mokh* to prevent conception. Therefore, Rashi concludes that these three categories of women are singled out by Rabbi Meir as the only woman who have this option. Since it is clear

¹²⁷ The two are giving their own readings as to what Rabbi Meir implied. We cannot know for sure what Rabbi Meir intended as he does not make it explicit in any known texts.

by the passage that the Sages, who hold the majority opinion, disagree with Rabbi Meir, this would imply that Rashi believes the Sages forbade these three women from the use of contraception and required them to rely solely on heaven to protect them from danger. In addition, this text is significant in that Rashi is informing the reader how to properly use the sponge as a contraceptive device. Rashi describes the use of the *mokh* as being in the vaginal canal during the act of intercourse.

The Tosafot to Yevamot 12b have a slightly different reading.

שלוש נשים משמשות במוך: פי' הקונטרס מותר לשמש במוך אבל שאר נשים אסור משום השחתת זרע אע"ג דלא מיפקדה אפריה ורביה וכן משמע בנדה דתנן בפ' כל היד המרבה לברוק בנשים משובחת באנשים תקצץ ומפרש בגמרא. משום דנשים לאו בנות הרגשה נינהו משמע דאי הוו בנות הרגשה הוי אסור ומיהו מצינו לפרש דלאו בנות איסור הרגשה נינהו ור"ת אומר דלפני משמים ודאי אסור ליתן שם מוך דאין דרך תשמישים בכך והרי הוא כמטיל זרע על העצים ועל האבנים כמשמטיל על המוך. אבל אם נותנת מוך אחר תשמיש אין נראה לאסור דהאי נברא כי אורחיה משמש מידי דהוה אקמנה ואילונית אית סרו בתשמיש משום דלאו בנות בנים נינהו והאשה שנותנת אח"כ מוך לא הוזהרה אהשחתת זרע כיון דלא מיפקדה אפריה ורביה משמשות במוך דקתני הכא היינו צריכות לשמש במוך.

THREE WOMEN HAVE INTERCOURSE WITH A SPONGE:

According to the Kuntres (Rashi's commentary), they are permitted to have intercourse with a sponge¹²⁸ however, the remaining women are forbidden of the destruction of seed, despite the fact that it is not commanded upon them to be fruitful and multiply. Thus they are scrupulous concerning their impurity according to the teaching "The hand that oftentimes examines women is, amongst women, praiseworthy; but amongst men let it be cut off,"¹²⁹ so explains the Gemara.

Because women are not sexual creatures, what is the meaning of –"If she has a sexual desire" (and this is why she uses the *mokh*) it is forbidden? And we find those who explain that women are not forbidden (to use the *mokh*) if they are desirous.

Rabbeinu Tam says that to place the sponge there (inside the vaginal canal) before intercourse surely is forbidden seeing that intercourse in this manner is not the normal way. [It would be as if] he throws his seed on twigs and stones [when he] throws his seed onto a sponge.

¹²⁸ These three women are allowed to use a sponge. However, they are not required to use a sponge when engaging in intercourse.

¹²⁹ Mishnah, Niddah 2:1

However if she puts the sponge in after intercourse it does not appear to be forbidden for the man, for it is the custom to have intercourse also with minors and barren women without ceasing from intercourse even though it is not that daughters and sons is meant [by the act]. Furthermore, the woman that places in the sponge after the fact is not warned on the destruction of seed since she is not commanded to be fruitful and multiply. “She has intercourse with a sponge” which we read here means, “are obligated to use a sponge.”

This is a highly significant text in its reference to both Rashi and Rabbenu Tam.

The Tosafot quote Rashi as stating that the three women mentioned **may** use birth control and therefore, this means that the other women cannot. However, Rashi is under the impression that the woman would insert the sponge **before** the coital act. On the other hand, Rabbenu Tam claims that these three women **must** use a form of birth control and that other women can choose if they would like to use the sponge or not. Rabbenu Tam requires birth control in these three cases because in each situation, as the Talmud explains elsewhere, the life of either the mother or a child would be placed into great danger should she become pregnant. According to Rabbenu Tam’s reading, the Sages, who do not agree with Rabbi Meir’s finding, would then simply say that no one is required to use birth control. However, Rabbenu Tam insists that the sponge be inserted only **after** the coital act has taken place. While the interpretation put forth by Rabbenu Tam is more liberal than Rashi on the matter of who can use the *mokh*, his method of inserting the *mokh* only after the sexual act would fail to prevent pregnancy.

The conclusions are then as follows:

| Commentator | Opinion of Rabbi Meir | Opinion of Sages | Time or insertion | Other women |
|-------------|-----------------------|-------------------------|-------------------|-------------------------|
| Rashi | May use <i>mokh</i> | May not use <i>mokh</i> | Pre-coital | May not use <i>mokh</i> |
| Rabbenu Tam | Must use <i>mokh</i> | Need not but may | Post-coital | Cannot determine |

Between the argument of Rashi and Rabbenu Tam the Tosafot state an interesting line that presumes that it is not normal for a woman to be desirous of sexual intercourse. In the case of the three women cited in the Mishnah, their desire is irrelevant because their permission to use a *mokh* is based on the physical well being of the woman herself, her nursing infant, or the fetus already in her womb. The Tosafot read Rashi as saying that women who desire sex and therefore want to use a *mokh* are surely forbidden, while Rabbenu Tam would permit these women to use contraception.

Therefore, we are left with Rashi and Rabbenu Tam on opposite sides of the spectrum. According to Rashi the *mokh* is a pre-coital device that would prevent pregnancy. Rashi reads that passage as stating that Rabbi Meir claimed that these three categories of women are merely permitted use the *mokh*. Since the Sages disagreed, the law would then say that it is not permissible for any woman to use the *mokh*. On the other hand, Rabbenu Tam sees a pre-coital *mokh* as unnatural intercourse, and therefore, only permits the use of the *mokh* as a post-coital act. Rabbenu Tam reads the passage as saying that Rabbi Meir would require these three categories of women to use the *mokh* because of the mortal danger that pregnancy would place on the woman, her infant, or fetus. The Sages, by this line of thinking, simply do not require these women to use birth control. Other women are not mentioned in this argument, so one could interpret the passage, as many rabbinic authorities have, as permitting the use of the *mokh* for other women.

These two early rabbinic authorities laid the groundwork for subsequent interpretation and ruling on birth control within a halakhic framework. A combination

of the two interpretations can lead to either a very strict or a very lenient ruling on the permissibility of birth control.

The most permissive view would combine the opinions of Rashi and Rabbenu Tam by taking Rashi's opinion on the proper use of the *mokh*, as a pre-coital device, and the permissibility of Rabbenu Tam as stating that these three categories of women must use the *mokh* while all other women may follow their own discretion. The idea that these three women would be required to use the *mokh* is not so far fetched. We saw earlier that Rabbi Eliezer permitted coitus interruptus for a nursing woman to prevent conception. Also, according to the Jewish laws of *pikuah nefesh*, the duty to protect life, actions should be taken to prevent mortal danger.

We will now turn to rabbinic sources that side with the more lenient readings.

LENIENCY IN THE USE OF THE *MOKH*

In the Teshuvot Ha-Gaonim, Yevamot Hai (ben Sherira) Gaon (939-1038) makes an argument in support of Rabbenu Tam's reading of the permissibility of the use of the *mokh* by the three categories of women.

In the matter of the Three Women, the Sages did not forbid them the use of the *mokh*; they merely said they do not have to [use it]. Most certainly they are permitted to use it. Women who do not wish to rely on "Mercy will be vouchsafed from heaven" – they and their husbands should use the *mokh* and there is no fear at all. And as to the suggestion of the Sages that one need only supplement the child's diet, you say that someone tried it in this generation and the child was not adversely affected . . . but, when she uses the *mokh* so that she does not become pregnant she need have no fear [at all] even not that the supplementation of diet would be necessary.

Here, Hai Gaon makes it clear that even if the husband, who is required to procreate and forbidden to waste his seed, knows about the use of the *mokh*, it is still permitted because in this case they are avoiding mortal danger by using this precaution. Yet, in Responsa

Sh'elat Yaavetz.¹³⁰ Rabbi Jacob Emden (1697-1776) permits a man to use contraception whether or not seed is “wasted.” He argues that since the ejaculation is during the act of marital relations, the act is no longer “in vain.” He says “the prohibition of *hash-hatat zera* is annulled of itself for reasons of the mitzvah.”

A second lenient reading is provided by Rabbi Menahem Shneirson of White Russia (1789-1866). Here, Shneirson takes a close look at the three categories of women and arrives at a permissible reading concerning the *mokh*.

The Creator so ordained human nature that the Three Women do not ordinarily conceive . . . However, in cases of ordinary risk the Sages certainly would agree with R. Meir that a *mokh* must be used. The author of *Hemdut Shlomo* permits a *mokh* in case of mortal danger. But, according to the way I see it, *mokh* should be permitted even where risk is only possible, as the text says with regard to the nursing mother: lest she wean and lest he die – which is a double “lest.” She may wean and yet it may not hurt him; or she may, as the Talmud suggests elsewhere, hire a nurse or supplement his diet. But with danger of another kind, even the Sages would agree with what R. Meir says about a nursing mother; for pregnancy to such a woman would be much more likely than to a nursing mother.¹³¹

In the sixteenth century, Solomon Luria, the Maharshal, gave the most permissive ruling within the bounds of halakhic discussion.

THREE WOMEN ARE PERMITTED TO USE A MOKH: According to Rashi they are permitted to put in a *mokh* in the place [of intercourse] so that they will not become pregnant. A minor lest she become pregnant and lest she die. A pregnant woman lest she become pregnant a second time and the second fetus press on the first fetus and lessen its form into that of a sandal. And a nursing woman lest she become pregnant and wean her child early and her die.

And who is a minor? From the age of eleven years and one day until the age of twelve years and one day. One who is younger than this does not become pregnant and one who is older than this does not die. And the Tosafot wrote in the name of Rashi and according to his

¹³⁰ Jacob Emden. *Sh'elat Ya'avetz*. (Altona, 1739) No. 43.

¹³¹ Menachem Mendel Schneirson. *Tzemah Tzedek (Hahadashot)*. Even HaEzer, Vol. I, No. 89.

explanation from this the remaining [women are forbidden] because of the destruction of seed.

Women are not obligated to be fruitful and multiply and thus there are those who say, "The hand that oftentimes examines women is, amongst women, praiseworthy; but amongst men let it be cut off"¹³² - explains the Gemara.

Because women are not sexual creatures, what is the meaning of - "If she has a sexual desire" (and this is why she uses the *mokh*) it is forbidden? We find those who explain that women are not forbidden (to use the *mokh*) if they are desirous. And furthermore we know that it is permitted to have sex with a minor or a barren woman despite the fact that there will be no sons or daughters. Rather these three **must** have intercourse with a sponge because of danger. And the Sages say they do not always have to have intercourse with a sponge. So, the remaining women also may have intercourse with a sponge post-coital to clean the seed. However to put the sponge in the very place [of intercourse] during intercourse is forbidden because of the destruction of seed [and it is] as if he throws his seed on trees and stones and this is not the normal way to have intercourse.

But it seems to me that although Mordecai represented Rivan¹³³ as holding with Rabbenu Tam [regarding post-coital *mokh*] and RaN¹³⁴ too so holds, still, Rashi's interpretation is the correct one. Pre-coital *mokh* is assumed and it is not improper; it is still normal intercourse, for one body derives its natural gratification from the other. It is no different than coitus with a minor. As is evidenced by what Ri upheld according to Rashi and is concluded from Resh Niddah¹³⁵ where pre-coital *mokh* is taken for granted.

And I wonder at Rabbenu Tam - how it could have occurred to him to interpret otherwise than is obvious from Resh Niddah.

However, the other point made by Rabbenu Tam is correct that the remaining women are permitted the *mokh* and three women "must" . . . just as Asheri¹³⁶ said . . . It may also be inferred from Asheri's language that pre-coital *mokh* is assumed . . . Resh Niddah implies also that other women may, for it says, "what about women who are using the *mokh*?" not "what about the three women?" That any woman may use the *mokh* is

¹³² Mishnah, Niddah 2:1.

¹³³ Meaning that Rabbi Mordecai's explanation made it appear as though Rivan, Rabbi Yehudah ben Natan - Rashi's son-in-law, agreed with Rabbenu Tam that only post-coital *mokh* was permissible.

¹³⁴ RaN is an acronym for Rabbi Nissim ben Reuven of Gerona (1320-1380).

¹³⁵ Niddah 3a. We will look at this in the next paragraph.

¹³⁶ Asheri, also known by the acronym RoSh, refers to Rabbi Asher ben Jehail who edited collections of Tosafot from the important French schools (~1250-1328).

the correct inference. The law follows the Sages that the three women 'need not' but the others "may."¹³⁷

Before any further discussion, we will look at the text Luria refers to above,

Niddah 3a. In this passage, the Talmudic discussion is attempting to determine how to recognize the onset of a woman's menstruation. In the passage, Shammai seems to believe that a woman can detect the exact onset of menstruation while Hillel thinks she cannot. Here we see the reasons for each school of thought's point of view.

תלמוד בבלי מסכת נדה דף ג עמוד א
ושמאי - כותלי בית הרחם לא מוקמי דם. משמשת במוך מאי איכא
למימר? אמר אביי: מודה שמאי במשמשת במוך; רבא אמר: מוך נמי,
אגב זיעה מכויץ כויץ; ומודה רבא במוך דחוק.

And Shammai? — The walls of the womb do not hold blood back. But what can be said for a woman who uses a *mokh* in her marital intercourse? Abaye replied: Shammai agrees in the case of one who uses a *mokh*, Raba replied: A *mokh* too [does not affect Shammai's ruling, since] perspiration causes it to shrink. Raba, however, agrees in the case of a tightly packed *mokh*.

Niddah 3a

As you can see, this text is extremely significant to our discussion of the *mokh*.

Here, Rabbis Hillel and Shammai are arguing about when a woman can detect the onset of her menstruation. Their debate concerns whether, in the case of a woman with an irregular menses, her period of impurity begins with the actual detection of blood (so argues Shammai) or if it should be said to have begun earlier and therefore retroactively render anything she may have touched impure (Hillel). Within the discussion, the case of a woman using a *mokh* as contraception comes into consideration. They question if a woman who was using this device for contraception would be able to detect if her menses had begun considering the *mokh* might absorb some of the blood.

¹³⁷ Solomon Luria (d.1612). *Yam Shel Sh'lomoh*. (Altona, 1739) 1:8.

For our purposes, this text is significant, not for the question of the onset of menstruation, but for its implications about the use of the *mokh* for contraception. Here, *mokh* is assumed to be used “as a matter of course”¹³⁸ without any specific reference to the three categories of women. Also, it appears that the *mokh* is presumed to have been inserted as a pre-coital act and remained in place during the sexual act. This passage is cited by many authorities, including Rashi, Ri, Asheri as evidence that the *mokh* is always meant to be used pre-coitus.

With this passage in mind, we can now fully understand the argument put forth by Luria. In his reading of the text, he rejects Rabbenu Tam’s assumption that the *mokh* is only inserted post-coitus, by using the above passage and previous rabbinic authorities’ interpretations thereof. Luria agrees with Rashi that the *mokh* is inserted prior to the sexual act. Luria does not believe that using the *mokh* as a pre-coital device results in wasting of the seed and therefore has no reason to prohibit the use of the device. Luria agrees with Rabbenu Tam’s interpretation that Rabbi Meir should be read as saying that the three women must use the *mokh* and that, when the Sages disagree, they are ruling that these women are not required, but are still permitted, to use contraception. According to Luria’s reading, the Sages have no reason to forbid other women from using the *mokh* and therefore any woman is permitted to use the device.

While Luria and other rabbinic authorities have ruled permissively on the issue of the use of the *mokh*, others have read the same passages and came to very different conclusions.

¹³⁸ Feldman, Birth Control, 176.

Moses Sofer (1762-1839) was one of the most important halakhic figures in the modern period. He gives a very strict reading concerning the use of the *mokh*, forbidding its use to a woman whose life had been in danger many times as a result of pregnancy.

You asked me concerning a woman who is in danger during pregnancy and nursing and several times has been under great threat, whether she is permitted to use a *mokh* during her intercourse so that she would not become pregnant . . .

Indeed, by your question it is made clear that the *mokh* would be in place during intercourse itself, and I have not found anyone who would permit that at all. Therefore, I see no reason to enter into a detailed discussion about this. . .

The law is that during intercourse, in my opinion, [a *mokh*] may not be permitted, but after it is possible to be more lenient. But with the husband's permission.¹³⁹

Moses Sofer, also known as the Hatam Sofer, gives a very strict reading. He does not permit the use of the *mokh* as a pre-coital device, even if the life of the wife is in danger. He then adds the restriction that to use this device post-coitus, the woman is required to gain the permission of her husband. This adds a complication in that, since the man is required to procreate, he should not knowingly allow his seed to go to waste. As we will see in later chapters, it is often the case that when a man does not know that the woman is using birth control that it is most easily permissible. As Rabbi Hanokh Agus of Vilna states in his responsum of the early 1900's:¹⁴⁰

Hash-hatat zera is a prohibition entirely independent of *p'ru ur'vu* . . . It is determined by the manner of the seed's emission from the body. After it has been discharged and has entered the womb – then what the woman is or is not permitted to do depends upon the separate question of her duty of *p'ru ur'vu*.

¹³⁹ Moses Schreiber (Sofer.) *Hatam Sofer*, (Vienna, 1855) Yoreh De'ah 172.

¹⁴⁰ Hanokh Agus. *Sefer Marheshet* Vol.II. (New York, 1931) No. 9:2:3.

Application of this ruling would allow a woman, who we have previously established as not being required to propagate, to take actions to prevent insemination from taking place.

Even more restrictive of a ruling comes from Rabbi Akiva Eger (1761-1837) of Posen in Prussia. In answer to a question of the use of the *mokh* for a woman who suffered during childbirth, he goes further than the Hatam Sofer and prohibits even post-coital *mokh*.¹⁴¹ He determines that post-coital *hash-hatat-zera* is applicable to women and therefore, he forbids the use of even post-coital *mokh*. His conclusion is so extreme, that later commentators conclude that he must have been discussing a woman who suffered only from pain, not a woman who was in danger. *Hazon Ish*¹⁴² (1878-1953) defends Eger saying, "If he were talking about danger, he would have forbidden coitus without the *mokh*, or even with the kind of *mokh* that he describes, which is not effective contraception."¹⁴³

These restrictive views, and the fact that Luria's ruling was not well known,¹⁴⁴ led to many other rabbinic authorities feeling as if they had no option but to be restrictive when it came to the use of birth control.

"But Hatam Sofer, Akiva Eger, and *Im'rei Esh*¹⁴⁵ have already closed off that path and have permitted only post-coital *mokh*."¹⁴⁶

¹⁴¹ Akiva Eger. *Akiva Eger*. (New York, 1945) No. 71.

¹⁴² Rav Avraham Yeshaya Karelitz came to be known by his greatest work – *The Hazon Ish*.

¹⁴³ Translation provided Feldman. *Birth Control*, *Hazon Ish* E.H., 37, 5.

¹⁴⁴ Through my research I have found that many authorities that were either contemporaries of, or lived shortly after Luria, were not aware of his writings. There are halakhic authorities that conclude that previous authorities must have been unaware of Luria or else they would not have come to such restrictive readings in regards to the use of the *mokh*.

“But Beit Meir, Sofer, Eger, and Binyan Tziyyon have all forbidden it, and who would come after them and permit it?”¹⁴⁷

These authorities seem to be completely unaware of the permissive ruling of Rabbi Luria, a ruling that would add support to the permissive ruling of Hai Gaon, and allow women in danger to avoid an unwanted pregnancy through an effective form of birth control.

¹⁴⁵ *Im'rei Esh* refers to Shmuel Eliyahu Taub (1905-1984), the Modzitzer Rebbe who was also referred to by the name of his famous book entitled *Imirei Ish*.

¹⁴⁶ Shneur Zalman of Lublin. *Responsum Torat Hesed*. (Jerusalem, 1909) Vol. II, No.44. While this seems to contradict what Eger said above, he is reading this with the same assumption as the *Hazon Ish*, that Eger would have required the use of the *mokh* in cases of danger.

¹⁴⁷ Rabbi Avraham Ashk'nazi, respnsum No.5 in Shalom Gagín's Responsa *Yishmah Lev* (Jerusalem, 1878.)

Lesson 6a:

Must or May: Three Women and the Mokh

INTRODUCTION

Living in a Christian world, most American's think that it goes against the teaching of the Bible to use birth control. While there is a biblical injunction to be fruitful and multiply, the rabbis recognized that there might be situations in which it would not be optimal for a woman to get pregnant; as a result, the rabbis permitted the use of birth control to three categories of women whose pregnancy would pose a mortal threat to either the mother, nursing infant, or fetus.

In this lesson, we will be introduced to the *mokh*, an ancient form of birth control, and look at rabbinic rulings surrounding the use of the *mokh*. Arguments for and against the use of the *mokh* are used by later rabbinic authorities to determine the proper ruling on all subsequent forms of birth control.

ENDURING UNDERSTANDINGS

- There is room in the Jewish tradition for the belief that the woman ultimately has control of her own body in matters of procreation.
- Jewish tradition can inform my choices about procreation and birth control.
- Rabbis have written laws in-keeping with Jewish values, and yet they often come to very different conclusions.

ESSENTIAL QUESTIONS

- How can Jewish tradition support and inform my view on the use of birth control?
- How can Jewish tradition provide me with comfort in choices I have made in regard to the use of contraceptives and other forms of birth control?
- How does my personal experience fit into a Jewish framework?
- Who has a say over what I do with my body?

QUESTIONS TO BE ADDRESSED

- Who has the right to make the choice of when and where to use birth control?
- What factors should be considered when deciding whether or not to use birth control?
- What can I learn from Jewish tradition that will teach me how to make this choice responsibly?
- What is my personal understanding of this issue? My feelings about this topic?
- How can Jewish tradition help support my opinion?

EVIDENCE OF UNDERSTANDING

- Students will identify instances in which pregnancy would not be an optimal outcome of a sexual union.
- Students will role play and determine where to draw the line, if anywhere, on permitting the use of birth control.
- Students will be able to compare the examples given to events in their own lives
- Students will be able to defend their position on the issue with support from Jewish sources

LESSON OVERVIEW

- Set Induction (10 minutes)

- Text Study (40 minutes)
- Review (5 minutes)
- Wrap-up and journal assignment (5 minutes)

MATERIALS NEEDED

- Their personal journals (given out at the beginning of the year-long curriculum)
- Copies of Handouts 15, 16, 17, 18, and 19.
- Post-it notes

LESSON VOCABULARY

Katan – A *katan* is a minor. In the Talmud, this is generally defined as a woman below the marital age. As you can see through the discussion in Yevamot 12b, the Rabbis do not all define this in the same manner. Some believe a woman is a *katan* until the age of 12 and one day; some believe that a woman is a *katan* until two pubic hairs appear, while others believe she is a *katan* until she is able to bear children and is thus defined in this manner.

Sandal – This is used to describe a child who they believed might be flattened or crushed in the womb by a second pregnancy and would therefore appear like a sandal.

Mokh - An absorbent material such as a piece of cotton, hackled wool, or flax which is inserted vaginally to absorb sperm.

LESSON PLAN

Set Induction (10 minutes)

1. Do a short welcome and check-in.
2. Explain that today we are going to begin our study of the rabbinic views on birth control. Today's lesson will focus on a device called the *mokh*. This is the most important lesson for our purposes. All subsequent rulings on birth control flow from the rabbinic interpretation of the proper use of this device.
3. Hand out quiz (Handout 15). Allow the students to work on the quiz by themselves for 2-3 minutes.
4. Discuss the difficulties in answering the questions.
5. Ask: What questions do you have as a result of this quiz? (List the questions on the board.)
6. Say: Today we are going to look at some texts that discuss birth control. Hopefully, by the end of the lesson, or the course, we will be able to answer these questions.

LEARNING ACTIVITIES

Text Study (40 minutes)

1. Introduce the *mokh*. The *mokh* is an absorbent sponge, much like a tampon that is made of pressed cotton, wool, or flax. It is inserted vaginally to absorb sperm. We will now read a text concerning the use of the *mokh* which delineates three categories of women who are permitted to use this form of contraception.
2. On the board as a class answer the following question: What are some of our modern reasons for permitting the use of birth control?
3. Pass out handout 16.

4. Answer the questions given as well as other questions that emerge from the text.
5. Compare who we would allow to use birth control to the 3 women of the text. (You may need to explain further why the Rabbis wanted to prevent these three types of women from getting pregnant.)
6. Point out that there is ambiguity in the text as to if Rabbi Meir is saying that the three women **may** or **must** use birth control. Say that the law in general will follow the ruling of the sages, and all we know is that the sages did not agree with Rabbi Meir, therefore we must answer the question of what Rabbi Meir meant before we can learn about who is permitted to use the *mokh*.
7. Ask: Who remembers where we look for answers to questions we have about the meaning of the Talmud? (Rashi, commentaries, etc.)
8. We will now look at two rabbinic authorities' interpretations of the text and see what they mean.
9. Hand out the chart (handout 17) and Handout 18 of both Rashi and Rabenu Tam's opinions. The completed chart is provided in the proceeding chapter. Ask the students to fill in the chart in *hevrutah* as they go through the text study.
10. Give 5-7 minutes for text study.
11. Come together and check that the students have filled their charts correctly.
12. Ask: How might one combine the ideas of Rashi and Rabbenu Tam to make a more accepting and effective approach to the use of birth control?
13. Hand out copies of restrictive and lenient readings from Handout 19.
14. Show example of restrictive reading.
15. Map out the idea put forth by Solomon Luria in his Yam Shel Shlomo, who lived from 1510-1574.
 - a. Solomon Luria believed that you should start with today's interpretations and work your way back to the sources. Therefore, start by asking the women their opinion on who should be able to use birth control and when it the optimal time to employ its usage?
 - b. Note in our text that both Rashi and Rabbenu Tam put forth good arguments and we can take from both of them:
 - i. We take from Rabbenu Tam that the Talmud must mean that there three kinds of women are required to use birth control and that any other woman is not required but may use it if she wishes to.
 - ii. We take from Rashi that a woman should use contraception prior to the act of intercourse or else it will not be affective.
16. Share with the women that this is the opinion of Rabbi Solomon Luria and that the Rash agrees with him, making this a valid, informed, Jewish approach for all Jews, even the ultra-orthodox, to take when making the choice over whether or not they should use birth control.
17. If there is time, use the list of who the class would permit to use birth control in the modern world and see if Luria and/or Hatam Sofer would permit them to use the *mokh*.

REVIEW (5 minutes)

Revisit the quiz and as a class discuss the answers as we know them now. Note the following:

1. Men, including clergy members, are required to be fruitful and multiply. Women are not.
2. All of the Rabbis permit the use of birth control for a minor, a pregnant woman and a nursing woman. While Rashi believes only these three women may use birth control, which would mean that Rashi believes the Sages say that these three do not, there are rabbis who interpret the passage today as permitting all women to use birth control.
3. A woman who is informed about the above opinions has complete control over her own reproductive choices in regard to birth control use.
4. We will apply what we have learned in this lesson to other forms of birth control in our remaining lessons.

Wrap-up

Go to the questions on the board and see if they have all been addressed. If not and they seem to be good questions. You may want to bring in answers for them in the next meeting or address the questions via email. Some may be answered in future lessons.

Lesson 6b:
Birth Control: Who's in control?

INTRODUCTION

Living in a Christian world, most American's think that it goes against the teaching of the Bible to use birth control. While there is a biblical injunction to be fruitful and multiply, the rabbis recognized that there might be situations in which it would not be optimal for a woman to get pregnant; as a result, the rabbis permitted the use of birth control in these situations. In order to avoid the complications that would surround going against the command for *privityah v'riviah*, the rabbis concluded that the command to be fruitful and multiply was only on the husband, this puts the woman in control of her own procreation. In this lesson, we will look at texts that discuss which women may use birth control as well as see two different forms of birth control employed at that time. While many rabbis do not agree on the permissibility of birth control, there is room within their interpretations for both the most conservative and the most liberal of views.

ENDURING UNDERSTANDINGS

- There is room in the Jewish tradition for the belief that the woman ultimately has control of her own body in matters of procreation.
- Judaism believes that it is procreation is of the utmost importance.
- Jewish tradition can inform my choices about procreation and birth control.
- The Rabbis that have written the laws in-keeping with Jewish values, and yet they often come to very different conclusions.

ESSENTIAL QUESTIONS

- How can Jewish tradition support and inform my view on the use of birth control?
- How can Jewish tradition provide me with comfort in choices I have made regarding in regard to the use of contraceptives and other forms of birth control?
- How does my personal experience fit into a Jewish framework?
- Who has a say over what I do with my body?

QUESTIONS TO BE ADDRESSED

- Who has the right to make the choice of when and where to use birth control?
- What factors should be considered when deciding whether or not to use birth control?
- What different kinds of birth control were recognized by the rabbis?
- What can I learn from Jewish tradition that will teach me how to make this choice responsibly?
- What is my personal understanding of this issue? My feelings about this topic?
- How can Jewish tradition help support my opinion?

EVIDENCE OF UNDERSTANDING

- Students will identify instances in which pregnancy would not be an optimal outcome of a sexual union.
- Students will problem solve situations
- Students will be able to compare the examples given to events in their own lives
- Students will be able to defend their position on the issue with support from Jewish sources

LESSON OVERVIEW

- Set Induction (10 minutes)
- Text Study (40 minutes)
- Review (5 minutes)
- Wrap-up and journal assignment (5 minutes)

MATERIALS NEEDED

- Their personal journals (given out at the beginning of the year-long curriculum)
- Copies Handouts 15, 20
- Post-it notes

LESSON VOCABULARY

Katan – A *katan* is a minor. In the Talmud, this is generally defined as a woman below the marital age. As you can see through the discussion in Yevamot 12b, the Rabbis do not all define this in the same manner. Some believe a woman is a *katan* until the age of 12 and one day; some believe that a woman is a *katan* until two pubic hairs appear, while others believe she is a *katan* until she is able to bear children and is thus defined in this manner.

Sandal – This is used to describe a child who they believed might be flattened or crushed in the womb by a second pregnancy and would therefore appear like a sandal.

LESSON PLAN

Set Induction (10 minutes)

7. Do a short welcome and check-in.
8. Explain that today we are going to learn about the rabbinic view on birth control.
9. Hand out quiz (Handout 15). Allow women to work on the quiz by themselves.
For 2-3 minutes
10. Discuss the difficulties in answering the questions.
11. Ask: What questions do you have as a result of this quiz? (List the questions on the board.)
12. Say: Today we are going to look at some texts that discuss birth control.
Hopefully, by the end of the lesson, or the course, we will be able to answer these questions.

LEARNING ACTIVITIES

Text Study (40 minutes)

1. Hand out the text study work sheets, pages 1 and two from Handout 20.
2. Do one as a class. Answer the questions given as well as other questions that emerge from the text.
3. Allow the women share their list of requirements they came up with that a woman should meet before having a child. Have one woman organize the post-it notes into common themes and ideas.
4. Discuss: What are the broadly held beliefs we have about who should have children? Did our mothers, and those of us who are mothers, fit these criteria? How do our beliefs fit into the Rabbis' ideas from Yevamot 12b?

5. Go over the text studies on pages 3 and 4 of Handout 20. How might the women combine the ideas to make a more accepting approach to the use of birth control?
6. Map out the idea put forth by Solomon Luria in his Yam Shel Shlomo, written in the 17th century.
 - Solomon Luria believed that you should start with today's interpretations and work your way back to the sources. Therefore, start by asking the women their opinion on who should be able to use birth control and when it the optimal time to employ its usage?
 - Note in our text that both Rashi and Rabbenu Tam put forth good arguments and we can take from both of them.
 - We take from Rabbenu Tam that the Talmud must mean that there three kinds of women are required to use birth control and that any other woman is not required but may use it if she wishes to.
 - We take from Rashi that a woman should use contraception prior to the act of intercourse or else it will not be affective.
7. Share with the women that this is the opinion of Rabbi Solomon Luria and that the Rash agrees with him, making this a valid, informed, Jewish approach for all Jews, even the ultra-orthodox, to take when making the choice over whether or not they should use birth control.

REVIEW (5 minutes)

Revisit the quiz and as a class discuss the answers as we know them now. (For the sake of time, other forms of birth control were not discussed. Other forms mentioned include tonics and coitus interruptus. "In the Talmud, there are several discussions of a so-called 'cup of roots' or sterility potion. In the Talmud Yevamot 65b, we find the following: "Judith, the wife of Hiyya, having suffered agonizing pains of childbirth, changed her clothes [on recovery] and appeared (in her disguise) before Rabbi Hiyya. She asked 'Is a woman commanded to propagate the race?' He replied 'No.' Relying on this decision, she drank a sterilizing potion."¹⁴⁸) Note the following:

1. Men, including clergy members, are required to be fruitful and multiply. Women are not.
2. Coitus interruptus is discussed in the Talmud but it is frowned upon as it would be the man spilling the seed and the man is required to be fruitful and multiply. The use of the sponge is what we studied today and we learned that it is required for women who are minors, pregnant, or nursing and is an option for any other woman. By the rational given for permitting the use of the sponge, oral contraceptives would be permitted while it may be argued that a condom would not be since the man would therefore not be fulfilling his obligation.
3. All of the Rabbis permit the use of birth control for a minor, a pregnant woman and a nursing woman. While Rashi believes only these three women may use

¹⁴⁸ Ronald H. Isaacs. "Procreation and Contraception." Reprinted from Every Person's Guide to Jewish Sexuality. (Jason Aronson Publisher.) MyJewishLearning.com. <http://www.myjewishlearning.com/ideas_belief/sex_sexuality/Overview_Judaism_And_Sexuality/Purpose_And_Meaning/Sex_Contraception_Isaacs.htm>. October 6, 2007.

birth control. and the sages say that even these three don't in our passage, our rabbis interpret the passage today to permit all women the use of birth control.

4. A woman who is informed about the above opinions has complete control over her own reproductive choices in regard to birth control use.

Wrap-up

Go to the questions on the board and see if they have all been addressed. If not and they seem to be good questions. You may want to bring in answers for them in the next meeting or address the questions via email.

Journal reflection questions: How are my beliefs about birth control reflected in the Jewish texts? What argument might I give a man who felt he should be able to control my reproductive decisions? How does the evolution in law, and the way it is interpreted in Judaism, support my approach to controversial issues? How does this evolution support my choice to be a progressive Jew?

Chapter 7: The Sterilization Libation

Even in the days of the Talmud, there was more than one way to prevent pregnancy. Equally important to the understanding of modern rabbinic interpretation of birth control is the use of a sterilization potion mentioned in the Talmud. This *kos shel iqarin*, or “cup of roots,” which renders the woman who consumes the substance sterile, was unobjectionable even to the stricter school of thought.

A Little Vocabulary . . .

This cup of roots is described as a *kos iqarin* in the Mishna and Gemara to Shabbat 109b and 110a.

תלמוד בבלי מסכת שבת דף קט עמוד ב

משנה. אין אוכלין איזביון בשבת, לפי שאינו מאכל בריאים. אבל אוכל הוא את יועזר, ושותה אבוברואה. כל האוכלין אוכל אדם לרפואה וכל המשקין שותה, חוץ ממי דקלים וכוס עיקרין, מפני שהן לירוקה. אבל שותה הוא מי דקלים לצמא, וסך שמן עיקרין שלא לרפואה.

MISHNAH. We may not eat Greek hyssop on the Sabbath because it is not the food of healthy people. However, we may beat *yoezer* and drink *abub ro'eh*. A man may eat any kind of food as a remedy, and drink any liquid except water of palm trees and potion of roots (*kos iqarin*) because they are a remedy for jaundice; but one may drink water of palm trees for his thirst and rub himself with oil of roots without medical purpose.

Shabbat 109b

תלמוד בבלי מסכת שבת דף קי עמוד א

וכוס עקרין. מאי כוס עקרין? אמר רבי יוחנן: לייתי מתקל זוזא קומא אלכסנדריא, ומתקל זוזא גביא גילא, ומתקל זוזא כורכמא רישקא, ולישחקינהו בהדי הדדי. לזבה - תלתא בחמרא ולא מיעקרא, לירקונא - תרין בשיכרא ומיעקרא. לזבה תלתא בחמרא ולא מיעקרא

“And a potion of roots (*kos iqarin*).” What is a “potion of roots?” Said R. Yohanan: The weight of a *zuz* of Alexandrian gum is brought, a weight of liquid alum and a *zuz* weight of garden crocus, and they are powdered together. For a *zabah*, a third thereof [mixed] with wine [is efficacious] that she shall not become barren. For jaundice two thirds thereof [mixed] with beer [is drunk], and he [the sufferer] then becomes impotent.

Shabbat 110a

The cup of roots is referred to as the *kos iqarin* in Tosefta Yevamot Chapter 8, and as *kasa d'akarta* in Yevamot 65b in our familiar text about Judith, the wife of Rabi Hiyya.

Yehudah and Hezekiah were twins. The features of the one were developed at the end of nine months, and those of the other were developed at the beginning of the seventh month. Judith, the wife of R. Hiyya, having suffered in consequence agonizing pains of childbirth, changed her clothes [on recovery] and appeared before R. Hiyya. "Is a woman commanded to propagate the race?" she asked. — "No," he replied. And relying on this decision, she drank a sterilizing potion (*kasa d'akarta*).

Feldman¹⁴⁹ differentiates between these two terms:

Kos shel ikkarin is probably a cup of any medicinally used roots and, in its context, was only secondarily a sterilizing agent. *Kasa d'akarta* is probably more specifically a sterilizing agent, from *akar*, "barren," rather than *ikkar*, "roots," but the Tosefta uses *kos ikkarin* perhaps in a double sense. R. Yohanan, in Shabbat 110a, enumerates the ingredients of *kos shel ikkarin*, further explained by Preuss p. 439, but this formula may be not at all identical with that of the *kasa d'akarta*.

Jewish law codes and responsa literature discuss the *kos shel iqarin* at length. In the discussion of this term as referring to a sterilizing potion, the rabbinic literature assumes the potion to be effective against pregnancy and to be available.

In his *Yam Shel Shlomo*, Solomon Luria rules on the use of this form of birth control as well as that of the *mokh*:

In regard to a woman who had children who are rebellious and offenders, and she is permitted to take a sterilizing potion (*kos shel iqarin*) because she is afraid that she will have more children and they too will not follow the righteous path, I say that she should not drink unless she really suffers with birth like the wife of Rabbi Hiyyah. And yet, if her sons do not follow the right path and she is fearful that she should multiply such progeny, certainly, she is permitted.

Yam Shel Shlomo, Yevamot 6:44

In both the case of the *mokh* and the sterilizing potion, Luria presents a very lenient position. In the above passage, he permits sterilization even though there is no mortal danger involved. Here, he permits sterilization in a case where the woman fears her

¹⁴⁹ Feldman. Birth Control, footnote 1, page 235.

children will rebel and go astray. In the passage, Luria shuffles back and forth on his position. At first, he says a woman should not use the potion unless she, herself, suffers during childbirth; then, he allows the same woman to use the sterilizing potion to prevent the conception of more rebellious children. What we are left with is a stance that is reluctant while remaining very permissive. Luria may not want women to self-sterilize unless they are in mortal danger, however, he recognizes that there may be other valid reasons to avoid pregnancy and therefore leaves the choice up to the woman. For Luria, it seems, the use of contraception should be available to all women who have compelling reasons for wanting to prevent pregnancy.

While the cup of roots is not mentioned explicitly in the Bible, Rashi reads it into one of the earliest narratives. Commenting on Genesis 4:19 which reads, “And Lamech took unto him two wives; the name of one was Adah, and the name of the other Zillah;” Rashi explains:

TWO WIVES. So was the custom of the generation of the Flood, one [wife] for propagation and one for marital relations. The one who was for marital relations would be given a portion of roots (*kos shel iqarin*) to drink, so that she should become sterile, and he would adorn her like a bride and feed her delicacies, but her companion was neglected and was mourning like a widow. This is what Job explained, “He feeds the barren woman who will not bear, but he does not adorn the widow.”¹⁵⁰ As explained in the Aggadah of Helek.¹⁵¹

ADAH. She was the one for propagation, called so because she was despicable to him and removed from him. “*Adah*” is the Aramaic translation of *surah*, turn away.

ZILLAH. She was the one for marital relations, [so named] because she would always sit in his shadow (*tzillo*) .¹⁵²

¹⁵⁰ Job 24:21.

¹⁵¹ Sanhedrin Chapter 10.

¹⁵² Translation with help from Chabad.org.

<www.chabad.org/parshah/rashi/default_cdo/aid/7781/jewish/Bereshit.htm>

Rashi does not indicate whether this practice was illegal or not, however negative his intonation. In fact, as we learned from the passage concerning Judith the wife of Rabbi Hiyyah, women are permitted to use the potion in the Talmud. This is stated explicitly by Solomon Luria in his *Yam Shel Shlomo* 6:44: "A man is not permitted to drink the cup of roots in order to become sterile, but a woman is permitted to drink the cup of roots to become sterile." This position is held by all the major law codes from then on including the *Sefer Mitzvot Gadol*,¹⁵³ *Mishneh Torah* L'Rambam, the *Tur* and the *Shulhan Arukh*, *Turei Zahav*¹⁵⁴ and *Beit Shmuel*.

In the case of sterilization, our example of the strict school, Rabbi Moses Sofer, at first glance seems to be in accordance with his position on the use of the *mokh*, that it should only be employed in extreme situations and with the husbands consent:

The permission for a woman to drink a sterilizing potion (*kos ikkarin*) . . . pertains to a single woman¹⁵⁵ or even a married woman in the days of the Rabbis of the Talmud, when the husband could marry another woman or divorce his wife against her consent. But now that the ban of Rabbenu Gershom Me'or Ha-Golah¹⁵⁶ is in effect, we must conclude that she does not have the right to drink a sterilizing potion without her husband's consent.

Teshuvot Hatam Sofer, Even Ha-Ezer 1:20

To restate the above more simply, the Hatam Sofer is saying that it was permissible for a woman to take a sterilizing potion during the time of the Talmud because at that point in time, men could have multiple wives and therefore fulfill their responsibility to procreate by marrying a second

¹⁵³ The SmaG refers to the *Sefer Mitzvot Gadol* by which the 13th century Rabbi Moshe ben Yaacov of Coucy is known.

¹⁵⁴ Rabbi David Halevi, Segal, better known as the TaZ, after the initials of his main work *Turei Zahav* (Rows of Gold) lived from 1586-1667.

¹⁵⁵ It is not clear here whether the single woman would be taking this as a form of birth control or if she would be taking it for one of its other uses, as in a cure for jaundice or gonorrhea.

¹⁵⁶ Rabbenu Gershom Me'or Ha-Golah (c.950-1028) lived in Mainz, Germany. He passed many laws, one of which was a 1000-year ban on polygamy. Violations of the laws he proposed and enacted were punished by excommunication from the community of Israel; this was known in time as the "*herem* (ban) of Rabbenu Gershom."

woman. However, since polygamy is no longer acceptable, men must rely on their first, and only, wife to join them in producing offspring. Since the potion would render the woman who consumes it barren, it would no longer be permissible in this monogamous context without the consent of her husband.

However, the Hatam Sofer's comments on the topic elsewhere show him to be much more lenient. As we have learned, a woman is not bound to the mitzvah of *p'ru ur'vu*, however, there still remains a general rabbinic injunction called *la-shevet* which states that a woman should contribute to the world's habitation of the species or as a partner to her husband in his obligation to *p'ru ur'vu*. Sofer, uncharacteristically, goes out of his way to permit the woman to use the sterilizing potion, even if she has not fulfilled *la-shevet*. In his discussion of *la-shevet*, Feldman¹⁵⁷ paraphrases Sofer's argument as:

True, the obligation of *la-shevet* applies to her, but unusual pain in childbirth is sufficient reason for her to be exempted from further pursuit of this duty; she need not "build the world by destroying herself." If she already has children and wants to cease conceiving, but her husband wants her to continue – R. Sofer adds, interestingly – she should obtain his approval before drinking the potion. And if the husband refuses permission or a divorce, she is *still* not obligated, by virtue of her marriage contract, to endure unusual pain for his sake!

Like Sofer, other members of the restrictive school permit the use of the sterilizing potion. The use of the potion avoids problems of *hash-hatat zera* as no impediment to coitus is involved. In fact, Rabbi Jacob Ettlinger of nineteenth century Altona, who had the most restrictive of rulings on the use of the *mokh*, suggests that women who suffer from hard labor take the *kos shel iqarin*.¹⁵⁸

¹⁵⁷ *Ibid.* 242.

¹⁵⁸ Jacob Ettlinger. *Binyan Tziyyon*. (Altona, 1868) No. 137.

So we find a form of birth control that is both permitted by all rabbinic authorities and effective. In the remaining chapters, we will see how the rulings on the *mokh* and the *kos shel iqarin* apply to modern forms of birth control.

Lesson 7:
Sterilization May be the Answer

INTRODUCTION

Judaism places a high value on procreation; however, marital intimacy is important even if children are not the result of the union. While Judaism puts a high emphasis on the family, *pikuach nefesh*, the sanctity of life, is placed above all the mitzvot save three.

The *mokh* was and is a controversial form of birth control. While the rabbis may allow women who would be putting either themselves or their children in mortal danger to use this device, issues such as *hash-hatat zera* (wasting the seed) and the efficacy of the device leave some rabbinic scholars weary of allowing its use.

In this lesson, the students will be introduced to a second, less controversial birth control method, the *kos shel iqarin*, the cup of roots. This sterilizing potion is assumed by the rabbis to be effective, and is recommended over the use of the *mokh* since it avoids issues of *hash-hatat zera*.

ENDURING UNDERSTANDINGS

- There is room in the Jewish tradition for the belief that the woman ultimately has control of her own body in matters of procreation.
- Jewish tradition can inform my choices about procreation and birth control.
- The Rabbis that have written the laws in-keeping with Jewish values, and yet they often come to very different conclusions.

ESSENTIAL QUESTIONS

- How can Jewish tradition support and inform my view on the use of birth control and other modern issues pertinent to my life?
- How can Jewish tradition provide me with comfort in choices I have made in regard to the use of contraceptives and other forms of birth control?
- How does my personal experience fit into a Jewish framework?
- Who has a say over what I do with my body?

QUESTIONS TO BE ADDRESSED

- Who has the right to make the choice of when and where to use birth control?
- What factors should be considered when deciding whether or not to use birth control?
- What can I learn from Jewish tradition that will teach me how to make this choice responsibly?
- What is my personal understanding of this issue? My feelings about this topic?
- How can Jewish tradition help support my opinion?

EVIDENCE OF UNDERSTANDING

- Students will empathize with a woman who desires to be “sterilized” (have her tubes tied) by watching a video clip.
- Students will compare the rabbinic responses to the use of the *mokh* to that of the cup of roots to better understand the rabbinic mindset.

LESSON OVERVIEW

- Set Induction (10 minutes)
- Text Study (40 minutes)

- Review (5 minutes)
- Wrap-up and journal assignment (5 minutes)

MATERIALS NEEDED

- Clip from Grey's Anatomy "Blues for Sister Someone" Season 2 episode 23
- Text studies from previous lesson on the *mokh*
- Handouts 21, 22 and 23.
- Post-it notes

LESSON VOCABULARY

Kos shel iqarin – Cup of roots. This is a sterilizing potion mentioned repeatedly in the Talmud and assumed to be efficacious and permitted by later rabbinic scholars.

Hash-hatat zera – **The destruction of seed. This may refer to masturbation or the spilling of the seed, or intercourse in a manner that is other than what the rabbis determined to be "natural."**

La-shevet – The rabbinic injunction to fill the earth. For our purposes it would mean that woman should contribute to the world's habitation of the species or as a partner to her husband in his obligation to *p'ru ur'vu*.

Pikuah nefesh, the duty to protect life; this duty supersedes every mitzvah except three 1) idolatry, 2) sexual immorality, and 3) murder.

Mokh - An absorbent material such as a piece of cotton, hackled wool, or flax which is inserted vaginally to absorb sperm.

LESSON PLAN

Review (15 minutes)

1. Do a short welcome and check-in.
2. Look at Rabbenu Tam's arguments against the use of the *mokh*. Ask: Why does Rabbenu Tam insist that we not use pre-coital *mokh*? (Answer: it would be like the husband was spilling his seed on trees.)
3. Look at the three categories of women in question. Ask:
 - a. What rationale is used for allowing these women to use the *mokh*? (Someone's life would be in danger if she became pregnant).
 - b. Is this danger temporary or a sustainable danger? (temporary)
 - c. What about women whose lives are in danger for other reasons? What if they suffered and almost died during a previous pregnancy? (We don't have an answer from the texts that deal with the *mokh*.)
4. Say: We are now going to learn of another form of birth control from the Talmud. This method applied to those women who might suffer from difficult labor and may apply to women who simply do not want to have more children.
5. Explain that today we are going to continue our study of the rabbinic views on birth control. Today's lesson will focus on a potion called the *kos shel iqarin* (write this word on the board). Along with the *mokh*, which we learned about last week, the *kos shel iqarin*, or the cup of roots, is imperative to our understanding

of rabbinic views on birth control both for the times of the Talmud and today. But first, let us begin with a video clip.

Induction (10 minutes)

6. Show the first clip.
7. Answer the following questions:
 - a. What is going on in the clip?
 - b. Why does the woman want her tubes tied?
 - c. Why does she not want to tell her husband?
 - d. How is the husband's rational in line with Jewish thought? How does it differ?
 - e. Is this a problem that a Jewish couple might face?

Text Study (30 minutes)

1. Say: the cup of roots is known by three different names: (list them on the board)
 - a. *kos iqarin*
 - b. *kos shel iqarin*
 - c. *kasa d'akarta*
2. Say: We have actually seen this sterilizing agent in our previous studied, but to remind us, let's look at a familiar text.
3. Hand out text study on Judith, Handout 21 and answer the questions.
4. Say: Last week, we heard rulings from two rabbis about the *mokh*. We will now break into two groups. One group will study the opinion of Solomon Luria on the issue of sterilization while the other will study the opinion of Hatam Sofer on the issue of sterilization.
5. Break the class into two groups. Give one group the Hatam Sofer text study Handout 22 and the other the Luria text study Handout 23. Have them answer the questions and present their conclusions to the class.

Wrap-up

- Show clip of doctor doing surgery.
- Review what we have done today.
- Preview the future weeks in which we will apply the reasoning we have discussed this week in regards to the cup of roots and last week in regards to the *mokh* to other forms of birth control.

Chapter 8: Applying the Old to the New

The *mokh* and the *kos shel iqarin* both come with advantages and disadvantages. The *mokh* may be argued to only apply to three categories of women while the *kos shel iqarin* would be for any woman who no longer wished to have children (usually only permitted in extreme situations). The *kos shel iqarin* avoids the issue of *hash-hatat zera* which rabbinic authorities used to argue against the use of the *mokh*. The *kos shel iqarin* also has the advantage of only needing to be administered once where as the *mokh* must be used during every act of intercourse. However, the *kos shel iqarin* permanently renders the woman unable to procreate; this may be a problem for women who only want to avoid pregnancy temporarily. Should she become healed of whatever illness threatens her and wish to have children, the *kos shel iqarin* would have rendered her sterile and therefore would not be at all advantageous.

THE CERVICAL CAP AND THE DIAPHRAGM

R. Hayyim Sofer (d. 1867) differentiated between two types of *mokh*. He forbade the use of the *mokh* that interfered with the sex act, but permitted one that simply closed the uterus off to any entry of sperm without hindering the sexual act.¹⁵⁹ The Maharsham, R. Shalom M. Schwadron of Brezany in Galacia (1835-1911), concluded that the use of a diaphragm is similar to “the condition of pregnancy when, too, the mouth of the uterus is naturally closed.” Making the use of the diaphragm “not at all analogous to *mokh*,” but to coitus during pregnancy.¹⁶⁰ All seem to be in agreement that there is little objection to use of the cervical cap or diaphragm when the man’s obligation to procreate has been fulfilled and danger exists.

¹⁵⁹ As noted by Feldman. For further reading see *Resp. Mahaneh Hayyim*, E.H., No. 53.

¹⁶⁰ *Responsum Maharsham*, Vol. I, No. 58.

TYING THE TUBES

The cutting of the Fallopian tubes is the closest modern parallel to the *kos shel iqarin*. In each case, a woman, in one action, renders herself unable to produce children and avoids ever having to engage in a second form of birth control. The cutting of the Fallopian tubes, a surgical procedure, may sound more serious than taking a potion, but rabbis have noted that there are advantages to this surgical method over the *kos*. In *Ezrat Nashim*¹⁶¹ and *Minchat Yitzhak*¹⁶² Rabbi Yosef Yonah Horowitz discusses the benefits of this form of birth control over all others to the extent that he believes that this method's superiority renders all other methods forbidden:

The diaphragm and the douche¹⁶³ were permitted because this x-ray¹⁶⁴ treatment was not mastered. Now that it has proven effective and accessible to many women, there is no longer any sanction for the other methods.¹⁶⁵

This approach has all the benefits of the *kos shel iqarin*, yet avoids the disadvantage of permanency for it is reversible. While this procedure is meant to be permanent, should a situation arise for the woman where it would no longer be a danger for her to have children and she desired to do so, doctors would be able to surgically reattach her Fallopian tubes.

¹⁶¹ Meir Me'iri. *Ezrat Nashim* Vo. III. (London, 1955) 315.

¹⁶² Isaac Weisz. *Minhat Yitzhak*. Vol. III. (London, 1955) No. 26:1.

¹⁶³ While the douche, being a post-coital act, would qualify as acceptable, even to the Hatam Sofer, it was not looked at as an effective form of birth control. David Feldman (*Birth Control in Jewish Law*, p. 232) notes R. Yosef Yonah Horowitz, in *Rosenheim Festschrift*, as arguing against the use of the douche. Feldman states: "since experience and medical opinion cast doubts on the efficacy of postcoital efforts, he forbore from ruling favorably on it when pregnancy had to be avoided."

¹⁶⁴ While he uses the word "x-ray," it is probably that Horowitz is referring to ultra-sound technology which appeared in the 1940's and made this type of procedure both safe and available.

¹⁶⁵ Translation by Feldman. *Birth Control*, 243.

The modern male equivalent to cutting or tying the tubes is the vasectomy. As we have learned, there is no precedent for the rabbis permitting inducing male sterility. The arguments against this form of birth control include: 1) rabbinic authorities consider this to be castration and therefore do not permit it, 2) the man is commanded to be fruitful and multiply and therefore it is not permissible for him to consciously take steps towards preventing pregnancy, 3) medieval commentators believed that semen was the life force of a man and that his power would be diminished should he be rendered sterile. 4) the Rabbis, while permitting women to take the *kos shel iqarin*, would not allow men to take it. The *kos* was also used to cure jaundice, in this case the Talmud discussed whether, under these conditions, a man was permitted take the *kos* with some rabbis ruling that he should be allowed to take the medication if he has already fulfilled his responsibility to procreate by having his requisite two children while the majority held that he could never take the medication since he is never free of the obligation to fill the earth.

THE CONDOM

While the condom has the benefits of being convenient, temporary, and preventative against sexual transmitted disease while avoiding side effects that may accompany oral contraceptives, it is the least preferred method of birth control by rabbinic argument.

The condom prevents any contact between the penis and the vaginal wall. Like the *mokh*, the condom does not allow what would be considered “natural” intercourse, in that the man is not ejaculating into the woman’s body. The protective layer between the male and female genitalia adds the problem of a lack of physical contact and would therefore eliminate Solomon Luria’s argument, used in support of the *mokh*, that one could still call intercourse natural as long as the bodies are deriving pleasure from one

another. Rabbi Yosef Yonah Horowitz supports this notion by noting that this form of intercourse violates biblical injunction for skin to touch skin during the sex act: "And he shall cleave unto his wife and they shall become as one flesh."¹⁶⁶ The condom also comes with the added problem of the man being an active member in employing the birth control as he is under the obligation to propagate. Yet, in extreme situations of physical health to the woman, where no other form of birth control is reliable, then some permit the use of the condom.¹⁶⁷ Rabbi Mosheh Feinstein, for example, states that using a condom during intercourse could not be called "normal" for "the sperm does not remain with her;"¹⁶⁸ however, those who permit the act do so because the act is still proper to a marital relationship and therefore can be permitted even with the use of a condom.¹⁶⁹ Therefore, when there is danger and no other alternative form of birth control is available, for the purposes of *shalom bayyit* and *pikuah nefesh*, it is possible to argue that it is permissible to use even this form of birth control.

SPERMICIDE

Lacking the problems of spilling the seed on "rocks and trees," spermicides allow for a natural form of intercourse while preventing pregnancy through creams, inserts, foams, and the like which are meant to kill the sperm before they are able to impregnate the woman. A major ruling was made on the permissibility of spermicides as birth control by Rabbi Meir Arik of Buczacz in 1913 where he stated that dissolving spermicides are preferred over the *mokh* as a

¹⁶⁶ Yosef Yonah Horowitz. "M'ni'at Herayon." *Rosenheim Festschrift*. (Frankfurt and Main, 1932) 108.

¹⁶⁷ Elijah Klatzkin. *D'var Eliyahu*. (Lublin, 1915) No. 24:5.

¹⁶⁸ Mosheh Feinstein. *Igg'rot Mosheh*. Even Ha'ezer Vol.II, (New York, 1961) Part 4, response 34, in which reference to Even Ha'ezer, Part 1, responsum 63 is also made.

¹⁶⁹ He concludes that the argument for permitting condom usage would be similar to the argument that those who permit sex *lo k'darkah* do so on the basis that it is still proper if it takes place within a heterosexual relationship.

method of birth control since spermicides do not block the passage of the sperm and allow for coitus to be unimpeded with full physical contact and normal gratification.¹⁷⁰ A responsum by Rabbi Menaham Mannes Babad states coitus with spermicide is “unlike *mokh*, instead like coitus with a barren woman.”¹⁷¹ In fact, this mode is so unobjectionable by most, that Rabbi Yosef Rosen of Rogotchev permitted its use even when there is less than imminent danger to the woman’s health.¹⁷² Yet some authorities held a minority opinion which preferred the cervical cap or diaphragm to spermicide. Rabbi Eliezer Waldenberg of Jerusalem, in a Responsum from *Tzitz Eliezer* published in 1967 wrote:

Spermicides destroy the seed immediately upon its entry into the canal, unlike the pessary . . . how can they prefer the others to the pessary where no destruction takes place? Perhaps because they think that spermicides merely neutralize the sperm when actually they destroy it.

By the above arguments, we see that the permissibility of birth control is determined on the basis of which forms least interfere with the act in its natural state.

THE PILL

“The Pill” is a “small tablet taken orally for either 21 or 28 days or continuously. It releases synthetic hormones that enter the bloodstream, preventing the release of eggs from the ovaries.”¹⁷³ The pill is over 99% effective in preventing pregnancy when taken regularly and correctly. Like the cup of roots, the Pill is taken orally by the woman and allows intercourse to

¹⁷⁰ Meir Arik. *Im'rei Yosher*, Vol. I. (Bucacz, 1925) No. 131.

¹⁷¹ David Menachem Mannes Babad. *Havatzelet HaSharon*, Vol.I. (Bilgoray, 1931)

Addendum to E.H.

¹⁷² Joseph Rosen of Rogachev. *Tzofnat Pa'aneah*, Vol. I. (Dvinsk, 1931) No. 30.

¹⁷³ (Dec 31 1969). © Ortho-McNeil Pharmaceutical, Inc. 2007. Retrieved on October 7, 2007.

<http://www.orthoevra.com/html/pevr/birth_ctl_know_option.jsp;jsessionid=CV0RYVS SZ102SCQPCCFTC0YKB2IIQNSC?#2>

take place unimpeded thereby avoiding the issue of *hash-hatat zera*; however, unlike the cup of roots, this is not a permanent, or semi-permanent form of sterilization. Rabbi Moshe Feinstein was an early halakhic authority to write on the birth control pill. Writing in 1961, he acknowledged the pill as both effective and a form of birth control that avoids “improper emission of seed.” However, at this early phase in the life of the pill, he noted the drawback of breakthrough bleeding, or spotting, which may occur when taking this oral contraceptive.

Breakthrough bleeding would render the pill unusable because of the strict laws of *Niddah* which, based on the appearance of blood during the menstrual cycle, determine when a woman cannot have sexual contact with her husband.¹⁷⁴ However, in a later responsum he admits that a woman could make the proper examination prior to each act of intercourse over the full month to insure there is no bleeding. However, a second problem was present at this early stage of the pill. When the pill was first placed on the

¹⁷⁴ *Niddah* laws are also known as laws of *Taharat Hamishpachah* (Family Purity). A woman enters the halakhic status of *niddah* when she experiences uterine bleeding that is not due to abrasions, lacerations or other forms of vaginal trauma (*makah*). Occurring once a month, the most common cause of this status is menstruation. However, *niddah* and menstruation are not totally synonymous. Uterine bleeding from the withdrawal of hormones (such as occurs when using oral contraceptive pills), and as side effects of medication also causes the onset of this status. Stains (*ketamim*) found on the body, clothing or bedding that fit certain criteria and cannot be attributed to other sources also render a woman *niddah*. Certain gynecological procedures involving significant dilation of the cervix may render a woman *niddah* even in the absence of visible bleeding. Childbirth brings on a similar status known as *yoledet*.

While the wife is *niddah*, the couple is not permitted any physical contact. Further proscriptions on behavior (*harchakot*), apply as well. In order to prevent marital relations from inadvertently taking place at the time that a woman begins her menses, the couple also observes times of separation (*vestot* or *onot perishah*) when marital relations are prohibited but the *harchakot* are not required.

A woman remains in the *niddah* status until she has ensured the cessation of vaginal bleeding by self-examination, waited the proper amount of days, and immersed in the *miqvah*. (Summary of Nishmat: The Women's Online Information Center <<http://www.yoetzet.org/article.php?id=98>>.)

market, the amount of hormones was not yet perfected. Many women taking the pill experienced severe side effects from the more tolerable nausea, bloating, and depression to blood clots and strokes.¹⁷⁵ While today the hormone level has been greatly reduced and side effects are both less frequent and less intense, the use of birth control pills is still linked to many health problems and therefore, its use might still be forbidden by Jewish authorities on the basis of the possible danger to the health of the woman.¹⁷⁶ The well-known Talmudic principle “*chamira sakkanta me'issura*”¹⁷⁷ indicates that a danger to health takes precedence even over ritual obligations, including Shabbat observance. Therefore, if the health of the woman is put in danger by taking birth control pills, if she becomes depressed or, arguably, is put at risk for more serious health threats, one may argue that she should not be permitted to take them. Yet some rabbis see no impediment to using the birth control pill. For example, while Rabbi Mordecai Breisch of Zurich denounces birth control for reasons of convenience, for reasons of danger he recommends the pill as being the best of methods, free from any legal impediment.¹⁷⁸

As a rabbi of the Reform movement, I encourage those with questions about the modern Jewish position on questions, such as the proper use of birth control, to consult the Central

¹⁷⁵ *The Pill*. PBS. American Experience.

<http://www.pbs.org/wgbh/amex/pill/peoplevents/e_effects.html>. Retrieved October 7, 2007.

¹⁷⁶ In “*Torat Hamishpaha*,” by R. Moshe Sternbuch, ed. *Kolel Yad Efraim Fischel* (Jerusalem, 1966), p. 38, the rabbinic academy sanctions the use of the birth control pill but points out the medical hazards.

¹⁷⁷ TB, Hullin 10a.

¹⁷⁸ Samuel Huebner. “*M'niat Herayon al y'dei G'lulot*” *HaDarom*. (New York: Tishrei, 1965) gloss on *Responsa Helkat M'hokek*, Vol. III, No. 62.

Conference of American Rabbis' Responsa on the issue. Here is a brief outline of the conditions of use of contraception written by Jacob Z. Lauterbach:¹⁷⁹

In summing up the results of our discussion, I would say that while there may be some differences of opinion about one detail or another, we can formulate the following principles in regard to the question of birth control which are based upon a correct understanding of the Halakhic teachings of the *Talmud* as accepted by the medieval Rabbinic authorities, and especially upon the sound interpretation given by R. Solomon Lurya to some of these Talmudic passages: (1) The Talmudic-Rabbinic law does not consider the use of contraceptives as such immoral or against the law. It does not forbid birth control, but it forbids -birth suppression.

(2) The Talmudic-Rabbinic law requires that every Jew have at least two children in fulfillment of the Biblical command to propagate the race, which is incumbent upon every man.

(3) There are, however, conditions under which a man may be exempt from this prime duty: (a) when a man is engaged in religious work, such as the study of the *Torah*, and fears that he may be hindered in his work for taking on the responsibilities of a family; (b) when a man, because of love, or other considerations, marries a woman who is incapable of having children (i.e., an old or sterile woman); (c) when a man is married to a woman whose health is in such condition as to make it dangerous for her to bear children; for, considerations for the saving of human life--*Pikuach Nefesh* or even *Safek Pikuach Nefesh*--set aside the obligation to fulfill a religious duty. In this last case, then, the woman is allowed to use any contraceptives or even to permanently sterilize herself in order to escape the dangers that would threaten her at childbirth.

(4) In case a man has fulfilled the duty of propagation of the race (as when he has already two children), he is no longer obliged to beget children, and the law does not forbid him to have intercourse with his wife even in a manner which would not result in conception. In such a case the woman certainly is allowed to use any kind of contraceptive or preventive.

Of course, in any case, the use of contraceptives or of any device to prevent conception is allowed only when both parties, i.e., husband and wife consent.

This provides the framework for looking at all forms of birth control through an informed Jewish lens.

¹⁷⁹ I am including the full CCAR's Responsa number 156 on birth control in the appendix A.

THE RHYTHM METHOD

By taking internal body temperature, women can now determine when they are ovulating. The amount of time that a woman is fertile each month is actually a very small window. Doctors have made determining the optimal time of fertilization a science and a resource for which many women are willing to pay. When trying to have a baby, days since menstruation are often counted, temperatures are taken, and sex is performed in the most optimal positions.

This same approach is also used far and wide to avoid pregnancy. Most commonly referred to as the “rhythm method,” couples are able to count days in order to try and find a “safe period” when they will be able to have intercourse without the threat of pregnancy. This method is also known as the Knaus-Ogino method, named after Hernal Knaus and Kyusaku Ogino,¹⁸⁰ the calendar method, or the Standard Days method. According to the Knaus-Ogino method, to find the estimated length of the pre-ovulatory infertile phase, nineteen days are subtracted from the length of the woman's shortest cycle. To find the estimated start of the post-ovulatory infertile phase, ten days are subtracted from the length of the woman's longest cycle. Therefore, a woman whose menstrual cycles ranged in length from 30 to 36 days would be estimated to be infertile for the first 11 days of her cycle ($30-19=11$), to be fertile on days 12-25, and to resume infertility on day 26 ($36-10=26$). When used to avoid pregnancy, the rhythm method has a perfect-use failure rate of up to 9% per year.¹⁸¹ Developed by Georgetown University's Institute of Reproductive Health, the Standard Days method is only intended to be used

¹⁸⁰ John Kippley and Sheila Kippley. *The Art of Natural Family Planning. The Couple to Couple League*. (Cincinnati, OH: 1996) 154.

¹⁸¹ R.A. Hatcher, J. Trussel, and F. Stewart, et al (2000). *Contraceptive Technology*, 18th Edition, (New York: Ardent Media. 2000.)

by women whose menstrual cycles always range between 26 and 32 days in length. In this system, days 1-7 of a woman's menstrual cycle are considered infertile. Days 8-19 are considered fertile. Infertility is considered to resume beginning on day 20. When used to avoid pregnancy, the Standard Days Method has a perfect-use failure rate of 5% per year.¹⁸²

The Talmud also speaks of times of greater and lesser fertility. We are told that according to one view, a woman only conceives immediately prior to the menstrual period, *samukh l'vestah*, or according to another opinion *samukh lit'vilatah*, right after the purification following the end of the period of 12 days after the onset of menses.

These views are expressed in passages from Niddah 31b and Sotah 27a with no consensus on which counting method is correct.

תלמוד בבלי מסכת נדה דף לא עמוד ב

ואמר רבי יצחק אמר רבי אמר: אין אשה מתעברת אלא סמוך לוסתה, שנאמר +תהלים נא+ הן בעון חוללת. ורבי יוחנן אמר: סמוך לטבילה, שנאמר +תהלים נא+ ובחטא יחמגני אמי. מאי משמע דהאי חטא לישנא דדכריי הוא? דכתיב +ויקרא י"ד+ וחטא את הבית, ומתרגמין, וידכי ית ביתא. ואי בעית אימא מהכא: +תהלים נ"א+ תחטאני באזוב ואסתר ואמר רבי יצחק אמר רבי אמר: כיון שבא זכר בעולם - בא שלום בעולם, שנאמר +ישעיהו ט"ז+ שלחו כר מושל ארץ זכר - זה כר. ואמר ר' יצחק דבי רבי אמר: בא זכר בעולם - בא ככרו בידו, זכר - זה כר, דכתיב +מלכים ב' ו'+ ויכרה להם כירה גדולה נקבה - אין עמה כלום, נקבה - נקייה באה, עד דאמרה מזוני לא יהבי לה, דכתיב +בראשית ל'+ נקבה שכרך עלי ואתנה. שאלו תלמידיו את רבי שמעון בן יוחי: מפני מה אמרה תורה יולדת מביאה קרבן? אמר להן: בשעה שכורעת לילד קופצת וגשבעת שלא תזקק לבעלה, לפיכך אמרה תורה תביא קרבן. מתקיף לה רב יוסף: והא מזידה היא, ובחרטה תליא מילתא! ועוד, קרבן שבועה בעי איתויי!

R. Isaac citing R. Ammi further stated: A woman conceives only immediately before her menstrual period, for it is said, "Behold I was brought forth in iniquity."¹⁸³ But R. Yohanan stated: A woman conceives only immediately after her ritual immersion, for it is said, "And in

¹⁸² M. Arévalo, V. Jennings, I. Sinai (2002). "Efficacy of a new method of family planning: the Standard Days Method." *Contraception* Vol. 65. Issue 5 (2002): 333-8.

¹⁸³ Ps. LI, 7. The last word is taken as an allusion to the menstruation period when intercourse is an iniquity and the prefixed bet ("in") is rendered "near."

cleansing did my mother conceive me.”¹⁸⁴ What is the proof that *het* bears the meaning of cleansing? — Since it is written “*v’hittei* the house”¹⁸⁵ and this is translated, “And so shall he cleanse the house.”¹⁸⁶ And if you prefer I might reply: The proof is derived from the following: “Purge me with hyssop and I shall be clean.”¹⁸⁷

TB Niddah 31b

When discussing if one can assume that the child of a woman of “ill repute” is legitimate and therefore able to be married, Sotah 27a discusses the times when a woman is fertile. Previously on the page it says “R. Tahlifa, the son of the West, recited in the presence of R. Abbahu, ‘If a woman is an adulteress, her children are legitimate since the majority of the acts of cohabitation are ascribed to the husband.’” Then we hear a little about the beliefs of when a woman is fertile.

According to him who maintains that a woman only conceives immediately before her period the question does not arise, because [the husband] may not know [when this is] and does not watch her; but the question does arise according to him who maintains that a woman only conceives immediately after the time of her purification. How is it then? Does he watch her since he knows when this occurs; or perhaps this is of no account since she is excessively dissolute? The question remains unanswered.

From the above passages, we see that the Rabbis could not agree as to the exact times of fertility; while the modern approaches to this type of birth control are more precise, by only using counting of days, we are still unable to say for certain when it is safe to engage in sexual behaviors.

The rhythm method has proved to be only somewhat effective. While following the method perfectly may result in a failure rate as low as 5%, the discipline required to track the length of the menstrual cycle and to abstain from intercourse as well as

¹⁸⁴ Ps. LI, 7.

¹⁸⁵ Leviticus 14:52 52.

¹⁸⁶ *Targum (Onkelos, 2nd Century, Aramaic Translation – Paraphrase of Bible).*

¹⁸⁷ Psalms LI, 9.

assumptions these methods are based on concerning the predictability of ovulation create an actual rate of failure around 25%.¹⁸⁸ The Rabbis also were witness to the unreliability of this approach. In Tosafot to Niddah 10b, a question arises concerning a woman who becomes pregnant while nursing.

But how can she be nursing and become pregnant? Did you not say elsewhere that she does not become pregnant while she is checking (for *niddah* during her regular menstrual cycle)? Does the text not say that she only gets pregnant soon after her immersion and she does not conceive until close to the anticipated time of her menstruation?¹⁸⁹

For the most part that is the case, but sometimes it happens that she becomes pregnant. Or else we can say that when she is seeing and checking that this is if her cycle is regular and it is only within the designated time that she can become pregnant.¹⁹⁰

Tosafot to Niddah 10b points out that according to other evidence that pregnancy can occur outside of this designated time zone. The rabbis offer two explanations, one being that the woman does not have a regular menstrual cycle and therefore she may ovulate outside of the normal time period and become pregnant; the other is just that normally pregnancy only occurs during this time period but it does happen that women become pregnant at other times.

This designated time period is used to caution women against thorough cleaning at their most fertile of times when desirous of having children, and the unreliability of the method prevents it from being a preferred method for women who would suffer physical hazard should they become pregnant. The sanctity of life is of the utmost importance,

¹⁸⁸ R.A. Hatcher, J. Trussel, and F. Stewart, et al (2000). *Contraceptive Technology*, 18th Edition, (New York: Ardent Media. 2000.) The inconsistency between the perfect use rate and the actual rate is primarily due to variations in a woman's menstrual cycle and human error.

¹⁸⁹ This is a reference to Niddah 31b.

¹⁹⁰ My translation.

and if a woman's life would be placed in danger should she become pregnant, then the most reliable methods of birth control should be employed.

We have also learned that marital intimacy is meant to fulfill two mitzvot.

Employing the rhythm method, while eliminating the obvious problems of *hash-hatat zerah*, avoids both the mitzvah of *p'ru ur'vu* and *onah* thereby rendering it unacceptable.

Lesson 8: The Possibilities of the Pill

INTRODUCTION

As we have learned, procreation is a high duty in the Jewish religion; however, marital intimacy is important to maintain, even when procreation is not the intent of the act. The *mokh* and the *kos shel iqarin* are both forms of birth control mentioned in the Talmud that serve as the basis of arguments for and against all other forms of birth control.

In this lesson students will apply what they have learned about the marital relationship, intimacy, the *mokh* and the *kos shel iqarin* to the permissibility of the birth control pill.

TIME

1 hour and 30 minutes.

Alternatively, this can be broken easily into two classes with one being the applications to modern forms of birth control and the second class being a review.

ENDURING UNDERSTANDINGS

- There is room in the Jewish tradition for the belief that the woman ultimately has control of her own body in matters of procreation.
- Jewish tradition can inform my choices about procreation and birth control.
- The Rabbis that have written the laws in-keeping with Jewish values, and yet they often come to very different conclusions.

ESSENTIAL QUESTIONS

- How can Jewish tradition support and inform my view on the use of birth control and other modern issues pertinent to my life?
- How can Jewish tradition provide me with comfort in choices I have made in regard to the use of contraceptives and other forms of birth control?
- How do I apply Jewish tradition to modern situations?
- How does my personal experience fit into a Jewish framework?
- Who has a say over what I do with my body?

QUESTIONS TO BE ADDRESSED

- What factors do rabbinic authorities consider when deciding whether or not to permit a form of birth control?
- What can I learn from Jewish tradition that will teach me how to make this choice responsibly?
- How do I apply rabbinic thinking to modern questions?
- What forms of birth control are permissible by rabbinic authorities?
- What is my personal understanding of this issue? My feelings about this topic?
- How can Jewish tradition help support my opinion?

EVIDENCE OF UNDERSTANDING

- Students will compare the rabbinic responses to the use of the *mokh* and cup of roots to various forms of birth control.

- Students will demonstrate their understanding of the issues by creating arguments for and against various modern forms of birth control by listing the pro's and cons of each from using what they have learned thus far.
- Students will demonstrate their mastery of the arguments by creating a ranking for the various forms of birth control from least to most preferable.

LESSON OVERVIEW

- Set Induction (10 minutes)
- Pros and Cons (20 minutes)
- Role Play (25 minutes)
- Review and Wrap up (5 minutes)

MATERIALS NEEDED

- Paper and pens
- Chalk or Dry/Erase board

LESSON VOCABULARY

Kos shel iqarin – Cup of roots. This is a sterilizing potion mentioned repeatedly in the Talmud and assumed to be efficacious and permitted by later rabbinic scholars.

Hash-hatat zera – The destruction of seed. This may refer to masturbation or the spilling of the seed, or intercourse in a manner that is other than what the rabbis determined to be “natural.”

La-shevet – The rabbinic injunction to fill the earth. For our purposes it would mean that woman should contribute to the world's habitation of the species or as a partner to her husband in his obligation to *p'ru ur'vu*.

Pikuah nefesh, the duty to protect life; this duty supercedes every mitzvah except three 1) idolatry, 2) sexual immorality, and 3) murder.

Mokh - An absorbent material such as a piece of cotton, hackled wool, or flax that is inserted vaginally to absorb sperm.

LESSON PLAN

Induction (10 minutes)

- Say: We have discussed forms of birth control that appear in the Talmud is this class, today we are going to look at modern forms of birth control.
- Ask: What are some forms of birth control that are used today? (List the answers of the board.)
- Write *mokh* and *kos shel iqarin* on the board. Say: We have learned that both of these methods are permissible in certain situations and that both have benefits and drawbacks to their usage. The *mokh* has the problems of *hash-hatat zera* and the *kos shel iqarin* has the problem of being permanent.
- Today, we are going to apply what we have learned about the rabbinic arguments for and against these forms of birth control as well as that of abstinence to the birth control methods we listed on the board.

Learning Activity (20 minutes)

The pros and cons

- Break the group into 4 teams. Have each team take out a piece of paper and write benefits on one side and problems on the other. Explain that they will be listing the benefits of their assigned form of birth control on one side of the page and then what might be some of the problems of this form according to rabbinic argument and modern scientific knowledge.
- Assign groups (if it is a large class, feel free to add other forms of birth control such as spermicide, IUD's, douche, the diaphragm, vasectomy etc.):
 - Group 1: condoms,
 - Group 2: the Pill,
 - Group 3: cutting the Fallopian tubes,
 - Group 4: rhythm method
- Allow groups time to work together on their arguments then have them present their findings to the class.
- After listing to all the arguments for and against the various forms of birth control, try and rank these methods of birth control as a class from most acceptable to least. Write your results on the board. *(Results will vary but of the four the condom is the least acceptable, followed by the rhythm method, then it is arguable that either the pill would be preferred because of it's lack of permanency or the cutting of the Fallopian tubes since this procedure is only administered once and is reversible in extreme situations.)*

Role Play (30 minutes)

Pose different scenarios and allow the students to act them out:

1. You are a member of a Reform congregation. Your sister has married an orthodox Jew and has 4 children. She tells you that she doesn't want anymore children and that when she tried to discuss the subject with her rabbi, he told her that if they didn't want any more children they shouldn't have anymore sex. How do you respond? What would you suggest?
2. You are an orthodox rabbi and a congregant tells you that she and her husband would no longer like to have children. She claims the birth process is very hard on her and you know that she was ordered to be on bed rest for 4 months of her last pregnancy and took a long time to recover after birth. What do you suggest?
3. You are a member of a Reform congregation while your in-laws are conservative. Over Thanksgiving, your mother-in-law sees you taking birth control and comments that a conservative Jew wouldn't use birth control but that Reform Jews don't have to do anything to be Jewish. What argument would you use to show her that using birth control pills can be a halakhically sound choice. How do you show her that you have made this decision based on your real-life situation as well as your responsibility as a Reform Jew to make choices through knowledge?

Wrap-up (30 minutes)

- Say: Today we began applying all we have learned about the rabbinic view of sex in marriage and birth control to modern situations. This is what rabbis do when they are approached with questions of these topics. The goal of this class has been to expose you to rabbinic texts, learn about the basic rabbinic writings, and

give you the tools to understand rabbinic argumentation so that you can employ these tools to answer modern questions. We have begun that process. Hopefully, you will take these skills and apply them to other areas, and hopefully, this class has broken some assumptions we had about rabbinic texts, what they discussed, what they were like, and has made them more applicable to you everyday life and less intimidating.

- What were some of your assumptions coming into the class? What surprised you? What questions still remain?

Chapter 9: Abortion

As birth control was the focus of this thesis, I do not wish to focus on the issue of abortion. Many great books on the subject are available, well written, and thoroughly researched. However, I have included an introductory lesson plan to the topic. For further reading please see:

Rachel Biale. Women and Jewish Law: The Essential Texts their History, and Their Relevance for Today. (New York: Schocken Books, 1984.)

And for more lesson ideas please see: Susan Freeman. Teaching Hot Topics: Jewish Values, Resources, and Activities. (Denver: A.R.E. Publishing, Inc., 2003.)

Lesson 9:
Abortion: Who makes the decision?

INTRODUCTION

In every election cycle the right to choose is a hotly debated topic. When does the life of a child begin? Who should be making the decision about terminating the pregnancy – the mother? The father? The government? Our religious leaders? Jewish sources do not give one clean-cut answer to the question of when life begins; yet the texts from our tradition reflect the complexity of this situation.

Judaism teaches that we must take the life of the woman into consideration. While our patriarchs may not be willing to leave the decision solely up to the pregnant woman, their commentaries leave space for a modern woman to find solace in her choice either to abort or to carry a child to term. As Jewish women, this is a topic that manifests itself in different mediums throughout our lives. Whether we personally have had to deal with this tough situation, or a friend has; or we are lucky enough to only have to deal with this choice through votes and media coverage; the right to choose/right to life debate is one that we should remain informed about, and our Jewish tradition can help us make and support our positions on this issue.

ENDURING UNDERSTANDINGS

- Judaism views life as a gift from God and therefore places it as the highest priority
- The Rabbis that have written the laws in-keeping with Jewish values, and yet they often come to very different interpretations

ESSENTIAL QUESTIONS

- How can Jewish tradition support and inform my stance on the abortion issue?
- How can Jewish tradition provide me with comfort in choices I have made regarding the right to choose?
- How does my personal experience fit into a Jewish framework?
- When does life begin?

QUESTIONS TO BE ADDRESSED

- What factors should be considered when choosing between termination of a pregnancy and carrying out a pregnancy to full term?
- What can I learn from Jewish tradition that will teach me how to make this choice responsibly?
- What is my personal understanding of this issue? My feelings about this topic?
- How can Jewish tradition help support my opinion?

EVIDENCE OF UNDERSTANDING

- Students will demonstrate understanding of the complexity in Jewish tradition of defining the status of a fetus through a staged debate.
- Students will identify instances when the life of a potential mother may be in danger through acting out scenarios and classroom discussion.
- Students will problem solve situations in which they encounter “women” who are choosing between pregnancy and abortion
- Students will be able to compare the examples given to events in their own lives

- Students will be able to defend their position on the issue by utilizing support from Jewish sources

LESSON OVERVIEW

- Set Induction (15 minutes)
- Text Study (30 minutes)
- Role Plays (10 minutes)
- Conclusion (5 minutes)

MATERIALS NEEDED

- Post-it notes
- Either a blackboard or a whiteboard
- Copies of the Handouts 24, 25, 26, and 27.
- Copies of the Scenarios
- Clip of a story from the 2005 documentary by Gillian Aldrich, "Speak out: I Had an Abortion."
- Another good option would be to use clips from the 1996 movie, "If these walls could talk." You could present the different scenarios to the group and have them discuss and defend the choices the individual women make in this movie.

LESSON VOCABULARY

Maimonides - Maimonides, also known as Moses ben Maimon, or the Rambam (1135-1200ce) was a medieval Talmudist, philosopher, astronomer and physician. He was a prolific writer and commentator with a vast knowledge in Jewish and secular studies. His *Mishneh Torah* is a comprehensive code in which he systematically went through all the laws discussed in the Talmud and wrote a code of conduct on how to properly follow the *halakhah*. The *Mishnah Torah* is broken into 14 books, the Hebrew equivalent of *yad*, "hand," and therefore it is also known as the *Yad*.

Rashi - Rashi, also known as Rabbi Shlomo Yitzhaqi (1040-1150ce) was a Rabbi in France. He is famed for his commentaries on the Talmud and Tanakh that give concise, clear, and basic meanings to the texts. He founded a school in Troyes France where many great scholars were educated.

Mishnah - The *Mishnah* (Hebrew, "repetition") is a major source of Rabbinic Judaism's religious texts. It is the first recording of the oral law of the Jewish people, as championed by the Pharisees, and is considered the first work of Rabbinic Judaism. The *Mishnah* was redacted around the year 200 CE by Yehudah Ha-Nasi. The *Mishnah* consists of six orders (*sedarim*). Each of the six orders contains between 7 and 12 tractates, called *masechtot*. Each *masechet* is divided into verses called *mishnayot* (singular - *mishnah*).

Parashah - Meaning "Portion" in Hebrew is the weekly Torah reading text selection. It is also known as the *Parshat HaShavuah* ("Weekly Portion") or the *Sidra*. The plural is

Parshiyot. Each Parsha usually takes its name from one of the first unique word or words in the Hebrew text. There are the 54 weekly Torah portions. They are usually read in an annual cycle, beginning and ending on the Holiday of Simhat Torah. The luni-solar Hebrew calendar contains up to 54 weeks, the exact number varying between leap years and regular years. In years with fewer than 54 weeks, some readings are combined to achieve the needed number of weekly readings.

Rodef - Literally “pursuer.” A *rodef*, according to Jewish law, is one who is pursuing another in order to murder him or her. According to the Babylonian Talmud (Sanhedrin 73a) any such person must be killed by any bystander after a warning; this law is called the *din rodef*.

LESSON PLAN

Set Induction (15 minutes)

1. (6 minutes) Show clip from “Speak out: I Had an Abortion.”
2. Reflect: Ask the students to take a minute to think about what choice they might have made had they been in that woman’s position. (1 minute) Have them pair-share their reactions.
3. Hand out post-it notes to each student. Have them write pro-choice arguments and pro-life arguments on the post-it notes and place them on either the pro-life side of the board or the pro-choice side of the board. (Explain that they do not have to agree with the arguments they’re proposing.)
4. As a group, read over the arguments for and against the right to choose. Say: It is clear from what we have come up with as a group that this topic is not easy. Today we will be exploring some of the different approaches our tradition has for this tough decision.

LEARNING ACTIVITIES

Text Study (25 minutes)

1. Pass out Handout 24 which deals with Exodus 21:22-25.
2. Allow the students to work independently or in *hevrutah* to answer the questions. As a group, review the conclusions we have made thus far.
3. Pass out Handout 25. As a group discuss the text and the question as well as the following questions:
 - Besides physical danger, what other kinds of danger are there? (*Monetary, social, spiritual*)
 - Can you think of a modern situation in which someone would be in monetary danger? In social danger?
4. Allow the students to make additional post-it notes to add to the arguments pro-choice and pro-life on the board.
5. Split the group into two groups. Give half of the room Handout 26 and the other half Handout 27. Allow both groups time to get to know their text and answer the questions.

Role Plays (10 minutes)

Inform each group that they will now be asked to judge different cases of women seeking abortions from the position of their Rabbi (either Rambam or Rashi).

Suggestion: “Cast” actors and do the following as a play to add a fun interactive layer!

- Scenario 1: A young woman is having complications in her pregnancy and her doctor tells her she must abort or she will die. *(Both Rashi and Rambam would argue to abort. Have the women use text to support their answers.)*
- Scenario 2: A woman was raped (or molested) and the attack resulted in a pregnancy. She will physically be able to carry the baby to full term, however, she fears she will not be able to mentally be able to handle carrying a baby from her attacker and does not even want to consider the problems she will face looking at a child that has the face of her attacker. *(Rashi is the more lenient of the two. Rambam looks at the fetus as a life. However, arguments could be made in support for an abortion from both rabbis.)*
- Scenario 3: Sheryl and Matthew have four children already and can barely get by both physically with the demands of parenthood and mentally. They are overwhelmed and barely scraping by when they discover that Sheryl is pregnant once again.

CONCLUSION (5 minutes)

- Have the students reflect in writing about what they have experienced today. Have their opinions changed? How do they feel about the positions these traditional Jewish texts have taken on the issue? Where are they emotionally?
- Allow a student to share her reflections if she feels willing and comfortable. If not, share a story from the following website which provides stories of women who have struggled with this choice: <http://www.fwhc.org/stories/meg.htm>

HOMEWORK

Have the students research their state’s laws on abortion and write a letter to a local representative using Jewish arguments to help support their position on the issue.

Conclusion

I began this project hoping to explore women's issues through a rabbinic framework. Birth control was one of a list of topics I thought I could summarize in a chapter. It did not take long to discover that this topic was much more complicated than I had anticipated. I was surprised at the sheer amount of material there was on this topic in rabbinic sources. I was also surprised to find that, as a liberal woman, I felt that I could find room for my voice within responsa literature, codes, certain mystic documents and the Talmud. While I have dabbled in researching other women's issues in this way, I found birth control in the rabbinic mind fascinating and you are reading the result of my fascination.

I was not the first person to want to delve into this topic. There are many wonderfully written books on Judaism and birth control. Numerous scholars have spent years researching and compiling detailed collections of texts on birth control and their books guided me to many texts that I might not have found on my own, certainly not without years of research. However, as an educator, I did not want to spend a year producing a thesis that was simply a less researched version of these authors works, I wanted to use my strengths of pedagogy and creativity to make something different and useful. What resulted was Proper Proceedure: A Guide to Learning and Teaching About Jewish Approaches to Birth Control.

I found that in order to understand the rabbinic approach to birth control, much had to be explained; therefore, I set up the thesis accordingly. I first established that the Rabbis were proponents of marital intercourse regardless of if procreation was the intent of the act. This required demonstrating the biblical basis for such an argument, the

Talmudic extrapolation thereof, and the repercussions of spouses who neglect the marital bed. After having established the mutual responsibility for sexual gratification in a marriage, I wanted to show the limits of this requirement; the safeguards put in place to protect women from unwanted sexual advances by their husbands. Next, I sought to debunk the belief that a woman is *halakhically* required *d'orayta* to produce offspring. Once this was established, there was a base to begin the discussion of birth control.

The discussion of Jewish approaches to birth control had to begin with our most ancient sources, the Torah and Talmud. While there were some erroneous beliefs, two major forms of birth control were prominent: the *mokh*, or sponge, and the sterilizing potion known as the cup of roots. The Talmudic discussions of these two forms of birth control serve as the basis for the permissibility of all other forms of birth control. Therefore, I wanted the reader to really understand the arguments surrounding these forms of contraception so they would be able to apply the same logic to modern methods of avoiding pregnancy.

By using this as a basis for a course, the teacher will have the tools, not only to teach a class on birth control through a Jewish lens, but will expose students to the rabbinic world. The students will not only read for the Torah, Talmud, commentators, and responsa literature, they will discover how they are related. The goal for the student is not only to learn the visible curriculum, but too begin to understand rabbinic thought and argumentation in the process.

I learned a great deal putting this thesis together. Hopefully, this learning does not stop with me.

CCAR RESPONSA

American Reform Responsa

156. Birth Control

(Vol. XXXVII, 1927, pp. 369-384)

In considering the question of the Talmudic-Rabbinic attitude towards birth-control we must seek to clear up the confusion that prevails in the discussion of the subject and define the principles involved in the whole question.

Some rabbis are inclined to regard all forms of birth-control, excepting self-control or continence, as "*Hotsa-at shichvat zera levatala*," and therefore put them in a class with masturbation or self-abuse. Hence, they believe that by citing Agadic sayings from the *Talmud* and the Midrashim against the evil practice of self-abuse, they have also proved the opposition of Rabbinic law to the various forms of birth control. Such a method, however, is unscientific and not justified in the discussion of such a serious and important question.

In the first place, the method of adjudging questions of religious practice on the basis of Agadic utterances is altogether unwarranted. The Talmudic rule is "*Ein morin min hahagadot*," i.e., that "We cannot decide the questions of practice by citing Agadic sayings" (Yer., Chagiga I.8, 76d). The Agada may set up an exalted ideal of the highest ethical living. It may teach the lofty precept "*Kadesh atsmecha bamutar lecha*," to aspire to a holy life and to avoid even such actions or practices which--though permitted by the law--do not measure up to its high standard. But it does not rest with the Agada to decide what is forbidden or permitted by the law. "The Agadist cannot declare anything forbidden or permitted, unclean or clean," says the *Talmud* ("*Ba-al agada she-eino lo oser velo matir, velo metame velo metaher*," Yer., Horayot III.7 48c). The answer to questions of practice--that is, as to what is permitted by Jewish law and what is not--can be given only on the basis of the teachings of the *Halacha*.

Secondly, it is absolutely wrong to consider cohabitation with one's wife under conditions which might result in procreation as an act of "*Hotsa-at shichvat zera levatala*," and to class it with sexual perversions such as self-abuse.

In the following, therefore, we must consider only what the *Halacha* teaches about the various forms of birth control and ignore what the Agada has to say in condemnation of the evil practices of self-abuse and sexual perversions.

In order to avoid confusion and for the sake of a clearer understanding and a systematic presentation of the Rabbinic teachings bearing upon our subject, it is necessary to formulate the question properly. It seems to me that the correct formulation of our question is as follows: Does the Talmudic-Rabbinic law permit cohabitation between

husband and wife in such a manner or under such conditions as would make conception impossible; and if so, what are the conditions under which such cohabitation is permitted?

As to the first and main part of the question, there is no doubt that it must be answered in the affirmative. To begin with, the Rabbinic law not only permits but even commands the husband to fulfill his conjugal duties to his wife, even after she has experienced the change of life and has become incapable of having children. Likewise, the husband is permitted to have sexual intercourse with his wife even if she is congenitally incapable of conception, as, for instance, when she is *Akara*, sterile, or an *Ailonit*, that is, a wombless woman (*Tosafot* and Mordecai, quoted by Isserles in *Shulkhan Arukh*, Even Ha-ezer XXIII.2). The later Rabbinic law goes even further and permits even a man who has never had children (and thus has not fulfilled the duty of propagation of the race, "*Mitzvat Periya Ureviya*") to marry a woman incapable of bearing children, that is, a sterile woman (*Akara*) or an old woman (*Zekena*) (Isaac b. Sheshet, quoted by Isserles, *op. cit.*, I.3). From all this it is evident that the act of cohabitation, even when it cannot possibly result in conception, is in itself not only not immoral or forbidden, but in some cases even mandatory. Hence, we may conclude that the discharge of sperm through sexual intercourse, even though it does not effect impregnation of the woman, is not considered an act of "wasteful discharge of semen" (*Hotsa-at shichvat zera levatala*), which is so strongly condemned by the Agadic sayings of the *Talmud*. For while--as regards procreation--such a discharge is without results and purposeless, yet since it results from legitimate gratification of a normal natural desire, it has fulfilled a legitimate function and is not to be considered as in vain.

Now it may be argued that only in such cases where the parties--through no fault of their own--are incapable of procreation does the law consider the mere gratification of their natural desire a legitimate act and hence does not condemn it as "*Hotsa-at shichvat zera levatala*." We have, therefore, to inquire further whether the gratification of their legitimate desire by sexual intercourse in a manner not resulting in procreation would be permissible even to a young and normally healthy husband and wife who are capable of having children.

To my knowledge, the *Halacha*--aside from recommending decency and consideration for the feelings of the wife in these matters--does not put any restrictions upon the husband's gratification of his sexual desire for his wife, and certainly does not forbid him any manner of sexual intercourse with her. This is evident from the following passage in the *Talmud* (Nedarim 20b) where R. Johanan b. Nappaha, commenting upon a saying of R. Johanan b. Dahabai in disapproval of certain practices indulged in by some husbands, says: "These are but the words [i.e., the individual opinion] of Johanan b. Dahabai; the sages, however, have said that the decision of the law, i.e., the *Halacha*, is not according to Johanan b. Dahabai, but a husband may indulge with his wife in whatever manner of sexual gratification he desires" ("*Amar Rabbi Yochanan, 'Zo divrei Rabbi Yochanan ben Dahavai. Aval ameru chachamim: Ein halacha keYochanan ben Dahavai, ela kol ma she-adam rotseh la-asot be-ishto, oseh'*").

This *Halacha* of R. Johanan b. Nappaha, supported by the decisions of Yehudah Hanasi

and Abba Areka and reported in the *Talmud* (*Ibid.*, l.c.), has been accepted as law by all medieval authorities, and they accordingly permit intercourse with one's wife in any manner ("*Kedarkah veshelo kedarkah*") (Maimonides, *Yad*, Isurei Bi-a XXI.9; *Tur*, Even Ha-ezer 25; and Isserles on *Shulkhan Arukh*, Even Ha-ezer 25.2). Maimonides (l.c.) would limit the permission of sexual indulgence ("*Shelo kedarkah*") only to such forms of "*Shelo kedarkah*" which do not result in *Hotsa-at shichvat zera levatala*, for he says: "*Uvilvad shelo yotsi shichvat zera levatala*." But other medieval authorities permit intercourse "*Shelo kedarkah*" even when resulting in *Hotsa-at shichvat zera levatala*. The only restriction they would put on this permission is that a man should not habituate himself always to do it only in such a manner: "*Dela chashuv kema-aseh Er veOnan, ela keshemtikaven lehashchit zera veragil la-asot ken tamid. Aval be-akrai be-alma umit-aveh lavo al ishto shelo kedarkah--shari*" (*Tosafot*, Yevamot 34b, s.v. "*Velo kema-aseh Er ve-Onan*"; *Tur* and Isserles, l.c.).

From the fact that they permit "*Shelo kedarkah*" even when it necessarily results in "*Hotsa-at shichvat zera levatala*" we need not, however, necessarily conclude that these authorities would also permit such practices of "*Shelo kedarkah*" as are performed "*Mimakom acher*" or "*Shelo hamakom zara*" (see Rashi to Yevamot 34b, s.v. "*Shelo kedarkah*"; and Rashi to Genesis 24:16, compared with *Genesis R.*, XL.5), which are really sexual perversions and not sexual intercourse. See R. Isaiah Horowitz in his *Shenei Luchot Haberit*, Sha-ar Ha-otiyot (Josefow, 1878, pp. 132-133). It seems rather that the Rabbis were of the opinion that when intercourse is had by what they euphemistically term "*Hafichat HaShulkhan*," whether "*Hi lema-ala vehu lemata*" or "*Panim keneged oref*," the very position of the woman is such as to prevent conception. Compare their saying "*Isha mezana mithapechet, kedai shelo tit-aber*" (Yevamot 35a; also *Tur*, Even Ha-ezer 76 end). Hence, according to their theory (though not sustained by modern medicine), there are forms of sexual intercourse--"*Shelo kedarkah*"--which cannot result in conception. These alone--not sexual perversions--do they permit. The statement of Rava (Sanhedrin 58b), taking for granted that an Israelite is permitted ("*DeYisra-el shari*"; see *Tosafot* and Maharsha, *ad loc.*) to have intercourse with his wife "*Shelo kedarkah*" is also to be understood in this sense; though from the phrase "*Vedavak--velo shelo kedarkah*" used in the amended saying of Rava it would appear that the term "*Shelo kedarkah*" means "*Bi-a mimakom acher*." From a *baraita* in Yevamot 34b, we learn that during the period of lactation the husband is allowed, if not commanded, to practice *coitus abruptus* when having intercourse with his wife. The *baraita* reads as follows: "*Kol esrim vearba-a chodesh dash mibifnim vezoreh mibachuts, divrei Rabbi Eli-ezer. Ameru lo, 'Halalu eino ela kema-aseh Er ve-Onan.'*" ("During the twenty-four months in which his wife nurses, or should nurse, the child, the husband when having intercourse with her should, or may, practice *coitus abruptus* [to prevent her from becoming pregnant again; for in the latter eventuality she will not be able to continue nursing the child and the child might die as a result of an early weaning--Rashi, *ad loc.*: '*Kedai shelo tit-aber vetigmol et benah veyamut*']. The other teachers, however, said to R. Eliezer that such intercourse would be almost like the acts of Er and Onan.") One may argue that this permission or recommendation of practicing *coitus abruptus* represents only the opinion of R. Eliezer, and we should decide against him, according to the principle "*Yachid verabim--halacha kerabim*." But such an argument does not hold good in our case. In the first place, when the individual opinion has a good reason in its support ("*Demistaber*

taameih"), as--according to Rashi--R. Eliezer's opinion in our case has, the decision may follow the individual against the many (see Alfasi and Asheri to B.B., chapter 1, end; and comp. Maleachi Cohn, *Yad Mal-achi*, 296). Secondly, we cannot here decide against R. Eliezer, since the other teachers do not express a definite opinion contrary to his. For we notice that the other teachers do not say, "It is forbidden to do so." They do not even say that it is Onanism. They merely say: "It is almost like the conduct of Er and Onan." This certainly is not a strong and definite opposition to R. Eliezer's opinion. It seems to me that even the other teachers did not forbid the practice under the circumstances. They merely refused to recommend it as R. Eliezer did, because they hesitated to recommend a practice which is so much like the acts of Er and Onan, even under circumstances which made it imperative that conception be prevented. And we have to understand R. Eliezer's opinion as making it obligatory for the husband to perform *coitus abruptus* during the period of lactation.

That this interpretation of the respective positions of R. Eliezer and the other teachers in our *baraita* is correct will be confirmed by our consideration of another *baraita* dealing with the question of using contraceptives. This other *baraita* is found in Yevamot 12b, 100b; Ketubbot 35b; and Nida 45b. It reads as follows: "*Tanei Rabbi Bibi kameih deRav Nachman: Shalosh nashim meshameshot bemoch--ketana, me-uberet umeinika. Ketana, shema tit-aber vetamut; me-uberet, shema ta-aseh ubarah sandal; meinika, shema tigmol benah veyamut. Ve-eizo hi ketana? Mibat 11 shanim veyom echad ad 12 shanim veyom echad; pachot mikan veyoter al ken meshameshet kedarkah veholechet. Divrei Rabbi Meir. Vachachamim omerim: Achat zo ve-achit zo meshameshet kedarkah veholechet, umin hashamayim yerachamu, mishum shene-emar 'Shomer peta-im Adonai.'*"

Before we proceed to interpret this *baraita*, we must ascertain the correct meaning of the phrase "*Meshameshot bemoch*," as there are different interpretations given to it. According to Rashi (Yevamot 12b), it means putting cotton or other absorbent into the vagina before the cohabitation, so the semen discharged during cohabitation will fall upon the cotton and be absorbed by it and conception will not take place. According to R. Jacob Tam (*Tosafot Ibid.*, s.v. "*Veshalosh nashim*"), however it means using the cotton (or the absorbent) *after* the act of cohabitation in order to remove the semen and thus prevent conception. Whether the latter is, according to modern medical science, an effective contraceptive or not, is not our concern; the Rabbis believed it to be such.

It is evident that according to R. Tam, the use of a douche or any other means of removing or destroying the sperm would be the same as "*Meshameshot bemoch*." Likewise, according to Rashi, the use of other contraceptives on the part of the woman would be the same as "*Meshameshot bemoch*." Possibly R. Tam would permit the use of chemical contraceptives, even if employed before cohabitation. For his objection to the cotton put in before cohabitation is that when the semen is discharged upon the cotton, it does not touch the mucous membrane of the vagina. This he considers "no real sexual intercourse, but like scattering the semen upon wood and stone" ("*De-ein derech tashmish bechach, vaharei hu metil zera al ha-etsim vecha-avanim keshemetil al hamoch*")--a practice which according to the *Midrash* (Genesis R. XXVI.6), was indulged in by the "generation of the flood" (*Dor Hamabul*). This objection, then, would not hold good when chemical contraceptives are used.

Again, according to Rashi, (Yevamot 100b) the phrase "*Meshameshot bemoch*" means "*Mutarot leiten moch be-oto makom, shelo yit-aberu*," that is, that in these three conditions women are allowed to use this contraceptive. This would imply that other women who do not expose themselves or their children to danger by another pregnancy are forbidden to do so. According to R. Tam (*Tosafot* Ketubbot 39a, s.v. "*Shalosh nashim*"), Asheri and R. Nissim (on Nedarim 35b) the phrase "*Meshameshot bemoch*" means "*tserichot*" or as R. Nissim puts it "*chayavot*," that is, that these three women--because of the danger of possible harm which might result from pregnancy--are *obliged* to use this precaution. If we interpret the phrase in this sense, it would imply that other women--not threatened by any danger from pregnancy--are merely not obliged to use this precaution against conception, but are not forbidden to do so. It would also follow from this interpretation that if the other teachers differ from R. Meir, they differ only in so far as they do not consider it *obligatory* upon these three women (or, to be more correct, upon the *Ketana*) to take this precaution; but as to *permitting* these three women (or any other woman) to use a contraceptive, there is no difference of opinion between R. Meir and the other teachers. R. Solomon Lurya (1510-1573), in his *Yam Shel Shelomo* to Yevamot, ch. I, no. 8 (Altona, 1739), pp. 4b,c has indeed so interpreted our *baraita*. He points out that from the *Talmud* (Nida 3a) it is evident that Rashi's interpretation of "*Meshameshot bemoch*" as meaning "putting in the absorbent before cohabitation takes place," is correct. As to R. Tam's objection, Lurya correctly states that such a practice is not to be compared to "*Metil al etsim*." For, after all, it is a normal manner of having sexual intercourse, and the two bodies derive pleasure from one another and experience gratification of their desire. It is, therefore, not different from any other normal sexual intercourse with a woman who is incapable of having children: "*Ve-ein zeh kemetil al etsim, desof sof derech tashmish bechach, veguf neheneh min haguf*."

Lurya further points out that since from Nida 3a it is also evident that all women are permitted to use this contraceptive, the meaning of the phrase "*Meshameshot bemoch*" in our *baraita* must therefore be that these three women must use this precaution--which implies that all other women may use it. From this, argues Lurya, we must conclude that even if we should decide that the law (*Halacha*) follows the Chachamim who differ from R. Meir, it would only mean that we would not make it obligatory for these three women to use this precaution. But these three women, like all other women, are permitted to use it if they so desire. This is in essence the opinion of Lurya.

It seems to me that a correct analysis of the *baraita* will show that Lurya did not go far enough in his conclusions, and that there is no difference of opinion between R. Meir and the other teachers on the question of whether a pregnant or a nursing woman must take this precaution. For this is what the *baraita* says: "There are three women who, when having intercourse with their husbands, must take the precaution of using an absorbent to prevent conception: a minor, a pregnant woman, and a woman nursing her baby. In the case of the minor, lest she become pregnant and die when giving birth to the child. [It was believed by some of the Rabbis that if a girl became pregnant before having reached the age of puberty, she and her child would both die at the moment of childbirth. Comp. saying of Rabba b. Livai in Yevamot 12b and *Tosafot ad loc.*, s.v. "*Shema tit-aber*"; also saying in Yer., Pesachim, VIII.1, 35c: "*Iberah veyaleda, ad shelo hevi-a shetei se-arot--hi uvenah metim*."] In case of a pregnant woman, this precaution is necessary, lest, if

another conception takes place, the embryo becomes a *foetus papyraceus* (comp. Julius Preuss, *Biblisches-Talmudische Medizin*, Berlin, 1921, pp. 486-487). In the case of a nursing mother, this precaution is necessary, for if she should become pregnant, she will have to wean her child before the proper time [which was considered to extend for twenty-four months], and the child may die as a result of such an early weaning." So far the *baraita* apparently represents a unanimous statement. It then proceeds to discuss the age up to which a woman is considered a minor in this respect. R. Meir says that the minor in this case is a girl between the age of eleven years and one day and twelve years and one day, and that during that period only must she take this precaution. Before or after this age she need not take any precaution, but may have natural intercourse ("*Meshameshet kedarkah veholechet*"). The other teachers, however, say that even during the period when she is a *Ketana* (i.e., between the age of eleven and twelve), she may have natural intercourse and is not obliged to take any precautions; for the heavenly powers will have mercy and protect her from all danger, as it is said, "The Lord preserveth the simple" (Ps. 116:6). The other teachers evidently did not consider the danger of a minor dying as a result of childbirth so probable. They must have believed that a girl even before the age of puberty could give birth to a living child and survive (comp. Preuss, *op. cit.*, p. 441). But as regards the nursing or the pregnant woman, even the other teachers do not say that she may dispense with this precaution, for we notice that they do not say, "*Kulan meshameshot veholechet*."

The rules of law laid down in this *baraita* according to our interpretation are, therefore, the following: When there is a danger of harm resulting to the unborn child or the child already born, all teachers agree that it is obligatory to take the precaution of using a contraceptive. According to R. Meir, however, this obligation holds good also in the case when conception might result in danger or harm to the mother. But even if we should understand the *baraita* to indicate that the other teachers differed with R. Meir in all three cases, it would still only follow, as Lurya correctly points out, that in all three cases we decide the *Halacha* according to the *Chachamim* and do not make it obligatory upon these three women to take the precaution of using contraceptives; the rule indicated by the *baraita* would still teach us that, according to the opinion of all the teachers, it is not forbidden to use a contraceptive in cases where conception would bring harm either to the mother or to the child born or unborn. And I cannot see any difference between the protection of a minor from a conception which might prove fatal to her and the protection of a grown-up woman whose health is, according to the opinion of physicians, such that a pregnancy might be fatal to her. Neither can I see any difference between protecting a child from the danger of being deprived of the nourishment of its mother's milk, and protecting the already born children of the family from the harm which might come to them due to the competition of a larger number of sisters and brothers. For the care and the comfort which the parents can give their children already born will certainly be less if there be added to the family other children claiming attention, care, and comfort.

The Talmudic law even permits a woman to sterilize herself permanently ("*Ha-isha rasha-it lishtot kos shel ikkarin*," Tosefta, Yevamot VIII.4). And the wife of the famous R. Hiyya is reported to have taken such a medicine ("*Sama de-akarta*") which made her sterile (Yevamot 65b). Whether there be such a drug according to modern medicine or not, is not our concern. The Rabbis believed that there was such a drug which, if taken

internally, makes a person sterile (see *Shabbat* 110a,b and Preuss, *op. cit.*, pp. 439-440 and 479-480), and they permitted the woman to take it and become sterile. According to Lurya (*op. cit.*, Yevamot IV.44), this permission is given to a woman who experiences great pain of childbirth, which she wishes to escape, as was the case of the wife of R. Hiyya. Even more so, says Lurya, is this permitted to a woman whose children are morally corrupt and of bad character, and who fears to bring into the world other moral delinquents: "*Ela lemi sheyesh lah tsa-ar leida ke-ein deveitehu deRabbi Chiya; vechol sheken im baneiha ein holechin bederech yeshara, umityare-a shelo tarbeh begidulim ka-elu, shehareshut beyadah.*" To these I would add the woman who, because of hereditary disease with which she or her husband is afflicted, fears to have children who might be born with these diseases and suffer and be a burden to their family or to society.

From the passage in the *Talmud* (Yevamot 65b) we learn, however, that there is an objection which the Jewish law might have to a man's using contraceptive means, or having intercourse with his wife in such a manner as to make conception impossible. This objection is based not on the view that such an act is in itself immoral or against the law, but merely on consideration for another religious duty which could not be fulfilled if such a practice would be indulged in all the time. The wife of R. Hiyya--so the *Talmud* tells us--incapacitated herself only after she had learned that the duty of propagation of the race was not incumbent upon her, since, according to the decision of the Rabbis, women were not included in the commandment, "Be fruitful and multiply" (Genesis 1:28), which was given to men only. Since a man must fulfill the duty of propagation of the race ("*Mitzvat periya ureviya*") he cannot be allowed the practice of having intercourse with his wife only in such a manner as to make conception impossible. For in so doing he fails to fulfill the law commanding him to have children. It is accordingly a sin of omission but not of commission; for the practice as such is not immoral or against the law.

But--and this is peculiar to the Jewish point of view on this question--the man who practices absolute self-restraint or total abstinence is also guilty of the same sin of omission, for he likewise fails to fulfill the duty of propagation of the race. No distinction can be made, according to Jewish law, between the two ways of avoiding the duty of begetting children, whether by total abstention from sexual intercourse or by being careful not to have intercourse in such a manner as would result in conception. For, as has already been pointed out, the act of having intercourse with one's wife in a manner not effecting conception is in itself not forbidden by Jewish law. If, however, a man has fulfilled the duty of propagation of the race, as when he already has two children (i.e., two boys according to the School of Shammai or a boy and a girl according to the School of Hillel) and is no longer obliged by law to beget more children (Yevamot 61b and *Shulkhan Arukh*, Even Ha-ezer 1.5), there can be no objection at all to the practice of birth control. For while the Rabbis of old, considering children a great blessing, would advise a man to continue to beget children even after he has already fulfilled the duty of propagation of the race, yet they grant that any man has a right to avoid having more children when, for one reason or another, he does not consider it a blessing to have too many children and deems it advisable in his particular case not to have more than the two that the law commands him to have.

But even in the case of one who has not yet fulfilled the duty of propagation of the race

("Mitzvat *periya ureviya*") it might, under certain conditions, be permitted to practice birth control, if it is done not for selfish purposes but for the sake of some higher ideal or worthy moral purpose. For the Rabbinic law permits a man to delay his marrying and having children or even to remain all his life unmarried (like Ben Azzai), if he is engaged in study and fears that having a family to take care of would interfere with his work and hinder in the pursuit of his studies (Kiddushin 29b; Maimonides, *Yad*, Hil. Ishut, XV.2-3; *Shulkhan Arukh*, Even Ha-ezer, I.3-4)

Since, as we have seen, the act of having intercourse with one's wife in a manner not resulting in conception is in itself not against the law, there can be no difference between the failure to fulfill the commandment of propagation of the race by abstaining altogether from marriage and the failure to fulfill the commandment by practicing birth control. The considerations that permit the one permit also the other. It would even seem that the other--i.e., the practice of birth control--should be preferred to the one of total abstention. For, in granting permission to practice the latter, the Rabbis make the proviso that the man be so constituted, or so deeply engrossed in his work, as not to be troubled by his sexual desires or to be strong enough to withstand temptation ("*Vehu shelo yehe yitsro mitgaber alav*," Maimonides and *Shulkhan Arukh*, l.c.). Now, if a man is so constituted that he is troubled by his desires and suffers from the lack of their gratification, and yet is engaged in some noble and moral pursuit (like the study of the *Torah*) which hinders him from taking on the responsibilities of a family, he may marry and avoid having children. He may say with Ben Azzai, "I am very much attached to my work and cannot afford to have a family to take care of. The propagation of the race can and will be carried on by others" ("*Efshar la-olam sheyitkayem al yedei acherim*," Yevamot 36b; Tosefta, *Ibid.*, VIII, end). For the Rabbis also teach that "it is better to marry," even if not for the sake of having children, than "to burn" with passion and ungratified desires. And, as we have seen above, the Rabbinic law permits marriage even when it must result in failure to fulfill the commandment "Be fruitful and multiply," as when a young man marries an old or sterile woman. The Rabbis did not teach total abstention. They did not agree with Paul that "It is good for a man not to touch a woman" (I Corinthians VII:1). While the institution of marriage may have for its main purpose the propagation of the race, this is not its sole and exclusive purpose. And the Rabbis urge and recommend marriage as such without regard to this purpose, or even under conditions when this purpose cannot be achieved. The companionship or mutual helpfulness in leading a pure, good, and useful life, achieved by a true marriage, is also a noble purpose worthy of this divine institution. In fact, according to the Biblical account, this was the first consideration in the Divine mind when creating woman for man. He said: "It is not good that the man should be alone, I will make him a helpmeet for him" (Genesis 2:18). He did not say, "I will make him a wife that he have children by her." The commandment to have children God gave to Adam later on. When husband and wife live together and help each other to lead a good life--whether they have children or not--God is with them and their home is a place for the *Shechina*, the Divine purpose, says R. Akiva (Sota 17a). Ben Azzai did not say like Paul, "I would that all men were even as I myself" (I Corinth. VII:7). He did not set up celibacy in itself as an ideal, nor would he recommend it to others (comp. H. Graetz, *Gnosticismus und Judenthum*, Krotoshin, 1846, pp. 73ff). Ben Azzai considered marriage a divine institution and recognized the obligation of propagating the race as a religious duty. But he believed that he was exempted from this duty in consideration of the fact

that it might interfere with another religious duty, e.g., the study of the *Torah* in which he was engaged. Of course the same right would, according to Ben Azzai, be given to others in a similar position, i.e., to those pursuing studies or being engaged in any other moral religious activities which might be interfered with by the taking on of the obligation of having children. We have seen that the medieval Rabbinic authorities have concurred in the opinion of Ben Azzai and allowed a man engaged in a religious pursuit, such as the study of the *Torah*, to delay--or even altogether neglect--fulfilling the commandment of "Be fruitful and multiply." And we have also found that no distinction can be made between neglecting this duty by abstaining from marriage and neglecting it by practicing birth control.

The above represents the logical conclusion which one must draw from a correct understanding and a sound interpretation of the Halakhic statements in the *Talmud* touching this question, disregarding the ideas expressed in the Agadic literature as to the advisability of having many children.

The later Jewish mystics emphasized these Agadic sayings, as well as the Agadic condemnations of the evil practices of "*Hotsa-at shichvat zera levatala*." They came to regard any discharge of semen which might have resulted in conception but did not, almost like "*Hotsaat shichvat zera levatala*." Nay, even an unconscious seminal emission is regarded as a sin against which one must take all possible precautions and for which one must repent and make atonement. But even the mystics permit intercourse with one's wife even when she is incapable of having children (see *Zohar*, Emor 90b).

Some Rabbinic authorities of the 18th and 19th centuries--under the spell of the Agadic sayings of the *Talmud* and more or less influenced by the mystic literature--are loath to permit birth control. But even these authorities do not altogether prohibit the practice when there is a valid reason for exercising it. The reasons given by some of them for opposing the practice are not justified in the light of the Halakhic statements of the *Talmud* which we discussed above. Their arguments are not based upon correct interpretations of the Talmudic passages bearing upon this question, and they utterly ignore or overlook the correct interpretations and the sound reasoning of R. Solomon Luria quoted above. In the following I will present the opinions of some of the authorities of the 18th and 19th centuries on this question.

R. Solomon Zalman of Posen, rabbi in Warsaw (died 1839), in his responsa *Chemdat Shelomo* (quoted in *Pitchei Teshuva* to Even Ha-ezer XXIII.2)--in answer to a question about a woman to whom, according to the opinion of physicians, pregnancy might be dangerous--declares that she may use a contraceptive. He permits even the putting into the vagina of an absorbent before cohabitation, declaring that since the intercourse takes place in the normal way, the discharge of the semen in such a case cannot be considered "*Hashchatat zera*."

R. Joseph Modiano, a Turkish rabbi of the second half of the 18th century, in his responsa collection *Rosh Mashbir*, part II (Salonica, 1840), no. 49, discusses the case of a woman who, during her pregnancy, becomes extremely nervous and almost insane. He quotes the great rabbinical authority R. Michael, who declared that the woman should use

a contraceptive. R. Michael argued that since the woman is exposed to the danger by pregnancy she is in a class with the three women mentioned in the *baraita* of R. Bibi and should therefore, like them, use an absorbent, even putting it in before cohabitation ("*Sheyeshamesh ba-alah bemoch kedai shelo tit-aber*"), and her husband cannot object to it. Modiano himself does not concur with the opinion of R. Michael; he argues that the use of the absorbent could only be permitted if employed after cohabitation, and the husband who may find the use of this contraceptive inconvenient or may doubt its effectiveness should therefore be permitted to marry another woman. But even Modiano would not forbid the use of this contraceptive if the husband had no objection to it.

R. Akiva Eiger in his *Responsa* (Warsaw, 1834), nos. 71 and 72, pp. 51b-53a, also permits the use of an absorbent, but only if it is employed after cohabitation. The questioner, R. Eleazar Zilz, a rabbinical authority of Posen however argued that it should be permitted even when employed before cohabitation.

R. Moses Sofer in his *Chatam Sofer* (Pressburg, 1860), Yoreh De-a, no. 172, pp. 67b-68a, likewise permits it only when used after cohabitation. R. Abraham Danzig in his *Chochmat Adam* and *Binat Adam* (Warsaw, 1914), Sha-ar Beit Hanashim, no. 36, p. 156, permits the use of an absorbent or a douche or any other method of removing or destroying the semen after cohabitation. He adds, however, that according to Rashi's interpretation, it would be permitted to the woman in question to whom pregnancy was dangerous, to use this contraceptive even before cohabitation.

R. Jacob Ettlinger (1798-1871) in his *Responsa Bin yan Tsion* (Altona, 1868), no. 137, pp. 57b-58b, and R. Joseph Saul Nathanson (1808-1875) in his *Responsa Sho-el Umeshiv*, Mahadura Tenina (Lemberg, 1874), part IV, no. 13, are inclined to forbid the use of any contraceptive, even when used after cohabitation.

The authorities objecting to the use of an absorbent before cohabitation, do so, of course, on the ground that, like R. Tam, they consider such a practice "*Kemetil al ha-etsim ve-al ha-avanim*." On the same ground they would no doubt object to the use of a condom. But, as was already pointed out above, they could have no objection to the use of chemical contraceptives on the part of the woman.

In summing up the results of our discussion, I would say that while there may be some differences of opinion about one detail or another, we can formulate the following principles in regard to the question of birth control which are based upon a correct understanding of the Halakhic teachings of the *Talmud* as accepted by the medieval Rabbinic authorities, and especially upon the sound interpretation given by R. Solomon Luria to some of these Talmudic passages: (1) The Talmudic-Rabbinic law does not consider the use of contraceptives as such immoral or against the law. It does not forbid birth control, but it forbids -birth suppression.

(2) The Talmudic-Rabbinic law requires that every Jew have at least two children in fulfillment of the Biblical command to propagate the race, which is incumbent upon every man.

(3) There are, however, conditions under which a man may be exempt from this prime duty: (a) when a man is engaged in religious work, such as the study of the *Torah*, and fears that he may be hindered in his work for taking on the responsibilities of a family; (b) when a man, because of love, or other considerations, marries a woman who is incapable of having children (i.e., an old or sterile woman); (c) when a man is married to a woman whose health is in such condition as to make it dangerous for her to bear children; for, considerations for the saving of human life--*Pikuach Nefesh* or even *Safek Pikuach Nefesh*--set aside the obligation to fulfill a religious duty. In this last case, then, the woman is allowed to use any contraceptives or even to permanently sterilize herself in order to escape the dangers that would threaten her at childbirth.

(4) In case a man has fulfilled the duty of propagation of the race (as when he has already two children), he is no longer obliged to beget children, and the law does not forbid him to have intercourse with his wife even in a manner which would not result in conception. In such a case the woman certainly is allowed to use any kind of contraceptive or preventive.

Of course, in any case, the use of contraceptives or of any device to prevent conception is allowed only when both parties, i.e., husband and wife consent.

Some Rabbinic authorities of the 18th and 19th centuries would object to one or another of the above rules, and especially put restrictions upon the use of contraceptives. But we need not expect absolute agreement on questions of Rabbinic law. We must be content to have good and reliable authority for our decisions, even though other authorities may differ. We have the right to judge for ourselves which view is the sounder and which authorities are more correct. We have found that the arguments of those authorities of the 18th and 19th centuries who would oppose or restrict the use of contraceptives in cases where we would recommend it, are not convincing. With all our respect for these authorities, we may ignore their opinions, just as they in turn have ignored the opinions of other authorities (especially those of R. Solomon Luria) on our question.

Jacob Z. Lauterbach

Appendix B

Handout 1

Midrash

Men of leisure, every day.
Workers, twice a week;
Sailors, once every six months.
"Two hundred she-goats" need "twenty he-goats."
"Two hundred ewes "need "twenty rams."
"Thirty milch camels with their colts," that is fifteen of each.

B'reishit Rabbah, 76:7

Torah

"If he takes for himself another woman, he may not reduce her food, her clothing, or her conjugal rights."

Exodus 21:10

Mishnah

If a man made a vow not to have intercourse with his wife, Beit Shammai ruled [she must consent to deprivation for] two weeks. Beit Hillel rules for one week.

Students may go away and study the Torah without permission [of their wives] for a period of 30 days; but laborers only for one week.

The times for conjugal duty as proscribed by the Torah are:

- For men of independence – every day.
 - For laborers – twice a week.
 - For ass-drivers – once a week.
 - For camel-drivers – once a month
 - For sailors – once in six months
- these are the rulings of Rabbi Eliezer.

Ketubot 5:6

Codes

"There are three obligations from the Torah: kinship, coverings, and conjugal rights. Kinship is sustenance, coverings are as is plainly understood [clothes], times of cohabitation is that he should have intercourse as do all people."

*Maimonides ruled in Laws of Interpersonal Relations
Chapter 12, Halacha 2.*

Torah Commentary

"This is the correct interpretation, for it is the Scripture's way in all places to mention intercourse in brief, euphemistic language, and therefore it hinted at it here as kinship, coverings, and times of cohabitation, the three parts of what passes between a man and a woman when they are together. This sits well with Halacha, if one agrees that woman's food and clothing are their [the Sages'] ruling."

*Nachmonides
(Ramban)*

If he takes another [wife] for himself in addition to her.
he shall not diminish her sustenance, her clothing, or her marital relations from the maidservant whom he had already designated.
her sustenance Heb. Sh'ayrah, [referring to] food.
her clothing Heb. K'sutah, lit., her covering As its apparent meaning [namely her clothing].
her marital relations Heb. Onahah, [meaning physical] intimacy.

Rashi

Talmud

Mishnah

MEN OF INDEPENDENCE EVERY DAY.

What is meant by "[men of] independence"?

Raba replied: "Day Students."

Said Abaye to him: [These are the men] of whom it is written in Scripture, "It is vain for you that you rise early, and sit up late, you that eat of the bread of toil (without toiling yourself); so God gives to those who chase their sleep away (Psalm 127:2)"; Rabbi Isaac explained that 'those [referred to in the Psalm]' are the wives of the scholars, who chase the sleep from their eyes in this world and by doing this are rewarded life of the world to come."

Abaye said the [accepted explanation] is in agreement with Rab who said [a man of independence] is one like R. Samuel b. Shilath who eats of his own, drinks of his own and sleeps in the shadow of his mansion and a king's officer never passes his door.

When Rabin came he stated: [A man of independence is] for instance, like the pampered men of the West,

Rabbi Abbahu was once standing in a bathhouse with two slaves supporting him on either side when the floor of the bathhouse collapsed under him. By chance he was near a column that he climbed taking up the slaves with him. Rabbi Johanan was once ascending a staircase with Rabbi Ammi and Rabbi Assi supporting him, when the staircase collapsed under him. He through his strength climbed up and carried them with him. Said the Rabbis to him, "Since you have such strength, why do you require support?" "Otherwise," he replied, "what [strength] will I reserve for the time of my old age?"

TB Kettuboth 62a

"Day Students," [literally "sons of the lesson"] are students who the Rabbi instructs them in the lessons and different chapters and they sleep at home."

Rachi

Handout 2

| | Married < 3 years | Married > 10 years |
|--|-------------------|--------------------|
| Have sex at least several times a week | 72% | 32 |
| Sex life very exciting | 58 | 29 |
| Enjoy sex a great deal | 87 | 70 |

Handout 3

Text Study

And if . . . he realizes that she is enticing him and trying to please him and adorning herself for him so that he should notice her – he must approach her sexually.

*Shulchan Aruch, Orach
Haim 240:1*

Questions for discussion:

1. What situation is the text discussing?
2. What does the text mean?
3. What does it add to our understanding of the frequency of sexual intimacy within the marriage relationship?

Questions for discussion:

1. What does this text teach?
2. What does he “refrained in order to inflict her” imply?
3. How are both of these texts meaningful to the modern day couple?

It is forbidden for a man to refrain from satisfying his wife’s needs for intimacy. And if he transgressed and refrained in order to afflict her – he has transgressed a Torah prohibition, as it says “. . . he may not diminish her allowance, clothing, or conjugal rights.”

Rambam, Hichot Ishut 14:7

Handout 4

Text Study

This text from the Mishnah introduces us to the idea of a rebellious spouse. While the definition of the type of rebellion is not stated here, we learn elsewhere that the rabbis call a wife or husband rebellious when they refuse to be physically intimate with their spouse.

This means they would reduce the amount of money she would be rewarded in a divorce to zero!

This means that she can be in debt to her husband. If this were the case, if a relative of hers died and left her money, it would automatically go to her husband.

MISHNAH: The wife who rebels against her husband – take from [the worth of] her ketubah seven dinari each week. Rabbi Judah said: seven tropaics. For how long may this reduction be made? Until it is equal to [the worth of] her ketubah. Rabbi Jose said: Continually the reductions can be made, even until if an inheritance should fall to her from elsewhere, [her husband] will be able to collect from her. And similarly, for the husband who rebels against his wife – add onto her ketubah three dinari each week. Rabbi Judah said: Three tropaics.

Questions:

1. How is a rebellious spouse punished according to the Mishnah?
2. How do you imagine these penalties would be help to ameliorate the situation?
3. What would be the benefit of reducing her *ketubah*'s worth to zero?
4. What would be the benefit of following the ruling of Rabbi Jose?
5. What are other ways the rabbis could have suggesting stopping the rebellion of a spouse?
6. How might this be applied to modern marital strife?

Text Study:

This passage from the Talmud expands upon how to deal with the rebellious wife.

What added pressure does this change place on the woman?

How long is the new waiting period for a divorce?

How might a man who is being denied by his wife like a man with no bread in his basket”?

Our Masters, returned and voted that an announcement would be made about her on four Shabbatot, one after the other, and the court would send to her (this message): “Let it be known to you that even if your ketubah is for a hundred maneh, you have forfeited it.” The same law applies to a betrothed woman, a married woman, or even to a menstruating woman, even to a sick woman, and even to one who is awaiting her levirate marriage.

Said Rabbis Hiyya ben Joseph to Samuel: “Can a menstruating woman have conjugal relations?” – He said to him: “One who has bread in his basket is not like one who has no bread in his basket.”

Rami son of Hama said: “The announcement concerning her is made in the synagogues and the houses of study. Said Raba: This may be proved by a deduction; as it was taught, “four Shabbatot, one after the other” learn from this.

Ketubot 63b

This shows that the rabbis revisited this issue and made a change in the law by taking a vote!

These women are not permitted to have intercourse with their husbands.

More Questions for Discussion:

1. How had the law changed?
2. Now what are the incentives for ending the rebellion?
3. How would you feel if your marital issues were discussed on the bimah?
4. Do you think this is a fair punishment?
5. Why might the rabbis have added this aspect of the punishment?

A wife who refuses to have marital relations with her husband, she is the person known as a rebellious wife (*moredet*). She is asked why she has rebelled. If she says 'he is loathsome to me and I cannot willingly have relations with him' then pressure is forthwith exerted upon him to divorce her because she is not like a captive that she has to have relations with a man who is hateful to her. However, when she exits [the marriage] it is without anything whatsoever of the *ketubah* entitlements.... But if when asked [why she rebelled] she says 'My purpose is to torment him in retaliation for such and such that he did to me or for his having cursed me or quarreled with me and the like' then she is sent away from the *beit din* with the following admonition. "Be advised that if you persist in your rebellion, then even if your *ketubah* is worth a hundred *Maneh* you shall forfeit it all.

Rambam, Yad, Ishoot 14:8-9

Handout 5

Miriam and Aaron spoke against Moses regarding the Cushite woman he had married, for he had married a Cushite woman.

Numbers 12:1

Miriam and Aaron spoke She spoke first. Therefore, Scripture mentions her first.

How did she know that Moses had separated from his wife? R. Nathan says: Miriam was at Zipporah's side when Moses was told that Eldad and Medad were prophesying in the camp (Numbers 11:26). When Zipporah heard this, she said, "Woe to their wives if they are required to prophesy, for they will separate from their wives just my husband separated from me."

From this, Miriam knew [about it] and told Aaron. Now if Miriam, who did not intend to disparage him [Moses] was punished, all the more so someone who [intentionally] disparages his fellow.

Rashi to Numbers 12:1

Handout 6

After Hours Torah Study

A skit based on BT Hagigah 5b and BT Berakhot 62a

Cast: Narrator, Rav Kahanah, Kahanah's wife, Rav, Rav's wife

Narrator: There was once a rabbi who was so great a teacher, so strong a scholar, so righteous in his every deed that instead of calling him by his name, people simply called him Rav. Rav's fame went far and wide, and many aspiring rabbis would come to learn from him. They would study with him, pray with him, memorize his every word, and mimic how he ate, how he dressed, and how he performed every daily task. Every move Rav made was thought to be a matter of Torah. Rav Kahannah was a student of Rav. He too attempted to mimic Rav in his every deed, but found that there were some areas in which he did not know how Rav behaved.

Kahanah: Since I have begun to study with Rav, I have learned so much! I have learned the proper interpretation of what the Torah means when it says, "keep the Sabbath," I have learned when to bow and go up on my toes during prayer, I have learned how to eat properly, how to dress properly, and how to make tea without violating Shabbat . . . but now I find that there are a few tasks that I still do not know how to perform in the proper manner.

Kahanah's wife: Only a few things you can think of? Why don't you let me add a few to that list! How about how to make your wife happy? Can the revered Rav teach you that? How about spending more time at home rather than following him around all the time? How about not wearing socks to bed, does your beloved teacher do that?

Kahanah (suddenly inspired): No, I don't know if he wears his socks to bed! I must find out what is proper and what else he wears to bed, and which side of the bed he sleeps on, and . . .

Kahanah's wife: There you go again, you want to mimic Rav so bad, why don't you follow his example of never speaking in vain? You ramble on so much.

Kahanah: Fine, my ramblings won't be in vain. I'm going to find the answers to my questions. I'll be back in the morning.

Kahanah's wife: Oy Vay! Here we go again.

Narrator: Rav Kahanah left his home and made his way to Rav's. He peered into the windows and saw that the bedroom was empty. As quietly as he could, he snuck through the open window and slid under the bed. He excitedly thought to himself:

Kahanah: This will show the old ball-and-chain and answer my questions. The next time I go to sleep I will know exactly how to behave.

Narrator: Rav and his wife had just finished a succulent meal of chicken flavored lightly with onion and garlic. Both prepared for bed and then entered the bedroom. From under the bed, Kahanah found he could not see much, but he could see that Rav was not wearing socks. At first Kahanah was deeply disappointed that he would only learn not to wear socks to bed, but he quickly discovered that he would be learning a lot more than he had anticipated.

Rav: That was a wonderful meal my darling. You are such a righteous woman, pious and modest. . .

Rav's wife: Oh, you dote on me so much, I think I'm blushing in the dark. I don't deserve all this praise.

Rav: Oh, but you do. You are so beautiful and yet so modest. You are so pious, coming to services at the Temple consistently, and loving. You do so much for me and for our household and make the holidays for us at home. You do good in the community, and volunteer at the Temple for every committee. You are a queen. May I kiss the Queen?

Rav's wife giggles.

Kahanah: Rav sounds like a starving man? Is this his first time?

Rav's wife: Ahhh! What was that? Is somebody there?

Rav: I know who it is, I once found him spying on me in the bathroom. Kahanah! Get out! This is not proper.

Kahanah: It is a matter of Torah, and I am required to learn!

Rav: You have learned quite enough. Leave.

Narrator: Rav Kahanah left quickly, shielding his eyes so that he would not offend the couple any further. He returned home and found his wife already in bed. He took off his socks and slipped into the bed beside her.

Kahanah's wife: Back so soon? Did you learn all you wanted to know or did you just miss me?

Kahanah: I guess both.

Kahanah's wife: Oh, your feet are cold, be careful where you put them! Wait, I can tell your feet are cold . . . you're not wearing socks! That's wonderful, what else did you learn from Rav?

Kahanah: Let's not talk about Rav. Have I told you lately how beautiful you are? How pious and modest?

Handout 7

Text Study

The rabbis believed that unworthy children would result from improper unions; they list nine situations from which unworthy children will result, the first of these is rape.

The children of a raped woman: You do not need to interpret this to mean that he raped some woman and had a child by her, but simply that he raped his wife in intercourse! And thus we learn in Tractate Kallah: Why does a man have children who are crippled? Because he demands and she does not reciprocate, that is, she does not turn around and desire him too, and nevertheless he satisfies his need for her. Rabbi Joshua says: Because she says to him during intercourse: "I am being raped [compelled]" and it occurs between them with him wanting it and her not wanting it. And thus they said in Tractate Eruvin: anyone who compels his wife to a matter of mitzvah is called wicked; as it says, "Without consent the soul is not good."

Abraham ben David (*Rabad*), *Ba'alei Ha-Nefesh, Sha'ar HaKedushah*

Questions for discussion:

1. What are your initial reactions to the text?
2. What does the text teach?
3. Do you consider the above situation to be rape?
4. Why is it so hard for women to win rape cases against their husbands?
5. What other restrictions should there be on limiting the sexual act between a man and wife?

Handout 8

Proverbs 31

- 10 *A wife of noble character who can find?
She is worth far more than rubies.*
- 11 *Her husband has full confidence in her
and lacks nothing of value.*
- 12 *She brings him good, not harm,
all the days of her life.*
- 13 *She selects wool and flax
and works with eager hands.*
- 14 *She is like the merchant ships,
bringing her food from afar.*
- 15 *She gets up while it is still dark;
she provides food for her family
and portions for her servant girls.*
- 16 *She considers a field and buys it;
out of her earnings she plants a vineyard.*
- 17 *She sets about her work vigorously;
her arms are strong for her tasks.*
- 18 *She sees that her trading is profitable,
and her lamp does not go out at night.*
- 19 *In her hand she holds the distaff
and grasps the spindle with her fingers.*
- 20 *She opens her arms to the poor
and extends her hands to the needy.*
- 21 *When it snows, she has no fear for her household;
for all of them are clothed in scarlet.*
- 22 *She makes coverings for her bed;
she is clothed in fine linen and purple.*
- 23 *Her husband is respected at the city gate,
where he takes his seat among the elders of the land.*
- 24 *She makes linen garments and sells them,
and supplies the merchants with sashes.*
- 25 *She is clothed with strength and dignity;
she can laugh at the days to come.*
- 26 *She speaks with wisdom,
and faithful instruction is on her tongue.*
- 27 *She watches over the affairs of her household
and does not eat the bread of idleness.*
- 28 *Her children arise and call her blessed;
her husband also, and he praises her:*
- 29 *"Many women do noble things,
but you surpass them all."*
- 30 *Charm is deceptive, and beauty is fleeting;
but a woman who fears the LORD is to be praised.*

*31 Give her the reward she has earned,
and let her works bring her praise at the city gate.*

Handout 9

Text study

Mishnah: A man is commanded concerning the duty of propagation but not a woman. However, Rabbi Johanan ben Baroka said: Concerning both of them it is said, "And God blessed them and God said to them 'Be fruitful and multiply.'"

Gemara: From what is this deduced? Rabbi Ile'a replied in the name of Rabbi Eleazar son of Rabbi Simeon: Scripture stated, "And replenish the earth, and subdue it" - It is the nature of man to subdue but it is not the nature of woman to subdue.

On the contrary! "And subdue it," implies two! Rabbi Nahman ben Isaac replied: It is written, "And thou subdue it."

Rabbi Joseph said: Deduction is made from the following, "I am God almighty, be thou fruitful and multiply," and it is not stated, "Be ye fruitful and multiply."

Yevamot 65b

Study Questions:

4. What are the two opinions in the above text?
5. What are the arguments on each side? What are they basing their arguments upon?
6. What opinion would you follow if you were only given the stated arguments?

Our text continues by giving examples of women winning court cases and being permitted to divorce their husbands when their husband could not provide them with children.

The question is: how could she win a court case in which forces her husband to a divorce if she isn't required to have children?

Such a case once came before Rabbi Johanan at the synagogue in Caesarea, and he ruled that the husband must divorce her and also pay her the amount of her ketubah.

Now, if it be suggested that a woman is not subject to the commandment, how could she have any claim to her ketubah?

It is possible that this was a case where she submitted to a special plea; as was the case with a certain woman who once came to Rabbi Ammi and asked him to order the payment of her ketubah. When he replied, "Go away, the commandment does not apply to you," she exclaimed, "What shall become of a woman like myself in her old age?" "In such a case, the Master said, "we certainly compel (the husband)."

A woman once came before Rabi Nahman. When he told her, "The commandment does not apply to you," she replied. "does not a woman like myself require a staff in her hand and a hoe for digging her grave?" "In such a case, the Master said, "we certainly compel (the husband)."

Yevamot 65b

Questions for discussion:

5. According to the above text, do the rabbis believe that women are obligated to be fruitful and multiply?
6. Why do the women in the above texts want a divorce?
7. What is the ruling of the courts?
8. What does this imply about a woman's right to have children?

Handout 10

What does Rashi think?

AND SUBDUE IT. The “vav” [in וכבשה is missing – this allows it to be read in the masculine singular imperative] to teach you that the male subdues the female that she should not be one who gallivants. And it is also meant to teach you that the man, whose way it is to subdue, is commanded to propagate, but not the woman.

Commenting on Genesis 1:28

And he repeats this in his commentary to Shabbat 111a.

Rather, [the reference is] to a woman. There is no commandment to be “fruitful and multiply” for her, as I have said in Yevamot. “Be fruitful and multiply and fill the earth and subdue it” [refers to] man. It is his way to subdue and it is not the way of the woman to subdue.

Handout 11

Text study

Judah and Hezekiah were twins. . . Their mother Judith, wife of Rabbi Hiyyah, suffered agonizing pains during childbirth. When she recovered, she disguised herself and appeared before Rabbi Hiyyah. "Is a woman commanded to propagate the race?" she asked.

"No," he answered.

As a result of this conversation, she drank a sterilizing potion so that she would have no more children.

When her actions finally became known, he exclaimed, "Would that you bore me only one more issue of the womb."

Yevamot 65b

Role play

You are Judith:

1. How do you feel after giving birth?
2. Why do you no longer want children?
3. What are your fears?
4. How do you feel about deceiving your husband?

You are Rabbi Hiyyah:

1. When this woman comes to you, how do you make your ruling?
2. How do you feel when you discover it was your wife?
3. How do you feel when you find you will no longer be able to have children with your wife?
4. Do you regret your ruling?
5. Where is the line between what you want as a man and your responsibility as a judge?

We know by tradition that a woman cannot conceive in a standing position.

Sanhedrin 37b

When discussing whether certain women should use a sponge or not to prevent pregnancy, one rabbi is of the opinion that they should while one states the following:

Rather, said Abaye, a woman playing the harlot turns over in order to prevent conception. And the other? -There is the apprehension that she might not have turned over properly.

Yevamot 35a

1. How might "turning over" prevent pregnancy?
2. What modern faulty thinking is this similar to?
3. Do the rabbis in the above passage believe that this is an effective form of birth control? Why or why not?

An objection was raised: During all the twenty-four months one may thresh within and winnow without - these are the words of R. Eliezer. The others said to him: Such actions are only like the practice of Er and Onan! - Like the practice of Er and Onan, and yet not [exactly] like the practice of Er and Onan: 'Like the practice of Er and Onan', for it is written in Scripture, 'And it came to pass, when he went in unto his brother's wife, that he spilt it on the ground;' and 'not [exactly] like the practice of Er and Onan', for whereas there it was not according to her way (the normal way), here it is done according to her way.

Yevamot 34b

1. What is the method of birth control suggested in the above passage?
2. What modern method is this similar to?
3. Do the rabbis in the above passage view this as an effective form of birth control?
4. What are their arguments against using this method?

Handout 13

A woman once came before Rabbi and said, "Rabbi, I set a table before my husband, but he overturned it!" Rabbi replied, "My daughter, the Torah has permitted you to him — what then can I do for you?"

A woman once came before Rab and complained. "Rabbi, I set a table before my husband, but he overturned it!" Rab replied, "How does it differ from a fish?"

Nedarim 20b

Rabbi Johanan ben Dahabai objects to this view; then the text continues.

R. Johanan said: The above is the view of R. Johanan ben Dahabai; but our Sages said: The halachah is not as R. Johanan b. Dahabai, but a man may do whatever he pleases with his wife [at intercourse]: A parable; Meat which comes from the abattoir, may be eaten salted, roasted, cooked or seethed; so with fish from the fishmonger.

Nedarim 20b

About 670 years later . . .

A man's wife is permitted to him. Therefore a man may do whatever he wishes with his wife. He may have intercourse with her at any time he wishes and kiss her on whatever limb of her body he wants. He may have natural or unnatural sex, as long as he does not bring forth seed in vain. However, it is a sign of piety not to show too much levity but to sanctify himself at the time of intercourse... A man should not depart from the way of the world and its custom because its ultimate purpose is procreation.

Mishnah Torah Issurei Biah 21:9

Handout 14

Surely Tamar conceived from a first contact! The other answered him: Tamar exercised friction with her finger; for R. Isaac said: All women of the house of Rabbi who exercise friction are designated Tamar. And why are they designated Tamar? — Because Tamar exercised friction with her finger.

Yevomot 34b

THUS WERE BOTH THE DAUGHTERS OF LOT WITH CHILD BY THEIR FATHER (Genesis 19:36). R. Leazar said: A woman never conceives by her first intimacy. The scholars raised an objection: Surely it is written, "Thus were both the daughters of Lot with child by their father?" R. Tanhuma said: they put pressure on themselves and brought forth their virginity and thus conceived at the first act of intercourse.

Genesis Rabbah 51:9

Text Study questions:

1. What makes both pregnancies strange to the rabbis who are discussing them?
2. How do they explain the fact that these young women all become pregnant through their first sexual encounter?

Handout 15

Quiz

1. In Genesis, God tells man to "be fruitful and multiply." In Jewish tradition, this is interpreted as applying to which among the following (check all that apply):
 - ☐ Men
 - ☐ Woman
 - ☐ Clergy Members
 - ☐ None are required, it is now interpreted as a choice
 - ☐ Other _____
2. The Rabbi's of the Talmud recognized which of the following as valid methods of birth control (check all that apply):
 - ☐ Coitus Interruptus
 - ☐ Using an insert such as a sponge
 - ☐ Oral contraceptives
 - ☐ Condoms
 - ☐ None of the above
3. The Rabbis permit the usage of the above birth control (check all that apply):
 - ☐ Never
 - ☐ If the woman was too young to carry a child without danger to her life
 - ☐ If the woman was already pregnant at the time of intercourse
 - ☐ A woman who is nursing at the time of intercourse
 - ☐ If the woman no longer wishes to have children
 - ☐ If the man no longer wishes to have children
4. Whose choice is it to use or abstain from the use of birth control?
 - ☐ The woman's
 - ☐ The man's
 - ☐ The couple's Rabbi
 - ☐ Our Sages

Handout 16

Rav Bivi recited the following Baraita before Rav Nahman: Three [categories of] women use the *mokh* in their marital intercourse: A minor, a pregnant woman and a nursing woman. The minor, [may use birth control] because she might become pregnant, and as a result might die; a pregnant woman, because she might cause her fetus to degenerate into a sandal; a nursing woman, because she might have to wean her child prematurely and this would result in his death.

Yevamot 12b

Context:

Yevamot ("levarites") is the first tractate of Nashim ("women") in the Babylonian Talmud. This tractate deals primarily with levirate marriage and other topics, such as the status of minors.

What the text means:

1. What are the three categories of women who are permitted to use the *mokh*?
2. What is the rationale for permitting the use of birth control in these situations?
3. Do you find it strange that the rabbis thought that these three categories of women would be in danger should they become pregnant? What do these categories reflect about the practices and beliefs about pregnancy during the time of the Talmud?
4. What method of birth control was mentioned in the above passage?
5. Taking into account the reasons given above for the use of birth control, would these rationales apply to other women who have not been mentioned as part of the above three categories?
6. What are some of our modern reasons for permitting the use of birth control?

Handout 17

| Commentator | Opinion of Rabbi Meir | Opinion of Sages | Time or insertion | Other women |
|-------------|-----------------------|------------------|-------------------|-------------|
| Rashi | | | | |
| Rabbenu Tam | | | | |

Handout 18

HAS INTERCOURSE WITH A MOKH. [They are] permitted to place a sponge in the place of intercourse (into the vaginal canal) when they have intercourse in order that they do not become pregnant.

Rashi's commentary to Yevomot 12b

1. According to Rashi does Rabbi Meir say these women are obligated to use the mokh or are they merely permitted?
2. What does this imply about the opinion of the Sages, which is more restrictive and is in disagreement with that of Rabbi Meir?
3. When does Rashi assume that mokh is inserted?

THREE WOMEN HAVE INTERCOURSE WITH A MOKH . . . And Rabbenu Tam says that to place the mokh there (inside the vaginal canal) before intercourse surely is forbidden seeing that intercourse in this manner is not the normal way. [It would be as if] he throws his seed on twigs and stones [when he] throws his seed onto a sponge.

However if she puts the sponge in after intercourse it does not appear to be forbidden for the man, for it is the custom to have intercourse also with minors and barren women without ceasing from intercourse even though it is not that daughters and sons is meant [by the act]. Furthermore, the woman that places in the sponge after the fact is not warned on the destruction of seed since she is not commanded to be fruitful and multiply. "She has intercourse with a sponge" which we read here means, "are obligated to use a sponge."

Tosafot to Yevamot 12b

4. According to Rabbenu Tam does Rabbi Meir say these women are obligated to use the mokh or are they merely permitted?
5. What does this imply about the opinion of the Sages, which is more restrictive and is in disagreement with that of Rabbi Meir?
6. When does Rabbenu Tam assume that mokh is inserted?
7. Fill in your charts.

Handout 19

Restrictive

You asked me concerning a woman who is in danger during pregnancy and nursing and several times has been under great threat, whether she is permitted to use a *mokh* during her intercourse so that she would not become pregnant . . .

Indeed, by our question it is made clear that the *mokh* would be in place during intercourse itself, and I have not found anyone who would permit that at all. Therefore, I see no reason to enter into a detailed discussion about this. . .

The law is that during intercourse, in my opinion, [a *mokh*] may not be permitted, but after it is possible to be more lenient. But with the husband's permission.

Moses Sofer (1762-1839) was one of the most important halakhists and Orthodox figures in the modern period.

Permissive

Solomon Luria, the Maharshal, possessed the stature of an Ashkenazi halakhic authority in the 17th century.

Rather these three **MUST** have intercourse with a sponge because of danger. And the Sages say they do not always have to have intercourse with a sponge . . . Rashi's interpretation is the correct one. Pre-coital *mokh* is assumed and it is not improper; it is still normal intercourse, for one body derives its natural gratification from the other. It is no different than coitus with a minor. . . And I wonder at Rabbenu Tam - how it could have occurred to him to interpret otherwise than is obvious . . .

However, the other point made by Rabbenu Tam is correct that the remaining women are permitted the *mokh* and three women "must" . . . Resh Niddah implies also that other women may, for it says, "what about women who are using the *mokh*?" not "what about the three women?" That any woman may use the *mokh* is the correct inference. The law follows the Sages that the three women 'need not' but the others "may."

Solomon Luria Yam Shel Shlomo 1:8

Handout 20

Rav Bivi recited the following Baraita before Rav Nahman: Three [categories of] women may use a sponge in their marital intercourse: A minor, a pregnant woman and a nursing woman. The minor, [may use birth control] because she might become pregnant, and as a result might die; a pregnant woman, because she might cause her fetus to degenerate into a sandal; a nursing woman, because she might have to wean her child prematurely and this would result in his death.

Yevamot 12b

Context:

Yevamot ("levarites") is the first tractate of Nashim ("women") in the Babylonian Talmud. This tractate deals primarily with levirate marriage and other topics, such as the status of minors.

What the text means:

7. What are the three categories of women who are permitted to use birth control?
8. What is the rationale for permitting the use of birth control in these situations?
9. What do these categories reflect about the practices and beliefs about pregnancy during the time of the Talmud?
10. What method of birth control was mentioned in the above passage?
11. Taking into account the reasons given above for the use of birth control, please answer the following questions:
 - a. Would these rationales apply to other women who have not been mentioned as part of the above three categories?
 - b. Would modern forms of birth control be permitted?
12. What are some of our reasons for permitting the use of birth control?
13. In what ways has the situation of the Jew changed to result in this change of approach?

And what is the age of such a minor? From the age of eleven years and one day until the age of twelve years and one day. One who is under, or over this age must carry on her marital intercourse in the usual manner.

This is the opinion of Rabbi Meir.

However, the Sages say: The one as well as the other carries on her marital intercourse in the usual manner, and mercy will be vouchsafed from heaven, for it is said in the Scriptures "The Lord preserves the simple."

Since it has been stated, 'because she might become pregnant and as a result might die' it may be implied that it is possible for a minor to be pregnant and not die.

Yevamot 12b

Text Study:

1. How is a minor defined in the above passage?
2. How would you define a minor?
3. With your *hevrutah* partner, write a list of requirements you believe a woman should have before bearing a child. Write each requirement on a different post-it note.
4. What is the opinion of Rabbi Meir? What is the opinion of the Sages? Who is more lenient in the use of birth control?

Rabbah ben Liwai said: She is subject to an age limitation. Prior to that period (the age of 11 and one day) she does not conceive at all; during that period (from 11 and one day to 12 and one day) she dies and her embryo dies; after that period (12 and one day) both she and her embryo survive.

Yevamot 12b

We decreed that she may have sexual relations with a sponge lest she die.
Rashi to Niddah 45a

Context:

Rashi, Rabbi Shlomo Yitzhaqi (1040-1105) is famed as the author of the first comprehensive commentaries on the Talmud and Tanakh. His commentary is included in every printed version of the Talmud. Here, he is suggesting that because the minor, the pregnant woman, and the nursing woman are all given the option of using birth control and are singled out as such, that this implies that other women may not use birth control.

Context:

The Tosafists were medieval rabbis who created critical and explanatory glosses on the Talmud. These were collectively called Tosafot. The tosafot are comprised of the grandchildren and students of Rashi. Like their teacher, their commentary is also found in the margins of the Talmud.

Only men have the obligation to be fruitful and multiply. [We know this from the Mishnaic injunction that one should] cut off a man's hand if he checks for niddah, but a woman can do it because it prevents a sexual trespass.
Tosafot to Yevomot 12b

Rashi explains that these three women have the option of using birth control. This therefore, implies that other women do not have the option.

The Tosafot states that it is not the obligation of a woman to be fruitful and multiply, it is only the obligation of the man.

Questions about the text:

1. What is Rashi's opinion on the use of birth control for women in general according to his commentary above?
2. What is the opinion of the Tosafot on the use of birth control by women in general?
3. If it is only the obligation of the man to be fruitful and multiply, what does this imply about the use of various types of birth control such as a sponge? The pill? Coitus interruptus?

You may not put a sponge in before intercourse because it is not a normal way to have intercourse; a man would [by having intercourse with a sponge] be spilling seed on trees and rocks. But using [a sponge] afterward is okay. There three categories of women must use birth control in this manner) other women have the option)

RabbenuTam on the Mishnah Niddah 2:1

Questions for discussion:

1. In what ways is RabbenuTam's reading of this passage helpful for a woman who wants to use birth control?
2. In what ways is it not helpful to any woman who would want to use this form of birth control?
3. Using his rational, what forms of birth control could a woman successfully employ in today's world? Would a condom be permitted? Would the pill?
4. Can you think of a way you could combine the ideas of RabbenuTam and Rashi to result in the broader acceptance of the use of birth control for all women?

Handout 21

Text Study

Judith, the wife of Rabbi Hiyya, having suffered in consequence agonizing pains of childbirth, changed her clothes [on recovery] and appeared before Rabbi Hiyya. She asked, "Is a woman commanded to propagate the race?" "No," he replied. And relying on this decision, she drank a sterilizing potion (*kasa d'akarta*).

Yevamot 65b

Questions for reflection:

1. What is going on in the above scenario?
2. Why does Judith not want any more children?
3. Does she qualify as one of the three categories of women who are permitted to use the *mokh*?
4. Is her life in danger?
5. As a Rabbi, does her husband allow her to use the sterilizing potion?
6. Does she consult her husband in her decision?

Handout 22

The permission for a woman to drink a sterilizing potion (*kos ikkarin*) . . . pertains to a single woman or even a married woman in the days of the rabbis of the Talmud, when the husband could marry another woman or divorce his wife against her consent. But now that the ban of Rabbenu Gershom Me'or Ha-Golah is in effect, we must conclude that she does not have the right to drink a sterilizing potion without her husband's consent.
Teshuvot Hatam Sofer, Even Ha-Ezer 1:20

La-shevet – The rabbinic injunction to fill the earth. For our purposes it would mean that woman should contribute to the world's habitation of the species or as a partner to her husband in his obligation to *p'ru ur'vu*.

True, the obligation of *la-shevet* applies to her, but unusual pain in childbirth is sufficient reason for her to be exempted from further pursuit of this duty; she need not "build the world by destroying herself." If she already has children and wants to cease conceiving, but her husband wants her to continue – R. Sofer adds, interestingly – she should obtain his approval before drinking the potion. And is the husband refuses permission or a divorce, she is *still* not obligated, by virtue of her marriage contract, to endure unusual pain for his sake!

David Feldman p.242

¹⁹¹ Questions for study:

1. Does the Hatam Sofer permit a woman to take the sterilizing potion? If so, under what circumstances?
2. Why does he require her to consult her husband?
3. What should the woman do if the husband does not give her permission?
4. If the situation from Grey's Anatomy were that of a Jewish couple. What would you do as the woman's doctor? Please use the texts above to support your response.

¹⁹¹ Rabbenu Gershom Me'or Ha-Golah (c.950-1028) was a famous rabbi for transplanting the rules of the Talmud to life in Europe. Living in Mainz, Germany, he passed many laws, one of which was a 1000 year ban on polygamy. Violation of the laws he proposed and enacted were punished by excommunication from the community of Israel; this was known in time as the "*herem* (ban) of Rabbenu Gershom."

Handout 23

Text Study:

In regard to a woman who had children who are rebellious and offenders, and she is permitted to take a sterilizing potion because she is afraid that she will have more children and they two will not follow the righteous path, I say that she should not drink unless she really suffers with birth like the wife of Rabbi Hiyyah. And yet, if her sons do not follow the right path and she is fearful that she should multiply such progeny, certainly, she is permitted.

“A man is not permitted to drink the cup of roots in order to become sterile, but a woman is permitted to drink the cup of roots to become sterile.”

Yam Shel Shlomo 6:44

This position is held by all the major law codes including the *SmaG*, Maimonides in *Issurei Biah*, the *Tur* and the *Shulhan Arukh*, *TaZ* and *Beit Shmuel*.

Questions for study:

5. Does Solomon Luria permit a woman to take the sterilizing potion? If so, under what circumstances?
6. Why do you think he initially sounds reluctant in the above situation?
7. Knowing what you know about the commandment to be fruitful and multiply, why would a woman be permitted to take a sterilizing potion while her husband could not?
8. If the situation from Grey's Anatomy were that of a Jewish couple. What would you do as the woman's doctor? Please use the texts above to support your response.

Handout 24

Context:

This parsha of Exodus is called Mishpatim, or judgments. It gives guidelines on how to fairly punish those who have committed offences as well as rules for the proper treatment of servants.

And if men strive together, and hurt a pregnant woman, so that her fruit depart, and yet no further harm ensue; he shall be surely punished, according as the woman's husband will lay upon him; and he shall pay as the judges determine. But if any harm ensue, then you shall give life for life, eye for eye, tooth for tooth, hand for hand, foot for foot, burning for burning, wound for wound, stripe for stripe.

Exodus 21:22-25

What the text means:

1. What is the punishment if the woman miscarries but she, herself, remains unharmed?
2. What is the punishment if she is harmed?
3. Does the text view the fetus as a life? How do you know?
4. Does the fetus have any value?
5. How might you use this text to support a position for/against abortion?

Handout 25

If a woman suffers hard labor in travail, the fetus must be cut up in her womb and brought out in pieces, for her life takes precedence over its life. If the greater part of it has already come forth, it must not be touched, for the [claim of one] life cannot supersede [that of another] life.

Mishna, Ohalot 7:6

If a woman is about to be executed, one does not wait for her until she gives birth; but if she has already sat on the birthstool (labor has begun) one waits for her until she gives birth.

Mishnah, Arakhin 1:4

Context:

The Mishnah (Hebrew, "repetition") is a major source of Rabbinic Judaism's religious texts. It is the first recording of the oral law of the Jewish people, as championed by the Pharisees, and is considered the first work of Rabbinic Judaism. The Mishnah was redacted around the year 200 CE by Yehudah Ha-Nasi.

The Mishnah consists of six orders (*sedarim*). Each of the six orders contains between 7 and 12 tractates, called *masechtot*. Each *masechet* is divided into verses called *mishnayot* (singular - *mishna*). Our section are attributed by *masechet* name followed by *mishna* number and verse.

What the text means:

1. Why is a woman allowed to abort a child according to the first text?
2. What are the limitations on her right to abort?
3. When does each text define the beginning of life for the fetus?
4. If one were to use these texts to support a right to choice, up to what point might a woman be permitted to abort her fetus?

How the text relates to my experience:

1. How do you define when life starts?
2. With our advances in technology, do you agree that a fetus is not a child until it's head is out of the birth canal?
3. How would you define "suffers hard labor"? Could this include financial and mental danger as well as physical?

Handout 26

This, too, is a mitzvah: not to take pity on the life of a pursuer [rodef]. Therefore the Sages have ruled that when a woman has difficulty in giving birth one may cut up the child within her womb, either by drugs or by surgery, because he is like a pursuer seeking to kill her. Once his head has emerged he may not be touched for we do not set aside one life for another; this is the natural course of the world.

*Maimonides, Mishneh Torah,
Hilkhot Rotze'ah U-Shmirat
Nefesh 1:9*

Context:

Maimonides, also known as Moses ben Maimon, or the Rambam (1135-1200ce) was a medieval Talmudist, philosopher, astronomer and physician. He was a prolific writer and commentator with a vast knowledge in Jewish and secular studies. His Mishneh Torah is a comprehensive code in which he systematically went through all the laws discussed in the Talmud and wrote a code of conduct on how to properly follow the Halakhah. The Mishnah Torah is broken into 14 books, the Hebrew equivalent of *yad*, "hand," and therefore it is also known as the *Yad*.

What does the text mean?

In the Tamud, we are taught that we should do anything in our power to try and prevent someone from killing an innocent person, even to the point of killing the would-be murderer. We call the would-be murdered a *rodef*, a "pursuer." In the above text, Maimonides uses the legal argument of the *rodef* to support the Mishnah's stance on abortion.

1. Is the above text supportive of the right to an abortion? If so, under what circumstances?
2. According to the above text, when is the fetus considered to be a life? Is this more or less strict of a definition than we have seen in the Bible and the Mishnah?
3. Would the Rambam support an abortion in the case of a woman who was not in physical danger, but who would be in mental danger? Economic danger?

Further discussion:

The Rambam seems to oppose abortion, yet he does not want to contradict what the sages taught in the Mishnah, and so he uses another law to reinterpret what they have said. Do you think this is valid? What are some ways we do this in our practice today? Would you say that this form of re-interpretation is supportive of the Reform Jewish approach to law?

Handout 27

It is removed limb by limb, for, as long as the being did not come out into the world, it is not a *nefesh* (it does not have personhood) and it is permitted to kill it and to save its mother. But, if the head has emerged, it may not be harmed, because it is considered as fully born, and one may not take the life of one *nefesh* in favor of another.

Rashi on M. Ohalot 5:4

Context:

Rashi, also known as Rabbi Shlomo Yitzhaqi (1040-1150ce) was a Rabbi in France. He is famed for his commentaries on the Talmud and Tanakh that give concise, clear, and basic meanings to the texts. He founded a school in Troyes France where many great scholars were educated.

What the text means:

1. How does Rashi clarify the text of the Mishnah?
2. According to Rashi, when does life begin?
3. How would you use this argument to support a woman's right to choose?
4. Would Rashi be supportive of woman who wanted to abort because of mental dangers? Because of financial hardships?

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