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TOWARDS GUIDELINES FOR A MODERN KETUBAH

Mark William Gross

Thesis Submitted in Partial Fulfillment

of the Requirements for Ordination

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DIGEST

This thesis explores the development of the form and function of the ketubah, and explores means whereby new and authentic forms of ketubah may be created.

The first section of the thesis deals with the traditional ketubah. From its beginnings as a rabbinic ordinance designed to help curb the Jewish husband's absolute power of divorce, the ketubah has acquired several other functions, all of which serve to reinforce the traditional model of marriage. Part One traces the developing model of the ketubah through its evolutionary process up to its final state of existence: as the established formulation still in use today. Moreover, this section will chart the unfolding of representative laws and customs pertaining to the ketubah by way of showing how it has served Jewish marriage.

Part Two evaluates changing roles in the institution of marriage as currently practiced in our society, among Jews and non-Jews alike, and discusses the demands being made for change in the traditional model of marriage. The phenomenal use of marriage contracts as a means of regulating pluralistic marriage will also be discussed, with an examination of the form and function of these contracts and a discussion of their enforceability in the civil courts. The thesis will deal with the relationship between these civil contracts and the exclusively Jewish ketubah.

On the basis of these trends and ideas, Part Three will posit guidelines for the writing of a modern ketubah. First to be considered are those requirements which provide the framework of an authentic ketubah:

the standard elements and rubrics which are common in customary formulations in every variant of ketubah, and without which the revised format would not be considered to be traditionally valid. In addition to these halachic and normative criteria, there exist innumerable individual and subjective considerations which likewise govern the revision of the ketubah text. The thesis will examine a representative selection of these issues and needs, and will discuss their correlation with traditional Jewish values and practices.

Finally, the thesis includes several appendices illustrating textual specimens of the ketubot, marriage contracts, and alternative ketubot discussed in the text. And in addition, as a treatise establishing guidelines for the revision of the ketubah, several of the appendices demonstrate traditional usages and spellings.

ERRATA AND CORRIGENDA

page	line		
1	16	for documents are	read documents is
2	14	for in Babylon	read in Nineveh
7	8	for thh Talmud	read the Talmud
12	4	for dealth with	read dealt with
12	17	for widow or	read widow and
14	3	for זקוקים	read ליטרין
17	28	for wife'es	read wife's
20	6	for defines	read defined
26	10	for eht	read the
28	6	for honever	read however
33	2	for established	read establishes
34	5	for peoperty	read property
34	15	for bride'es	read bride's
35	11	for mount	read amount
46	15	for are fairly	read is fairly
54	32	for illurtrious	read illustrious
63	2	for nontheless	read nonetheless
64	10	for אנד	read תאנד
68	16	for עגופה	read עגונה
69	1	for Epsetin	read Epstein
70	19	for this	read these
76	15	for dailt	read ' daily
79	3	for exercize	read exercise

87	5	for companio-	read companion-
91	11	for expre-sed	read expressed
93	15	for trial marriage	read trial marriages
96	11	for Marvin Sus-	read Marvin Suss-
99	16	for irritatinf	read irritating
99	17	for annyoance	read annoyance
102	12	for counselinf	read counseling
107	5	for marraige	read marriage
113	6	for cidifies	read codified
113	8	for nust	read must
115	6	for hie	read his
115	9	for ssrael	read Israel
115	26	for whcih	read which
117	17	for thile	read while
125	24	for השראל	read ישראל
128	6	for alot	read allot
130	28	for or	read of
139	4	for naturing	read maturing
139	18	for unfavorable	read unfavorably
145	6	for their	read there

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PART ONE

The Ketubah

CHAPTER I

Nature of the Ketubah

The ketubah, or marriage documen., represents one of the greatest ordinances of the Tannaitic rabbis. The document, modeled after the marriage contracts written in the wealthy countries of the ancient Near East, democratized the marriage transaction, protected the Jewish wife from the arbitrary whims of her husband, and--as a universal institution for every Jewish bride--paved the way for other reforms which continue to serve Jewish marriage. Of the several types of marriage documents commonly in use in the ancient world, several are referred to in Jewish literature: שטר קדושין (betrothal deed), שטר ארוסין ונשואין (betrothal and marriage deed) or שטר פסיקתא (pledge of alimentation), and ספר אנתו ("woman book," therefore marriage document). The best known reference to marriage documents is probably that of the Mishneh tractate Qiddushin, which begins with the observation that

האשה נקנאת בשלשה דברים: בכסף בשטר ובביאה
a woman is acquired by three means: money, contract, or intercourse (1).

Yet none of these documents are a ketubah: that name refers specifically to the special document still in use, which was established by rabbinic decree early in the tannaitic period.

Even in our own time, the ketubah is an integral part of every Jewish wedding service, and its preparation is as indispensable to the ceremony as is the cup of wine, the canopy and the r..g. Marriage itself is unthinkable without the protection of a ketubah, in keeping with the Talmudic injunction that warns a man against living with his wife for

even one hour unless she has a ketubah in her possession (2). Such is the importance of the document, that its use is consciously--and anachronistically--ascribed to Jews who lived long before it actually came into use in Jewish marriage. The Midrash tells us that Sarah received a ketubah from Pharoah (3), that Solomon wrote one when he married Pharoah's daughter (4), and that in turn Solomon's daughter received one from her husband (5).

The Talmud states that the ketubah was instituted by an ordinance of the great Pharisaic sage, Rabbi Shim'on ben Shetach (6), but this is not literally true. There is evidence that various forms of marriage contract were in use among the Jewish communities as early as the Babylonian exile, although--as we have already observed--they were neither called nor applied as ketubot. The apocryphal Book of Tobit, which is set in Babylon of the exile period, describes the writing of a marriage document which the Greek text calls a synegraphe, συγγραφέν (lit. "together writing"), or bill of cohabitation (7). In addition, a number of marriage contracts are available to modern scholars, from Elephantine and other Egyptian locales of the same period, written in Aramaic (8). These pre-rabbinic documents appear to be copied rather loosely from marriage contracts which were customarily written in accord with Babylonian civil law (9), and it is difficult to ascertain whether or not a fixed form existed for them.

Form notwithstanding, it is evident that these contracts became customary accoutrements of marriage in ancient times, and also amongst the Jews. That the contractual mode was used by the tannaitic rabbis is clearly evidenced in the Mishneh cited above (1), which states that

> a woman is acquired (in marriage) by (one of) three means: money, contract, or intercourse.

The insertion "by one of three means" is not inaccurate, for the Talmud specifically declares (10) that any one of these three means of acquisition would suffice to enact a binding marriage. Accordingly, we must conclude that the שטר sh'tar, contract mentioned here is not a ketubah; a ketubah by itself has never been sufficiently binding to finalize a Jewish marriage (11). Moreover, as Zeitlin points out (12), the שטר represented common practice, while the ketubah was instituted specially as a rabbinic תקנה taqqanah, or reform (5).

The שטר, or contract by which marriage could be effected, represented in all likelihood some form of receipt. Zeitlin suggests (13) that it was a form of bill of sale, recording the cash transaction entered between the groom and his father-in-law. Marriage in the ancient world was almost exclusively a financial matter, with the bride considered basically a chattel changing hands; accordingly, the negotiation was made not between the groom and bride, but between the groom and the bride's father. An Aramaic marriage contract of the late 6th pre-Christian century (14) records that

> Abaniah ben Haggai. . .said to Zakkur ben Meshullam. . .'I have come to your house to ask of you the woman named Yehoyishma, your sister, for marriage, and you have given her to me; she is my wife and I am her husband from this day forth forever.'

Similarly, another document dated "the 16th year of Artaxerxes the king" (449 BCE) records how one

> Ananiah ben Azariah. . .said to Meshullam ben Zakkur. . .'I have come to you that you might give me the woman named _mut, your handmaiden, for marriage. She is my wife and I am her husband from this day forever' (15).

Even in the earliest Jewish marriages do we see such a groom-father or groom-

guardian negotiation for marriage with a woman. The betrothal of Rebekah to Isaac is an example (16). Even though Rebekah is given the right to accept or to decline the arrangements made for her (verse 58), the transaction is nonetheless carried out indepdently of her, by her mother and brother.

The amount for which the שטר was a receipt, was the מהר mohar, or bride-price. Scripture mentions this bride-price in several instances. Shechem negotiated eagerly with Jacob for betrothal with Dinah:

> ask of me whatever mohar and gift you will, and I will grant it to you, only give me the maiden for my wife! (17).

Saul seeks David's death, by demanding no other mohar for Michal than

> a hundred foreskins of the Philistines, to be avenged of the king's enemies (18).

The codes of Exodus prescribe the fine to paid by a seducer as

> money according to the mohar due a maiden (19),

a sum defined in Deuteronomy (20) as 50 silver shekels. That a figure is stipulated, demonstrates that the mohar is not a symbolic payment, but a real and literal bride-price intended to compensate the bride's father and family for the loss of

> an object of value, a young maiden who is a potential mother and can increase the family that gets her, and who also is a good worker in the house and the field and can add to the family's wealth (21).

A similar bride-price is paid in all societies which practice purchase-marriage: from the s-ḥm·t, or "woman's gift", of ancient demotic contracts (22) to the ṣdaq and ta-mant of the Moroccan Berbers (23). Such an amount, be it fixed by convention or variable in accord with the groom's means, is a compensation gift due to the bride's family for or to the marriage, as a prerequisite which facilitates the union.

Under the tannaitic rabbis, however, the mohar underwent a marked change in nature. Whereas the Biblical mohar had been 50 silver shekels, the rabbinic mohar was set at 200 zuz, which amount would be paid to the bride's family prior to the wedding as a security deposit; the sum reverted automatically to the bride in the event that her husband died or divorced her (24). In such an event, she would be basically self-sufficient for at least a year, in keeping with the standards of the day: the Mishneh indicates (25) that any person possessing 200 zuz would not be considered a public charge, and Bertinoro--commenting on this--notes that the sum would suffice to provide a person with food and clothing for a year. The rationale for this new rabbinic mohar was, that it would curb the husband's absolute power of divorce over his wife, which was granted to him by Toraitic law (26), by imposing her maintenance as a financial penalty,

> so that it might not be a light matter in his sight to send her away (27).

In fact, the reform was not effective in preventing divorce. Husbands who had paid our the 200-zuz deposit no longer considered the money to be their property, and were able to divorce their wives with no feeling of personal loss (28). Not only did the practice fail to prevent divorce, but in many cases it was an unsurpassable impediment to marriage, for poorer bridegrooms had no means to provide the requisite 200 zuz in order to marry (29). For a time, husbands were urged to invest their 200-zuz mohar in kitchen utensils and household furnishings, so as to tie up the funds and make them inaccessible for payment as a divorce settlement; this, too, was ineffective, for the husband was permitted to give his wife the utensils at their cash value in lieu of money as a

divorce settlement (30).

Accordingly, the tannaitic sages adopted another reform, whereby the husband should no longer set aside 200 zuz in cash, but rather should write a deed for payment of that amount in the event of death or divorce. This deed imposes a lien on all of the husband's property and substance as a security against payment of the required settlement. This alternative had the advantage of enabling even the poorest grooms to marry, without compromising the monetary protection due their wives. It is at this juncture that the term "ketubah" refers to our modern document, and not just to the rabbinic mohar--or cash settlement--for which it is the deed.

The institution of the ketubah deed (שטר כתובה) is traditionally attributed to Shim'on ben Shetach (31). As we have seen, payment of a ketubah sum--the rabbinic mohar--antedated ben Shetach; the institution of the ketubah deed, however, might indeed have been his ordinance. If so, he requires the writing of a brief document which commits the groom to full payment of an appropriate cash settlement for his wife, should he die unexpectedly or divorce her. The rabbinic mohar, or ketubah money, still consisted of 200 zuz at this time; but the groom was no longer obliged to produce the cash prior to the wedding. Instead, the Tosefta tells us,

> the ketubah settlement remains with the groom, while he is obliged to write for her, 'all my properties which I own are collateral and security for your ketubah monies' (32).

With this beginning, it remained for the later tannaitic rabbis and their Talmudic successors to broaden the terms of this provision, by permitting payment of the ketubah from all property--real and chattels--which the groom may own, even though debts may not normally be resolved from chattels under Talmudic law (33). Moreover, the obligation of making good a

woman's ketubah settlement is not acquitted by the husband's death, but rather devolves upon his estate and his heirs after him.

The effectiveness of this institution of the ketubah deed as an impediment to divorce is demonstrated readily enough. The punishment of having a bad wife and a large ketubah settlement was already proverbial at any early time (34), and was described by the rabbis in the words of Jeremiah (11:11) as "an inescapable evil." A man in such a situation, says thh Talmud (35), can truly lament, "I am fallen into their hands against whom I am unable to stand" (36). The rabbis advise correcting a stubborn wife who has a large ketubah by giving her a rival, since her large settlement makes it almost impossible to divorce her (37). The Midrash uses the protection of the ketubah as a metaphor for the comfort offered by G-d:

> just as a high ketubah is the consolation of a woman long deprived of her husband's company, so is the Torah a consolation and a reminder of G-d's faith for those Jews taunted by gentiles, who cry 'your G-d has hidden His face from you!' (38).

Ashkenazic Jews continue to write out a properly formulated ketubah, even though the 11th-Century decree of Rabbenu Gershom would appear to provide adequate protection from arbitrary divorce (39). In short, so effective was ben Shetach's ordinance of the ketubah deed as an impediment to divorce, that the rabbis ascribe to him not only the deed, but the institution of the ketubah itself (40).

We see in these rabbinic enactments a shift in emphasis, from purchase-marriage to covenantal marriage. The bri -price, as paid by the Biblical mohar, is an element of purchase-marriage; the pledge of the ketubah, by contrast, signifies a covenantal relationship between the groom and bride. Likewise, the sh'tar--which served as a receipt

for payment of the bride-price--was written by the bride's father for the groom, while the ketubah deed is written by the groom for his bride. The trend is clearly away from purchase-marriage and toward a sense of marriage as covenant. It is for this reason that we find ethical and spiritual, as well as financial, obligations listed in the ketubah, all of them addressed directly to the bride and not to her father or guardian. The earliest marriage contracts merely list the betrothal formula which was customary at the time:

> I have come to your house to ask of you the woman X, your daughter, so that you have given her to me: she is my wife and I am her husband from this day forth and forever (14).

Demotic marriage contracts of the 1st pre-Christian century, by contrast, reflect a marked Jewish influence by directing the groom's vow directly to the bride:

> X has said to Y, 'I have made you wife, and have given you 100 pieces of silver. . .as your woman's gift' (22).

But only the Jewish ketubah transcends this directness to contain a full pledge with emotional and ethical vows which are uniquely Jewish in character.

These vows developed at an early date, and have become standard in every נוסח variant form of ketubah. While the wording of ben Shetach's original text is unavailable, and the Talmud does not record a ketubah text, nonetheless enough ancient and Medieval documents exist, that we are able to perceive the elements common to them all. Each Jewish community would develop its own nusach, in accord with local custom and the demands of the day; each of these variant forms nonetheless demonstrates a uniformity--and a tie to what could be called the "standard form"--by virtue of the rubrics common to them all. These common elements of the

ketubah have developed historically to emphasize those aspects of marriage which are uniquely Jewish, and thereby they serve to distinguish the ketubah from the ancient marriage contracts of which it is an outgrowth.

The text which most Jews in the United States would use today, is a standardized formulation from Germany, which is simply called נוסח אשכנז, the Ashkenazic text. This text, like that of every ketubah, consists of four separate clauses, each of which can be named by its respective concern: Certification, Money, Security, and Validation. These clauses are a common element of every ketubah, and we will be more easily enabled to compare texts in terms of the individual clauses. Moreover, it should be noted in advance that a ketubah is a legally binding document drawn up as a record of the rabbinic court; accordingly, exacting attention is given to form, and to the precise shade of meaning of every word.

CERTIFICATION CLAUSE (41)

> On Wednesday, the 3rd day of the month of Elul, in the year 5422 anno mundi as we customarily count time here in the district of Bamberg; how Master Moses, son of Abraham the Cohen, said to the maiden, Beileh daughter of Master Meir the Levite: 'be mine in wifehood, in accord with the laws of Moses and of Israel; and thereby will I "till" you and cherish and nourish and provide for you, as is the custom of Jewish husbands to "till" and cherish and nourish and provide for their wives in honest estimation. And moreover have I established for you the marriage-settlement as ordained for a maiden's first marriage, being the amount of 200 silver zuz, which you merit by Toraitic law, this in addition to your food, clothing and needs--as elaborated above--and above all to cohabit with you as is the universal custom.' And Miss Beileh, this maiden, was pleased with these terms, and became his in wifehood.

This Certification, or Vow, clause records the obligations of the groom in terms of the responsibilities incumbent upon any Jewish husband.

Maimonides elaborates upon these husbandly duties, indicating that they are ten: three Toraitic and seven rabbinic (42). The groom, however, has pledged himself to all ten, regardless of their source or authority, whether they be based on the Toraitic "Law of Moses" or the rabbinic "Law of Israel." The rest of the vow itemizes these ten obligations further. The three Toraitic responsibilities--intercourse, food, and clothing(43)--are guaranteed respectively by the pledge אפלח. . .ואידון ואפרנס, "I will 'till' you (44). . .and nourish and provide for you," while the seven rabbinic obligations come under the general ægis of maintenance, and accordingly are covered by the pledge ואפרנס, "and provide for you." In addition to these obligations, many Sephardic communities insist on listing clothing as a separate vow--אכסה, "I will cover" (45)--since it is one of the Toraitic commitments and thus deserves to be entered apart from the general provision ואפרנס. Some communities even elaborate upon these vows by writing into their ketubot the additional pledges אכלכל, "I will outfit" (46) or איסובר, "I will supply" (47); the exact import of these terms, however, is unclear, and we cannot be certain why they were needed in addition to the customary pledges, save for the sake of wordiness. And every ketubah adds to the three main commitments--אפלח ואידון ואפרנס--a fourth: אוקיר, "I will cherish." This last term can imply the general attitude of respect due a man's wife as עזר כנגדו, an "equal and adequate partner" (48), or can likewise suggest a literal enrichment--"I will make you precious"--through social and material attainment.

No matter what obligations the groom takes upon himself, he does so בקושטא. . .כהלכות גוברין יהודאין, in keeping with "the custom of Jewish husbands" who do so "in honest estimation." This qualification

takes into account both the ability of the husband and the needs of his wife. "The custom of Jewish husbands" can circumscribe his obligation for intercourse, for example, on occupational grounds as described in the Talmud (49):

> the times enjoined for marital duties enjoined in the Torah (Exodus 21:10) are, daily for the independently wealthy, twice weekly for working-men, weekly for donkey drivers, bi-weekly for camel drivers, and once in six months for sailors.

In every one of his commitments, the Jewish husband is bound to his "honest estimation" of his wife's needs, of his own means, and especially of the prevailing standards of the day. Maimonides defines the groom's obligation to clothe his wife concretely, in terms of the applicable standards of his own time:

> How much is the כסות, clothing, for which he is responsible to her? It is 50 zuz worth of clothing every year, with this sum being the equivalent of 6-¼ dinars (50).

And the Talmud similarly interprets the husband's commitment in terms of contemporary standards, when it defines the minimum burial due the wife, which is one of the seven rabbinic obligations:

> Rabbi Judah says, that even the poorest Jew may not provide less than two flautists and a professional mourner (51).

Similarly, the nurturing tasks of the wife--understood implicitly in Jewish tradition, but stated explicitly in the Talmud (52)--is defined in terms of the standard usages of the day. The Talmud requires a dutiful wife to grind grain for the baking of bread, which task would be an anachronism in our time; in an age when the handmill was an indispensable means of feeding a family, however (53), the mention of such a domestic task is altogether appropriate. The implication is, that both husband and wife make their contributions to the shared household within the dictates of contemporary usage, so that marriage remains a living institution and a means of fulfillment equally viable in every generation.

The most central of the seven rabbinic obligations mentioned by Maimonides (42) is עקר-כתובה, or the mohar. Accordingly, the mohar is mentioned in the Certification clause as a condition of marriage, even though monetary matters will be dealth with at length in the Money clause. The ketubah drawn up for a maiden specifically mentions that the stated mohar is מדאורייתא, "prescribed by Toraitic law," even though institution of the ketubah was a reform of the rabbis, because the 50-shekel mohar due a maiden by Scriptural law (54) was exactly equivalent to the rabbinic ketubah of 200 zuz (55). The connection is a forced one; but it is clear that the rabbis were seeking to strengthen and legitimize their universal ordinance of the ketubah by basing its use on Scriptural law. They also ordained the writing of a ketubah for widows and divorcees who sought to remarry. but fixed for them the lower mohar of 100 zuz (56), and wrote instead of מדאורייתא the qualification מדרבנן, "prescribed by rabbinic law." This lower mohar due a widow or divorcee is commonly viewed as a discriminatory enactment of the rabbis, implying that such women are "used" products, or somehow inferior. Nothing could be less true: the widow or divorcee, who already own property and their mohar from their previous marriages, do not require as much concrete protection as does the maiden who has never before been married. But since many men would not marry a widow, when a maiden merited the same ketubah sum, the rabbis enacted the lower mohar as a leniency, encouraging Jewish men to marry--and thus ensure maintenance of--widows and divorcees.

The name of a community is often difficul to identify in ketubot, as in most Hebrew documents. This is due only in part to the confusion involved in transcribing a German or Italian or Persian place-name into Hebrew characters; more often, the difficulty would arise out of a sense

of confusion with other towns bearing the same name. Accordingly, ketubot --like many Hebrew documents, especially גטין, divorce records--would identify the community in terms of nearby bodies of water: oceans, lakes, rivers, springs, or even wells. This exactness is a characteristic of the ketubah as of the get, for it represented a record of the rabbinic court and was at times the only record of marriage or identification available to the religious or civil authorities. Accordingly, the writing of a ketubah is to be undertaken only with a great deal of caution, to the point that a careless scribe deserves to have the work taken from him (57).

It will be noted that the bride accepts the terms the groom has offered her, and becomes "his in wifehood," והות ליה לאנתו. Involved here is a question of status, and not of ownership: the husband acquires her אשות ishut, "wifehood," which is the benefit of being married to her, but he has no title to her person. A woman is not property, in the Jewish view, and cannot be owned by anyone. Nachmanides explains that a divorcee is free to remarry upon presentation of her bill of divorce

> because she has never been the property of her husband, and is fully responsible for herself in the matter of remarriage (58).

Slavery is a matter of the transfer of property, and so is governed by the laws of commerce; marriage, by contrast, is a change in status effected by mutual consent between two equal partners, and in no way resembles a commercial transaction. By means of the formula of betrothal--הרי את מקודשת לי--the woman becomes אשת-איש, "a man's wife," while he is called בעל, ba'al, or "master." Yet his בעלות, ownership, exists not over the person of his wife, but rather over the ishut, "wifehood," which is inherent in her status as a married woman, and which he warrants by virtue of performing his ten marital responsibilities (59). The relationship between husband and wife, in short, is circumscribed and symbiotic.

MONEY CLAUSE

> And the dowry which she brought him from her father's house--whether in silver or gold, in furniture or bedclothes--did the groom, Master Moses, accept at a valuation of fifty זקוקים ("pounds") of silver. And he was pleased to freely add to this another fifty pounds of silver, making a total of one hundred pounds of silver.

The Money clause at one time consisted of a full dowry list, enumerating each of the gifts with which the father of the bride had endowed his daughter, and listing the value of each. These items of dowry were considered the property of the bride, of which the groom was entitled to enjoy only the usufruct, and which he was obliged to return to her in full, at their original unimpaired value, upon breakup of the marriage. Accordingly, the dowry list was at one time a central part of the ketubah, and there would occasionally be a great deal of haggling over what was included in the dowry and what was not, to the point that the Talmud rather pithily observes that

אין כתובה שאין בה קטטה;

there is no ketubah which does not involve some degree of dispute (60). The practice of writing an enumeration of the dowry has largely fallen into disuse in our time, but the formula persists as a point of etiquette and as a compliment to the bride's family, showing out of goodwill that

לא נכנסה תחת החפה ארטלאי;

she did not go under the canopy naked (61).

In addition to the dowry valuation, for which the groom was held responsible, it was customary for the new husband to make a תוספת tosefet, or additional amount, as a gift to his bride. It was the practice to pay only a portion of this amount in advance as a מוקדם muqdam, or prior payment, in order to allow the bride to purchase her wedding outfit; the balance of the tosefet was contracted in the ketubah. This practice fell into disuse late in the Middle ages, but the custom of assigning a tosefet was retained

in the ketubah, with the amount written in full and not diminished by payment of an advance amount. The sum of the tosefet was often determined by convention: many Italian communities would automatically add a third of the dowry value as a tosefet, while it was the custom among Ashkenazic Jews to write a tosefet of half the dowry (62), and the Sephardic Jews would make a תוספת כפולה, a "balanced addition," matching coin for coin (63). In Germany, prior to the year 1000, it was found that the 200-zuz mohar was an inadequate marriage settlement, and the German communities accordingly established the custom of writing a dowry and tosefet fixed by convention at 50 ליטרין ("pounds") of silver, for a total of 100 pounds of silver. This practice was adopted as the standard ketubah jointure not only in Germany, but also in Austria, Hungary, Bohemia, Poland, and Lithuania, up to the present time (64), and is the standard reflected in our present text. The advantage of this 100-pounds-of-silver ketubah standard was, that the pound could be interpreted in terms of any contemporary currency, allowing the actual cash value of the ketubah to vacillate with fluctuations in the fortunes of the community (see Appendix D, Monetary Notes).

As a result of this practice, the mohar became a vestigial and purely symbolic payment, which in many cases was not even collected upon breakup of the marriage. The fixed payment of 100 pounds of silver was such a substantial sum, Agus observes (65), that Jewish wives simply didn't bother to collect their mohar at the same time. In the early 15th Century, for example, when the 100 pounds of silver was equivalent to 600 gold florins, 200 zuz was computed as only 17 florins; a divorcee who could manage to collect the 600 florins would not trouble herself with the additional pittance of the mohar. It is likewise possible, according to some halachists,

that the 100-pound standard included the mohar as well as the dowry valuation and tosefet. Rabbi Joshua Falk suggests this possibility in his itemization of the ketubah standard paid in his time:

> We are accustomed in our country to claim for the married maiden 400 gulden. . .(which) consists of 320 Polish or Rhine gulden, plus the 200 zuz which are the mohar, and which are another 80 gulden (6€).

No such confusion was possible in Italy, where most communities would scrupulously note in their ketubot that any sums of money mentioned in the Money clause applied בר (or לבר) ממאתן זוז דחזי לה, "exclusive of the 200-zuz (mohar) which she merits" (67). This consideration is a reflection of the Talmudic stringency (68) which commits the groom to payment of a mohar even in the event that no ketubah was written at all. As such, it distinguishes between the sacred ordinance of the Sages and the mundane financial matters involved in contemporary marriage. This distinction suggests a commitment to the institution of the ketubah, and serves to perpetuate that institution by adapting the ketubah to the current needs and practices of the community.

SECURITY CLAUSE

> And thus said Master Moses, our groom: 'I have accepted the responsibility for this deed for the mohar and dowry valuation plus the additional amount upon myself and upon my heirs after me, so that it should be paid from the best part of any valuable property which I may own in any place, which I now possess or am yet to acquire. Real property and chattels alike shall be collateral and a pledge for the payment of this deed for the mohar and dowry valuation plus the additional amount, and even from the cloak on my shoulders, during my life as after my death, from this day forth and forever.'

This clause pledges the groom's property to the payment of all his ketubah obligations, by imposing a lien on any and all property of value which he owns or may at any time acquire. Tosefta Ketubot (32) gives the original form of this clause as the heart of the original ketubah:

כל נכסין דאית לי אחראין וערבאין לכתובותיך;
'All my properties which I own are collateral and a pledge for payment of your ketubah monies.'

Our present text cites this same pledge, differing only in that it has broadened to include any and all properties in the lien, wherever they may be in the world. In terms of this commitment, our text adds to the word נכסין "properties" the term וקנינין "and acquisitions," although the distinction between the two is unclear. While the former is a more generally accepted term for property, the latter can imply specifically flocks (69) or acquired property in general. In another interpretation, it is possible that the two terms are used to refer to real property and chattels; but in fact, the exact distinction between the two terms is irrelevant. In discussing them, Shmuel haLevi comments only that קנינין should be written מלא plene, with two yods, one between each nun (70). In short, so universal is this pledge and lien that the nature of the groom's property is unimportant: even his symbolic four cubits of earth in Israel are sufficient to pledge against his ketubah obligations (71). It appears that, in payment of the ketubah, a pledge of property is more central and important than is a definition of property.

The availability of chattels in disposition of the ketubah is unusual, in that such a practice would appear superficially to be a breach of Talmudic law. In fact, while Sephardic ketubot call such properties מטלטלין, "moveables," Ashkenazic texts refer to them as נכסי דלית ליון אחריות, "properties from which debts may not be paid" (72). But it appears that chattels could indeed be used in payment of th ketubah, despite the Talmudic ruling to the contrary: the Talmud records that a member of the priestly class may use his share of בקורין first-fruits in payment of his wife'es mohar (73), and that a bill of divorce engraved on a gold platter

worth more than 200 zuz is considered to be both get and mohar (74). Clearly, the intention of permitting chattels in payment of the ketubah is, to facilitate the most accessible source of funds as a leniency in favor of the divorced or widowed wife.

Similarly reflective of a leniency is the phrase ואפילו מן גלימא דעל כתפאי, "and even from the cloak on my shoulders." The intention of the expression is, to show the extent to which any and all properties are mortgageable in payment of a woman's ketubah, as a leniency on her behalf. But it is understood that the term is not to be taken literally,

so that they strip him naked (75)

to pay her settlement. The expression is used for emphasis only, to demonstrate that the groom's payment of his wife's ketubah is a high ethical commitment which supercedes any personal gain or interest.

Another phrase which is objectionable to some is that which observes that the groom's obligations obtain alike בחיי ובמותא, "during my life and after my death." Some variants read, less bluntly, בחיי ובתר חיי, "during my life and after it." Nonetheless, to mention death at a wedding altogether, however aptly phrased, would seem superficially to be inconsonant with the joyous mood of the occasion. However, this too is an expression of the universal obligation of the ketubah, the responsibility for which is not absolved upon a man's death, but devolves upon his heirs. "During my life," accordingly, refers to dissolution of the marriage by divorce, and "and after it" implies widowhood. Theologically speaking, it is preferable to mention death over divorce at a Jewish wedding: death, being in the hands of the Divine, comes at a propitious hour as a part of the universal Plan, while divorce represents a purely human failing. It is in this vein that Shmuel haLevi rather

pithily observes that

> אין כתובה ניתן (sic) לגבות מחיים;
> the ketubah was not instituted that it might be collected from a living husband (76)!

VALIDATION CLAUSE

> And Master Moses, this groom, has accepted the responsibility and the strictest interpretation of this deed for the mohar and the dowry valuation plus the additional amount, in accordance with the strictest interpretation of every deed for the mohar and additional amount which we are accustomed to make for Jewish brides in accord with the ordinances of our Sages of blessed memory, neither as an unenforceable consideration nor as a mere contract blank. And we have enacted a formal delivery from Master Moses son of Abraham the Cohen, this groom, for Miss Beileh daughter of Master Meir the Levite, this maiden, concerning everything that is written and expounded above, using an instrument fit for the purpose; and all is thereby valid and confirmed.

For many years and even centuries following the institution of the ketubah, the document was considered an official record of the rabbinic court. A geniza ketubah blank of the 13th Century ends with an instruction to the scribe to

> arrange any insertions between the printed lines, and so all is complete and ready for the signature and validation of the rabbinic court (77).

The members of the constituted court would give their official validation when all financial matters of the ketubah had been satisfactorily negotiated between the respective parties in the presence of reliable witnesses. But subsequently, the absolute legality of the ketubah lagged with the loss of Jewish autonomy, and by the 17th Century one halachist could state absolutely that

> the ketubah resembles, but is not in fact, a record of the rabbinic court (78).

Rather, the ketubah had become a ritual motif and an institution which derives its validity from convention and from its status as one of the "ordinances of our Sages of blessed memory."

The groom commits himself to the ketubah lien באחריות וחומר, in keeping with the "responsibility and strictest interpretation" of the ketubah deed. The first of these two terms refers to the dowry valuation and tosefet, which--even though they are required in the ketubah by convention--the groom may assign according to his own means and wishes; the second refers specifically to the mohar, which is rigidly defines by the rabbis. Accordingly, Isserles says, a husband is to be believed if he declares that he has paid his wife's tosefet and dowry, since these are his privately negotiated obligations; he is not to be believed, however, if he claims to have paid her mohar, unless he presents a certification of the rabbinic court in support of his claim (79). The basis for this stringency is, again, the Talmudic injunction which obliges a husband to pay his wife's mohar even if he had written her no ketubah (72). Accordingly, we may also understand the immutable mohar to be one of Maimonides' ten husbandly obligations, while the remaining term אחריות refers to the other nine duties incumbent upon any Jewish husband. While the mohar, as an institution of the Sages, is circumscribed by the Tradition, the remaining nine obligations of a husband fluctuate with time, and must be negotiated in each generation by the prevailing standards of the day. This is the meaning of כל שטרי כתובות ותוספתות דנהיגין בבנות ישראל, "every ketubah deed which we are accustomed to make for Jewish brides."

The Validation clause, by its nature, involves the citation of several standard rubrics, some of which are discussed in the preceding paragraphs. Another is the phrase דלא כאמסכו ודלא כטופסי דשטרי, "neither as an unenforceable consideration nor as a contract blank." The Shulchan Aruch, quoting the Tur, offers an interpretation of this phrase:

> Since the essence of the mortgage on the loan (=the dowry) is on real property and a mortgage on chattels, then the real property is only a voucher, demonstrating that he will pay it from chattels if he is unable to pay it from real property. Accordingly, one must write דלא כאסמכתא, "not as an unbased condition," to demonstrate that his position relies on (סומכת על) chattels as on real property; and moreover, he must write ודלא כטופסי דשטרי, "nor as a contract blank" to show that all is set down as a complete and finished mortgage, and not as a contract blank, which must still be filled in (80).

This explanation is more an amusing wordplay than an insightful elucidation of the phrase. The phrase is best taken at face value, literally, as a demonstration that the ketubah is neither a legal fiction nor a document blank. As a validation formula, the phrase must date from the Talmudic period: it was well established by the time of the Geonim, while the term אסמכתא was unknown to the tannaitic sages (81).

The "symbolic delivery" referred to is the קנין סודר, or handkerchief acquisition, by means of which any non-moveable could be acquired legally. As such, this mode of acquisition may not be enacted on the Sabbath, although to do so would not invalidate ownership (82). For a normal acquisition--let us say of a field--the price would be agreed upon and paid out, whereupon

> the purchaser will give the seller any object he wishes, and will say to him, 'this acquires and transfers the land which you sold/gave to me' (83).

For the qinyan at a marriage, however, no formula is recited; only the object changes hands. Normally a handkerchief is used, but any object is acceptable, even if it is worth less than a p'rutah (84). Since the function of the qinyan ceremony is to acquire, and not confer, possession (85), the acquisition is valid if the purchaser grasped only a corner or part of the handkerchief rather than all of it, since his intention is clear (86).

This, then, is the "standard" ketubah in use among most Ashkenazic Jews today. It represents a community variant, in that it records usages

and emphases common at the time; it is also a standardized form of ketubah, the end result of an evolutionary process, by virtue of containing the standard rubrics which are common to every variant formulation of ketubah since the Middle Ages. The ketubah is still in use today, even as it has been used for over two thousand years, because it continues to serve Jewish marriage as an ordinance of the rabbis.

CHAPTER II

the Function of the Ketubah

Rabbi K. Kahana made the following observation concerning marriage among Jews:

> Taken together with the comprehensive legislation enacted by the Rabbis, the stability of Jewish marriage has historically been safeguarded throughout the ages (1).

The ketubah is perhaps one of the most effective of these enactments, in that--as a written form in universal use--it could be shaped and developed to serve the needs of each community in regulating their marriages. The provision of the rabbis, as represented by the ketubah, was basically a simple one: that the husband should be penalized, when he exercizes his absolute power of divorce over his wife, by being subject to a lien on all his property for payment of her marriage settlement. But by virtue of the flexibility afforded by its written form and its contractual nature, the ketubah developed several other historical functions which have likewise served the institution of marriage.

JEWISH MARRIAGE

It might be worthwhile, for the sake of background, to examine the nature of Jewish marriage, particularly in contrast to modes of marriage practiced among non-Jews, to understand how the ketubah served--and continues to serve--this relationship.

All societies and cultures regulate marriage, since the social stability it affords makes it to their interest to do so. And the means by which each group regulates marriage can tell us a great deal about

their values.

For the Jews, the basis of marriage is the word of G-d in the Bible. The Book of Genesis recounts the divine creation of humanity:

> Male and female did G-d create them. Then G-d blessed them and said to them, 'be fertile and increase, fill the earth and master it and rule the fish of the sea, the birds of the sky, and all the living things that creep on the earth (2),

to which Scripture adds,

> hence a man will leave his father and mother, and cling to his wife, so that they become one flesh (3).

We deduce from these passages a Jewish model of marriage. Its end is the wellbeing of society--"fill the earth and master it"--and the preservation of the human race--"be fertile and increase." Both parties are egalitarian partners in this endeavor--"male and female did G-d create them"--whose relationship is monogamous--"a man. . .clings to his wife, so that they become as one flesh"--and marked by a transcendent love. Finally, and most important, the entire arrangement has the sanction of Divine blessing (4). Jewish law affirms these principles, and adds to them social and legal implications. Jewish marriage, as reaffirmed by rabbinic law, confirms the interpersonal relationship between husband and wife as a human institution, and not as a sacrament, as is the concept of the Christian church; it insists on the wife's status as the social equal of her husband; it makes the woman her own possession, denying the husband any power of compulsion over her person; and it guarantees independent right of property to both partners (5). Jewish marriage, in short, deals with

> the subject itself and its importance for the life and happiness of the people; the Jewish reverence for marriage has its foundation in the mutual respect of husband and wife and their resultant happiness (6).

Jewish marriage is not a sacrament, as matrimony is considered to

be in the Christian church. There marriage is believed to be a concession to the impure lusts of the body. It is good, writes Paul,

> for a man not to touch a woman; but, to avoid fornication, let every man have his own wife, and every wife her own husband. . . .It is good if they can abide as I; but if they cannot contain, let them marry: for it is better to marry than to burn (7).

The Christian sacrament consists of G-d's redemption in grace of the weak mortal who "cannot contain"; since the bond between man and wife is thus created by a lenient G-d, they must always stay together in obedience to the Divine will. Accordingly, there can be no divorce in an orthodox Christian society, since marriage is a bond

> dissoluble only by death; so if a man and a woman have chosen wrongly, then they must suffer as a duty owed to G-d (8).

Judaism, by contrast, considers marriage a human institution founded on love, sharing, and companionship (9). Marriage has the approbation of Heaven, but is in fact an altogether human institution, legislated by the society and the rabbis to serve the needs of the individual couple. So while divorce is not encouraged under rabbinic law, it is nonetheless available. Even in recent times, an Israeli judge has reaffirmed the non-sacramental view of Jewish marriage, and has declared it as binding also in civil law:

> as they entered into (marriage) from their own free will, so may they at any time and for any reason terminate and rescind it from their own free will. Where spouses agree to have their marriage dissolved, the function of the court is a purely supervisory and executory one. . . . It is in this divergence from other systems that the distinction--you might even say the modernity--of Jewish law lies (10).

Intercourse is a natural function in Jewish marriage, and is considered not only a healthy means of expressing love, but also as the means of fulfilling the true purpose of marriage, which is to "be fertile and increase, to fill the earth and master it." The rabbinic name for intercourse, עונה "the appropriate period," affirms that the main function

of intercourse is procreation (11). But the rabbis recognize that intercourse for its own sake is a legitimate end, since it is mutually pleasurable and a means of expressing love and sharing (12).

With the primary aim of marriage being the legitimization of offspring, it came to serve as well as the means whereby a stable household was established for the welfare and security of the children. To this end, marriage involves a communion of personalities and experiences, of talents and resources towards the establishment of a working household. In most societies, the life-tasks which are shared out are apportioned on eht basis of gender--the husband engages in commercial and productive pursuits, while the wife provides nurturing and support by assuming the domestic role of homemaker and child-rearer. Such a model is evident in traditional Jewish marriage, as well, in which the husband works to provide for the household, while the wife maintains and operates the home. The Talmud lists and elaborates the tasks specifically expected of a Jewish wife: she is to grind grain, bake bread, launder, cook, nurse her child, make the beds, and work in wool (13). While such a general distinction in role appears superficially to discriminate against the woman by precluding her participation in the commercial world, the purpose of the distinction is in fact to protect, and not limit, women's rights. In marriage, as in any interpersonal relationship, it is essential that the needs and duties of both parties be clearly set forth. Such a delineation is intended to enrich the relationship by creating understanding and respect, but not to discriminate or establish limitations. In this sense, Jewish marriage has already instituted, from ancient times, the modern ideal of different tasks equally weighted. In order for a home to function, by definition, there must be respect from each partner for the household contribution of

the other.

That such equality exists in Jewish marriage is expressed in the Torah verses cited above, in which a man's wife is described as עזר כנגדו an "equal and adequate partner" (14) or companion. It might be argued that Jewish women have been and still are subject to liabilities under rabbinic law, that the laws of menstrual impurity (15), of the עגונה "grass-widow" (16) and of levirate marriage (17) operate to the disadvantage of the wife. Nonetheless, despite the disabilities to which women have always been subject in a homocentric world, Judaism has established meaningful marriage and pioneered dignity for women. It is the status of women in a society which determines that society's view of marriage (18), and the status of Jewish women has always been superior to that of their non-Jewish sisters. Roman women were blatantly considered pieces of property, charges upon their husbands and burdens to their fathers, and were "under perpetual tutelage" (19); Aristotle reflects the Greek view when he maintains that "the courage of a man is shown in commanding, that of a woman in obeying. . .silence is a woman's glory" (20); and amongst the Egyptians, female ownership was so firmly entrenched that it was customary to marry women to their own brothers in order to keep property in the family (21). In Jewish marriage, by contrast, husband and wife are not

> tools or means or vehicles for one another (22).

As early as the Biblical period, marriage among Jews is described as ברית a covenant (23), a relationship implying absolute understanding and communication and equality, along with a sense of trusting f fillment in each other. The sources occasionally recognize inequity between husband and wife, and compensate by admonishing the husband not to mistreat his companion: "do not cause your wife to weep, for G-d counts her tears" (24); "if your wife

is short, bend down that you may listen to her" (25); strive to do your wife's wishes, for in so doing you do G-d's will" (26). For the larger part, however, the rabbis stress absolute equality, and the mutual honor of husband and wife (27). It is telling that, in their marriage vows, both Jews and Christians require both partners to love, cherish and honor one another; only the latter, honwever, demand that the wife obey her spouse. In Jewish practice, the wife is a partner, but not a chattel or slave to be bought and sold, in spite of the tone of the aforementioned Mishneh (28), which begins:

> the woman is acquired by (one of) three means.

Bertinoro is at pains to explain (29) that it is not the woman's person which is acquired, for in that case the verb would be the active קונה, "the man acquires the woman." Rather, the mishneh is couched in the נפעל to demonstrate that the betrothal cannot be effected without the wife's agreement and consent. That acquisition is mentioned at all in this context, is a vestige of purchase-marriage, as evidenced in even some early Biblical material (30); such a mode of marriage is not evidenced in later Biblical texts, however, and is altogether obsolete by rabbinic times. As a transitional mode from purchase-marriage to covenant, rabbinic marriage involves elements of both: "let us say," suggests Louis Epstein,

> that marriage was purchase in essence, covenant in rite (31).

As a covenant, marriage must be monogamous. Polygyny was practiced by some Biblical personalities (32), and accordingly cannot be directly prohibitted in either Scriptural or rabbinic law. In fa , the rabbis themselves would sometimes practice polygyny, either for status or for expediency: the Talmud tells of Rabbi Tarphon, who betrothed three hundred pauper maidens, so as to be able to support them from his share of the priestly

תרומה "heave-offering" (33). Yet monogamy became the norm among Jews fairly early, in response to the divisiveness inherent in a "multiple-spouse" household. Rab advised that a man not facilitate this divisiveness by marrying more than one wife, but that should he nonetheless desire to do so, three wives would get along better than two (34). Even more definitively, Judah haNassi advised his son to marry only one wife, so that popular opinion would not go against him and brand him licentious, since his second wife would be recognized only as a concubine (35). By the Geonic period resistance to polygyny is evident; it is at this period that Rabbi Gershom ben Judah issued his interdict against any Jew who marries a second wife without first obtaining a proper and amenable divorce for the first. As for Sephardic Jews--who were not subject to this interdict, yet were threatened by polygyny as commonly practiced by their Moslem neighbors--they created a ketubah clause during the 12th Century which explicitly prohibits polygyny, and which is still in use today in every Sephardic ketubah. It is particularly telling that this clause, and the sentiment behind it, represented not an enactment of the rabbis, but rather a popular movement initiated by the families of Jewish brides (36). Accordingly, monogamy became the norm practiced in the Jewish community. This is not to imply that monogamy is the most natural form of interaction; it is, however, by definition the simplest, and perhaps the most conducive to the type of covenant represented in marriage.

As partners in a covenant, husband and wife share their property. A woman has access to her husband's property by convention, while the Talmud guarantees that a man may enjoy any product of his wife's manufacture, anything of worth which she finds, the income of any land she might possess, and her estate in the event that he survives her (37). However, it is signifi-

cant to point out that all of these (except for the last, by definition) remain the wife's property. Her husband may enjoy only their usufruct, and is responsible for them at their full original value, regardless of depreciation, as mortmain property (38). The centrality of the doctrine of independent rights of property in Jewish marriage, can readily be seen in the old Yiddish proverb, "husband and wife may be 'one flesh,' but they have separate purses!"

Jews might not have always faithfully observed the principle of absolute marital equality between husband and wife. Observant Jewish women are still subject to many disabilities today, and even the rabbis themselves occasionally demonstrate the conviction that women are somehow inferior or subordinate to men, although it is difficult to ascertain whether they entertained this opinion because it was an aspect of their contemporary civilization or because it had the sanction of Biblical usage. Nonetheless, in an age when women were considered chattels in most cultures, and vestiges of ancient kidnap-marriage were still extant even among some Jews (39), the rabbis undertook in their enactments to circumscribe male ascendency over women. Insofar as such was possible, they attempted to abrogate primitive attitudes preserved in the Scriptures--like the husband's absolute power of divorce--and to modify both attitude and conduct in the favor of woman's status as עזר כנגדו, "an equal and adequate partner" (40). If the Torah gave ascendancy to the husband--

> your urge shall be for your husband, and he shall rule over you (41)--

then the rabbis set out to guarantee at least that his rule would not be a lawless one.

IMPEDIMENT TO DIVORCE

We have seen above that the initial purpose of the ketubah was, to discourage divorce by imposing a financial penalty upon any man who exercized his absolute power of divorce over his wife. This power represents perhaps the epitome of marital inequality, and is the hallmark of most oriental societies. That it is permitted to Jewish grooms is guaranteed by Mosaic law. "When a man takes a woman and marries her," says Deuteronomy,

> and it then happens that she no longer please him because of some abominable thing, then let him write her a document of severance and put it into her hand, and send her from his home (42).

In the sense that this verse requires a defineable motive for the divorce, and demands the writing of a certified bill of divorce, it represents an early attempt to legislate the husband's absolute power of divorce over his wife. But the enactment of the verse did not, in fact, effectively regulate divorce: the form and purpose of the required "document of severance" are not known from the Biblical period, and the stipulated motive, "because of some abominable thing," permits interpretation so broad as to preclude any definition at all. Almost any fault or oversight is accepted by the rabbis as suitable grounds for divorce, involving ultimately a question of the husband's taste and temperament. "Just as some will drink a beverage touched by a fly," observes the Talmud,

> so will some husbands forgive their wives and be considerate of them, while others will not (43).

The intention of the rabbis is clear: they are attempting to circumvent the husband's absolute power of divorce in a suitable and effective way. They cannot abrogate this power altogether, because it is guaranteed in Mosaic law; neither can it be regulated suitably by an authoritative

interpretation of the term ערוות-דבר, "some abominable thing." Rather, some other means of legislating divorce was needed; it is in answer to this need that the ketubah evolved. As discussed in the previous chapter, the ketubah was not at first a contract like that used today, but rather was the cash settlement for which our modern ketubah is the deed (v. supra, pages 5-6). The groom would deposit the sum of 200 zuz with his father-in-law as a security, which amount would automatically be forfeited to his wife in the event that he divorced her. When this sytem proved inadequate as a curb to divorce, the rabbis decreed a more immediate form of penalty: a deed must be written, imposing a lien on all the groom's peoperty for payment of the marriage-settlement. The effectiveness of this decree in preventing or regulating divorce has already been discussed above (v. supra, page 7).

NEW FUNCTIONS OF THE KETUBAH

The ordinance of the rabbis which required a ketubah for every Jewish bride (44) democratized the document to the extent that an established form was required. But all we know of this form is the pledge of the groom's property in payment of the mohar, which is recorded in the Tosefta (v. supra page 6), and which is at the heart of every ketubah. The most logical written context for this pledge was in a marriage contract, like those which were commonly used by Egyptian and Babylonian Jews from at least the early Persian period.

Such a contract, an Aramaic document from Elephantine, dated "the fourth year of Darius the King," or 518 BCE (45), deals with a specific series of terms. It cites the date and place of the marriage, declares that the groom had paid the appropriate mohar, itemizes the dowry received from

the bride's parents, provides for inheritance should there be no issue, stipulates the conditions of divorce, and established fines for mistreatment and polygyny. Other marriage contracts, dated as diversely as 459 BCE (46), 449 BCE (47) and 97 BCE (48), all deal with very similar concerns; accordingly it appears that such details were basically common to most ancient marriage contracts. And while the ketubah was instituted by the rabbis to serve a specific purpose, the fact that it was framed in terms of contemporary marriage contracts made it inevitable that the ketubah would acquire new functions by virtue of the existing mode.

DOWRY LIST

The most important and universal of these additional functions served by the ketubah is, as a receipt for the dowry. As just noted, each of the marriage contracts mentioned above (45, 46, 47, 48) includes a dowry list; so central was the dowry list to the ancient marriage contract, that it was inevitable that one would be written into the ketubah as well. Since the dowry consisted of household gifts with which the bride had been endowed by her father, it was clearly a fine point of etiquette in the ancient world to enumerate the dowry fully as a compliment to her family. An itemized list of each gift and its value would indicate the importance and generosity of the bride's family, and the importance they placed in her.

But beyond this social consequence, observance of the practice was doubly important for Jews. The dowry list served to fine the property which the bride was bringing into the marriage; and, as we have seen, independent rights of property is a canon of Jewish marriage. Although the husband is entitled to benefit from the household items given as dowry--

he may sleep on the bedclothes, eat from the pots, store grain in the jars--they are in fact his wife's property, which he is obliged to restore to her at their full original value in the event of divorce. Accordingly, the dowry list in the ketubah identified those items of household property which were the bride's peoperty; it served as a receipt for the total given valuation of those items; and it stood as a promissory note for payment of that amount in the event of death or divorce. As such, the dowry list represents an additional financial burden imposed on the husband who would rashly exercize his power of divorce, and it made the ketubah an even more effective impediment to the hasty dissolution of marriage.

It is clear that the inclusion of such an itemized dowry list must at one time have represented a stressful level of negotiation. We have a hint of such in an 11th Century geniza ketubah from Mastaura (49), which includes a house and well in the dowry, and which stipulates that the bride'es brother be allowed access to the well; the ketubah ends this stipulation with the notation from Psalm 85 that

mercy and truth are met, righteousness and peace have kissed.

Similarly, the Talmud tells an anecdote of a reticent bridegroom whose prospective father-in-law mistook his silence for petulance; hoping to appease his new son-in-law, the man endowed his daughter with every bit of property he owned (50). Elsewhere, it mentions a man whose wife had lost her ketubah deed, and who in reconstructing the dowry list intentionally ommited an expensive cloak, so as to save himself the c[illegible] (51). Even in more recent times there is occasionally an argument over the contents of the dowry. Isaac Bashevis Singer writes of a choosy Talmud scholar who will marry an undesireable girl only if her dowry valuation is raised by a third,

and he demands that this be written into the ketubah (52).

In most communities the enumeration of the dowry was eliminated fairly early, as a cumbersome and unnecessary formality. Even as early as Maimonides's time the listing of the dowry was not mandatory (53), and he does not leave room for it in the specimen ketubah blank he cites (54). In most cases, a sum would be alloted for the dowry valuation in keeping with the fixed custom of the community. Such was the case in the Ashkenazic communities, where the groom would write a dowry of 50 לימרין pounds of silver, with an additional juncture, or tosefet, of another 50 pounds (55); most Sephardic Jews, by contrast, would pay the dowry in cash only, in an mount determined by the custom of the community or the means of the groom, so that no dowry list was written into their ketubot. But even when no household articles are included in the ketubah, even if the bride's father endowed her with nothing (56), some formula is to be entered into the ketubah as a reflection of good-will, showing as a compliment to the bride's family that

she did not go under the canopy naked (57).

Accordingly, we still write an abbreviated accounting of the items in the dowry, even though this does not constitute a literal dowry list. The formula used in a Polish ketubah, which is the most complete, lists

בין בכסף בין בזהב בתכשיטין ובמאני דלבושא בשימושי דירה
ובשימושי דערסא;

silver and gold, jewelry and clothing, furniture and bedclothes. The purpose of this phrase is to show that, just as any and all of the groom's property is mortgageable in payment of the mohar, likewise any and all of the bride's property is considered to constitute her marriage

endowment. But the phrase is symbolic only, and the substantial trend is away from an itemized dowry list. In fact, the phrase as given here is written only by Polish Jews; Ashkenazic Jews omit the term בשימושי דירה "furniture," so as to avoid compounding too many obligations (58). While some traditional communities continue to enumerate the dowry even today, the formulated reference to the dowry and the customary fixed sums have effectively replaced an itemized list of gifts in current usage.

CERTIFICATE OF MARRIAGE

A limited, but significant, function of the ketubah is, as a marriage certificate. In the ancient world, civil records were all but nonexistent; it was advantageous to possess a formulated document--properly witnessed and signed--which could attest to the identity of a couple, to the validity of their relationship, and as well to the legitimacy of their children. That such status was sometimes in question, is attested by the Mishneh:

> If a man and his wife went overseas, and then he and his wife and his children come back and he says 'this is the woman who went beyond the sea with me, and these are his children,' he need not bring evidence regarding either the woman or her children. . . . But if he said 'She died, and these are her children,' he needs to bring evidence regarding the woman and her children as well (59).

In a mobile society with no civil records, the ketubah served as a record of the couple's names and of the location and date of their wedding. It is still acceptable identification for any rabbinic court anywhere, and a Jewish woman is required to show her ketubah, as the most reliable evidence of her marital status, to the religious authorities in the State of Israel when she registers there for remarriage.

The ketubah is especially important in determining the proceedings

in the event of a divorce. As definitive evidence of the bride's marital status when the marriage was negotiated, the ketubah determines the marriage settlement due her. But even more important, on a practical level, it provides the proper spelling of the couple's names, which--if improperly written--can invalidate the divorce and illegitimze any issue from a subsequent marriage (60). It is for this reason that the preparation of a ketubah is circumscribed in some traditional quarters, and that later halachists even declared that a careless scribe is guilty of causing the bride financial loss, and deserves to have the unfinished work taken from him (61).

COVER DEED

As the Jewish communities lost their autonomy and came more under the sway of civil law, the ketubah acquired a new aspect to its function as a marriage certificate. In many communities, the ketubah seems to have been the cover document which received the court's blanket validation of additional deeds, riders and codicils attached to it. Moshe Gil suggests this as an explanation of the Greek word aqolitos, which appears at the end of several Medieval ketubot. He demonstrates that the original full phrase was, "all is valid and confirmed, according to (=aqolitos) the deeds attached" (62). Whether or not this demonstration is accurate or not is irrelevant: it remains that innumerable ketubot contain validating clauses in reference to external or additional deeds. Two ketubot from Mantua, dated fifty years apart (63), write instead of a dowry list that any dowry valuation and other fiscal arrangements will be provided for

> in a manner clarified in the deeds which they will make between themselves.

Another Italian ketubah, this one from Ancona (64), lists the cash value of the dowry as

> ten pounds (ליטרין) of silver, as clarified in an additional deed (בשטר נצרי).

A ketubah from Rome (65) grants a cash value to the dowry in addition to some articles of women's jewelry, as an added gift,

> as evidenced in a deed made at the Uffizio di Conte.

And a ketubah from Bordeaux, France, mentions in lieu of a dowry that

> any dowry which she brought to him, and whatever he might have freely given her in addition, along with any conditions which they might have stipulated between themselves, is all expounded and explained in the deed which was made by the civil authorities at Arshoron (66).

It is clear from these examples that the ketubah came to serve as a cover deed for all contracts and codicils involving marriage-related transactions, and especially those which involved cash taxable by the state (67).

AN INSTRUMENT OF NEGOTIATION

As a result, with the significant monetary details recorded elsewhere, the ketubah became predominantly a record of Jewish marriage. In addition to the considerations common to every marriage contract, the ketubah added on details and emphases that were uniquely Jewish. The woman is married כדת משה וישראל, "in accord with the Laws of Moses and of Israel," a term employed at least since the time of Hillel (68). Likewise, the groom's obligations are spelled out clearly, in keeping with the traditional dictates of Toraitic and rabbinic law. And all of the hu nd's commitments apply בקושטא . . כהלכות גוברין יהודאיו, "according to the custom of Jewish husbands, in honest estimation," a term that ties the groom to observance

of the prevailing community standards.

In addition to these uniquely Jewish expressions, which are common to every ketubah, special clauses and stipulations have been added to the text throughout Jewish history. The significance of these stipulations is, that they make the ketubah a medium of marital communication and exchange, and an instrument of negotiation.

That such stipulations were written into the ketubah from an early date, is evidenced in the Mishneh. The tractate Ketubot discusses a few provisions and stipulations which might commonly be written into the body of the ketubah, and indicates that several of them are superfluous. A husband is permitted to waive right or title to his wife's property, or the usufruct of her property, or to the usufruct of the proceeds of her property, ad infinitum, either during her lifetime or after her death (69). Likewise, he may affirm in writing that he is powerless to impose an oath or vow upon his wife or upon her heirs or agents (70). Several other conditions or stipulations are discussed in the Mishneh which need not be written in a ketubah, since they are understood by convention, and comprise תנאי בית-דין, court-enjoined conditions. These superfluous conditions are: that a husband will ransom his wife in the event that she is captured (71); that the wife's male heirs will inherit her ketubah settlement (72); that the wife's daughters are entitled to maintenance from the husband's estate until they are married (73); and that the wife is entitled to maintenance from her husband's estate, in the event that she survives ת (74).

These stipulations, which were evidently common in the tannaitic period, could represent a formulation which was customary in a given com-

munity, or likewise they could be private stipulations made between the bride and groom in their own terms. An example of a standardized condition is the last, guaranteeing maintenance to a widow from her husband's estate; it was phrased differently in Jerusalem and the Galilee than it was in Judea (75). Even in later times, certain ketubah stipulations were standardized in customary formulations, by community: the geniza ketubot of Medieval Palestine would grant the wife the privilege of initiating divorce proceedings against her husband (76); Sephardic communities have since the 12th Century written a ketubah clause prohibiting polygyny (77); and certain communities which were not in the practice of enumerating the dowry, would make use of an alternative formulation which is recorded in the Shulchan Aruch (78). Stipulations between bride and groom, for which no standard form exists, could be made on nearly any condition, including waiving certain traditional responsibilities. The Talmud indicates (79) that a woman is not bound to provide housework in return for her maintenance, but may claim her independence of such an arrangement if she chooses to do so. And Maimonides writes (80) that a husband may waive all but three of his ten marital obligations, if his wife is willing to absolve him of them.

Whether the couple's stipulation is a private one or a communal standard, it affords the ketubah a great flexibility in meeting the demands and needs of contemporary marriage. The insertion of selected stipulations in the ketubah has served to make of that document an instrument of marital negotiation and exchange which not only responds to Jewish marriage, but which shapes it as well.

It is as an instrument of negotiation and exchange that the ketubah

demonstrates the most promise as a meaningful contribution to modern Jewish marriage. The former function of the ketubah, that of regulating divorce, was effectively ended late in the Middle Ages, when the mohar was no longer collected, and when the cash value of the dowry and tosefet had dwindled until they were negligible, making the ketubah less a penalty for divorce than an anachronisitc formality (81). Moreover,

> we must take into consideration the fact that the ketubah was an important document, and that its provisions were significant and binding, only so long as the Jews possessed autonomy in their own affairs, brought their cases for trial to their own courts, and recognized the authority of rabbinic law (82).

In modern times, by contrast, Jews have no autonomy, but are recognized as full citizens of the lands in which they live; accordingly, they bring their divorce suits and inheritance cases to be adjudicated by the civil courts, and few consult or abide by the rabbinic authorities.

In short, the ketubah has lost its value as a marriage contract, so far as its financial functions are concerned. But with the fiscal concerns which are at the heart of the traditional ketubah dealt with elsewhere, what remains in the ketubah is the real essence of marriage: interaction and sharing. By viewing the modern ketubah as a record of marriage, and as a means of articulating the rights and responsibilities of the partners in marriage, a new emphasis emerges: the ketubah becomes a model of marital exchange and communication. Of the many functions historically served by the ketubah, and of the many needs it has met, this is perhaps the most central and the most promising.

CHAPTER III

Form of the Ketubah

While we are familiar with the wording of many ancient marriage contracts used by Jews and non-Jews alike, the text of the earliest true ketubot is not known to us. Although the Talmud discusses the ketubah deed often, it never cites the text of the document. Even later halachists do not cite the wording of a ketubah: the Tur completes its discussion of the document (1) with the observation that

נוסח הכתובה הוא ידוע;

the formulation of a ketubah is well known.

Of the earliest true ketubot which are available to us, then, the earliest, most complete, and most representative are geniza texts.

GENIZA TEXT, 1220

Israel Abrahams published a ketubah from the Cairo geniza in his 1906 article "A Formula and a Responsum" (2). This ketubah, dated 1220, is interesting for several reasons: it is a ketubah blank, or scribe's model, rather than a completed working text; it includes in its Aramaic text some terms in Judeo-Arabic; it records payment of a מוקדם muqdam, advance payment against the tosefet, with the balance contracted to the groom, by the rabbinic court, a practice which we have seen is now obsolete; and it records three stipulations, one of which--the wife's obligation to perform טבילה ritual immersion--has nowhere else been written into a ketubah blank as a stand d obligation.

CERTIFICATION CLAUSE

On the ___ day of the week, the ___ day of the month of ___, the

year ___, in the city of Bilbeys, which is near the land of Goshen and subject to our Master and naggid, the great prince in Israel, Rabbi Abraham--may his glory be exalted and his honor increase!--how X son of P the groom said to Y daughter of P, "be mine in wifehood, in accord with the laws of Moses and of Israel, and I will 'till' you and nourish and provide for and cherish and supply you, in accord with the custom of Jewish husbands, who 'till' and nourish and supply their wives in honest estimation and faithfully." And Miss Y, the bride, heard him and became his in wifehood.

MONEY CLAUSE

And the groom gave her 25 silver zuz, which are the 200 ordained by the Sages as the mohar for a maiden's first-marriage; and the groom was pleased to add to this another ___ gold dinars, besides the mohar. He advanced her 20 gold dinars (of this sum), and gave them to her as a free, irrevocable and permanent gift from the time that she goes under the canopy. Then came two witnesses and testified before us, the duly constituted rabbinic court, concerning the amount thus due the bride: namely, that advance--which she has already received--and the remaining sum of ___, which is his obligation due to her, to be paid in good dinars.

And this is the dowry which she freely brought to him from her father's house: _____. And we will mark this property, in benefit or in depreciation, from אתאג (iron?) and from related dispossession (?); and he will mark the benefit likewise, according to the custom of that city, and will add up the total of the transference, which is the sum of this ketubah: the mohar, the (unpaid balance of the) tosefet, and dowry, all told ___.

SECURITY CLAUSE

And the groom accepted the responsibility for this ketubah upon himself and upon his heirs after him, to pay it from the best part of all valuables--property, acquisitions, and wealth--which he possesses here or elsewhere in the world, in his house or afield, either real property or chattels, and even the claok on his shoulders.

VALIDATION CLAUSE

(The above applies) neither as an unenforceable condition nor as a mere form of contract, but rather in accord with the strictest and strongest interpretation of every ketubah--and of every decree--ordained by our Sages of Blessed Memory, from this day and forever. (Here the groom binds his heirs to the maintenance of his wife, and declares that he may make no vow against her, even by גילגו, implication. Nor may he marry a second wife, or force upon her a handmaiden whom she hates). And we have enacted a qinyan from the forementioned bride, that she will practice ritual immersion whenever her menses so requires, for the sake of cleanliness; and we have likewise enacted a qinyan from the aforementioned groom concerning all that is written and

expounded above. And let him(the scribe) then arrange any insertions between the lines, and all is ready for the signature and validation of the rabbinic court.

The Certification clause of this ketubah is straightforward, with little deviation from the current "standard mode" for which it is the precedent. It is interesting to note that the geographical locale is spelled out in terms of the religious authority, as well as the nearby regions. Moreover, the date is given in Hebrew and Judeo-Arabic as שנת אתקל"ב השטרות, "the year variable for contracts in the town of Bilbeys," a notation different that the simpler שנת פ' לבריאת עולם, anno mundi, which is in use today. The groom's vow is similar to the modern standard, the only variance being in the order of the vow components. As in our model, intercourse is promised first, and אישובר--as a synonym for אפרנס, "I will provide"--is guaranteed last, as commonly written today; the only distinction is, that the two central elements, אוקיר and אידון are interchanged.

The equation of 25 zuz to 200 in the Money clause is not the contradiction it seems. Very simply, the Bilbeys community had chosen to interpret the 200-zuz rabbinic mohar in terms of the Tyrian zuz, which was made of a copper-silver alloy in a one-to-eight ratio (3). Accordingly, the actual cash value of the mohar would be only an eight of its 200-zuz face value, or 25 pure silver zuz. The inference is, that the community adopted this lower ketubah standard in order to limit the groom's financial penalty in the event of death or divorce, as a leniency to encourage marriage. With the lower ketubah standard, the dowry payment and tosefet settlement--which are completely negotiable--become the truly effective impediment to divorce, since they are a more immediate and realistic

cash amount. No standard dowry valuation is fixed, for the items in the dowry could not possibly be listed: our text is a blank, and not an actual ketubah.The same holds true for the tosefet, which is negotiable in any amount. Of the stipulated tosefet, however, 20 gold dinars are to be paid to the bride as an advance cash gift, with the balance contracted to the groom as an obligation of the rabbinic court, to be payable in the event of death or divorce. It is clear that, by a process of transition, the Bilbeys community had made the tosefet transaction the real cash penalty for hasty divorce, in lieu of the traditional rabbinic mohar of 200 zuz, which had been found to be an inadequate curb. So seriously was the tosefet once considered, that its payment was a prime consideration of the ketubah; a geniza document dated 982 (4), which was written independently of the ketubah, records that the bride's father actually paid the 20-dinar advance on behalf of his son-in-law, with the balance of the tosefet devolving directly upon the groom. Later in the Middle Ages, however, the payment of the tosefet lost its importance as a real commitment, until--as in our time--the obligation is a symbolic one only, and the tosefet serves only as a compliment to the bride and as a portion only of the overall marriage-settlement.

That the Money clause provides for enumeration of the dowry, as late as the 13th Century, is important, for it serves to reinforce the significance of independent rights of property as a central principle in Jewish marriage. The husband accepts the privilege and responsibility of the bride's property as mortmain, and is liable for it at its full original value, "in benefit as in depreciation." The same consideration applies to the property of a Jewish bride in the third pre-Christian

century--the woman's marriage contract guaranteed that the bride shall be entitled to

take out all that she brought in her hand, from thread to straw (5)--

and to that of a 17th-Century Italian bride, for whom dowry property is mortmain by definition (6).

The Security clause pledges the groom to payment of the ketubah in terms which are altogether unambiguous: any and all property of worth, of any type and at any place or time, as soon as it becomes the groom's property is liable by him or his heirs for payment of his obligation. The formulation is time-honored; it exists virtually unchanged in every variant of ketubah.

The Validation clause of our document, however, is unique. The first paragraph, which is basically the customary Validation formula, differs little from that currently in use. The second paragraph, the groom's stipulations, are fairly standard in the Oriental world, where polygyny was permitted. But the bride's stipulation that she would perform ritual immersion at the appropriate time is dually novel: first, because this is the only known listing of such a stipulation in a ketubah blank, as if the stipulation were not only customary, but mandatory in that community; and secondly, because it is novel--if not unique--to indiacte that a qinyan was enacted from the bride concerning her obligations. The קנין-סודר, or formal acquisition, has always been performed by the groom in symbolic acquisition of his responsibilities; but to perform such a ceremony for the bride is rare, if not nonexistent, in other ketubot. It is worthy of note to point out that, at the time of our document, the ketubah was considered an official record of the rabbinic court; the last

line of the text instructs the scribe how to finish preparation of the document for the validation of the בית-דין. Later in the Middle Ages, by contrast, the ketubah had become institutionalized as a ritual mode in its own right, so that by the 17th Century we are told that

> the ketubah resembles--but is not in fact--a record of the rabbinic court (7).

NEW DIRECTIONS--GENIZA TEXT, 1022

Another geniza text worth examination is one from Mastaura, Egypt, dated 1022 (8). Although this ketubah predates the previous text by two centuries, it is nonetheless more representative of our modern "standard" text.

CERTIFICATION CLAUSE

> On Friday, the 4th of Nissan, anno mundi 4782 according to the system by which we are accustomed to reckon time here in the the city of Mastaura, which is by the river Meandros: how Namer son of Elqana came and said to Eudokia daughter of Caleb, "be mine in wifehood, in accord with the laws of Moses and of Israel, and thereby will I 'till' you and cherish and provide for and supply you in accord with the custom of Jewish husbands, who 'till' and cherish their wives honestly. And moreover have I established for you the mohar as ordained for a maiden's first-marriage, set aside and duly established upon me from my property, 200 silver zuz--which are 8-1/3 dinars--which you merit by Toraitic law; this in addition to your food and clothing and other needs, which are likwise my obligations, and above all to come to you as is the custom of all the earth." And this Eudokia was pleased (with these terms) and became his in wifehood.

MONEY CLAUSE

> And this is the dowry which Eudokia the bride brought from her father Caleb's house to that of Namer, her husband: (here fo ws a long list of household articles, clothes and items of jewelry, with their respective values). And the sum of all this--with her property, her wedding-gifts, and her mohar plus the tosefet--is 35-1/3 pieces of gold. ~~And Namer the groom has received upon himself~~ (stricken out). And moreover has the bride's mother given her daughter the lower level of a house, the doorway of which is at the east, towards the River.

Half of this well shall belong to the bride's brother, Caleb, who shall have the right to enter through the eastern gate to use the well as he needs. "Mercy and truth are met, Justice and Peace have kissed" (Psalms 85:11).

SECURITY CLAUSE

And Namer the groom has received the responsibility of this ketubah upon himself and upon his heirs after him, to pay it from the choicest part of all his valuable property which he has anywhere in the world, in his house or afield, whether in real property or in chattels, and even to the cloak on his shoulders,

VALIDATION CLAUSE

neither as an unenforceable condition nor as a mere form of contract, but rather, in accord with the strictest interpretation of every ordinance of our Sages. And we have enacted a qinyan from Namer, our groom, by means of an article fit for the purpose, concerning each statement and point which we write and define on the reverse of this deed. Valid and binding, AQOLITOS (אקולימוס).

This ketubah is fairly compact and straightforward. The Money clause, especially, merits notice: it consists solely of a dowry list, and a סכום s'kum, or total dowry valuation. There is no enumeration of a tosefet, but only passing reference to it, by which we can infer that its size and payment are defined by tradition and local custom. By contrast to the previous ketubah--which called for an advance payment against the tosefet, and a certified pledge for payment of the balance--our present document considers the tosefet merely a component of the final balance of "35-1/3 pieces of gold" for which the groom is held responsible upon dissolution of the marriage. The emphasis is, clearly, upon simplification of money matters written into the ketubah, by considering the separate cash liabilities to comprise one single obligation.

The Security and Validation clauses are basically the same as those in the previous ketubah, and--by inference--as those in use today.

Two aspects of the document are unique, however. The first of these is the observation that the ketubah validates

> each statement and point which we write and define on the reverse side,

whereas we would expect the modern notation,

> written and defined above.

The explanation is, very simply, that our document is written on two sides of a piece of parchment: the Certification and Money clauses on the recto side, and Security and Validation clauses on the verso, along with the signatures of the witnesses and that of the scribe.

The second unusual detail is the use of the word Aqolitos at the end of the document. It is surmised that this is a Hebrew spelling, אקוליטוס, of the Greek word ἀκωλύτως, "unhindered," which was used by Jews of the Byzantine world in validation of documents. Moshe Gil considers the term to be

> a kind of terminus technicus; we find that the official, or judge, when validating a transaction, would insert the phrase 'according to (=akolouthos) the deeds presented' or the like (9).

Gil suggests that this formula was once standard in every ketubah, as a validation for the entire marriage transaction "as written and explained above"; that, as a transition, many ketubot omitted the validating phrase while retaining the single word aqolitos; and that finally even this was dropped as a meaningless vestige (10). Whether or not this theory is sound, it nonetheless is clear that Medieval Jews used the term aqolitos as a sign of validation in their documents. Mann cites th case of a Byzantine document (11) which notes at the bottom:

> אקוליטוס דמרדכי כתוב על מחקא וקיים;
> aqolitos that the name 'Mordecai' is written on an erausre, but is nonetheless genuine.

CODIFICATION--MAIMONIDES, CIRCA 1180

Maimonides cites the text of a ketubah in his Mishneh Torah, late in the 12th Century (12). While his formulation might not be the first by a halachist, it is certainly the most important and most influential. This formulation, we will see, especially represented a stabilizing factor in the development of the ketubah in the Sephardic world.

CERTIFICATION CLAUSE

On the ___ day &c, how X son of P said to Y daughter of P, the maiden bride, "be mine in wifehood, in accord with the Laws of Moses and of Israel, and thereby will I--by the grace of G-d!--'till' you and cherish and supply and nourish and provide for and clothe you, according to the custom of Jewish husbands who cherish and supply and nourish and provide for and clothe their wives in honest estimation. And moreover have I established for you the mohar ordained for a maiden's first marriage, 200 zuz of silver--which are 25 silver zuz--which you merit by Toraitic law, this in addition to your food and clothing and needs, and above all to cohabit with as is the custom of all the world." And this Y was pleased (with these terms) and became X's in wifehood.

MONEY CLAUSE

And he was pleased to add for her an additional amount beyond the mohar, making a total of ___. And this is the dowry which she brought him: _____. The groom has received it all, and it is come into his hand and is become his right; but he has enjoined it upon himself as a loan and as his responsibility.

SECURITY CLAUSE

And thus said X, this groom, to us: "the responsibility for this ketubah in its entirety--the mohar, dowry, and tosefet, plus the rest of the ketubah conditions--have I accepted upon myself and upon my heirs after me, and upon the best part of all valuables. Property and acquisitions which I already possess or am yet to acquire, at any place in the world, whether real property or chattels supported by real property, are all pledged as collateral for this ketubah in its entirety--the mohar, dowry, and tosefet--so that it should be paid from them in my life and after my death, and even from the cloak on my shoulders.

VALIDATION CLAUSE

> And we enacted a complete qinyan from this groom X, concerning all that is written and explained above, neither as an unenforceable condition nor as a mere document blank, but rather in accord with the strictest and strongest interpretation of every ketubah deed which Jews are accustomed to use, and which are suitable in accord with the ordinance of our Sages of blessed memory. And we have signed this ketubah on the aforementioned date, whereby all is valid and clear and binding.

In this ketubah, as in the Bilbeys blank above, the 200-zuz mohar of the rabbis is interpreted in terms of the adulterated Tyrian zuz, giving the overal mohar an actual cash value of 25 silver zuz. While this appears to have been a common practice amongst Oriental Jews, there can be no question that Maimonides codifies the custom by writing it into his ketubah form. In the vow passage, Maimonides mentions all seven of the obligations mentioned in Chapter I (v. supra, page 10), thus establishing a precedent that will be followed in many Oriental and Sephardic communities. That Maimonides begins his Certification clause "On the -- day etc." indicates that the general wording of this formula was well-known in his day, too much so to bother mentioning it specifically in full.

It is not clear whether or not such a standardized formula is called for in the Money clause. Maimonides provides a caption for the enumeration of the dowry, but there is no indication whether this refers to a list of items or a סכום sum total of their value. In either case, the emphasis of the clause is clearly to define both the bride's property and the groom's responsibility for it as mortmain, "as a an and as his responsibility." It will be noted especially that only the dowry and tosefet are mentioned in the Money clause, while the mohar is listed in the Certification clause, as an element of the groom's vow. This is

the practice common today, but it is in contrast to the Bilbeys blank, which includes the mohar as well in the Money clause. In the latter case, the mohar is a simple monetary detail and a completed transaction; with the mohar included in the Certification clause, it retains its status as an ordinance of the Sages and a precondition of marriage. The shift in emphasis marks a transition in the nature of the ketubah, from an official court record to a personal document regulated by the weight of tradition.

Maimonides's document represents a transitional mode when it couches the Security clause as the record of a spoken vow: "thus X the groom said to us." The question must be asked, to whom does this "us" refer? It cannot mean the rabbinic court, for they would be so identified. It must, therefore, refer to the witnesses to the signing of the ketubah. Accordingly, later Sephardic ketubot specifically name

אנן סהדי דחתימי מטה;

we, the undersigned witnesses.

That this understanding is Maimonides's intent, is conveyed by the last section of his Validation clause, which begins very uniformly

וקנינא;

and we have enacted a qinyan.

This "we," likewise, can refer to none other than those who are mentioned in the final line--

וחתמנו על שטר כתובה זו בזמן הנזכר לעיל;

and we have signed this ketubah on the aforementioned date--

namely, the undersigned witnesses.

Maimonides's formulation includes for the first time the phrase "like every ketubah deed which Jews are accustomed to use," whereas our previous texts had mentioned only "like every ordinance of the Sages."

This new term represents a democratizing trend, since it expands the definition of a ketubah to include community standards as well as the classical model. And even as he thus expands the definition of the ketubah, he is standardizing the usages of his own time as a model for future communities.

Additionally, Maimonides is the first to truly define the content of the ketubah obligations. Our previous documents have only made reference to

אחריות שטר כתובה דא;

the responsibility for this ketubah deed.

Maimonides, by contrast, defines the three component payments for which the groom is held responsible: mohar, dowry and tosefet. And in addition to these, he binds the groom to

שאר תנאי כתובה;

the rest of the ketubah conditions.

This term refers to six of the seven husbandly obligations (v. supra, page 10, note 42) which are rabbinically ordained; the seventh, mohar, is considered separately of the rest as a תנאי-בית-דין, or court-instituted provision (13). Maimonides's ketubah formulation, in short, defines all ten of the groom's responsibilities to his wife, as enumerated in his Hilchot Ishut (14): the three Toraitic obligations--food, clothing, and intercourse--plus the court-enjoined mohar and the six remaining rabbinic obligations, or תנאי-כתובה. As such, his formulation makes the ketubah a viable record of Jewish marriage, describing fully the parties, the locale, and the complete terms of the relationship.

THE ESTABLISHED MODEL--TRIESTE, 1773

One ketubah which represents a finished product, is a text from

Trieste, Italy, dated 1773 (15). It is a modern ketubah in every respect, yet it represents a classical Sephardic norm which owes much to the formulation of Maimonides.

CERTIFICATION CLAUSE

On Friday, the 10th of MarCheshvan, anno mundi 5733 according to the system by which we customarily reckon time here in Trieste, the town which is situated on the shore of the (Adriatic) Sea, did the honored youth David son of the illustrious Kolonomos the Levite--may his Rock and Redeemer keep him--say to chaste maiden Miss Malkah daughter of the respected Joseph Constantini--may the Eternal preserve him--"be mine in wifehood, in accord with the Laws of Moses and of Israel, and thereby will I 'till' you and cherish and nourish and provide for you, according to the custom of Jewish husbands who 'till' and cherish and nourish and provide for their wives in honest estimation. And moreover have I established for you the mohar ordained for a maiden's first marriage, 200 zuz of silver which you merit by Toraitic law, this in addition to your food, clothing, and other needs, and above all to be with you as is the custom of all the world." And Miss Malkah, this maiden, was pleased with these terms, and became his in wifehood.

MONEY CLAUSE

And this is the dowry which she brought him from her father's house: one thousand sequins (zecchini, זיקינו), with such currency being computed at the rate of fifteen p'tish to the zecchino--plus two suits of clothing belonging to the bride. And the young illustrious Master David, the groom, was pleased to freely increase for her the amount of 333-1/3 zecchini--at the aforementioned rate of exchange--making a total value for the ketubah dowry and tosefet one thousand three hundred and thirty-three and one-third zecchini, besides the (mohar) of 200 zuz, which she merits.

SECURITY CLAUSE

And thus said the illurtrious exalted Master David--may his Rock and Redeemer keep him--the groom: "I have received the responsibility and stringency of this deed (for the) mohar, dowry and tosefet upon myself and upon my heirs after me, to be paid from the best part of all my valuables, properties and acquisitions which I now possess or will yet acquire, at any place in the world, both real property and--on the basis of them--chattels: all are security and collateral from which this deed (for the) mohar, dowry and tosefet may be paid, and even from the cloak on my shoulders, from this day forth and forever."

VALIDATION CLAUSE

> And the groom, the illustrious exalted Master David--may his Rock and Redeemer keep him--accepted the responsibility and stringency of this deed (for the) mohar, dowry, and tosefet in accord with the responsibility and stringency of every ketubah deed which we are accustomed to make for the chaste and fitting daughters of Israel, (which) are made in accord with the ordinances of our Sages of blessed memory, neither as an unenforceable condition nor as a mere document blank; but rather, we the undersigned witnesses have enacted a qinyan from the illustrious and exalted Master David son of the illustrious and exalted Master Kolonomos the Levite--may his Rock and Redeemer keep him--to the benefit of Miss Malkah daughter of the illustrious and exalted Master Joseph Constantini, this maiden, concerning all that is written and explained above; and all is valid and confirmed.

The use of elaborate honorifics in reference to the bride and groom, and to their families, is a hallmark of Italisn ketubot. This particular ketubah is even somewhat austere in this regard. By contrast, one text from Mantua, dated 1777 (16), speaks of

> the respected, honored youth, the exalted Master Azriel Hayyim--may his Rock and Redeemer keep him--son of the respected, illustrious exalted Master Simon Vitarbi--may his Rock and Redeemer keep him,

and of the

> respected, distinguished, chaste maiden, Miss Esther--may she be blessed above all women--daughter of the reknowned, praised, illustrious exalted Master Eliezer Huego--may his Rock and Redeemer keep him--from the city of Modena, which may the Eternal guard.

By contrast, the honorifics of our present text are modest indeed! Otherwise, our text shows no unusual elements; rather, it follows the established formulae very closely. The vow passage of the Certification clause mentions the customary four pledges--אפלה ואוקיר ואידון ואפרנס--whereas most Italian ketubot likewise pledge the groom to clothe his bride, אכסה. Beyond this one detail, however, our ketubah resembles those of its age and provenance in every respect.

The Money clause deals literally and exactly with disposition

of the dowry. According to local custom, the tosefet is figured to be one third of the dowry; the groom complies with this practice, right down to the fraction of a sequin. The obligation is exacting, and a real one: its seriousness can be gauged by the notation in our text which defines the sequin, or zecchino, at the current rate of exchange. Even two suits of clothing, belonging to the bride, are listed in the ketubah as an obligation of the groom. Their inclusion indicates a vestige of the older mode, whereby every item of household apparel would be listed in the ketubah. That they are listed separately, is indicative of the new mode, whereby enumerated lists of property are recognized as being cumbersome, and the tendency is towards simpler cash transactions. The tone of this Money clause is decisive, but it is less formal, and almost casual.

Our document closely resembles Maimonides's formulation in its Security clause. The three components of the marriage settlement--mohar, dowry, and tosefet--are mentioned specifically as binding obligations, whereas such an itemization was not the custom in our earlier documents. Moreover, our present ketubah--like that of Maimonides--couches the Security clause in the first-person, as a form of extended vow. It is unclear, in either of these cases, whether Maimonides innovated the respective practices; but there can be little doubt that his codification of them standardized their use.

The Validation clause is a synopsis of the groom's ligations, as expressed in the Security clause, and serves moreover as an assurance that these obligations are enacted according to the traditional usages of the ketubah. In the 11th-Century text from Mastaura, the groom's obli-

gations were confirmed

> according to the strictest interpretation of every ordinance of our Sages of blessed memory;

the 13th-Century Bilbeys ketubah blank expanded this to refer to

> the strictest and strongest interpretation of every ketubah which our Sages ordained, and which Jews are accustomed to write;

while Maimonides reverses the order somewhat, to validate the groom's several obligations

> in accord with the strictest and strongest interpretation of every ketubah deed which Jews customarily write, and which are suitable in accord with the ordinance of our Sages of blessed memory.

Based on the latter model, that of Maimonides, our present text contains the definitive form of Validation still in use today.

This ketubah of Trieste represents a modern ketubah in every respect. We have already indicated that diversity in ketubah texts became limited during the Middle Ages, and that usages in the ketubah became standardized. By the 18th Century, the evolution of the ketubah was more than complete. Our text represents a community variant, in that it contains the usages and emphases common in Trieste at that time; for the larger part, however, it is a standard and fully modern ketubah. The distinctions between its text and our own modern "standard" are minor and historical, and in no way alter the meaning of the ketubah. Similarly, of the many community נוסחאות variants still in use today, most differ from each other and from our standard in only a few minor respects. As described in Nachalat Shiv'ah, for example, the customary Ashkenazic ketubah calls for payment of the groom's ketubah obligation in זקוקים כסף, "silver marks," while the Polish variant specifies that these must be זקוקים כסף צרוף, "marks of refined silver." The difference is minor, and has no practical impact on the meaning of the ketubah.

ASHKENAZIC AND SEPHARDIC

More marked differences exist between the ketubah texts currently in use among Ashkenazic Jews and those written in the Sephardic communities. The Ashkenazic ketubah has altered little since the Middle Ages, since its financial transaction has traditionally been circumscribed by the 100-pounds-of-silver standard since the year 1000 (17). In the Oriental and Sephardic countries, by contrast, the dowry and tosefet are negotiated based entirely on local custom and the means of the respective families. Moreover, the Sephardic communities standardized their ketubot according to the codification of Maimonides's model.

In a line-by-line collation, the two texts would look like this:

Sephardic Ketubah (18)	Ashkenazic Ketubah (19)
CERTIFICATION CLAUSE	
On the ___ of the week, ___ day of the month of ___ anno mundi ___ according to the system by which we reckon time here in ___	On the ___ of the week, ___ day of the month of ___ anno mundi ____ according to the system by which we reckon time here in ___
we are witnesses to	
how X son of P, the groom, said to Y daughter of P, this bride, "be mine in wifehood, according to the Laws of Moses and of Israel; and thereby will I	how X, son of P, the groom said to Y, daughter of P, this bride, "be mine in wifehood, according to the Laws of Moses and of Israel; and thereby will I
--at the command of and with the Grace of Heaven--	
'till' and cherish and nourish and provide for	'till' and cherish an nourish and provide for
and outfit and supply and clothe	
you as Jewish husbands are	you as Jewish husbands are

accustomed to 'till' and cherish and nourish and provide for

and outfit and supply and clothe

their wives in honest estimation. And moreover have I established for you the mohar ordained for a maiden's first marriage, 200 zuz in silver, which you merit,

this in addition to your food and clothing and other needs,

and to 'know' you

as is the custom of all the world." And Miss Y was pleased (with these terms) and became his in wifehood.

accustomed to 'till' and cherish and nourish and provide for

their wives in honest estimation. And moreover have I established for you the mohar ordained for a maiden's first marriage, 200 zuz in silver, which you merit

by Toraitic law,

this in addition to your food and clothing and other needs,

and above all to be with you

as is the custom of all the world." And Miss Y was pleased (with these terms) and became his in wifehood.

MONEY CLAUSE

And this is her dowry:

And the groom has acknowledged

that he has received them, and that they are come into his hand and his authority completely, to the fraction of the last penny. And he was

And the dowry

which she brought to him from her father's house, in silver and gold, in jewelry and clothing, in furniture and bedclothes,

has the groom acknowledged

it at a value of 50 marks silver. And X, this groom, was pleased to increase this amount freely by another 50 marks to match them, making a total obligation of one hundred marks of lver.

pleased to accept them
upon himself as a mortmain
property, so that he suffers
their depreciation and enjoys
their increase himself.

SECURITY CLAUSE

And thus said the groom: "The responsibility	And thus said the groom: "The responsibility
and strictest interpretation	
of this ketubah deed	of this ketubah deed
	--which is for the mohar, dowry, and tosefet--
have I accepted upon myself and upon my heirs after me	have I accepted upon myself and upon my heirs after me
and upon	
	to be paid from
the best portion of all my valuables which I possess anywhere in the world,	the best portion of all my valuables which I possess anywhere in the world,
from real properties or-- on the strength of them-- from chattels,	
which I have already acquired or am yet to acquire:	which I have already acquired or am yet to acquire,
	whether from real property or from chattels:
all of them are security and collateral	all of them are security and collateral
and mortgageable in a full and total mortgage in accord with the ordinance of the Sages	
for payment of this ketubah	for payment of this ketubah
	--which is the deed for the mohar, dowry, and tosefet--

during my life and after it,

and even from the cloak on my shoulders!"

and even from the cloak on my shoulders,

in life or death, from this day forth forever."

VALIDATION CLAUSE

And X, the groom, has accepted responsibility for this ketubah --which is a deed for the mohar, dowry, and tosefet--

And all of this is neither an unenforceable condition nor a mere contract blank; but rather, the stringency and strength of this ketubah is

like the stringency of every

like the stringency of every

fitting deed, whereby this ketubah may be neither nullified or voided.

deed for the mohar and tosefet which is made by Jews in accord with the ordinance of our Sages of Blessed Memory, neither as an unenforceable condition nor as a mere contract blank.

And we have enacted a

And we have enacted a

complete and total

qinyan from the groom

qinyan from the groom

concerning all that is written and explained above,

using an object fit for the purpose

using an object fit for the purpose;

as is seemly and in accord with the ordinance of our Sages of blessed memory, concerning all that is written above. And moreover has he (the groom) sworn a solemn oath, that he will substantiate

and fulfill all that is written in this ketubah deed, without change, substitution, or artifice whatsoever;	
and all is valid	and all is valid
and clear and true and firm and right	
and binding.	and binding.

Of the distinctions evident between the two ketubot, only a few warrant comment. As in Maimonides's model, the Sephardic ketubah employs all seven pledges in the vow clause. While the Ashkenazic text adheres to the four traditional vows--אפלח ואוקיר ואיזון ואפרנס--the Sephardic ketubah adds אכלכל ואיסובר ואכסה, "I will outfit, supply, and clothe." Moreover, as we had noted earlier, the Sephardic text does not specify that the bride warrants her mohar מדאורייתא, "by Toraitic law," while the Ashkenazic document very specifically mentions the Scriptural basis of this payment. It is very common in the Sephardic world to omit the Hebrew term מדאורייתא, and we have many ketubot written without it (20).

In the Money Clause, the Sephardic groom vows formally that he will consider the bride's property to be mortmain property, over which he has limited control and full responsibility. This stipulation is suggestive of a similar condition in the Maimonides formulation. No such vow or clause is required among the Ashkenazic Jews, however, who understand from convention that the bride's dowry is to be considered mortmain by definition (21). Likewise, Ashkenazic Jews refer to chattels by the term נכסי דלית להון אחריות, "property which cannot be mortgaged for payment of a debt" (22). This nomenclature is a direct response to the Talmudic law (23) which prohibits payment of a ketubah from chattels:

the Ashkenazic wording implies, "even those properties from which debts may normally not be resolved, may nontheless be mortgaged for payment of a ketubah." The Sephardic text is more circumspect in resolving this problem. It employs the legal fiction codified by Maimonides, whereby chattels are not in fact used in payment, but may stand in pledge of real property, עגב קרקעות.

Finally, it will be noted that the Sephardic text is inclined towards a certain poetic wordiness. Whereas the Ashkenazic text retains a legally concise compactness of style, the Sephardic ketubah compounds adjectives and qualifiers. It is not enough to enact a qinyan, as in the standard formulation: our text must express קנינא קנין שלם, "we have enacted a complete qinyan." Similarly, the Sephardic text specifies that all the groom's property is mortgageable in a "full and complete mortgage," while the Ashkenazic text suffices to comment simply that the property is "security and collateral." The best example of all, however, is the last validation phrase, והכל שרירן הקים, "and all is valid and therefore binding." The logic and meaning of this phrase is clear enough: it is concise, and a time-honored formulation. Yet the Sephardic text inserts additional qualifications--"clear and true and firm and right"--which serve no evident purpose other than emphasis.

Beyond these details--which are, again, rather minor, and reflect the historical development of the respective texts--the Ashkenazic and Sephardic ketubot are very similar in form. The terms are standard, the customary rubrics are by and large the same. Both texts demonstrate, for the larger part, a uniformity as fully modern documents and finished products.

PERSONAL CONSIDERATIONS--KETUBAH STIPULATIONS

Beyond the standardized formulae and rubrics, however, the ketubah has always contained a highly personal element. It was customary in every community to write personal stipulations between the groom and bride into the ketubah. Most often these stipulations would not be altogether individual, but rather represented usages common to the entire community. However, we must recognize that the needs of the individual had originally given rise to each of these stipulations, even if they were later adopted by the rest of the community as well.

Although the formulation of a תנאי, or conditional stipulation, is circumscribed (24), ketubah stipulations can in fact occur in almost any format. They are not always conditional, but sometimes merely represent a statement of intention. Neither is the location of these stipulations necessarily fixed. Two specimen ketubot from Jerusalem (25) insert their stipulations between the Money Clause and Security Clause, with the notation that

> the stipulations which they agreed between themselves are valid, and they are as follows.

Some ketubot, by contrast, write the stipulations in the middle of the Validation Clause, as was the case in the Bilbeys ketubah blank (v. supra page 49). And in the Sephardic world especially, where polygyny was an ever-present threat to the Jewish family, it is common to insert the required monogamy clause--along with any other desired stipulations--in a codicil attached to the ketubah (cf the שטר נצרף mentioned above, page 38).

Some common stipulations, and stipulation categories, are as

follows:

MONOGAMY

The monogamous principle is at the heart of Jewish marriage, as has already been discussed; and Jews have often written a monogamy clause into their ketubot to legislate polygyny, especially in the Oriental countries. Such a condition is evident in the 13th-Century Bilbeys ketubah blank, in which the groom vows "not to marry another wife besides her." But it can be argued that Jews employed this particular provision at an even earlier date. A Greek marriage contract from Elephantine, dated 311 BCE, stipulates that the groom, Heracleides, is not permitted to bring a second wife into his house as an affront to his wife Demetria; since the Greeks commonly practiced polygyny, the inference is that this proviso reflects a Jewish influence at the Elephantine colony (26).

It is assumed that resistance to polygyny was popular rather than official, for polygyny is tolerated by the halachah, and no rabbinic interdict against it was issued prior to that of Rabbenu Gershon in the 11th Century. Epstein recounts, in explaining the popular origin of the clause, that

> parents of daughters who could dictate terms to their prospective sons-in-law demanded a written pre-nuptial promise that their daughters should not be subjected to polygamy (27).

The result was a ketubah stipulation which reads:

> he may not marry or take during the bride's lifetime a[nother] while she is with him another wife, slave-wife or concubine except with her consent; if he do so. . .he shall from that moment be obliged for payment of her ketubah in full, plus release by means of a bill of divorce by which she shall be free to remarry (28).

This clause has been written into Sephardic ketubot, in one form or another, at least since the 12th Century. A more recent Sephardic ketubah, the Jerusalem blank referred to above (18), couches this commitment as follows:

> and he may neither marry, negotiate a match, or betrothe any other woman besides her, save with the permission of a just and duly-constituted rabbinic court.

It is obvious that this represents an even greater stringency than does the older provision: for while a man's wife might conceivably entertain the prospect of sharing her household and sex prerogative with another woman, the rabbinic court would almost certainly reject the prospect out of hand.

The monogamy provision developed somewhat differently in the Ashkenazic world, where life among Christian neighbors reinforced rather than challenged monogamy. The 11th-Century interdict of Rabbenu Gershom forbade polygyny under pain of a ban of excommunication. Whereas the Sephardic clause would permit polygyny with the consent of either a man's wife or of the court, Rabbenu Gershom's interdict prohibitted polygyny even with the wife's consent (29). Accordingly, most Ashkenazic Jews do not bother to write a stipulation prohibitting polygyny, since Rabbenu Gershom's decree is universally in effect even today. There is such a stipulation to this effect in use among the Ashkenazic Jews of Jerusalem--

> he may not marry or betrothe any other woman besides her in her lifetime, according to the decree of Rabbenu Gershom, Light of the Exile (30)--

but it is hardly ever used save by Jews of that community.

DIVORCE

The function of the ketubah was, primarily, to regulate the husband's absolute power of divorce by penalizing him for breakdown of the marriage. Conversely, some communities sought to regulate divorce to a degree by permitting the bride to initiate it, matching her rights with those of the groom. An early Aramaic marriage contract, dated 518 BCE (31), specifies that

> if tomorrow or another day Ananiah shall rise up of his own account and say, "I divorce my wife Yehoyishma, she shall no longer be my wife," then the divorce money is on his head (as an obligation). . . . And if Yehoyishma divorces her husband Ananiah and says to him, "I divorce you, and will be no more your wife," then the divorce money is on her head (forfeit).

This provision evolved ultimately into the following formula:

> if this groom hates his wife and ceases loving her, but wants to be quit of her, he must pay her all that is written and specified in this ketubah completely. And if this bride hates her husband, and desires to leave his house, she will forfeit her ketubah money and take nothing (except her dowry) with her (32).

This condition was fairly common in Palestinean ketubot of the 10th-13th Centuries; of fifty geniza texts available from that period, Friedman has found this stipulation, or a variation of it, in nearly all. The stipulation was presumably adopted in Palestine fairly early, for it is mentioned in the Jerusalem Talmud (33) as a valid and binding fiscal term. So common was it, in fact, that Rabbi Yossi simply calls it by a familiar short form, אי סנא אי סנת, "if he hates/if she hates." The logic of the clause is clear: the husband who initiates a divorce must pay all the customary settlements, as established in the ketubah, while the wife is permitted to initiate the divorce proceedings subject to the supervision of the rabbinic court, but must forfeit all benefits but her own property, which remains hers under any circumstances.

It becomes evident that this stipulation is not as egalitarian as it originally appeared. While the bride is granted the right to divorce her husband, this right is subject to the permission of the rabbinic court (34). Nonetheless, the provision was a very popular one, so much so that scribes would write an abbreviated form rather than bringing the full text of the stipulation (35). So it is that we find several geniza ketubot with the notation that the couple

> stipulated between themselves concerning love and hate, and life and death, and all the stipulations of the Torah and the stipulations of the rabbinic court, from beginning to end (36).

DESERTION AND MAINTENANCE

Not infrequently, Jews would write ketubah stipulations guaranteeing maintenance and even provisional divorce to a woman whose husband was leaving on a journey. In an age when travel was hazardous, it was easily conceivable that a traveler coule be waylaid, kidnapped, or drowned; in the absence of a witness to his fate, his wife would be left unsupported as an עגונה "grass widow." To alleviate this situation, Talmudic law states that a man's estate will be mortgaged to provide for the maintenance of his wife, should he journey overseas without first seeing to her needs (37).

In response to this need--and to avoid dispossession of their estates--Jewish men wrote a ketubah stipulation permitting travel under controlled circumstances. Normally these stipulations would promise that the husband would not journey beyond a certain locale or for longer than a determined period of time, unless he had left his wife with a supply of food sufficient for the period of time he would be away, and unless he had left her a bill of divorce conditional upon his return by an assigned

date. We see such a stipulation in a ketubah cited by Epsetin (38), which declares that the groom

> shall not journey by sea, or go distances overland, unless he leaves her a bill of divorcement conditional upon a specified time of return and (makes provision for) her maintenance; nor shall he leave her, as a result of an argument, for a period longer than ten consecutive days.

Even more explicit is a stipulation once common among the Sephardic Jews of Palestine:

> (the groom) shall not journey farther than the anti-Lebanon or Beirut or than Thebes, or any distance whatsoever by sea, unless he leaves his wife a bill of divorcement conditional upon a specified time of return, together with a supply of food (39).

It is unlikely that any variant of this provision is still in use, for in recent times the writing of a provisional bill of divorce--however praiseworthy the motive--is condemned as the behavior of a man who plans to desert his wife intentionally. It is more likely that a modern couple would stipulate that, should either of them undertake air travel for whatever reason, they must purchase an adequate amount of insurance with the other partner as a beneficiary. And, as we shall see in a later chapter, the provision that couple shall not separate as a result of an argument for longer than a prescribed period of time, is surprisingly modern.

INHERITANCE

Ancient marriage contracts frequently write in a stipulation or condition governing inheritance of property. An Aramaic contract from Assuan, dated 459 BCE (40), recounts that a groom's father-in-law granted him a house as his dowry, with the stipulation

> that your sons by Mivtahya, my daughter, have rights to it after you. . . .If you divorce Mivtahya, half of the house. . .(is yours)

> in return for the work which you have expended on it; but as for the other half, your sons by Mivtahya have the right to it after you.

Moreover, the two demotic documents referred to above (41) stipulate, in the groom's words, that

> your eldest son --my eldest son of the children you shall bear me-- is the owner of everything that belongs to me, together with those things that I shall gain (through your dowry).

Most true ketubot, by contrast, do not mention such conditions. In the Jewish community, inheritance is administered by Talmudic and rabbinic law and--more recently--by civil legislation. The Jerusalem variant texts mentioned above (25) do contain inheritance conditions, as a remarkable exception to the rule:

> the inheritance, like all the laws of the ketubah, is in accord with the customs of Ashkenaz as prescribed by the Ordinances of Speir, Worms, and Mainz;

and, in the Sephardic text,

> the inheritance is in accord with the conventions customary in the Holy City of Jerusalem--may she be speedily rebuilt and repaired!

Beyond this exceptions, inheritance is not ordinarily mentioned in modern ketubot. The only deviation from this rule might occur when the ketubah settlement is inordinately large, as is the case in a Dutch ketubah written in Amsterdam in 1700 (42). The clause is a wordy one, but its terms are basically these: that should the groom die without issue--or even with--the bride will receive her full ketubah settlement; should the bride die without issue, the groom must return half her dowry to her family, but may keep the rest; and should she die leaving a child, then for the child's sake the groom may retain the full dowry. This stipulation, again, is unrepresentative, and undoubtedly was written only because of the remarkable size of the dowry: 60,000 Dutch florins, at a time when 600 was the standard jointure in Germany.

OTHER STIPULATIONS

Stipulations would sometimes be written into the ketubah to articulate and define the religious duties of the bride and groom. While such conditions are rare, citations do exist. We have an example of such in the Bilbeys ketubah blank, which commited the bride to visit the ritual bath as required. Another such citation is that of a highly unusual ketubah, one written for a Karaite-Jewish wedding (43). The bride, who is the Karaite partner, is obliged to be scrupulous in observance of her ritual immersion; she is bound to kindle the Sabbath lights in their due time; and she is freed from any obligation to observe the Jewish holidays with her husband, but is permitted the practice of her own faith. For obvious reasons, such stipulations are rare. Nonetheless, these precedents are important, inasmuch as they indicate that provisions of a religious nature have been written into the ketubah, and that such are valid and binding.

A ketubah could contain a clause making the groom's obligation of the mohar a civil debt, and one which could be arbitrated in a civil court under gentile law as well as in the rabbinic court (44).

The groom could express a sensitivity for his wife's feelings by agreeing not to

> take her from this country to another without her consent and of her own free will (45).

Such a stipulation would be superfluous under conventional understandings of the obligations of a Jewish husband, who is prohibited to hector his wife, but is constantly reminded to consider her advice and opinions, and to make her a full partner in the marriage (v. supra pages 27-8). Nonetheless, it is telling that the Jewish couple is permitted to enter

such a term into their ketubah, and that--more importantly--they chose to.

SUMMARY

We have seen in this section that the ketubah developed--in form and function--from other marriage documents of the ancient Near East, and that the inclusion of new emphases made it into something uniquely Jewish. While the wording of the earliest ketubot is not known to us, some geniza texts provide early formulations. These formulations, as they became used universally, were recorded--and therefore codified--by such halachists as Maimonides, whose text especially influenced both Ashkenazic and Sephardic ketubot in normalizing the final mode which today we consider to be the standard.

By the end of the Middle Ages, the ketubah is fully evolved; the text cited and discussed in Nachalat Shiv'ah is in every respect the end-product of an evolutionaty process. Some variants do exist even today --the Ashkenazic "standard" text differs in many respects from its Sephardic counterpart--but for the larger part, standardized forms are uniformlu in use today. These standard formulations are varied only by the inclusion of personal stipulations and conditions, which themselves have often become normalized for use by the entire community.

In short, the ketubah is a time-honored institution, with an adaptability that has historically served Jewish marriage. But Jewish marriage is currently in a state of flux: whether--and how--the ketubah can respond to the new trends, remains to be seen.

PART TWO

Modern Factors

CHAPTER IV

Directions in Marriage

Whether or not the ketubah as it now exists--or even a modified ketubah or marriage contract--can serve modern marriage, is the topic of much discussion and debate in contemporary American society. It is popularly believed that marriage as an institution is vanishing in this country. A freer lifestyle and the blossoming of a "new morality," the availability of inexpensive and effective contraceptives, the convenience of no-fault divorce--all are considered elements contributing to the destruction of the institution of marriage. However, most authorities on marriage feel that the institution is undergoing change and maturation to meet these new demands, but is not vanishing at all. Americans are exploring highly personal alternative life-styles, which represent levels and types of commitment equal to that of conventional marriage. What must be questioned is, the applicability of these new modes, and the manner in which they can or should be regulated.

Divorce is seen as the single greatest indicator of the breakdown of marriage, since it is the means whereby a marriage is dissolved. Accordingly, most states have traditionally regulated divorce even more stringently than they have legislated marriage. In recent years, despite state controls, divorce has been on the increase, an increase that has redoubled itself subsequent to the legalization in most states of no-fault divorce. No-fault divorce became legal in the state of Ohio September of 1974, and during the following year divorce filings in the seven-county Cincinnati area increased overall by 4.3%:

INCREASE IN CINCINNATI AREA DIVORCE (1)
FOR THE ONE-YEAR PERIOD 1974-5
(Subsequent to the Legalization of No-Fault Divorce)

Number of Marriage Licenses Issued	16,790 (1974)	16,539 (1975)
Number of Divorces Filed	10,800 (1974)	11,261 (1975)
Net Change in Marriage, 1974-5	-1.5%	
Net Change in Divorce, 1974-5	+4.3%	

Although not every wedding license issued is actually used, and the number of divorces filed does not reflect the number granted, these figures nonetheless confirm a national trend:

INCREASE IN DIVORCE FOR THE PERIOD 1970-75 (2, 3)
IN THE SIX MOST POPULOUS U.S. STATES

State	marriage rate*		net change	divorce rate*		net change
	1970	1975		1970	1975	
United States (for contrast)	10.6	10.0	-5.6%	3.5	4.8	+37%
California	8.6	7.5	-10.5%	5.7	6.1	+7%
New York	8.9	7.8	-12%	1.5	3.1	+107%
Texas	12.5	12.6	+.8%	4.6	6.3	+37%
Pennsylvania	8.0	7.6	-5%	1.9	2.7	+42%
Illinois	10.4	10.0	-3.9%	3.3	4.7	+43%
Ohio	8.5	9.4	+11%	3.7	4.8	+30%

* per 1,000 population

It will be noted that four of the six most populous states in the United States have experienced an increase in divorce of 30-40% over the five-year period 1970-75. The inordinately large figure for New York is not representative, since that state changed to no-fault divorce from a stringent law which permitted only adultery as a grounds for divorce. Still, the increase is representative of a very real trend: while the chart shows that fewer people are marrying in the United States, it demonstrates equally clearly that more are terminating their marriages in divorce.

Yet despite the increase nationwide in the frequency of divorce, the institution of marriage is not in a state of dissolution. Marriage as we know it is changing, yes; but marriage as an institution, as a practice, as a covenant, is not vanishing. John Scanzoni states so explicitly (4), and Jessie Bernard implies such when she declares that despite

> the institutional or structured relationships between husbands and wives. . .there is much in this human substratum that we recognize as familiar. There is an inner dynamic that does not change (5).

Marriage, Sumner agrees (6), is an unstructured, elastic institution, with variable usages, so that

> each pair, or other marital combination, has always chosen its own 'ways' of living within the limits set by the mores. . . . No rules or laws can control (marriage), they only affect the conditions against which the individuals react. . . . All the intimate dailt play of interests, emotions, characters, taste, etc., are beyond the reach of bystanders, and that play is what makes wedlock what it is for every pair.

What Sumner and Bernard are suggesting is, that emerging forms of marriage have the same validity as do the traditional models, and that the future of marriage lies not with Church and State, but rather with the married couple. Accordingly, marriage is not declining, rather new forms of marriage are emerging.

However, none of the marriage authorities fails to recognize the substantial effect of established norms. Sumner expresses (7) that a couple's interaction is controlled by

> the current opinions of the society, the prevalent ethical standards, the approval or condemnation passed by the bystanders on cases between husbands and wives, and by the precepts and traditions (of the society).

It is for this reason that a diminished number of wedding licenses is construed by statisticians as a decline in the institution of marriage:

the society only regards as "marriage" those interactions which meet its standards, and which are licensed by the state--conventional marriage.

TRADITIONAL MARRIAGE

The traditional model of marriage emphasizes the home. The objective of marriage is to build a stable home environment for the raising of children. And the roles associated with traditional marriage are clearly defined in terms of sex: the husband furnishes the house, the wife maintains it and raises the children. Accordingly, there is a necessity for the husband to be a good provider if he wishes to marry; the traditional query in Victorian novels and situation comedies is, "how do you propose to support my daughter, young man?"

The husband deals in occupational and economic pursuits--the so-called "instrumental" dimension--while his wife is involved in the "expressive" dimension of nurturant and supportive functions (8). Accordingly, it is the husband who works at a profession and career, the wife who specializes in domestic activities; the husband who pays the bills in disbursement of funds spent by the wifem in her shopping for the needs of the house; the husband who accepts credit for engendering children, the wife who rears them.

It becomes clear very quickly that these roles are not equal. The wife's identity exists solely in relation to that of her husband, while he inherently enjoys greater authority. It is the husband/father who "wears the pants" in a family, who makes all executive decision in household affairs, who (~~in~~ as a privilege protected by law in most states) selects the community and home where the family will reside, who disciplines the

children--"wait 'till your father gets home!"--and who faces the challenges of a commercial world. The wife, conversely, is prepared by her

> socialization and her femininity. . .to step into the role of complement to the male, i.e., as the expressive hub of the conjugal family (9).

The authority of the husband over his wife is a type of power-related authority which

> resides not in the person on whom it is conferred by the group or society, but in the recognition and acceptance it elicits in others (10).

This authority is one of convention, and is absolute: English common law flatly declares that husband and wife are as one, and that one is the husband (11). Chaucer calls this absolute power and authority maystrye, "mastery," and tells a tale of a husband who abdicated his maystrye to his wife. Having thus been assured of her husband's true love for her, the dutiful wife insisted that her husband retain authority in the household, and gratefully

> obeyed hym in every thyng
> That myghte doon hym pleasure or lykyng (12).

The story makes clear that a woman should or could never be given power or authority in the household. The Wife of Bath, who tells this tale, reports that her own husband had granted her maystrye of their household--

> 'Do as thee lust the term of all thy lyf,
> Keep thyn honour, and keep eek myn estaat;'
> After that day we hadden never debaat (13)--

but it is worthy of note, that the Wife of Bath is a comic character. Such maystrye,

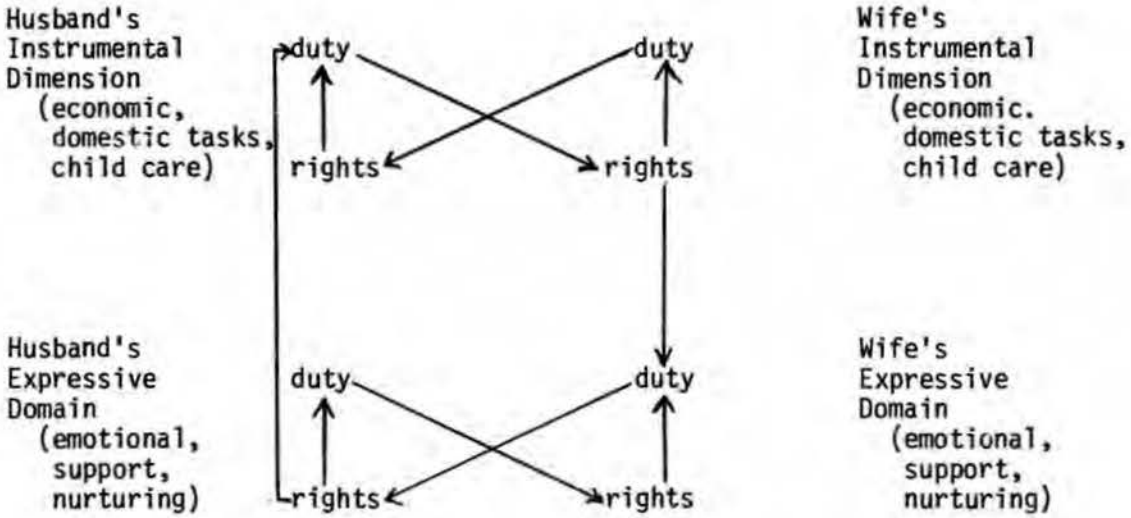
> the governance of hous and lond,
> And of hys tonge and of his hond also (14)

is vested by definition and convention in the husband, as "lord of the castle." Conversely, any power possessed by the woman will tend traditionally to be ancillary and self-enforcing,

it may even operate subversively. A woman with this kind of power may or may not know that she possesses it. If she does know she has it, she will probably disguise her exercize of it (15).

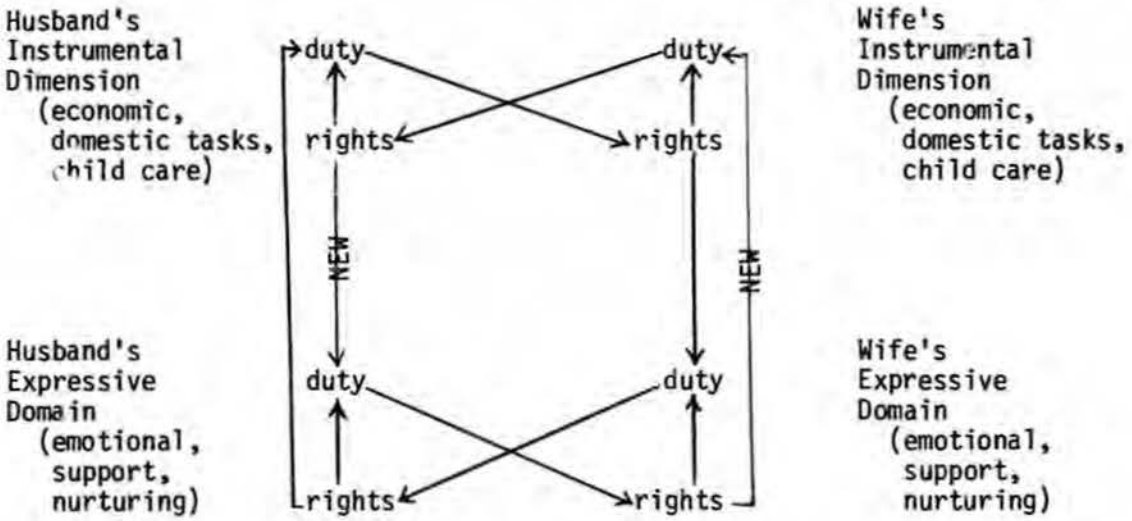
Traditional marriage, then, is an unequal power balance, defined in a reciprocal role system of interaction. In the task of maintaining the household, the husband assumes the role of provider , and the wife, of junior partner. Scanzoni portrays role reciprocity in this manner:

HUSBAND-WIFE RECIPROCITY, WITH HUSBAND AS PROVIDER AND WIFE AS JUNIOR PARTNER (16)
(After Scanzoni)



It will be noted that the model is imbalanced: the two are not equal partners, and there is no role interchangeability in the role of Provider. The wife has no instrumental duty devolving upon her expressive rights; neither does the husband have access from his instrumental domain to the expressive. A more equalized model would be one in which the two partners' roles are balanced, with full status as equal partners and with provider-role interchangeability. Scanzoni portrays this model as follows:

HUSBAND-WIFE RECIPROCITY, BASED ON
EQUAL-PARTNER STATUS AND PROVIDER-ROLE
INTERCHANGEABILITY (17)
(After Scanzoni)



In this model, every role is fully integrated and reciprocal: a right devolves upon every duty, and vice-versa. Such a model would represent a marital ideal; the most common form of marriage, however, is that represented in the previous diagram, with the husband as provider and the wife as a supportive junior-partner.

TRANSITIONS IN MODE

The traditional model of marriage is in many ways unsatisfactory. The circumscribed nature of the husband's and wife's roles can lead to disillusionment after marriage. Hobart has demonstrated (18)

> the existence of important unrealism-generating influences in the courtship process

which romanticize married life to the extent that disillusionmer with marriage is reflected in postmarital affairs concerning personal freedom, marital roles, children, relationships with in-laws, values on neatness,

and so on. Moreover, there is evidence that some individuals hide behind the established roles of provider and nurturer. Husbands with childhood or adolescent problems, it has been found, tend to

> marry maternal, home-centered wives and (invest) themselves single-mindedly in matters of occupational ambition. . . . This is a pattern of traditional role orientation

in which the husband is disinterested in housework and the wife expresses no interest in work outside the home (19).

Even among better-adjusted couples, the traditional division of role by sex is no longer clearly defined. Our society has developed to allow broader social and vocational opportunities to men and women alike, and the transition from

> ascribed to achieved roles makes sex prerogatives in various situations less clear (20).

Indeed, Mower concludes at the end of his 1969 study dealing with sex roles in the home and in our society that

> there is no longer, if there ever has been, any sharp division of function within the modern family (21).

Mower's study, "Differentiation of Husband and Wife Roles," quizzed 1180 urban middle-class wives concerning their own conception of their role in their respective households. 75% of these women considered their husbands to be dominant and important, yet 70% said that they themselves budget, choose the family's home, and discipline and advise the children (22). Mower characterizes the contemporary American couple in this manner:

> -diminishing power role for the husband, whether through sharing or transfer;
>
> -diminishing instrumental role for the husband, whether thro ' sharing or transfer;
>
> -substantial sharing of the expressive dimension;
>
> -substantial sharing of companionship (mutual and independent social

contacts).

When Mower refers in this characterization to a diminuition of the husband's instrumental dimension, he is referring specifically to occupational and vocational pursuits. Engels observes that the husband's access to the commercial world, and his subsequent assumed control of the paycheck he has earned, serves to dominate his wife, and that should

> one remove the economic considerations that now force women to submit to. . .men, women will be placed on an equal footing with men (24).

In fact, women's involvement in occupations is not only common today, but is on the increase. In the period 1940-67 the number of working women tripled, to constitute 34% of the United States labor force (25). Moreover, more jobs in more professions are becoming available to women as a result of social pressure and the 1964 Civil Rights Act; even the United States Military Academies at West Point and Anapolis opened to enrollment by women cadets in the summer of 1976. Of these many working women, few maintain their families alone; rather, most supplement their husbands' salaries (26). It is noteworthy that in many of these marriages the wife's contribution is overshadowed by that of her husband: his job is central, hers is ancillary; his paycheck is the main income, hers is supplemental; and she is expected to leave work early so as to have dinner on the table, hot and ready, when he returns home from his own job. Clearly, the wife is still bound by the traditional model of marriage, in spite of her increased access to the instrumental dimension; it is equally clear that the traditional model is not workable for such a family. Fulfillment of achievement-oriented women calls for a changed structure of marriage, from role specialization to role interchangeability, and hence equality (27).

Another thrust of contemporary marriage is, de-emphasis on the household. A part of this is, that child-bearing and -rearing are no longer the universal goal of marriage (28), and--by definition--an adult couple requires a much less stable and established home than does an infant or small child. Beyond this particular emphasis, property and security are no longer prerequisites for marriage. Bernard attributes this liberalization to what she calls the "democratization" of marriage, whereby the traditional prerequisites for marrying were broadened--a necessary development in a pioneer society--until 20th-Century marriage is no longer

> dependent on competence, on property, or even on maturity. . . . By the middle of the twentieth century, even the term 'good provider' was losing its significance. What did providing have to do with marriage? . . . (By that time) a generation came to maturity without feeling that they had to establish a household when they married. Not until the advent of a child does the household today become important, especially to the wife (29).

And with many couples intending not to have children at all, it seems that the household is completely a lost value. Even a few home-related marriage rituals--the hope-chest and kitchen-shower--are viewed only as vestiges of an older, property-oriented model of marriage (30).

The role of provider is so de-emphasized in modern ma-riage that large numbers of college students are marrying while still in school, a practice that would have been unthinkable a hundred years ago. Men no longer finish training or enter the professional world before marriage, reports a 1960 study of college students:

> today, more likely, many young men consider a wife an economic asset rather than a liability; if the student marries while preparing for a profession, his wife can work while he completes his studies. . . . Career does not determine when the student marries (31).

This value is so entrenched in contemporary society that younger people,

to quote Bernard,

> do not formally 'demand' the right to marry without the old prerequisites, they assume it (32).

This de-emphasis of the household, Bernard observes, mollifies the impact of marriage as a change in status. Many couples do not bother to observe any kind of formality for marriage, but simply cohabit, whether such interaction is characterized as "living together," or--in the more traditional vein--as "living in sin." If the transition from single and unattached to sharing a home is

> not marked by much more than the ordering of a duplicate key. . .then the 'what-difference-does-a-piece-of-paper-make?' point of view begins to make sense. If you can just move in together, sharing the rent, without having to worry about setting up in serious housekeeping, married or not, why bother to marry? Marriage, one might say with a good deal of truth, has for some been democratized right out of existence (33).

De-emphasis on the household, then, along with the greater incidence of working women and an associated ambiguity in sex-role prerogatives, calls for the restructuring of the institution of marriage; for marriage does continue to exist, albeit often in a changed form, distinct from the traditional model.

NEW MODES OF MARRIAGE--JEWISH INVOLVEMENT

New forms of marriage are emerging which may replace the present models, or which may merely supplement them as viable and sanctioned options. Yet all, by definition, represent interaction between people, which means that they will involve some degree of conflict, for

> there never has been, nor will there ever be, any family form that is free from its own types of conflicts, tensions, burdens, difficulties, and problems (34).

These new modes of marriage may shed old burdens, observes Scanzoni, but they are bound to take on new ones. In dealing with and resolving these burdens, the new modes may be able to derive insight from past models, like that of Jewish marriage.

Jews are as involved as non-Jews in exploring these new models of marriage, for most trends which involve modern Americans involve American Jews in the same way--the majority of American Jews are bound more by civil law than by halachah, and by convention most of all. Still, Jewish marriage, as an established mode, has much to offer the new forms of matrimony. Three aspects of Jewish marriage, in particular, do or can contribute immensely to emerging modes: monogamy, status of women, and negotiability.

MONOGAMY

Monogamy is not exclusively a Jewish concern, but it has certainly been reinforced, in Western marriage, by the Jewish community. At the beginning of the 11th Century, when

> the moral level of family life among the Christians of the Rhineland . . .was not above polygamy (35),

and polygamy was the accepted norm in the Moslem countries, Rabbi Gershom ben Judah decreed a ban reinforcing the monogamous ideal among Jews, thus codifying a popular and rabbinic attitude which stemmed from Tannaitic times. Ashkenazic ketubot occasionally stipulate that the groom may only marry one wife, as a reinforcement to Rabbenu Gershom's interdict, and the Sephardic Jews--who were not bound by the decree--wrote their own ketubah clause prohibitting polygyny (v. supra pages 65-6).

Most of the emerging forms of marriage are likewise monogamous models. This does not imply that monogamy is the most natural interaction, but it is definitely the simplest. There are some levels of marriage--especially the sharing of goods and services--where the partners benefit from the increased contacts of a group; accordingly, there is some inclination towards group marriage in its several variations (36). These variants may be satisfactory, and a logical alternative, for a select few, but they are by definition a more complex form of interaction, by virtue of the large number of individuals involved. Monogamous marriage, by contrast, is a more gratifying one-on-one interaction. Accordingly, the greatest tendency is to retain a monogamous model of marriage. Homosexual unions are almost as a rule monogamous, involving only two partners; the same rule applies for lesbian alliances. Even "swinging" is ultimately a form of monogamous marriage, since the variant behavior involves intercourse only, and all partners otherwise manifest absolute loyalty to their respective spouses (37). In short, any

> attempts at long-lasting and substantial innovations in marital structure give no hint whatever of any departure from the general pattern of monogamy by more than a handful of persons (38).

STATUS OF WOMEN

Judaism has been accused of limiting the power and status of women, in that it adheres traditionally to the customary model of marriage, in which the wife is a junior partner. While it is true that this subsidiary status is not the ideal towards which marriage is developing, nonetheless it remains a step forward from the earlier conception of women, as property. This latter viewpoint was prevalent among the early Egyptians, Romans, and Greeks, as seen above (39), and--because of them--among early Chrisians

and in British common law as well. Judaism pioneered the status of women as עזר כנגדו, an "equal and adequate" partner to her husband, at an early date, and gave it the authority of a Biblical ordinance (Genesis 2:18). This ordinance gives the wife the subsidiary role of nurturing as an עזר, or companio-helper, while paradoxically indicating that her status is no lower than that of her husband. In modern language, the Jewish model expressed in Genesis 2:18 is that of a husband and wife who have assigned roles involving different tasks, equally weighted.

Most of the emerging alternative forms of marriage involve total equality for women. What is needed to facilitate this aim, is greater reciprocity and interaction between the instrumental and expressive dimensions--which is to say, free role interchangeability. Such absolute equality is attainable only in the absence of any sexist posture, when all attainments in every endeavor are achieved rather than ascribed, or at least ascribed with no consideration to gender. It is difficult to say how or whether Jewish attitudes reflect sexist predilections, but a 1975 research project indicated that college students

> who claimed no religious background, and those raised in the Jewish faith, were less likely to take a sexist position

in the stated test situations (40). It is unclear whether the unprejudiced responses of the students tested is a function of their Jewishness or of their middle-class suburban liberality, or whether Jews from another age or sociological group would have tested out similarly; but the inferences are encouraging.

NEGOTIABILITY

Since the society and the State have vested interest in the organi-

zation of the family, the traditional model of marriage is of such a sacred character that it is

> distinguished in the eyes of the law from other contractual relationships so that it cannot be set aside or abrogated by consent of the parties (41).

Most of the new modes of marriage involve a shift from this sacramental theory of marriage towards a more consensual view, whereby the couple is free to negotiate their own interaction, generally independently of court control. Even in more conventional cases, like serial polygamy, whereas

> once divorce statistics were cited with alarm as evidence of the need for judges to be adamant in preserving marriage, their abundance is now taken as proof of the reality of consensual matrimony in America (42).

Meislin writes that New York has

> belatedly and reluctantly sought to keep pace

with the rising rate of divorce by means of the application of a contractual theory of marriage (43). He adds, however, that

> Jewish law favored a contractual view of marriage more than fifteen hundred years ago (44).

Marriage is not a sacrament in Judaism, but rather a free consensual agreement--a contract--between the bride and groom. An Israeli judge recently characterized the negotiability of Jewish marriage as an unlimited privilege of the married couple:

> as they entered into it from their own free will, so they may, at any time and for any reason, terminate and rescind it from their own free will. . . . It is in this divergence from other systems that the distinction--you might even say the modernity--of Jewish l lies: no imposition of a status, whether you like or continue to like it or not, but your own and your spouse's right to determine whether and when to marry, and whether and when to dissolve your marriage (45).

The flexibility afforded by a consensual model of marriage can facilitate

not only the outset and termination of the married state, but its content and terms as well. This is in marked contrast to the sacramental theory of marriage, as instituted in Christian thought and perpetuated by civil law, which

> does not allow the parties to modify by agreement the personal rights and duties of the married state (46).

While Jewish marriage is not the original or exclusive source of consensual matrimony, it nonetheless anticipated the current trend towards that mode by some twenty centuries. More importantly, the Jewish model of marriage is a valuable precedent for the reformation of American civil law: it has already been so applied in the New York state court (47).

In summary, soaring divorce rates indicate not a decline in American marriage, but rather a trend towards new modes of husband-wife interaction. These may constitute some variant of the group-marriage model, but generally the newly-emerging forms of marriage are monogamous. There is also a temdency away from the traditional role distinctions--the husband as provider, his wife in a supportive role--towards a total reciprocity of rights and duties between marriage partners. The traditional Jewish marriage has contributed to these new marriage directions: by establishing equal-partner status for the wife; by reinforcing the pattern of monogamy; and by serving as a legal precedent for the consensual, or contract, model of marriage in place of the sacramental model currently upheld by American courts. It is this last contribution which may ultimately be the most important, for it implies the ability of the bride and groom to negotiate the terms of their marriage independently of State control, and in accord with their own unique needs.

CHAPTER V

Marriage by Contract

Recent years have seen the appearance of a new phenomenon in American marriage. Increasing numbers of couples are defining the unique needs of their relationships by means of a consensual, or contractual, model of marriage. By writing personal marriage contracts to describe and specify their marital rights and duties, contemporary couples feel they can formulate a model of interaction which meets their needs within a broad, pluralistic definition of modern marriage. These contracts are of three types: Legal, Personal, and Therapeutic

LEGAL DOCUMENTS

Most states uphold marriage laws which some couples find to be untenable. In compensation for these inequitible marriage laws, the couple might write an equalizing contract. Such a modern contract, written by a couple in California, cites as its purpose an effort to

> overcome the inequalities and unequal burdens thrust upon married persons by custom and tradition, and by California's laws (1).

In many cases, these contracts serve not only in compensation for discriminatory laws, but also as a social and political enactment against those same inequities. The 19th-Century feminist, Lucy Stone, and her husband, Henry Blackwell, wrote a marriage contract which contained this preamble:

> While acknowledging our mutual affection by publicly assuming the relationship of husband and wife, yet in justice to ourselves and a great principle, we deem it a duty to declare that this act on our part implies no sanction of, or promise of voluntary obedience to, such of the present laws of marriage as refuse to recognize

> the wife as an independent, rational being, while they confer upon the husband. . .legal powers which no honorable man would exercize (sic) and which no man should possess.

The document concludes,

> thus reverencing the law, we enter our protest against rules and customs which are unworthy of the name, since they violate justice, the essence of law (2).

Couples who write such socio-political contracts consider them to be binding documents with full legal validity. A newspaper article on marriage contracts (3) quotes interviews with several couples who had written legal contracts, and two of them in particular expre-sed their confidence in the enforceability of their documents.

> We drew up a contract. . .so in case of a divorce we would have protection,

states one woman, and a man (not her husband) indicates that he and his wife

> were very careful and specific in the wording of our contract. I think both of us would lean very heavily on the contract in case of a bitter split.

However, the definition of the relationship between a husband and wife is a privilege that society--and its courts--has traditionally reserved to itself. Civil law considers marriage to be a sacred institution,

> in the maintenance of which in its purity the public is deeply interested, for it is the foundation of the family and of the society, without which there would be neither civilization nor progress (4).

Because of the society's vested interest in the institution of marriage, and because of its subsequent maintenance of a sacramental view of matrimony, the court considers that marital vows create

> a relation between the parties. . .which they cannot change. Other contracts may be modified, restricted, or enlarged, or entirely released upon the consent of the parties. Not so with marriage. The relation once formed, the law steps in and holds the parties to various obligations and liabilities (5).

Accordingly, most states will not at present honor or uphold a marriage contract negotiated between a husband and wife. This is due in part to the immutable nature of marriage in common law, whereby husband and wife are considered one entity--which cannot by definition negotiate a contract with itself. But the courts additionally prohibit marriage contracts as a protection of women's rights, since the husband--as a dominant authority figure--is in a position to coerce his wife to her disadvantage (6). Accordingly, enforceability of private marriage contracts is limited by American courts.

Some modes of contract, and some contractual terms, have been supported in judicial review, however. When one partner in a marriage has been previously married, or otherwise owns property, the court will generally uphold an antenuptial agreement concerning this property, deeming it

> both valid and enforceable, provided it is fair and does not encourage divorce (7).

Such a property agreement may be either reciprocal or unilateral; a court should nonetheless support it if it can be proved that the contract was in fact agreed upon and duly made. Accordingly, the burden of proof rests with the contracting party (8). Postmarital property agreements may also be upheld by the court, provided that

> there is no overreaching goal, and that there are no harsh undertakings assumed by the wife

which would indicate her to be the victim of coercion (9). In North Carolina, at least, a state statute designed to prevent fraud upon women by their husbands validates transactions not previously recognized by common law (10). It must be noted that these cases of court validation for

marital agreements only involve control of personal property, and that statutes in fact override the power of a couple to contract concerning their own property. Accordingly, court validation in these cases implies legitimacy of the couple's intent, but not of the contract through which that intent was expressed.

Beyond such property agreements, many considerations of marriage which are negotiated by the couple, may be rejected out of hand by the court. In most states and among most judges, the power of the court has been used to reinforce the normative mode of marriage, despite private reservations and stipulations contracted between husband and wife to the contrary. For example, the intervention of a court is a requirement in any divorce case; therefore, prior to the advent of no-fault divorce, any provision that granted the right to terminate marriage without the supervision of the Bench was categorically voided under state law (11). Likewise trial marriage--whether or not the trial period is defined in the contract--are nullified by the courts. Nor is legality customarily granted to any

> clause by which the parties attempted to vary the obligation of sexual fidelity (12);

for while a couple might reject a more or code in their private practice, they are nonetheless legally bound to fulfill their respective marital duties in keeping with public policy (13). In this context, public policy dictates that a husband and wife may not live separately (at least, not for an unreasonable amount of time), nor may they refrain from intercourse, fix alimony or support payments at the time of marriage, or stipulate terms for anulment or divorce exclusive of court control (14). Concerning the latter, a North Carolina verdict of 1867 stated specifically

that

> articles of separation between husband and wife, whether entered into before or after the separation, are against law and public policy, and therefore void;

however, a court in the same state reversed that position in 1912 to permit the writing of such articles, provided: that they do not look forward to a future separation; that there be an adequate reason for the separation; that the husband provides a fair and just marriage settlement for his wife (15). Courts might enforce a stipulation to raise a child in a given faith--usually written between a Catholic and a spouse of another Christian denomination--although the judge's decision would, as before, be based on public policy rather than on the contractual aspects of the agreement (16). It appears, in short, that little besides certain property agreements can legally be negotiated in a marriage contract which is destined for legal review. The basic issue at question, argues one California attorney, is

> are you going to let people arrange their own lives, or let the state decide what it thinks is best for the parties? (17)

In fact, the right of the married or of marrying couples to contract the terms of their own relationship is currently being confirmed in American courts. While the common-law concept of marriage has always been that of two people become one legal entity, the Supreme Court effectively reversed this classical stance with a 1972 verdict that declared the married couple to be

> not an independent entity with a mind and heart of its own, but an association of two individuals each with a separate intellectual and emotional makeup (18).

An "independent entity" is unable--and has never been legally permitted--to negotiate a contract with itself, but two sharing individuals are ful-

ly able to do so. An even more important breakthrough is the High Court's protection of the right of privacy, as guaranteed in this verdict and in others (19). No court can violate a couple's right to privacy save for the sake of a "compelling state interest." The welfare of a minor child constitutes such an interest, and so countervails against the parents' right to absolute privacy in all their affairs, but a childless couple is clearly not so bound. Taylor argues that--in theory, at least--no provision written into a marriage contract by a childless couple could legally be invalidated by an American court. He cites three contract provisions in particular--an agreement not to have children; to terminate the marriage after a fixed period of time, unless the parties choose mutually to renew it; to free both parties for extra-marital sexual unions--and demonstrates that, on the basis of the Supreme Court's ruling guaranteeing the couple's right to privacy, no state may invalidate any of these agreements in court (20). In short, the standard terms negotiated between husband and wife as legal in nature are, at least in principle, both valid and viable;

> the majority of such contracts would shock no one and would be well received on the few occasions when they received judicial review (21).

In fact, it must be pointed out that very few private marriage contracts are taken to court, so legality and precise formulations are generally the least important considerations of such contracts. More often, these contracts serve primarily to define the terms of the couple's relationship.

PERSONAL MARRIAGE CONTRACTS

Most such contracts, which we may call Personal marriage contracts, serve to articulate the terms by which a couple agrees to be bound, and stipulate the roles involved in their relationship. Such contracts do not

generally deal with the normative model of marriage; rather, they serve to establish parameters for new models of interaction which are more in keeping with the unique needs of the individual couple. As such, these Personal marriage contracts are an instrument of modern pluralistic marriage: they supplement--or even displace--conventional wedding vows in articulating a specific relationship.

Personal marriage contracts are divers in form, but almost all define specifically the rights and duties devolving upon both partners as members of the household. These rights and duties are usually dealt with in a series of provisions which can be formally couched in legalistic clauses, or merely enumerated in a numbered list. Professor Marvin Sussman, of Case Western Reserve University, who has made an extensive study of Personal marriage contracts, lists (22) six basic categories of provisions which commonly recur in the contracts he has studied, along with their subsidiary concerns:

1) Economic
   Division of assets prior to marriage
   Division of assets and income acquired after marriage

2) Career and Domicile

3) Children

4) Relationships with Others
   Provisions regarding general relationships
   Provisions regarding relationship with spouse and relatives by previous marriage

5) Division of Household Responsibilities

6) Renewability, Revision, and Termination of Contract
   Provisions regarding evaluation of the contract
   Provisions regarding termination of the contract

The goal of these provisions is, to actualize the couple's expectations about themselves and each other in their marriage, as a working alternative

to the traditional role models associated with normative marriage.

Clearly, the very act of articulating these expectations is a socialization process. By discussing their respective needs and goals, the parties to a contract come to know each other better. Moreover, this interplay helps the couple to identify problems, issues and areas of conflict; the contract itself records their mutual resolution. As such, Personal marriage contracts function as a communicative medium, and as the

> moral or ethical basis for a relationship in terms of reciprocal expectations and responses to expectations (23).

As a medium of communication and exchange, Personal marriage contracts are generally negotiable. Some are even effective for a finite period, at the end of which time they may be renewed or lapsed. Such flexibility is necessary in any marriage, especially in one which deviates from standard modes, and so must define its own roles in terms of the couple's needs. As the couple grows together their needs and tastes may change, especially in such matters as having children. Needs change over a period of time, and behavior traits develop spontaneously that affect marriage; it is only logical, therefore, that the contract which represents the couple's model of marriage be negotiable to account for these variables. Accordingly, most Personal contracts specify a time period for which they are applicable, generally for from one to five years. And at the end of the stipulated period, the contract provides, the couple is free to renew. renegotiate, or terminate their relationship.

This negotiability makes the Personal marriage contract an important instrument in resolution of post-marital difficulties. It pro-

vides a common ground and a base for communication in dealing mutually with problems and disagreements in the established family.

THERAPEUTIC CONTRACTS

A similarly concrete base of communication is not available to resolve conflicts in marriages that are not based on a contract. However, an increasing number of marriage counselors and related professionals are using the contractual model to negotiate reciprocity and exchange between couples who are experiencing friction in their relationship.

Marriage represents a prolonged and intensive form of interaction, and of role-playing, between two people. The actions of one partner

> are significant in the determination of those of the other, necessitating a continuous reevaluation of their own and the other's behavior, even as the activities are taking place. The relationship is never static, and can never become so (24).

When one partner ceases evaluating his or her role in the relationship, the marriage suffers. Often this can be the manifestation of a behavior or trait that annoys one party, or conversely the failure of one party to do something the other enjoys. It must be understood that feelings--

> nonrational and often irrational feelings--and not logic are the motives of human action (25),

and accordingly we must not ask about logic in dealing with a marital crisis, but rather about the feelings which might be served by a given action. It is perfectly conceivable that a woman whose husband begins to bite his nails may hide her annoyance with the habit until her suppressed displeasure expands so that she notices several other petty annoyances he causes her which she has never noticed before, and finally she files for divorce!

Behavior exchange is involved in this model, as in every aspect of a marriage. It has been observed that

> the degree of success of the marriage is in direct proportion to the mutual positive reinforcements exchanged by the couple (26).

This couple is not reinforcing at all, and their marriage--by this criterion alone will not succeed, because they are not communicating. Neither would it succeed if her reinforcement were negative: yelling at him when he bites his nails. Rather, both partners must commit themselves to resolution of the nail-biting conflict, for in the process of exchange

> the attainment of one person's goals entails investment and cost on the part of the other (27).

It remains, then, for the couple to decide what investment they are ready to make emotionally for the attainment of their goals. The wife can be rid of her husband's nail-biting only if he is willing to find another and less irritatinf outlet for his anxieties...which might, in turn, reflect his own suppression of his annyoance with certain of her traits which irritate <u>him</u>!

It is in this context of communication that many marriage counselors are beginning to use what might be called a Therapeutic marriage contract. Such a contract serves as a medium of negotiation and feedback in analyzing the traits the couple wishes to reinforce. Saxon observes (28) that in most cases where a couple feels that the "magic" has gone out of their marriage, the problem is simply that

> the couple have ceased doing and saying the things that so effectively influenced the good feelings during their courtship and early years of marriage.

It is the role of the counselor to draw the couple out concerning these neglected positive behaviors which they will want to restore by reinforce-

ment, and likewise to help them identify the negative behaviors they will want to overcome. Once these behaviors are identified, a system of rewards is devised, and all is written into a contract.

A true behavioral exchange contract, as discussed by Saxon, rewards one desired behavior with another. In his specimen contract, he lists three clauses: the husband will bed the children down each night, in return for which his wife will spend thirty minutes nightly discussing shared goals; the husband will visit his wife's family with her every eight weeks, in return for which she will accompany him on a hunting or fishing trip at the same interval; and the wife will prepare a hot dinner every night, in return for which her husband will take her to a restaurant of her choice at least once a week (29). More commonly, the partners to a Therapeutic contract devise a simpler and more uniform mode of positive reinforcement, such as giving each other receipts to reward performance of the desired behavior. These receipts might be redeemable by the partners for a dinner or movie as the other's "guest," but more often they provide a means whereby the counselor or therapist may monitor the couple's progress in sharing. One Therapeutic contract specifies that

> each receipt will have the recipient's name on it, plus the date and what was done to earn it. The reciepts earned by each will be brought to the therapy session each week (see Appendix B).

Saxon suggests a behavioral-exchange model of marital treatment, incorporating a Therapeutic contract. He recommends that the counselor concentrate on having each spouse articulate five

behaviors which would increase his positive feelings for the other (i.e., which five behaviors are then to be written on a checklist. This list should be posted in an observable place in the home, and each spouse is

> asked to record the frequency with which the behavior is performed. This record will provide a crude baseline and also a structure that increases the probability that the behavior will occur. Written agreements assure that selective forgetting will not occur. (32)

On the basis of this list, a behavioral-exchange contract is developed, with pinpointed behaviors written in along with the behavior which the other partner is willing to exchange. The couple should continue to keep charts, in order to evaluate the program. As a result of this chart, the couple can renegotiate their contract with the marriage counselor. So central is this process of renegotiation in the contractual process, that Saxon urges the writing of a renegotiation clause be written into the contract text (33).

This model of a Therapeutic contract is not the only one available, but represents the mode in use by one authority in the field of marital counseling. This model uses charts as a monitoring and evaluation tool; others use receipts. Also, Saxon's model attempts to resolve the couple's conflicts by emphasizing the positive behaviors to be reinforced, rather than the negative behaviors they wish to eliminate; the latter is the emphasis of conventional marriage counseling, and of many models of Therapeutic contracts. It is much simpler, however, to reinforce a positive behavior than to punish and dismantle a negative one. Fitzhugh Dodson has mentioned in his lectures what he calls the "Law of the Soggy Potato Chip," the phenomen whereby a child whose good behavior is ignored will intentionally misbehave for the sake of the negative attention he receives: for negative attention is better than none. If this phenomenon applies to children, then it is sufficiently a part of the human psyche to hold for their parents as well. The wife is displeased with the late hour at which her husband comes home, so she allows his dinner to burn, at which point

he begins coming home even later, in order to spite her. Eventually, the burning of the dinner becomes a standard form of communication for this couple, and a means of negative reinforcment; their entire marriage comes to consist of such negative modes of interaction. It is far more effective for the wife to write a contract , promising that dinner will be ready at 6:30 whenever her husband guarantees that he will be home on time, as did the couple in Saxon's model above (page 100). Such reinforcement is positive, mutual, and constructive.

It is difficult to assess the efficacy of Therapeutic marriage contracts. However, the increasing frequency with which marriage counselors are having recourse to them would be a fair index of their effectiveness in the counselinf situation. Moreover, the Conciliation Court of Los Angeles County has handled 15,000 reconciled families between its establishment in 1954 and the year 1967, all by means of reconciliation contracts prepared by the families under the supervision of court-appointed advisors; and 75% of these families were still together after a year.

In summary, it would appear that the phenomenon of the marriage contract is coming to be an established part of American marriage. These contracts are a logical by-product of the development of a pluralistic and consensual model of marriage, in the place of the normative mode and values. Marriage contracts may be political statements or merely communicative forms, but the couples who draw them up almost unanimously consider them to be binding, even though their legality is still being tested in American courts. Legal contracts challenge or compensate inequitable state laws pertaining to marriage. Personal contracts, on the other hand, define the terms of the marriage in more general terms, within the needs

and expectations of the couple which prepares them. And Therapeutic contracts provide a means of communication and negotiation for behavior exchange in resolving post-marital conflicts. It is understood that these names do not represent clear-cut definitions of contract types, but rather indicate categories only: a single contract may contain elements of more than one type of document, and there is no set form for any of them. Therefore, it must be understood that the contract names used in this chapter describe the function and not the content of the marriage documents in question.

THE KETUBAH AS A MARRIAGE CONTRACT

An undocumented multitude of Jewish couples are commissioning artists, scribes, and calligraphers to prepare personalized ketubot for their weddings. Many of these ketubot are not true ketubot at all, but rather Personal marriage contracts with a sprinkling of Jewish elements interposed. As Personal marriage contracts--for which no set form exists--these documents may be impeccable; but it is arguable whether or not they truly qualify as ketubot.

A part of this question might refer to the basic issue: is a ketubah in fact a marriage contract, or a marriage document? A contract represents an agreement between two people--it is a record of negotiation--whereas the ketubah contains a unilateral pledge of the groom to provide for his wife in the customary manner. The ketubah is in a sense a record of agreement, inasmuch as the bride accepts the groom's vow and pledges her troth to him:

וצביאת מרת פי והות ליה לאנתו;

and Miss X was pleased by these terms, and became his in wifehood.

Moreover, while the groom's vow makes his obligations explicit, and the bride's commitments must be understood implicitly from convention, nonetheless--as we will see below--there exists a precedent for writing the bride's obligations into the ketubah as well. So the ketubah is, in a very real sense, a reciprocal agreement and a true contract of marriage.

A more important issue is, what are the criteria for a ketubah? What are the minimum rubrics which every variant text of ketubah has historically contained, and which therefore ought to be written into the text of a modern revision? And, for that matter, since the ketubah currently in use represents a standard in use for over five hundred years as a matter of convention, is a variant ketubah text which has not been used historically by the entire community considered valid at all, for use by an individual? It is these questions with which we must now deal.

PART THREE

Guidelines for a Modern Ketubah

CHAPTER VI

Traditional Requirements for a Ketubah

Revision of the ketubah is problematic at best. The form is so well established today that any attempt to modify it must be viewed as violation of the Tradition. Still, the passage of time and changes in the circumstances of modern marriage call for new terms and modes in the ketubah. Even more directly, many couples are beginning to write their own ketubot--or documents they call ketubot--with little or no regard for the usages that name implies. Accordingly, we must attempt to develop criteria for ketubot and to ascertain the rubrics and usages common to every formulation of the ketubah, in order to guarantee the authenticity of emerging forms.

A central factor in revising the ketubah is, the function which the ketubah will serve. Of the traditional functions, none truly obtain in the general Jewish community. The ketubah is no longer an effective impediment to divorce, since the mohar has not been collected since the later Middle Ages (1), and since most American Jews arbitrate their divorce cases in the civil rather than the rabbinic courts. Even for observant Jews, the rigid halachah surrounding the get makes it a more effective impediment to divorce than is the ketubah. The ketubah can no longer be considered to be a dowry list, since few communities enumerate the dowry in our time: as early as the 17th Century, Ashkenazic Jews were omitting the term "and furniture" in the dowry phrase, in order not to lengthen the ketubah with too many superfluous terms (2). Independent rights of property are guaranteed alike by Jewish convention and civil

law; to elaborate upon this right by enumerating the dowry, would be redundant. It is questionable whether the ketubah has any validity as the cover deeds for a series of attached riders and codicils, as was its function through the Middle Ages and afterwards. The ketubah is not even literally a marraige certificate any longer: in modern times, reliable civil records are available to decide cases of identification, inheritance, and the like.

Rather, the sole remaining function of the ketubah is, as a record of Jewish marriage. As has been discussed above, the ketubah differed from other marriage contracts of the ancient Near East from which it evolved, by virtue of its inclusion of ethical and emotional terms which are uniquely Jewish. So today--in a society in which many American Jews allow the civil requirements for marriage to overshadow the religious significance of the wedding ceremony--does the ketubah deal with marriage in specifically Jewish terms.

As a record of marriage, the ketubah must be accurate and concise. Accordingly, we may adduce certain criteria for every ketubah. First, the document must be properly drawn, with no misspellings, illegibilities, or strikeouts; its intention must be clear. Secondly, all identifying variables--names, dates, places--must be correct, and properly spelled. The customary obligations must be included, in the standard formulations, and the overall relationship between man and wife qualified within the parameters of the tradition as a binding Jewish marriage, "in accord with the laws of Moses and Israel." Indication must be made specifically, that the customary obligations are fulfilled in keeping with the ordinance of the Sages. All stipulations and conditions must be properly formulated.

And the ketubah must be attested by reliable and acceptable witnesses.

CONSTRUCTION OF THE KETUBAH

The construction of the ketubah is not circumscribed by the Tradition: to the contrary, there is no specific halachah governing the writing of a ketubah. Accordingly, we adduce guidelines from those governing the preparation of a bill of divorce (3). By inference from this source, it can be stated that any literate Jew may write out a ketubah, writing on any permanent substance using any kind of ink or dye which will leave an ineradicable mark. By contrast to the rigid halachah governing the writing of a Torah scroll or phylacteries (4), the rules regarding preparation of a ketubah are fairly lenient. The inference is, that the rabbis sought to facilitate the joyous circumstance of marriage by making the ketubah easily accessible.

For the same reason, embellishment of the ketubah with illumination and other means of decoration is permitted. In a precarious world, marriage means

> one more Jewish pair wedded, in defiance of disaster! One more Jewish home set up, to be as the house of Jacob and as the house of Abraham, a place of learning and of prayer!(5).

Marriage meant expansion of the family, of the community and--by extension--of Judaism. As such, it represented a messianic promise, and accordingly many of the art motifs common in ketubot are messianic in tone. The Mosque of Omar is often portrayed, as a symbol for Jerusalem, city of Peace and Promise (6). Likewise, turrets and battlements are often depicted as emblematic of the Tower of David (7). David himself is drawn in the margins of many ketubot, sometimes playing the harp (8) or holding

the blossoming rod of Aaron, which serves as a Tree-of-Life motif and which will be the scepter of the Messiah (9). The seven-branched menorah of the Temple in Jerusalem is also often depicted in Jewish art as a Tree-of Life, giving light to the End of Days (10). Even the prophet Elijah is occasionally depicted, usually in the midst of blowing a ram's horn to announce the coming of the Messiah (11). Many art forms used to decorate ketubot were not at all messianic in tone, but represented the taste and temperment of the artist and the fashions of the country at that time. So we find geometric carpet patterns and floral motifs in ketubot from the Oriental countries; black-and-white arabesques from Morocco; palm and cypress trees from Jerusalem; ornate copper-etched flowers on ketubot from Amsterdam (12); and the coats-of-arms of the bride's and groom's families from 18th-Century Italy (13). We even find portrait-ketubot from Italy, featuring faithful paintings of the bride and groom in their wedding finery. Indeed, the earliest known illuminated ketubah, from 14th-Century Germany, features a painting of the groom in the act of offering his bride the wedding ring (14).

Illumination of the ketubah, in whatever manner, is permitted because the Ineffable Name is not reproduced anywhere in the text of the document, and accordingly there is no danger of transgressing the commandment (15) prohibiting idolatry. The Scroll of Esther can traditionally be illuminated, for the same reason. Even more important is the principle of הידור-מצוה, of glorifying a religious article or deed by embellishment. The ketubah is an ordinance of the Sages, and is obligatory for every Jewish bride; therefore it is appropriate to decorate it, to show the gladness with which we carry out the decree of the rabbis.

It is customary to prepare the ketubah in advance of the wedding ceremony. The rationale is, that the ketubah will definitely be ready, so that the wedding ceremony may proceed at the appropriate appointed time (16). If some imperfection is found subsequently in the text of the ketubah, the marriage is nonetheless valid: only the ketubah needs repair (17). Should the groom be unable to write his bride-to-be her ketubah--as, for example, on a Friday afternoon wedding drawing near to the Sabbath, when no writing can be done--he may give her some chattels in pledge, as a token that he intends to write her a ketubah as soon as writing is permitted; on the strength of these chattels in lieu of a ketubah, they may contract and even consummate the marriage (18). In the event that the ketubah is drawn up subsequent to the wedding, the Certification Clause should show the date on which the wedding was contracted; however, the Validation Clause must mention the date on which the ketubah was written and the qinyan enacted (19). It is customary for the scribe to omit the word וקנינא, "and we have enacted a qinyan," when preparing the ketubah far in advance of the wedding date; the officiating rabbi must fill this word in personally, in the presence of the witnesses, at the time that qinyan is actually performed and the ketubah signed. As an alternative to this, the word וקנינא can be written in full, omitting only the long tail of the letter qof for the rabbi to fill in.

It is customary in most communities for the groom to make the arrangements for the writing of the ketubah, and the payment of the scri is his responsibility (20). The Talmud explains that every groom is obliged to write his own wife's ketubah, on the basis of the Toraitic injunction in Deuteronomy 24:3 (sic!); and if he delegates a scribe to

be his שליח-מצוה, or proxy in fulfillment of the precept, he is not absolved of his responsibility, but must take the scribe's fee upon himself (21). Even the poorest scholar is not exempt from this rule (22). The Shulchan Aruch comments that the writing of the ketubah--and the payment of the scribe--is the responsibility of the groom, since the writing of the ketubah facilitates the change of status whereby the bride will becomes available to him sexually (23). Evidently even this incentive proved inadequate for some balking bridegrooms, and to avoid delay the Talmud permits the bride to pay the scribe's fee for the preparation of her own ketubah (24).

As a means of negotiation and a record of marriage, the ketubah is the occasion for a singular leniency on the part of the rabbis. The Talmud indicates (25) that a ketubah may be written by day and signed that night, a procedure that it entirely out of order for any other document. This extraordinary leniency is permitted in the case of the ketubah, inasmuch as the involved parties would be engaged in matters pertaining to the wedding all during the intervening period from daylight to dark, which would not be the case with any other transaction. In the final analysis, the ketubah cannot be signed--or even written--save with the consent and accord of the bride and groom (26).

The ketubah is customarily written in Aramaic. This is the case, in all probability, because Aramaic was the commonly-spoken language of Jews at the time that the ketubah was ordained. Accordingly, since the ketubah represented a standard usage rather than a scholarly document, it would be indispensable that the language be comprehensible to the groom, so that he should understand his ketubah obligations (27). On this basis,

we might argue for translation of the ketubah into any language which the groom speaks and can understand. In fact, many ketubot printed in the United States, even in traditional communities, do feature a parallel English translation; the main text, however, is still in Aramaic. In fact, the writing of the ketubah in Aramaic has been standardized less by precept than by custom. A modern halachist writes that inasmuch as

> the formulation of the ketubah has been received in the language of the Oral Tradition--that is, the Talmud--and has gone into practice in every community of Jews, and has become sanctified by traditional usage, and hundreds of thousands of Jews have sanctified the Covenant of the family in the customary wedding ceremonies to the sound of the traditional ketubah which we use...accordingly, we are not free to find fault with or make changes in the traditional ketubah, or to disregard the Aramaic language or the total sum (of the mohar) at the customary coinage (=zuz). And Heaven forbid that we should alter any of the traditional usages! (28).

More uniformly, we can adduce that the ketubah cannot be written in translation because the get cannot be written in translation. Both documents, as mentioned above, are exacting legal documents, with an exact shade of meaning for every word and obligation. A recent responsa indicates that the get may not be translated into Hebrew because nuances and shades of meaning are lost in the process of translation (29). The respondent discusses the one Aramaic word שבקית, "I have released you," which is a central term of the get, and demonstrates that the corresponding Hebrew word עזב is used in too many contexts to be a concise translation. He points out that the Hebrew term

> has two meanings: a) to abandon without aid, to forsake, and likewise b) to help or relieve (30).

Since the process of translation into Hebrew--or, by extension, into any language--develops such ambiguity, it must be assumed that translation of a get from Aramaic is not permitted; by extension, neither is translation of a ketubah. While a parallel translation is permitted, it must be writ-

ten into the ketubah, or else printed by machine, at the same time that the Aramaic is printed or written, prior to the signing of the ketubah (31).

CONTENTS OF THE KETUBAH

Every ketubah contains certain standard elements, by virtue of which it is considered to be a ketubah rather than a simple marriage contract. These standard elements are not cidifed in any volume of halachah; rather, they are manifested in every variant form of ketubah. Each of these standard elements nust moreover have a customary formulation, which varies little if at all from one community to the next.

The central concern of the ketubah is payment of the mohar, since the ketubah is by definition a deed for the discharge of the mohar in the event of death or divorce. Any other financial considerations of the ketubah are historical and secondary; the halachah carefully distinguishes between the dowry and tosefet, which are variable and optional, and the mohar, which is a real and immutable obligation incumbent upon the husband (32). Of the ten marital obligations elaborated by Maimonides (33), the mohar is one of three which can under no circumstances be waived (34). It follows logically that every ketubah must make provision for payment of the appropriate traditional mohar, as established by the rabbis: 200 zuz for a maiden, 100 for a widow or divorcee (35). This sum is fixed by convention as well as by rabbinic decree, and has often been paid in modern coin rather than in terms of the antiquated zuz; we find notations of the mohar, paid in contemporary coinage, as late as the 17th Century (36). The rabbinic mohar does not represent a fixed amount, but only a guideline, and any individuals who wish to write a larger mohar than is required are encouraged to do so (37). However, the rabbinic figure is a definitive mini-

mum, and any groom who assigns less is considered to be licentious and irresponsible (38).

The mohar is traditionally considered to be an enactment of Toraitic law (39). It is customary to mention this fact, as a legitimizing element, in the ketubah, viz:

> And I have established for you the mohar as ordained for a maiden's first marriage, 200 zuz of silver, which you merit by Toraitic law.

Mention of Toratic law, מדאורייתא, is not an absolute necessity, inasmuch as it is commonly omitted in Italian ketubot; but Ashkenazic Jews normally include it. The cash settlement due a widow or divorcee, by contrast, is not a Scriptural institution at all, but was ordained by the rabbis (40). Accordingly, this settlement is not called mohar at all, but is simply referred to as כסף, "the money":

> And I have established for you the money ordained for a widow's remarriage, 100 zuz of silver, which you merit by Rabbinic law.

Whichever of these terms might be appropriate in the context of an individual marriage, one or the other must be used as a legitimizing factor, to show that the settlement has been established not as a personal whim, but rather as an authentic and binding consideration in keeping with the ordinance of the rabbis. This is a time-honored and customary formulation, common to the earliest ketubot and to every variant since.

Similarly customary is the validating phrase "in accord with the laws of Moses and of Israel," which is also used in the Certification clause. This phrase likewise is of great antiquity, dating at least to t times of Hillel (41). The expression is a part of the Jewish wedding vow; and since the ketubah is a record of Jewish marriage, it is incorporated into the ketubah as well. The exact wording of the phrase has varied some-

what through Jewish history. A ketubah dating from the year 128 CE writes כדין משה ויהודאי, "in accord with the judgement of Moses and of the Jews" (42). Similarly, the Jerusalem Talmud twice uses the phrase כדת משה ויהודאי, "in accord with the laws of Moses and of the Jews" (43). But the oldest formulation of the phrase is that of the Tosefta (41), and it is the wording generally in use today. Meir of Rothenberg writes in hie Zikaron Moshe that the validating phrase כדת משה וישראל is used to define the proper behavior of a Jewish wife. He writes

> 'in accord with the laws of Moses and ssrael,' meaning that she should not go out with her hair uncovered, nor should she weave in the marketplace...' (44).

These categories of behavior are quoted in the Talmud (45) as those unworthy of a chaste and righteous Jewish wife:

> A woman who repeatedly and despite warning transgresses the Laws of Moses and of Israel, should be divorced without receiving her ketubah. What is meant by the Laws of Moses? She had fed him from food which had not been tithed; she had intercourse while menstrually unclean; she had not apportioned the challah from her bread dough; she had made a vow without fulfilling it. And what is meant by the Laws of Israel? She had gone out with her head uncovered; she had done her weaving in the marketplace; she had spoken indiscriminately with every man.

Shmuel haLevi refutes Meir's contention (46), and indicates that such a condition cannot be written into a ketubah, even if it has Talmudic basis and even if the traditional phrase of validation is associated with it, for

> the ketubah treats whcih the obligations for the wife which are upon the husband, but never with the obligations for the husband which are upon the wife, a fact that can be seen from any variant of ketubah.

Indeed, as we have seen in a previous chapter, it is the obligations of the husband, and not of the wife, which are always made explicit in Jewish marriage. This emphasis is clearly expressed in the Certification clause of the ketubah, which in every variant text represents the unilateral

vow of the groom:

> "Be mine in wifehood, in accord with the laws of Moses and of Israel, and thereby will I 'till' you and cherish and nourish and provide for you, as Jewish husbands are accustomed to 'till' and cherish and nourish and provide for their wives in honest estimation. . . ." And Miss X, the bride, was pleased by these terms, and became his in wifehood.

The phrasing is in standardized use today, and was likewise written by the 10th-Century communities of Africa, and from the 11th Century on among Jews in Egypt, Babylonia, Spain and Germany (47). However, there is evidence that at that same period of time a number of ketubot were written that place certain obligations upon the bride as well as the groom. A Syrian ketubah of the 10th Century, and other later ketubot from Palestine, Egypt and other Oriental lands, contain the following Certification clause:

> "Be mine in wifehood, in accord with the laws of Moses and of Israel, and thereby will I nourish, outfit, clothe, cherish and honor you, as Jewish husbands are accustomed to nourish, outfit, clothe, cherish, and honor their wives in honest estimation. . . ." And Miss X, the bride, was pleased with these terms, and agreed to marry him and to 'till', serve, cherish and honor him as Jewish wives--the faithful daughters of Israel--are accustomed to 'till' and serve and cherish and honor their husbands in purity (48).

Zeev Falk believes this clause was composed at about the 10th Century in order to bestow ethical obligations upon the bride, and that it was later dropped as a redundant expression of the groom's vows (49). What is vital about this clause is not that it was written, but that it was abandoned in favor of putting greater emphasis on the groom's obligations, which are traditionally held to be central in Jewish marriage. While the vows made by the bride in this clause are important, they represent no concrete task or function; the groom's ten obligations, by contrast, are real and tangible responsibilities.

Nonetheless, certain of the husband's obligations may be waived, if his wife is willing to exempt him from them. Talmudic law obliges a husband to maintain his wife in exchange for her seven domestic tasks (50), but Rav Huna guarantees her the freedom to exclude herself from such an arrangement (51). Elaborating on this rule, Maimonides declares that a woman may absolve her husband of one or more of his ten obligations, save for three for which no stipulation is valid: intercourse, mohar, and inheritance (52). He likewise expresses that a woman may waive any of her customary duties, with the permission of her husband (53). Maimonides does not stipulate the form such a waiver should take, and there is some question as to the general applicibility of his statement that such a waiver is valid; the Lechem Mishneh comment to Hilchot Ishut 12:6, in particular, raises sharp questions about the viability of the waiver of duties, and its tone is tempered only by respect for Maimonides. The implicit suggestion is either that the husband's obligations are immutable as specific ordinances of the Sages, or else that the customary formulations themselves are fixed, thile the obligations to which they refer are variable; the exact import of the discussion is unclear.

What is clear, is that a husband is in every case to assume responsibility for the customary obligations, using the customary phrasing. So central is the husband's vow in the Certification clause, that(whatever its content) he is considered to make this vow בדיבור אחד "in a single utterance" (54). The formulation of the vow, however, is not as uniform: while the standard in practice is אפלח ואוקיר ואיזון ואפרנס, "I will 'till', cherish, nourish, and provide for," other orders are also historically evident. Several Sephardic ketubot list אפלח ואוקיר ואיזון ואפרנס ואכסה, being the same

vow plus a commitment to clothe the bride, since this term is one of the three Toraitic obligations incumbent upon a husband, and should be mentioned specifically (55). Others may add to this list the obligation אכלכל, "I will outfit" (56), and still others may use the term איסובר in addition to or even as a synonym replacing אידון (57). Any order, accordingly, is acceptable, so long as reference is made to each of the husband's obligations. For this reason, the basic formulation is that standardized currently, אפלח ואוקיר ואידון ואפרנס.

Problematic in this formulation is the term אפלח, which is traditionally assumed to refer to intercourse. In the mutual vow clause cited above, however (v. supra page 116), the bride promised this term instead of the groom; this reading must be problematic, inasmuch as intercourse is the groom's obligation. Difficulty with this term is likewise expressed in the Tosafot (58), where it is understood literally by its root meaning as "field work." It is telling that Zeev Falk considers the term (59) to be an obligation equally of the bride and groom, and that he translates it "cherish" as a component of the phrase אפלח ואוקיר, "I will cherish and honor." The obligation to cherish and honor one's spouse, Falk observes,

> may relate both to husband and wife--cf Qiddushin 31a, Yebamot 62b, Baba Mesi'a 59a, Hullin 84b--but in this context it suits better the latter's obligations (60).

The customary understanding of the term, as intercourse, is more appropriate in the current standard phrasing of the vow, which is spoken only by the groom; but it is clearly problematic if--as in the geniza formulation cited by Falk--the same vow is made by the bride. However, this term must, in fact, refer to intercourse, by virtue of comparison between the first

and second vow components contained in the Certification clause. The groom vows first אפלח ואוקיר ואיזון ואפרנס, then guarantees the mohar, and finally indicates that the mohar applies in addition to מזוניכי וכסותיכי וסיפוקיכי ומיעל לותיכי, "your food, clothing, and other needs, and above all to cohabit with you." If these two vow components are parallel to each other--

ומזוניכי.....איזון
וכסותיכי וסיפוקיכי..אפרנס

then אפלח is the equivalent of לותיכי באורח כל ארעא, and does indeed refer to intercourse. Accordingly--with food, clothing, and intercourse being rights guaranteed to a Jewish bride by the Torah--a ketubah must be written so as to bind the groom to these four traditional vows at least: אפלח ואוקיר ואיזון ואפרנס. And some formula must be included to indicate that the bride was satisfied with the groom's vows, and joined herself with him in marriage. The customary formula is that already seen, וצביאת מרת פי' והות לחה לאינתו; however, other wordings are likewise acceptable, like the Bilbeys ketubah blank, which writes ושמעתיה, "and she heard him" rather than וצביאת, "and she was pleased."

Mention of a dowry in the Money clause is traditional, even when no dowry was in fact given, out of respect for the bride and her family. This is a central custom of marriage: each family reflects goodwill and respect for the other. Accordingly, certain customary phrases are included in the ketubah to describe the dowry in the most complimentary manner possible. The traditional phrase accepts all articles of value in the dowry, including "silver and gold, jewelry and clothing, furniture and bedclothes." We intentionally write "clothing" במאני דלבושא, and not

simply במאנא דלבושא--which would refer to only one garment--out of respect for the bride's family, to show that her dowry was a rich and diverse one (61). Likewise we do not write בין בכסף בין בשוה כסף, "either in silver or in something worth money," but are obliged to write בין כסף בין בזהב בין בתכשיטין, "in silver, gold and jewelry," to show how rich the bride's dowry was (62). The ketubah served the purpose of bolstering relationships between the two families united in marriage, by providing a means of subtly complimenting one another; at the other extreme, the uniform mohar and standardized dowry formula guarantee that no one will be embarassed in times of poverty by listing an inadequate dowry (63).

Depending on the style of the scribe and the custom of the place, the ketubah could be written either in the first or third person. Generally, however, the text is written in the third person as a record of the marriage transaction. The tone of the text is specifically a record of testimony, written in the words of and/or on the behalf of the witnesses. Accordingly, certain elements of phraseology are often used in ketubot which recall the presence of witnesses. We find, in the Certification clause, the notation בא לפנינו היחור פי ואמר or בא הבחור פי ואמר, "the youth P came (or came before us) and said..." (64). Similarly, the Security clause can begin וכך אמר לנא פי חתן דנן, "and thus did P the groom say to us..." (65). Finally, the Validation clause often contains the notation וקנינא אנן סהדי דחתימי (or חתומי) לחתא (or מטה) מיד (or מן) פי חתן דנן, "and we, the undersigned witnesses, have enacted a qinyan from P, the groom..." (66).

Such minor stylistical digressions are permissible in the ketubah. We often find insertions and qualifications which seem to serve no practical

purpose, but which to the contemporary community lent strength and authority to the ketubah. Sephardic communities, especially, are fond of such elaborations, and we find in their ketubot that the qinyan is described as a "total qinyan" קנין גמור (67), or that the groom had vowed a strict oath שבועה חמורה (68), or that his property is to be mortgaged in payment of the ketubah "in its entirety" עד גמירא (69). It was common at one time, in describing the Security clause the property which was thus mortgageable, to include any property תחות שמיא בביתא ובברא "beneath all the heavens, in my house or afield" (70); today, only the first half of this phrase is retained. A ketubah of Bordeaux, France (71), mentions that qinyan is enacted לזכות הכלה על כל הנ"ל מעכשיו, "for acquittal of the bride concerning all the aforementioned terms, from the present time forth," an insertion which is found in several other ketubot of the Sephardic world (72). Several ketubot indicate that the groom pays the tosefet מדילי ומנכסי "freely from his own wealth..." (73). Such qualifications as these are permitted so long as they do not detract from or alter the meaning of the ketubah or of the standard formulations which they describe. The formulations of the ketubah, like the document itself, represent a time-honored institution and an ordinacne of the rabbis; accordingly, any changes made in the form of the ketubah or in its practice must be carried out in a spirit of responsibility and respect.

The only truly variable element of the ketubah is, the series of stipulations which the couple makes between themselves on the basis of private agreement or communal custom. Some standard stipulations were mentioned in an earlier chapter (v. supra, pages 65-72); they, and many others, have been written into ketubot throughout Jewish history. There

is no standard form for a stipulation which is to be written into a ketubah, unless the stipulation represents a condition upon which certain aspects of the union are dependent, in which case definitive rules apply. Essentially, any condition of this type must be couched as a תנאי כפול or "balanced condition": if X, then Y; and if not X, then not Y. The Talmud declares (74) that

> any condition which is not stipulated like the conditions of the people of Gad and Asher, is not a valid condition; for it is written, 'and Moses said to them: "If the people of Gad and the people of Asher wll pass over...",' and it is also written, '"But they will not pass over armed"' (Numbers 32:29-30).

A later example of this type of condition is seen elsewhere in the Mishneh (75), in which a man who had betrothed a woman on the condition that he be a member of the priestly class, and was found to be a Levite, has not effected a licit betrothal. We can assume, by extension, the second half of his betrothal formula, as a "balanced condition": "And if I am not a Cohen, then you are not betrothed to me in accord with the laws of Moses and of Israel." Maimonides elaborates upon this requirement for a balanced condition, and posits additional criteria for a conditional stipulation. In order for such to valid, he says, such a condition must:

a) be "balanced" (שיהיה כפול);
b) be written with the positive "if" preceding the negative "and if not" (הן קודם ללאו);
c) precede the event on which it is conditionsl (קודם למעשה);
d) be a realistic condition, which can conceivably be fulfilled (אפשר לקיימו) (76).

If a stipulation is not of this conditional type, then there is no set formulation for it. But, by inference, its meaning and intention must be clear, and there should be some indication that both bride and groom are in complete accord concerning it; in the Bilbeys blank, this last was done by enacting a qinyan from both parties regarding their respective obligations.

VALIDATION OF THE KETUBAH

According to Talmudic law, a document is validated only by the signatures appended to it (77). Accordingly, the ketubah must be signed at the appropriate time, by suitable witnesses. It is customary for two witnesses to sign the ketubah, just as two witnesses are required for any testimony--as in witnessing murder (78) or the New Moon (79)--so that one may corroborate the evidence of the other. The witness to a ketubah may not be related to either the bride or the groom (80), and must have both observed the qinyan and heard the ketubah read (81). These two witnesses must sign the ketubah; the signatures of the scribe and of one witness are not adequate (82). At one time, only pedigreed Jews were allowed to witness and sign a ketubah, but under Rabbi Shim'on ben Gamliel (c. 160 CE) this condition was no longer required (83). In fact, Jews who do not observe the Sabbath are permitted to witness and sign ketubot (84), and even the signature of a known Sabbath-violater is acceptable (85).

But the witnesses who sign the ketubah must be men, and women are categorically denied authorization to witness and sign the ketubah as they are for any official document (86). The basis for this custom is the Scriptural passage dealing with witnesses (87):

> Should a witness arise to give evidence maliciously against another, to give false testimony against him, then let the two parties to the dispute appear before the Eternal, before the judges or priests in authority at the time....

The Hebrew used for "the two parties" is שני-האנשים, "the two men"; and on the strength of this, Maimonides rules that women may not offer evidence (88). Joseph Caro protests that the word אנשים is simply the plural of the Hebrew אנש, "person," and that a witness could therefore be a woman

as well as a man: he argues that the masculine gender is not an ultimately reliable index of the meaning os Scripture, since

> the whole Torah speaks in the masculine gender! (89)

Nonetheless, women are not accepted as witnesses to the ketubah, and even the Reform movement urges that couples who will be living in Israel --or other communities in which the traditional customs are observed--plan to have only male witnesses sign their ketubah (89).

It is permitted--in some communities, even mandatory--that the groom sign the ketubah at the same time as the witnesses. The groom should not sign on the same side--the right--as the witnesses, but should sign opposite them on the left side, with a line drawn from their names to his own (90). Moreover, it is advisable according to some authorities that he write "I, X, the groom, attest all the aforementioned terms," and then sign his name, so that there can be no mistake about his intention (91).

The time of the signing of the ketubah is problematic. Generally the document is negotiated and drawn, and the qinyan enacted, before the wedding service; accordingly, this would be the logical time to witness and sign the ketubah. However, signing before the wedding is viewed by Cohen (92) as an undesireable option, to be favored only when the wedding takes place on a Friday afternoon so that there is risk of writing on the Sabbath if the signing is delayed until after sundown. He concedes, however, that

> in this community, where the congregation becomes disorganized and everyone begins to kiss everybody else (after the service), it is perhaps preferable to sign beforehand (93).

He states that, under more sedate circumstances, it is customary for the rabbi to accept qinyan from the groom in the presence of witnesses, who

then sign the ketubah after the wedding (94). Shmuel haLevi, likewise, agrees that the witnesses sign the ketubah after the qinyan and before the יחוד or consummation of the marriage (95). He indicates, however, that the Polish and Ashkenazic communities have different wedding customs: the latter perform qinyan after the marriage ceremony, and only then sign the ketubah. His preference is for the Polish custom, whereby qinyan is performed prior to the wedding, in which case--he argues--the bride will be provided for in the event that the groom suddenly dies (96)!

SUMMARY

This chapter has attempted to define the traditional criteria for a ketubah, by evaluating the customary terms and their formulations, and by presenting some of the representative customs and rules regarding the preparation and content of a ketubah.

The modern ketubah no longer serves any of its previous functions. It has no impact as an impediment to divorce, is not used as a dowry list, and has no applicability as a cover deed. Rather, the ketubah as generally used serves as a marriage certificate of a special type, and as a record of Jewish marriage. Accordingly, emphasis must be given to the terms of the ketubah which concisely describe the nature of a Jewish marriage, and which are altogether traditional.

Moreover, certain prescribed formulations are customary for these terms, and they should be adhered to for the sake of authenticity. In addition, all of the customary validating formulæ which indicate the exclusively Jewish nature of the marriage--viz. כהלכות גוברין, כדת משה והשראל יהודאין--should be used to indicate the context of the document. And, by

definition, all of the identifying variables--names, dates, places--must be correct, and properly spelled. Any private stipulations made between the bride and groom must be realistic and mutually agreeable, and--if they are of a conditional nature--they must be phrased strictly in accordance with the criteria developed for such conditions by Maimonides. Finally, the ketubah must be properly attested and signed by witnesses who are not relatives of either the groom or bride.

We may construe that a modified ketubah which adheres to these standards would, in spite of its changed form, nonetheless be considered to be a halachically viable and binding ketubah.

CHAPTER VII

Non-Traditional Considerations for Revision of the Ketubah

These traditional requirements are not the only factors to be considered in revision of the ketubah. They determine only the framework or minimal form of the ketubah, while other factors must determine the bulk of the document's content. While the customary format of the ketubah has evolved to meed the needs of traditional marriage, modern relationships are not as uniformly defined; they often involve unique demands and needs with which the existing usages cannot cope. Nonetheless, as a record of Jewish marriage as it is lived, the ketubah must deal with these new demands.

Clearly, these new needs cannot be considered to be fixed criteria or prerequisites for a ketubah; they reflect the plurality of modern marriage, and so are by definition variable. Rather, they represent factors which govern the revision of the customary ketubah text, or the creation of new forms and stipulations; they determine the way in which the traditional mode of the ketubah can meet the needs of the Jewish couple as a working and negotiable marriage contract. What must be determined is, to what extent are the couple's individualistic needs in accord with the established Jewish view of marriage? Is their commitment basically consonant with Jewish marriage, or is it conversely contrary to every Jewish value? It is these ambiguous value judgements which must be applied to issues which are little better defined.

THE KETUBAH IN REFORM THOUGHT

Central to the issue of revision of the ketubah is the basic

question of whether a ketubah will be written at all. The official policy of the Reform movement has never been overly sympathetic to the mode of the ketubah, and the wedding service adopted by the Movement in 1890 (1) does not include the reading of a ketubah. Uniformly enough, the Rabbi's Manual published by the Central Conference of American Rabbis (CCAR) likewise neglects to allot time in any of its three wedding services (2) for the reading of the ketubah.

The motive for this stance is one of equality, for the ketubah is an element of purchase-marriage, a mode of marriage which many Reformers feel to be discriminatory and anachronistic. Indeed, Reform Judaism considers the absolute social and ritual equality of men and women to be its single most valuable contribution to contemporary Judaism (3). As early as 1869 the Rabbinical Conference of Philadelphia decreed that

> the bride shall no longer occupy a passive position in the marriage contract, but a reciprocal vow should be made by the bridegroom and the bride, by pronouncing the same formula (4),

a stance that was renewed most recently by the CCAR, which insists that

> any aspect of the marriage or the preparations for a marriage which suggest the dominance or diminuition of one (partner) or the other should be recognized as such and avoided (5).

The ketubah is the prime example of such inequity: the CCAR views it as the unilateral and discriminatory vestige of a male-oriented society (6). On a more humanistic level, the ketubah is viewed by the early Reformers as a belittling influence and an example of what Freehof calls

> the minute enactments controlling the ceremonial observances. It (the Reform Movement) considered such fixed laws to be a trivialization of the grand ethical teachings of the Jewish faith (7).

Nonetheless, even the Reform movement has been historically involved with the ketubah, in spite of its philosophical and æsthetic

stance against the document. Although the practical impact of the ketubah is questionable even in the traditional community, nonetheless its role as a ritual mode in the wedding service is so central that it could not be abrogated even by the progressive philosophy of early Reform. In 1935 the request was made at the annual convention of the CCAR for the creation

> of a Hebrew Kethuba to be used in marriage ceremonies when requested (8).

The motion was passed, which would indicate either that the membership was subliminally committed to the ketubah or else that they were met with the demand for such a document from their congregants. Dr. Samuel Cohon, of the Cincinnati faculty of the Hebrew Union College, was asked to prepare the new ketubah, and the following year the CCAR Yearbook notes that

> a revised form of Kethuba prepared by Rabbi Samuel Cohon was presented, and the President (Felix A. Levy) was instructed to consult with Rabbi Cohon in regard to certain suggested changes, and that a copy be furnished to publishers who may care to issue the document (9).

It is significant that the CCAR requested, composed, and published a ketubah for use in Reform marriages, which action appears on the surface to run counter with Reform philosophy.

Yet the question remains as to whether this alternative ketubah meets the requirements for ketubot as discussed in the previous chapter, or if the CCAR had prepared their alternative text within political guidelines. In fact, the document approved by the CCAR in 1936 has the form less of a ketubah than of a Jewish marriage certificate: it mentions none of the customary ketubah terms, and places more emphasis on the role of the rabbi as "solemnizer" than on that of the bride and groom as parties to the marriage:

> This is to certify that on the ___ day of the month of ___, 19--, corresponding to the Hebrew calendar date ___ day of the month ___, the year 57--; ___ son of ___ and ___, and ___ daughter of ___ and ___ entered into the covenant of marriage, vowing to love, honor, and cherish and to care for one another throughout life; and that I solemnized their union in accordance with the faith of Israel and the laws of the State of ___.
>
> Signature of the rabbi
> Signature of two witnesses

Similarly the latest CCAR statement regarding ketubot (10) encourages the use in Reform weddings of decorated ketubot which

> emphasize the mutual spiritual obligations of bride and groom while omitting finances and legalisms,

a qualification which in fact robs the traditional ketubah of even its symbolic meaning, namely its status as an ordinance of the Rabbis. While the formality of the mohar might be considered distastefully legalistic by the CCAR, it nonetheless remains that any ketubah which does not treat with this consideration in at least a token way is only a Jewish marriage certificate; to call such a document a "ketubah" is a misnomer.

In any form, or by any name, the ketubah has never been even a peripheral element of Reform marriage. Nonetheless, by virtue of its posture as a liberal movement, Reform permits in principle any type of ketubah or none, subject to the wishes and impulses of the officiating rabbi and the motivation of the marriage couple. Reform is, at bottom, a movement of free choice on the individual level: even the 1936 text was prepared for use only "when requested" by the couple. So while official policy might consider the ketubah to be a regressive or disciminatory medium, on the individual level or ritual and preference the ultimate criterion is the couple's and the rabbi's option.

MUTUALISM

This issue is perhaps the single greatest point of departure between the traditional ketubah and the modern marriage contracts. The ketubah represents a unilateral agreement of the groom concerning his responsibilities; most marriage contracts, by contrast, deal with mutual pledges of the bride and groom, and delineate respective rights and duties. The ketubah does not deal with these details, because they are understood by convention; the ketubah was established as a single facet of traditional marriage, and accordingly discusses the terms of marriage in strictly traditional terms. This does not mean that other and new terms of agreement cannot be written into the ketubah, it means only that such terms should be consonant with the spirit and practices of Jewish marriage and Law.

An almost universal practice among Jewish couples who rewrite the ketubah is, to mutualize the vow embodied in the Certification Clause. A well-known example of this is the ketubah written by Rabbi Lawrence Kushner, which is printed in the Jewish Catalog (11). The bride and groom both make the same vow to each other, based rather broadly on the traditional vow of the groom:

> "you are my husband/wife, according to the tradition of Moses and Israel. I shall cherish you and honor you as is customary among the daughters/sons of Israel, who have cherished and honored their husbands/wives in faithfulness and integrity.

Along similar lines is the vow incorporated in a sample ketubah formulated in Canada in 1972:

> The groom X, son of Y, and his bride A, daughter of B, made the following mutual declaration: "Let us be wedded according to the laws of Moses and Israel. We promise to respect, love, work, and do all that we can to insure each other's happiness. All this we will do in faithfulness (12).

Both vows are structured loosely after the customary vow of the groom to "'till' (or honor), cherish, nourish and provide for" his bride; both incorporate the indispensable element כדת משה וישראל, "in accord with the laws of Moses and of Israel"; and both qualify the vow as a real obligation which will be fulfilled בקושטא, "uprightly," faithfully and in integrity. Despite these traditional elements, the vows differ from the customary norm in the precise terms they embody. They eliminate the monetary or support aspects of the husband's responsibility, and stress ethical commitments for both partners.

As seen in the previous chapter, there is historical precedent for such a ketubah clause. Several oriental ketubot of the 10th through 13th Centuries contain a Certification Clause which places mutual--if unequal--obligations upon the bride:

> "Be mine in wifehood, in accord with the laws of Moses and of Israel, and thereby will I nourish, outfit, clothe, cherish and honor you, as Jewish husbands are accustomed to nourish, outfit, clothe, cherish and honor their wives in honest estimation. . . ." And Miss P was pleased by these terms, and agreed to marry him and to 'till', serve, cherish and honor him as Jewish wives--the faithful daughters of Israel--are accustomed to 'till' and serve and cherish and honor their husbands in purity (13).

It is noteworthy that this formulation was lapsed later in the Middle Ages as a redundant restatement of the groom's obligations. Equally significant is the extent of the bride's vow, which is singularly passive and even submissive. Her vow is given in a third-person paraphrase, in contrast to that of the groom. She vows to honor and cherish her husband, as he does her, but moreover promises to "till" him אפלח, a term which is traditionally assumed to be a euphemism for intercourse, but which Falk translates as cherishing. Finally, she commits herself to serve her husband, as a counterpoint to his pledge that he will "nourish, outfit,

and clothe" her.

If this ketubah clause is the only available precendent of a mutualized vow, it commits modern couples to the traditional model of marriage. The bride's pledge to honor and cherish her husband, and to serve him, speaks to the supportive role of a traditional Jewish wife in the expressive domain, as a complement to her husband's working role in the instrumental domain. It might be implied by the precedent of the Syrian vow clause above, that a mutualized vow may only refer to the traditional role-models of Jewish marriage. A non-unilateral vow should only reinforce the behavior patterns and roles which are customary, and cannot refer to innovative obligations.

The appropriateness or justice of this conclusion might well be questioned. Is the higher priority of the ketubah to serve traditional Jewish marriage, or Jewish marriage as it is currently being practiced? It seems illogical to commit only the husband to פרנסה, or providing for the needs of the household, when in over 50% of American families women are wage earners in addition to--or even in lieu of--men. As a record of Jewish marriage, the modern ketubah must be accurate, describing the terms of the marriage as they are lived, not as they are traditionally idealized.

In fact, many of the terms commonly written into marriage contracts are not at all in conflict with Jewish Law or the traditional model of Jewish marriage. What is unorthodox is not the stipulation, but the fact that it is written down. Most aspects of marriage were understood by convention, and did not warrant being recorded in the ketubah, which was

primarily a deed for payment of the mohar. Since the ketubah was required, by a decree of the Sages, for every Jewish marriage, and since it was accordingly a fixture of all wedding ceremonies, it proved a convenient means of recording special terms of marriage which were not normally dealt with by the customary vows: monagomy, inheritance, and the like. But the standard details of married life were never recorded in the ketubah, since they were too well-known by convention to merit such special mention. In modern times, however, with more pluralistic models of marriage, the traditional modes no longer obtain universally, and it seems altogether appropriate to document the terms of the couple's relationship in the ketubah or some other written contract. What must be discussed, in such a case, is the propriety of the term or stipulation from the viewpoint of the Tradition. Any stipulation which is not foreign to Jewish thought or practice may be written into a ketubah.

A representative selection of modern marriage stipulations is that of Professor Marvin Sussman, which was referred to above (v. supra, page 96). Of 37 stipulations or types of stipulation commonly made by couples--Jewish and non-Jewish alike--in their marriage contracts, 18 are permissible in theory under Jewish law, or even superfluous as concepts or values central to Jewish marriage; 11 are questionable, but would probably be considered acceptable under the strictest test of the Tradition; 3 are questionable, with the likelihood that they would not be consonant with traditional values; and only 5 are unquestionably contrary to the teachings and practices of Judaism.

Of the stipulations commonly made which are parallel to Jewish values and practices, a few examples will suffice.

a) A couple might indicate that all assets owned at the time of marriage by either party are to remain the exclusive property of their respective owners. This stipulation is altogether consonant with the Jewish doctrine guaranteeing separate rights of property for husband and wife, and there is no halachic reason that it could not be written into a ketubah.

b) Decisions regarding family administration, management of household funds, and choice of the family residence are often declared to be joint responsibilities, in which both partners to the marriage have both a stake and a voice. These decisions are likewise viewed as common domain of the husband and wife in the Jewish Tradition, for Woman was created --according to the Scriptural account--not as a servant to Man, but as an עזר כנגדו, an equal and adequate partner. And any husband who would take the example of neighboring societies who regard their wives as subservients, is gently but firmly admonished throughout the rabbinic literature to remember his own wife's status, and to heed her input into the family system: "if your wife is short, bend down so that she may whisper in your ear" (14).

c) Many couples maintain their personal autonomy, by stipulating that one partner is not obliged to visit the other's friends, and that --conversly--a business or social invitation extended to one does not by definition extend to the other. This considration is matched, in Jewish Tradition, by the principle that a married couple retains their respective identities. A Jewish couple consists of two people sharing; in contrast to the common-law attitude prevalent in the British and American judicial system, husband and wife do not become one entity under the authority of the husband. And while the ideal of marriage is for a

tangency of families, and good relations with the respective in-laws, nonetheless one partner to a Jewish marriage may avoid or decline invitations from his or her extended family, for the sake of the highest social principle of all: שלום-בית, peace in the home.

d) Perhaps the most widely-publicized marriage contract stipulation of all, is that which apportions household tasks to the two partners equally, either in an undefined allocation or by a specific hour-to hour breakdown. While the Talmud lists certain domestic chores which are the duty of a married woman (15), this is only a guideline and not an immutable ruling; there is nothing in Jewish Tradition that precludes the husband's participation in the household tasks which are traditionally an aspect of the wife's expressive domain. However, for husband and wife alike, it must be understood that no domestic task can be allowed to interfere with the observance of מצות-עשה שהזמן גרמא, or time-oriented mitzvot, like the recitation of the daily prayer services or the kindling of Shabbat candles.

e) Some couples may agree that an uninterested third party must arbitrate all disagreements between them, and that breach of a substantial provision of the marriage contract is gronds for termination of the relationship. One of the most important functions of the community rabbi over the past centuries has been as an arbiter of family disputes. The rabbi traditionally had the patience to hear both sides; he was the employee of the entire community, and so would be impartial; and he had the wisdom, plus the recourse to Jewish teachings, to provide for a fair and equitable decision within the context of the teaching of the Sages. For a more substantial or weighty problem, a couple should turn to a

trained marriage-counselor, or--within the Jewish context--to a duly-constituted בית דין, rabbinic court. Provided that the provision breached be a substantial one--sustenance, mental or physical cruelty--the court would recommend or even effect a halachic divorce, and help implement a civil divorce. Such intervention, by definition, circumvents the intent of the original contract stipulation, which was to democratize divorce proceedings without the involvement of the civil law; such is not possible from the viewpoint of the Jews, for whom דינא דמלכותא דינא, civil law is valid and binding for all citizens of the State. Moreover, such a contract stipulation would be written less frequently today, since in most states no-fault divorce is available.

A few stipulations often found in modern marriage contracts are problematic or questionable from the viewpoint of Jewish law. Again, only one or two examples should suffice.

a) A stipulation is occasionally found, which indicates that neither partner may expect career enhancement from the other. This condition is addressed specifically to protect the status of the wife, by not making her an ornament to be borne by her husband to business dinners and other social engagements which might further his career plans. It might be argued that husband and wife owe each other support in all of their endeavors, as a broad extension of their marital duties. But, by the same token, the stipulation might be enforceable by the same argument as (c) above: partners in a Jewish marriage are two individuals, and should be treated as such, neither as an accoutrement of the other.

b) Even more common is a stipulation that children are to be conceived only as a result of mutual and deliberate agreement, and that the

responsibility for the means of birth control used is assigned or shared. This stipulation is problematic, in that the traditional function of Jewish marriage is to build a household as a safe and conducive environment for children, and to legitimize offspring. This is demonstrable from the very first commandment of the Torah: "be fertile and increase" (16). It may be argued that the stipulation is defensible, so long as the couple does finally agree to have and raise children, for their own propogation and that of Judaism, and that the decision is indeed a mutual one as a result of sharing and discussion.

The second part of the stipulation is more difficult, inasmuch as the traditional community is divided--although negatively disposed--towards the use of contraceptives by healthy women of child-rearing age. There is no question regarding the use of artificial contraceptives when a pregnancy would menace the mother's life (17), but contraception for the sake of convenience of the parents is highly problematic from a halachic viewpoint. The most lenient opinion of a modern halachist is, that a woman may use any contraceptive which does not endanger her health, so long as she has already borne a son and daughter, and thus fulfilled the injunction to "be fertile and increase" (18). Most authorities, however, limit the means of contraception which may be used by a Jew. The determining rule is, that no means of contraception is valid if it destroys the sperm cells or the mature egg, in keeping with the Talmudic prohibition against "spilling seed on rocks and trees" (19). Accordingly, these authorities maintain, no observant Jew should use an intrauterine device, or IUD, which destroys the maturing egg (20), or a spermicide jelly or foam; a diaphragm, however, is permitted by some, since it only serves as

an impediment to fertilization and destroys neither sperm nor egg (21). Likewise, the oral contraceptive, or "Pill", is permitted to an observant Jewish woman, since it does not destroy the female egg cell, but rather prevents an egg cell from maturing (22). In the case of any of these means of contraception, their use must be discontinued at once if any dizziness, bleeding, or other undesirable side-effects is manifest which might prove dangerous to the woman (23). And in any event, a woman may continue using a contraceptive only so long as she would be endangered by a pregnancy; she must discontinue their use, and strive again to have children, as soon as the danger is past (24). The use of male contraceptives has not yet been approached by halachic authorities; but the use of a condom is traditionally forbidden, as a violation of the Talmudic principle mentioned above, and withdrawal is frowned upon from the example of Onan (Genesis 38:8-10). Vasectomy is likewise not viewed favorably by modern halachic authorities, based rather broadly on the Deuteronomic law (25) which prohibits a man with crushed genitalia to marry. In short, the halachic community is divided on the issue of mechanical or chemical contraception, largely unfavorable; those authorities who are inclined towards a lenient decision, are obliged to qualify their opinion with the comment, "but this really calls for more study," in order to avoid losing credibility with their colleagues (26). Accordingly, a marriage contract stipulation which assigns responsibility for birth control would tend to be in contrast with current Jewish practice, as based on the opinion of contemporary authorities.

c) Most marriage contracts include a negotiation clause, indicating that the couple will reevaluate their relationship and their contract periodically, or that the contract will be amended upon the birth of their

first child. It is questionable whether or not this reassessment is in keeping with Jewish practice. Some ketubah stipulations could be written into the document subsequent to the marriage, but it is unclear how long a period was allowed to elapse.

As for the second point, amendment upon the birth of the first child, this would probably be permissible under Jewish law, provided that the amendment guarantees a firmer marriage and a more secure home to provide for the needs of a growing child. But if the modifications made in the contract failed to provide for maintenance and inheritance, and other terms designed to guarantee the child's welfare, this stipulation would not be workable.

Finally, very few of the stipulations commonly written into marriage contracts conflict glaringly with traditional Jewish values. Those that are, generally conflict with the values and practices of the general society, as well. Of the thirty-seven stipulation categories on Professor Sussman's list, only five were plainly contradictory to Jewish Tradition, so we shall examine them all.

a) It is not uncommon, in contracts that discuss responsibility for birth control, to stipulate that the woman may make her own final decision regarding abortion, in the event of an accidental or unplanned pregnancy. The motive of this stipulation, clearly, is a political one in most cases, explicitly stating that the woman has control over her own body. Nonetheless, such a stipulation must be rejected out of hand from the viewpoint of Jewish law, if the woman's is the only opinion forwarded. The halachah permits termination of a pregnancy only when

a woman's life is endangered by miscarriage or a birth complication, which conditions must be determined in consultation with a trained physician. When the need exists, a woman may decide whether she wishes the procedure done, or will try to undergo the normal birth with the consent of her doctor; to terminate for the sake of her own convenience, however, would be contrary to Jewish practice. Financial hardship is a more refined social and emotional consideration in deciding to terminate pregnancy; here again, however, the advice of a physician and a rabbi would be called for.

b) Many couples specify in their marriage contracts that sexual fidelity will be maintained in their marriage, while an even greater number stipulate that fidelity is not a necessity in their relationship. The firs term is superfluous, in the traditional model of Jewish marriage: intercourse is the means of having children, which prerogative and privilege is the domain of the married couple alone. Equally important, the rabbis do not underestimate the sharing involved in purely recreational and expressive intercourse (v. supra, page 26). Such an intense sharing is the exclusive domain of the married couple, who have covenanted to constitute an intimate pair of friends who interact on every plane--emotional, intellectual, physical--in a way which is shared with no one else. Marital fidelity is a value intrinsic to Jewish marriage and the Jewish experience; accordingly, to specify it is superfluous, and to disavow it, unthinkable.

c) Several couples stipulate in their marriage contracts, that the contract is binding only for a finite period of time. If the intent of this is to require reevaluation at the end of that time, then the same

argument applies as for (a) above. However, if the stipulation requires termination of the relationship after the time is elapsed, such a term is contrary to Jewish practice. It is true that even the Sages would marry for finite periods of time--at times, even for one or two nights, so that they would not be overwhelmed by יצר הרע, their evil inclinations (27)--yet the practice was frowned upon even in their own time, and is no longer practiced in societies which observe the monagomous principle. Such a trial marriage would be permitted by precedent, then, if the precedent is taken out of context and the subsequent prohibition of the Shulchan Aruch is ignored (28). If the couple arranges a finite period for their marriage, with the intention of reevaluating their relationship while continuing it, then the same question applies as for (a) above.

d) A common contract stipulation is one, whereby the marriage is to be dissolved uncontested at the wish of either partner. Such a stipulation was originally written as an enactment against inequitable state divorce laws; with the advent of no-fault divorce in most states, it is less common. Nonetheless, a stipulation of this nature would not be acceptable on the basis of Jewish practice. Just as the civil courts demand judicial review of every divorce proceeding, likewise does the Jewish Tradition insist on religious divorce proceedings in the presence of a duly-constituted rabbinic court, in order to protect both parties. Customarily, the Tradition is at pains to protect the wife's rights, inasmuch as Toraitic law grants her husband absolute power of divorce over her. The decree of Rabbenu Gershom provides universal protection for the wife, by guaranteeing that no Jewish husband may divorce his wife without first providing an adequate settlement with which his wife is

satisfied, this under pain of a ban of חרם, excommunication. On a more individual level, precedent exists for the inclusion of a ketubah clause granting a woman the right to sue for divorce with the rabbinic court (29). In any case, the couple's suit for divorce must be referred to the appropriate authorities for supervision; and although the court's role is purely a supervisory one, it is indispensable nonetheless.

e) Similarly, a common stipulation provides that the marriage may be dissolved at any time by mutual consent. Such a term in unacceptable under Jewish law, for the same reasons just cited in (d) above.

These, then are some considerations for mutualizing the ketubah, either through changes in the customary vows or by means of inserted clauses and stipulations. We have seen that few stipulations are truly out of accord with traditional usages, and that accordingly there is no reason that a Jewish couple could not--at least in theory--write them into a ketubah without fear of censure on halachic grounds. Moreover, precedents exist for mutualization of the vows contained in the Certification Clause (this issue, however, is a delicate one, inasmuch as the vow formulation currently in use has been standardized by convention for nearly two thousand years). Nonetheless, within the framework of values and considerations presented here, it is possible in principle to write into a ketubah terms of marriage which are mutual and authentically Jewish as well.

CONCLUSION

This thesis has endeavored to explore the medium and the phenomenon of the ketubah, and to develop guidelines for the creation of new forms of ketubot which can at once satisfy the requirements of the Tradition and the uniqe needs of the individual.

I am convinced that a need exists for such guidelines. While there is somewhat of a renaissance currently going on amongst progressive Jews as regards ketubot, many of these Jews have no realistic understanding of the ketubah text, or of what is involved in revising it. Over the past four years I have myself drawn up nearly fifty ketubot for various couples, most of them Reform and Conservative Jews. Of these ketubot, nearly half were variants or נוסחאות of the traditional "standard" text; twenty used modern variants not of their own composition, especially that formulated by Rabbi Lawrence Kushner in the Jewish Catalog (page 165); and only four were willing or able to create their own personal texts, based entirely on their own needs and preferences.

Moreover, increasing numbers of Jews are having recourse to the kind of Personal marriage contract described in Chapter V of this thesis, whereas a revised ketubah might have as much to offer, with the added benefit of coming from an authentically Jewish context.

In both of these cases--the couple committed to the ketubah and the couple committed to the contract--guidelines are required. It is inappropriate to hand down a halachic decision, for such an action is by definition limiting. But conversely, neither can the nihilistic response "do your own thing" meet our needs as Jews. The best response is a compromise, in

the drafting of guidelines. Such guidelines represent parameters, with a comfortable amount of room for exploration and innovation. Some responses in this thesis might have appeared to be unequivocal or monolithic, the reason being that they represent reactions to needs or demands which lay unquestionably outside of the realm of Jewish values. Such definitive statements, I feel, are few; for the larger part, this thesis has served the function of providing input. We have developed no definitive rules, but rather Jewish insights into the problems of revising the ketubah.

It is hoped that the limited scope of these insights will not encompass the reader, but rather will suggest the lattitude still opened by the Tradition. It is also hoped that this study--which has been a dream for three years now--will serve Jewish couples and their rabbis by enabling them to create new and dynamic ketubah texts which can attune their own lives to the flow of Judaism, so that they may sing and share and love together.

Ketubot Referred to in the Footnotes

1) Busseto, Italy, dated 1677; #31.4 in the Klau Library, HUC-JIR, Cincinnati

2) Ancona, Italy, dated 1692; #34.109 in the Klau Library, HUC-JIR Cincinnati

3) Ferrara, Italy, dated 1775; #2120 in the Klau Library, HUC-JIR, Cincinnati

4) Finale, Italy, dated 1787; no number, Klau Library, HUC-JIR, Cincinnati

5) community ketubah text; Marriage Customs of the Spanish and Portugese Jews' Congregation, (London, 1967), pages 12-4

6) Bordeaux, France, dated 1822; HUC-JIR Gallery of Jewish Art and Artifacts, Cincinnati

7) Trieste, Italy, dated 1773; HUC-JIR Gallery of Jewish Art and Artifacts, Cincinnati

8) Mantua, Italy, dated 1777; HUC-JIR Gallery of Jewish Art and Artifacts, Cincinnati

9) Urbino, Italy, dated 1661; HUC-JIR Gallery of Jewish Art and Artifacts, Cincinnati

10) Venice, Italy, dated 1776; HUC-JIR Gallery of Jewish Art and Artifacts, Cincinnati

11) Bilbeys, Egypt, dated 1220; Israel Abrahams, A Formula and a Responsum, (1906), Appendix I, page 105

12) Mastaura, Egypt, dated 1022; Jacob Mann, The Jews in Egypt and in Palestine Under the Fatimid Caliphs, (New York, 1970), Part II, pages 94-6

13) Jerusalem formulation, Ashkenazic; Judah Eisenberg, אדם וביתו: יסודות דיני המשפחה בישראל, (New York, 1968), page 24

14) Jerusalem formulation, Sephardic; Judah Eisenberg, אדם וביתו: יסודות דיני המשפחה בישראל, (New York, 1968), page 25

FOOTNOTES

Chapter I

1) Qiddushin 1:1

2) Baba Qama 89a

3) Pirqei de Rabbi Eliezer, Pereq 26, in reference fo Genesis 12:15-6. His generosity was motivated, the Midrash tells us, by his deep love for her. The ketubah he wrote for her guaranteed her all of his wealth in silver, gold, servants, and land, and included especially the land of Goshen as a personal inheritance. This is why Jacob lived in the land of Goshen when he came to Egypt (Genesis 47:1, 4, 6), because it was the property of his grandmother, the matriarch Sarah.

4) Qohelet Rabbah, 9:1, in reference to I Kings 3:1

5) Mavo Tanhuma haQodem. Solomon had locked her in a tower in the midst of the sea, to prevent her from marrying the pauper for whom she was destined. Still, the match was miraculously made; and the young man, being honorable, wrote the princess a ketubah in his own blood to legitimize their cohabitation.

6) Shabbat 14b

7) Tobit 7:13, "then Raquel called to the bride's mother to bring him a scroll, and he wrote a document of cohabitation."

8) Emil G. Kraeling, The Brooklyn Museum Aramaic Papyri, (New Haven, 1953), pages 140-2, 204-7; A.H. Sayce and A.E. Cowley, Aramaic Papyri Discovered at Assuan, (London, 1906), page 54

9) the neo-Sumerian city code of Eshnunna, dating to the end of the third pre-Christian millenium, stipulates that a marriage is valid only if the groom has received the permission of his mother- and father-in-law, and only if he has concluded a sealed marriage contract with them (Iraq Museum #51059, lines 27-8; cited in James Pritchard, The Ancient Near East, Princeton, 1973, page 135). Likewise the subsequent Code of Hammurabi states that "should a householder acquire a wife without drawing up the proper contracts for her, she is not a wife" (line 128; in Pritchard, ibid. page 152).

10) Qiddushin 8b

11) The ketubah is only one element of betrothal, which can be effected without it. Baba Qama 89a, which forbids a man to live with his wife for even one hour without a ketubah, does not conversely declare marriage without a ketubah void. Likewise, Ketubot 7a (and Even HaEver 66:2) permit a groom who for some reason is unable to write out a ketubah, to effect betrothal and even consummate

the marriage on the basis of chattels which he has deposited with his bride as security against the time that he shall be able to have a ketubah written.

12) Solomon Zeitlin, "The Origin of the Ketubah: a Study in the Institution of Marriage," in the Jewish Quarterly Review, Volume 24 #1 (July, 1933), page 2

13) loc. cit.

14) Kraeling, op. cit. page 204

15) ibid. page 142

16) Genesis 24:50-8

17) Genesis 34:12

18) I Samuel 18:25

19) Exodus 22:16

20) Deuteronomy 22:29

21) Louis M. Epstein, "Marriage: Purchase or Covenant?" in the Jewish Quarterly Review, Volume 30 #3 (January, 1940), page 272

22) Elkan Nathan Adler, The Adler Papyri, (London, 1939), pages 91, 100

23) Edward Westermarck, Marriage in Morocco, (London, 1914), pages 75-6, 79

24) Ketubot 82b, Jerusalmi Ketubot 32b

25) Peah 8:8

26) Deuteronomy 24:1

27) Ketubot 11a

28) Jerusalmi Ketubot 32b

29) Ketubot 82b

30) loc. cit.

31) Shabbat 14b

32) Tosefta Ketubot 12:1. A demotic marriage contract of the 2nd pre-Christian century lists a similar phrase: "All that I own or shall acquire is pledged for your marriage-settlement." See J.J. Rabinowitz, "Marriage Contracts in Ancient Egypt," from Harvard Theological Review , Volume 46 #1 (January, 1953), page 92

33) Ketubot 51a

34) Eruvin 41b

35) Yebamot 63b

36) Lamentations 1:14

37) Yebamot 63b

38) Lamentations Rabbah 3

39) Isserles to Even haEzer 66:3

40) Shabbat 14b, Ketubot 82b

41) ketubah text cited from Nachalat Shiv'ah 12, pages 23b-24a

42) Maimonides, Hilchot Ishut 12:2. They are:

Toraitic: (on the basis of Exodus 21:10)
food, clothing, intercourse

Rabbinic:
עקר-כתובה (mohar), medical care, ransom if she is kidnapped, burial if she dies in his lifetime, food and shelter should she survive him, maintenance for her daughter from his estate pending her betrothal, her inheritance to be administered by his heirs.

43) Exodus 21:10; see 42, above

44) Nachalat Shiv'ah 12:19. "אפלח הוא כנוי לעונה," "Eflah is a euphemism for intercourse." Compare the Arabic stem f-l-ḥ, which implies work generally, but specifically means breaking of the soil for tilling (cf fellahin). Cf also the American slang for intercourse, "plowing."

45) see, for example, the ketubah formulation given by Maimonides in Hilchot Yibbum veHalisa 4:33. See also ketubot 2,5, and 6 on the list of ketubot referred to in the footnotes

46) for example, ketubah 10; ketubah #118 in the Jewish National and University Library, Jerusalem, from Venice and dated 1652, in Davidovitch, The Ketubah: Jewish Marriage Contracts Through the Ages (Tel-Aviv, 1968), page 52; ketubah #360, Jewish National and University Library, from Hamadan, Persia and dated 1874, in Davidovitch ibid. page 68

47) for example the Bilbeys ketubah blank cited in Israel Abrahams "A Formula and a Responsum," (New York, 1906), page 105; see also Hilchot Yibbum veHalisa 4:33

48) Genesis 2:18

49) Ketubot 5:6

50) Hilchot Ishut 13:1

51) Ketubot 46b

52) Ketubot 59b

53) Deuteronomy 24:6

54) Exodus 22:16, Deuteronomy 22:29

55) Sayce and Cowleyop. cit. page 22, indicate that in 449 BCE the Biblical shekel was the equivalent of four drachmæ; and Phillip Blackman, Mishnayoth, (Gateshead, 1964), page 19, mentions that the Toraitic shekel is worth four dinars or zuz in the rabbinic period.

56) Ketubot 1:2, 4

57) Nachalat Shiv'ah 12:16

58) RaMBaM to Tosefta Gittin 2a

59) Rabbi K. Kahana, The Theory of Marriage in Jewish Law, (Leiden, 1966), page 90

60) Shabbat 130a

61) Nachalat Shiv'ah 12:52

62) ibid. 12:49, 12:52

63) Aaron Mendel Cohen, ספר כלילת חתנים : לקוטי דינים ומנהגים ארוסים ונשואין , (קיירה, 1910), 6:6

64) Irving G. Agus, "The Development of the Money Clause in the Ashkenazic Ketubah," in the Jewish Quarterly Review, Volume 30 #3 (January, 1940), page 221

65) ibid. page 252

66) Rabbi Joshua Falk, Derisha to Tur Even haEzer 66

67) for example, ketubot 1, 2, 3

68) Ketubot 51a, cf Even haEzer 66:3

69) Marcus Jastrow, Dictionary of the Targumim, Talmud Babli, Yerushalmi and Midrashic Literature, (New York, 1971), page 1392b

70) Nachalat-Shiv'ah 12:56

71) ibid. 12:48

72) Ketubot 51a

73) Hullin 131a, Bikkurin 3:12

74) Gittin 20b

75) Nachalat Shiv'ah 12:62

76) ibid. 12:63

77) Israel Abrahams, op. cit. page 105

78) Nachalat Shiv'ah 12:1

79) ibid. 12:65

80) Be'er Heitev and M'irat Einayim to Choshen Mishpat 113:1

81) Harry S. Linfield, "The Dependence of the Talmudic Principle of Asmakhta on Babylonian Law," Journal of the American Oriental Society, Volume 40 Part 2 (1920), page 130

82) Choshen Mishpat 195:11

83) ibid. 195:1

84) ibid. 195:2

85) Baba Metzia 47a-b

86) Choshen Mishpat 195:4

Chapter II

1) Kahana, op. cit. page 22

2) Genesis 1:27-8

3) Genesis 2:24

4) Moses Mielziner, The Jewish Law of Marriage and Divorce in Ancient and Modern Times, (Cincinnati, 1884), pages 15-6

5) Kahana, op. cit. page 28

6) ibid. page 17

7) I Corinthians 7:1-2, 8-9

8) Kahana, op. cit. page 27

9) loc. cit.

10) Reisenfeld vs Jacobson, 1009 פסקי-הדין 17 (1963), reported in English in the United Nations Yearbook of Human Rights 175 (1963); cited in Bernard J. Meislin, "Jewish Law of Marriage in American Courts," Journal of Family Law, Volume 11 (1971), page 274

11) Even haEzer 1:1

12) While the primary aim of intercourse is procreation, the communicative and recreational aspects of sex are not unappreciated by the rabbis. The husband is obliged to come to his wife even if she is past childbearing, or sterile (Even haEzer 23;2). Sexual intercourse should take place only when both partners are awake, willing and involved (Hilchot Ishut 15:17, Isurei Bi'ah 21:12). Intercourse should not be a chore, but rather a delight and a shared experience. Sexual incompatibility is grounds for divorce, since one partner is unable to share with the other: a man who will not undress to have sex must divorce his wife with her full ketubah settlement (Ketubot 48a), and a wife who constantly denies intercourse without cause is liable for divorce with no benefit or settlement (Even haEzer 77).

13) Ketubot 59b

14) Brown, Driver and Briggs, Hebrew and English Lexicon of the Old Testament, (Oxford, 1972), page 617b

15) Leviticus 18:19, 12:1-8

16) Yebamot 88a, 122b

17) Deuteronomy 22:5-10

18) Edwin Westermarck, The History of Human Marriage, cited in Kaufman Kohler, "The Harmonization of the Jewish and Civil Laws of Marriage and of Divorce," CCAR Yearbook, Volume 25 (1915), page 13

19) Theodor Lewis, "Women Under Rabbinic Judaism," (Cincinnati, 1933), page 5

20) Aristotle, Politics, i, 13

21) John Langdon Davies, A Short History of Women, (New York, 1930), page 157

22) Eugene Mihaly, "The Jewish View of Marriage," CCAR Journal, 1954 page 33

23) Malachi 2:14

24) Ketubot 62a

25) Baba Metzia 59a

26) Kallah 2

27) Qiddushin 31a, Yebamot 62b, Baba Metzia 59a, Hullin 85b

28) Qiddushin 1:1

29) Bertinoro to Qiddushin 1:1

30) As, for example, Isaac's service to Laban in payment for Rachel and Leah (Genesis 29); Shechem's negotiation for Dinah (Genesis 34:6-12); David's conquest of two hundred Philistines as a bride-price to Saul for Michal (I Samuel 23:7 and II Samuel 3:14); Caleb's naming the destruction of Kiryat-Sefer as the bride-price for his daughter Achsah (Joshua 15:16); and Hosea's purchase of a woman "beloved of her friend and an adulteress" for a sum of silver plus measures of barley (Hosea 3:2)

31) Louis M. Epstein, "Marriage--Purchase or Covenant?" op. cit. page 275

32) As, for example, Jacob, who married both Rachel and Leah, and took their handmaidens as concubines as well (Genesis 29:26-30); Lamech, who married Adah and Zilpah (Genesis 4:23); and Esau, who married two Canaanite wives, one for love or lust (Genesis 26:34-5) and one for spite (Genesis 28:8-9)

33) Tosefta Ketubot 5:1

34) Pesachim 113a

35) Ketubot 62b

36) Louis M. Epstein, Marriage Laws in the Bible and Talmud, (Cambridge, 1942), page 26

37) Cohen, op. cit. 6:8

38) Tannaitic law defines property rights according to the following categories:

> The husband's access to his wife's property, for usufruct only, but with full benefit and no responsibility for loss or damage, is referred to as nichsei m'log. The term m'log is from the verb-stem m-l-g, which refers to plucking a chicken of its feathers, or a sheep of its wool; and so we may call this category of property in English "pickings." It is implicit in the concept of ishut; that is, a husband has this kind of unlimited access to his wife's property automatically, by virtue of marrying her.
>
> The second category is the property called mortmain, or "iron sheep" property (pecus ferreum in Latin, nichsei

tson barzel in Hebrew). The husband must share any benefit from this property equally with his wife, and is fully responsible for any loss, damage, or depreciation. This category is very old: an Aramaic marriage document from Assuan, dated 459 BCE, grants property and a home in the bride's dowry, with the stipulation that the groom may develop and enjoy the property, but may not dispose of it (Sayce/Cowley, Aramaic Papyri Discovered at Assuan, (London, 1906), page 64).

The latter category is obviously of benefit to the owner of the property; the partner--a husband, in the case of marriage--must share benefit of the property, and must bear alone loss from damage or loss. Accordingly, the Talmud teaches (Baba Metzia 70b) that it is usurious to accept property as tson barzel from another Jew. Yet such a stipulation is not only permitted in reference to a woman's property upon marriage, but in fact is required as a leniency on her behalf. The Shulchan Aruch comments that the dowry is always nichsei tson barzel by definition (Even HaEzer 85:2); but Kahana indicates (op. cit. page 18) that making the bride's property tson barzel is an option only, available by voluntary arrangement.

39) The rabbis condemn the custom current among Alexandrian grooms, of "escaping" with their brides from under the chuppah (Baba Metzia 104a).

40) Lewis, op. cit. pages 19-24

41) Genesis 3:16

42) Deuteronomy 24:1-2

43) Gittin 89b

44) Baba Qama 89a

45) Emil G. Kraeling, op. cit. pages 204-7

46) A.H. Sayce and A.E. Cowley, op. cit. page 64

47) Kraeling, op. cit. pages 140-2

48) Adler, op. cit. pages 89-92

49) Jacob Mann, The Jews in Egypt and in Palestine under the Fatamid Caliphs, (New York, 1970), page 188

50) Ketubot 52b

51) Baba Metzia 17a

52) Isaac Bashevis Singer, "The Dead Fiddler," The Seance, (New York, 1972), pages 56-7

53) Hilchot Ishut 16:1

54) Hilchot Yibbum VeHalitsa 4:33

55) Nachalat Shiv'ah 12:49, 12:52, cf Agus, op. cit. page 221

56) Tur Even HaEzer 66

57) Nachalat Shiv'ah 12:52

58) ibid. 12:46

59) Qiddushin 4:10-11

60) Nachalat Shiv'ah 12:16: "One should be exact in a ketubah in everything in which one is exact in a get, in order that something should happen--G-d forbid!--so that one might divorce his wife, and it should not be known precisely how her name or his name or their parents' names are spelled; and this can be discerned from the ketubah."

61) Nachalat Shiv'ah, loc. cit.

62) Moshe Gil, " The Term AQOLITHOS in Medieval Jewish Deeds," Journal of Near Eastern Studies, Volume 23 #3 (July, 1973), pages 318-20

63) ketubah #199, the Jewish National and University Library, Jerusalem, cited in Davidovitch, op. cit. page 60; also ketubah 8

64) ketubah #123, the Jewish National and University Library, Jerusalem, cited in Davidovitch page 58. The term שטר נצרי appears to be from the root נ-צ-ר, "a sprout, an offshoot."

65) ketubah #134, the Jewish National and University Library, Jerusalem ,cited in Davidovitch page 54

66) ketubah 6

67) Ketubah 10 bears the following postscript in a flowery hand:

> Adi 3xme 1788 Fenezia
>
> La presente Chetuba sive carta datado fu aggi tradota alli Italiano e segnata al di fuorieon (?) il soliso sigillo dimi.
>
> Massimo Todesco Finzi q.^{m} Salamon Dubblico Traddutore

August 3rd 1788, Venice

This present ketubah--that is, dated document--was translated into Italian and signed independently (?) and sealed in the usual way by me.

Maximus Todesco Finzi, for Solomon's Public Translators

It is unclear why a translation of the document was required, but the very strong inference--in view of the proper seals and appended signature--is that it involved civil law in Venice at the time.

68) Tosefta Ketubot 4:9

69) Ketubot 9:1

70) Ketubot 9:5

71) Ketubot 4:8

72) Ketubot 4:10

73) Ketubot 4:11

74) Ketubot 4:12

75) loc. cit.

76) Mordecai Friedman, "Termination of the Marriage Upon the Wife's Request: a Palestinean Ketubah Clause," Proceedings of the American Academy of Jewish Research, Volume 37 (1969), pages 29-55

77) Epstein, Marriage Laws, op. cit. page 24

78) Even haEzer 88:2

79) Baba Batra 49b

80) Ishut 12:6

81) Agus, op. cit.

82) ibid. page 245

Chapter III

1) Tur Even haEzer, Qiddushin 66

2) ketubah 11

3) Ketubot 65b

4) Mann, op. cit. pages 364-5. The document, a marriage receipt dated 982 CE, records that the groom settled upon a marriage commitment of 150 gold dinars, 100 of which would be paid by his father-in-law. In fact, the father-in-law paid only the 20-dinar advance, and the document contracts the balance as a debt due t- the groom.

5) Kraeling, op. cit. page 142

6) Even haEzer 88:2

7) Nachalat Shiv'ah 12:1

8) Mann, op. cit. pages 95-7

9) Gil, op. cit. page 319

10) ibid. page 320

11) Mann, op. cit. page 96

12) Hilchot Yibbum veHalisa 4:33

13) Ishut 12:2

14) loc. cit.

15) ketubah 7

16) ketubah 8

17) Agus, op. cit. page 221

18) Judah Eisenberg, אדם וביתו : יסודות דיני המשפחה בישראל, (New York, 1968), page 25

19) Alexander Guttmann, מבחר שטרות, (Cincinnati, 1971), pages 10-13

20) ketubot 6, 8, 10

21) Even haEzer 88:2

22) Ketubot 51a

23) loc. cit. Compare to this Be'er Heitev and M'irat Einayim to Choshen Moshpat 113:1. In fact, chattels could be used in

payment of the ketubah lien, even under Talmudic law. The Talmud indicates that a member of the priestly class could use his share of the first-fruits to pay his wife's ketubah (Hullin 131a, Bikkurin 3:12), and that a bill of divorce written on a gold platter worth more than 200 zuz is considered both get and ketubah settlement (Gittin 20b)

24) Ishut 6:1, 2

25) Eisenberg, op. cit. pages 4-5

26) Rabinowitz, op. cit. page 94

27) Louis M. Epstein, Jewish Marriage Contracts: a Study in the Status of Women in Jewish Law, (New York, 1954), page 24

28) loc. cit.

29) ibid. page 25

30) Eisenberg, op. cit. page 24

31) Kraeling, op. cit. page 204

32) Friedman, op. cit. page 37

33) Ketubot Jerusalmi V, 10, 3b. "אמר רב יוסי אלין דכתבין אין סנא אין סנת תנאיי ממון תנאיי קיימ."

34) Friedman, op. cit. pages 37-8, page 43

35) ibid. page 48

36) ibid. page 49

37) Ketubot 107a

38) Epstein, Marriage Contracts, op. cit. page 277

39) ibid. page 278

40) Sayce/Cowley, op. cit. page 38

41) Adler, op. cit. pages 91, 100

42) I.S. Immanuel, "ארבע תעודות בעברית ושתי כובות מיוחדות מרבני הספרדים של אמסטרדם", Hebrew Union College Annual, Volume 36 (1965), page 13

43) Epstein, Marriage Contracts, op. cit. pages 278-80

44) ibid. page 280

45) ketubah from Gibraltar, cited in M. Gaster, The Ketubah, (Berlin, 1923), pages 20-1

Chapter IV

1) "Divorce: the Throw-Away Society," the Cincinnati Enquirer, May 10, 1976, page B-1

2) Reader's Digest 1977 Almanac and Yearbook, (Pleasantville, 1977), page 872

3) ibid. page 419

4) John Scanzoni, Sexual Bargaining: Power Politics in the American Marriage, (Englewood Cliffs, New Jersey, 1972), page 47

5) Jessie Bernard, The Future of Marriage, (New York, 1973), page 86

6) William Sumner, Folkways, (Boston, 1906), pages 348-9; cited in Bernard, op. cit. page 87

7) Bernard, loc. cit.

8) Scanzoni, op. cit. page 30

9) Martina Horner, "Femininity and Successful Achievement: a Basic Inconsistency," in Feminine Personality and Conflict, (Belmont, 1970), page 56; cited in Scanzoni, op. cit. page 48

10) Bernard, op. cit. page 10

11) ibid. page 11

12) F.N. Robinson, ed. "The Wife of Bath's Tale," The Works of Geoffrey Chaucer, (Cambridge, 1961), page 88

13) ibid. page 84

14) ibid. page 88

15) Bernard, op. cit. page 10

16) Scanzoni, op. cit. pahe 63

17) ibid. page 141

18) Charles Hobart, "Disillusionment in Marriage and Romanticism," Journal of Marriage and Family Living, Volume 20 (May, 1968), pages 160-1

19) Wells Goodrich, Robert Ryder, Harold Rausch, "Patterns of Newlywed Marriage," in Journal of Marriage and the Family, Volume 30 (August, 1968), pages 387-8

20) R.F. Badgeley, "Altrusim, Role Conflict, and Marital Adjustment," in Journal of Marriage and the Family, Volume 23 (February, 1961), page 25

21) Ernest Mower, "Differentiation of Husband and Wife Roles," in Journal of Marriage and the Family, Volume 31 (August, 1969), page 537

22) loc. cit.

23) ibid. page 539

24) Frederick Engels, "Transformation of the Family," in N. Bell and E. Vogel, A Modern Introduction to the Family, (New York, 1968), page 45; cited in Scanzoni, op. cit. page 30

25) Bernard, op. cit. page 25

26) loc. cit.

27) Scanzoni, op. cit. page 163

28) F.E. Clarkson, "Family Size and Sex Role Stereotypes," in Science, (January, 1970), pages 390-2; also Jennie Farley, "Graduate Women: Career Aspirations and Family Size," in American Psychologist, Volume 25 (December, 1970), pages 1099-1100; both cited in Scanzoni, op. cit. page 152. These two articles indicate that a "modern" mother--as against a "traditional" mother--is one who prefers occupational rewards to the raising of children.

29) Bernard, op. cit. page 126

30) loc. cit.

31) Rose Goldsen et. altri., What College Students Think, (Princeton, 1960), page 85; cited in Bernard, op. cit. page 127

32) Bernard, loc. cit.

33) loc. cit.

34) Scanzoni, op. cit. page 137

35) M. Güdemann, Geschichte des Erziehungswesens, (Vienna, 1880), pages 115-9; cited in Epstein, Marriage Laws, op. cit. pages 25-6

36) Group marriage proper is defined as a small society which shares a common household, and which also shares money, intercourse,

labor, goods, and services (Scanzoni, pages 115-6). A variation of this theme is the "Intimate Network of Nuclear Families," as described by F.H. Stoller, "Intimate Network of Families as a New Structure," in H.A. Otto, The Family in Search of a Structure, (New York, 1970), pages 145-60, and as cited by Scanzoni pages 114-5. This model represents a circle of separate families who reciprocally share secrets and provide services, such as baby-sitting, recreation, and crisis funds. This model, Scanzoni stipulates, succeeds based on the malleability of each family's bounds; there is no such stipulation for true group marriage, in which every member is a component of one family.

37) Scanzoni, op. cit. pages 116-7

38) ibid. page 136

39) v. supra page 27

40) Alan Bayer, "Sexist Students in American Colleges: a Descriptive Note," in Journal of Marriage and the Family, Volume 37 (May, 1975), page 393

41) New York State 2d at 695; cited in Meislin, op. cit. page 277

42) Meislin, op. cit. page 278

43) ibid. page 281

44) ibid. page 283

45) Reisenfeld vs Jacobson, op. cit.; cited in Meislin, page 274

46) "Marriage Contracts," in The Century Dictionary," (1911), page 3637

47) cited by Justice Abraham Multer in the case Wener vs Wener, 59 Misc. 2d 957, 301 New York State 2d 237 (1969). The case is discussed, so far as its ramifications go, in Meislin. The case--a divorce--involved proprety rights which were in dispute; there was no precedent in American or British common law, in the Napoleonic Code nor in the Code of Justinian, so the judge had recourse to Jewish law, justifying this precedent on the groom's commitment to abide by his marital vows כדת משה וישראל. The judge's citations are wryly characterized by Meislin as "atypical of American legal opinions": Ruth 4:17; Sanhedrin Jerusalmi 19; The Spirit of Jewish Law, by New York attorney George Horowitz; Hilchot Yerushah 2:14; Leviticus 19:34; and Volume II, page 55, of Dr. Isaac Herzog's Law of Obligations.

Chapter V

1) from a contract supplied, with no title or other identification, by Professor Marvin Sussman's Personal Contract Study at

Case Western Reserve University, Cleveland, Ohio; see Appendix B

2) cited from Miriam Schneir, ed. Feminism: the Essential Historical Writings, (New York, 1972?); cited in Jurate Kazickas, "Modern Marriage Contracts," the Cincinnati Enquirer, January 4, 1976, page J-2

3) Kazickas, loc. cit.

4) Maynard vs Hill, 125 U.S. 190, 210-1 (1888); cited in Karl Fleischman, "Marriage by Contract: Defining the Terms of the Relationship," in Family Law Review, Volume 8 #1 (Spring, 1974), page 38

5) R. Lee, North Carolina Law Review, #207, 3rd edition (1903); cited in Thomas Taylor, "An Analysis of the Enforceability of Marital Contracts," in North Carolina Law Review, Volume 47 (June, 1969), pages 816-7

6) Taylor, loc. cit.

7) Nathan Dardick, "Marital Contracts Which May be Put Asunder," Journal of Family Law, Volume 13 (1973-4), page 24

8) Taylor, op. cit. pages 820-1

9) ibid. page 825

10) loc. cit.

11) Fleischman, op. cit. page 39

12) ibid. page 40

13) Note, "Marriage Contracts and Public Policy," in Harvard Law Review, Volume 54 (1941), pages 473, 478; cited in Fleischman, loc. cit.

14) Flsiechman, loc. cit.

15) Taylor, op. cit. pages 828-9

16) ibid. page 832

17) Kazickas, loc. cit.

18) 405 U.S. (1972) at 453; cited in Fleischman, op. cit. page 43

19) Fleischmen, ibid. pages 41-4

20) ibid. pages 45-8

21) ibid. page 49

22) Marvin Sussman, "Plenary Address--Marriage Contracts: Social and Legal Consequences," Cleveland, 1975, pages 10-13

23) ibid. page 7

24) Edwin Lively, "Toward Concept Clarification: the Case of Marital Interaction," in Journal of Marriage and the Family , Volume 31 (February, 1969), page 109

25) R.A. Harper, "Communication Problems in Marriage Counseling," in Marriage and Family Living, Volume 20 (May, 1958), pages 107-8

26) Saxon, op. cit. page 36

27) John Edwards, "Familial Behavior as Social Exchange," in Journal of Marriage and the Family , Volume 31 (August, 1969), pages 518-9

28) Saxon, loc. cit.

29) ibid. page 39

30) ibid. pages 38-40. Saxon's model here is based on the formulation of R. Stuart, "Operant-Interpersonal Treatment for Marital Discord," in Journal of Consulting and Clinical Psychology, Volume 33 (October, 1969), pages 675-82, and of Alan Rappaport and Jan Harrell, A Behavioral Exchange Model for Marital Counseling (Family Consultation Center of the College of Human Development, Pennsylvania State University, 1971), pages 1-9

31) Saxon, op. cit. page 38

32) ibid. page 39

33) ibid. page 40

34) Fleischman, op. cit. page 33

Chapter VI

1) Agus, op. cit. pages 250-2

2) Nachalat Shiv'ah 12:46

3) Gittin 2:3-5. The relation between the ketubah and the get is not as surprising as it might appear; both pertain to marriage, which is a more than adequate common denominator to the Talmudic mind. Baba Batra 167b, for example, speaks of the ketubah as a Biblical ordinance, referring for proof to Deuteronomy 24:3, which specifically mentions "a bill of divorcement," but never in any wise speaks of marriage contracts.

4) T'filin are to be drawn up by a trained scribe only, according to

an established order (Menachot 34b-36a). The Torah must be drawn by a professional scribe on specially treated parchment (Shabbat 79b), using special inks (Shabbat 23a), according to a master text like that of the modern תיקון לסופרים (Megillah 18b).

5) Sholom Asch, "קידוש-השם," trandlated by Maurice Samuel, in Irving Howe and Eliezer Greenberg, A Treasury of Yiddish Stories, (New York, 1959), page 256

6) Ernest Namenyi, The Essence of Jewish Art, translated by Edouard Roditi, (New York, 1960), page 69

7) loc. cit.

8) ibid. page 51

9) J. Klausner, Die Messianistische Vorstellung des Judischen Volkes im Zeitalter der Tannaiten, (1903), page 61; cited in Namenyi, op. cit. page 45

10) Namenyi, op. cit. pages 45-6; cf Exodus 25, Zechariah 4:9-14

11) ibid. pages 69-70

12) David Davidovitch, "Ketubba," Encyclopedia Judaica, Volume 10, column 931

13) ibid. column 930

14) the Krems ketubah, 1392; Austrian National Library, Vienne Cod. Hebr. Ms. 218

15) Exodus 20:4

16) Isserles to Even haEzer 61, quoting Maimonides

17) מ"ס רפ"ו, תשובת-הגאונים; cited in Cohen, op. cit. 6:1

18) Ketubot 7a, Even haEzer 66:2

19) Cohen, op. cit. 6:1

20) Baba Batra 167b, Even haEzer 66:1

21) Baba Batra loc. cit.

22) Baba Batra 168a

23) חלקת מחוקק to Even haEzer 66:1

24) Baba Batra 168a

25) Gittin 18a

26)

27) Zalman Joseph Aloni, קונטרס הקדושין בישראל, (Dublin, 1960), page 39

28) ibid. page 40

29) Meir Blumenberg, "על דבר הרגום הגט ללשון הקודש," in נועם, Volume 10 (1967), pages 273-4

30) ibid. page 273

31) Isserles to Even haEzer 66:1. "אין לשנות מנהגן שלא להוציא לעז על כתיבות הראשונות."

32) Ishut 16:1

33) Ishut 12:2

34) Ishut 12:6

35) Ketubot 1:2 (=10b)

36) Even haEzer 66:6 indicates that the mohar for a maiden is worth 37-½ drachmæ, and that accordingly a widow's settlement is half, or 18-3/4 drachmæ.

37) Even haEzer 66:10. "אם יש משפחות שנוהגים לכתוב בכתובתן יותר משיעור חכמים, אין למחות בידם."

38) Ketubot 5:1, Even haEzer 66:9

39) On the basis of Exodus 22:15-6; so Nezikin 17, Ketubot 10a

40) Ketubot 10a, Ishut 10:7, חלקת מחוקק to Even haEzer 66

41) Tosefta Ketubot 4:9

42) Solomon Zeitlin, "Family Life in Israel," in Jewish Quarterly Review, Volume 51 (1960-1), page 337

43) Yebamot Jerusalmi 15.3, 14d and Ketubot Jerusalmi 4.8, 29a

44) in Nachalat Shiv'ah 12:18

45) Ketubot 72a

46) Nachalat Shiv'ah 12:18

47) Zeev W. Falk, "Mutual Obligations in the Ketubah," Journal of Jewish Studies, Volume 8 #3 and 4 (1957), page 215

48) ibid. page 216. Note that I have taken the liberty of changing Falk's translation of the vow terms, so as to create a sense of uniformity with earlier citations in translation.

49) ibid. page 217

50) Ketubot 5:5. She is expected to grind grain, bake, launder, cook, nurse her children by him, make his bed, and spin wool.

51) Baba Batra 49a

52) Ishut 12:6

53) loc. cit.

54) Nachalat Shiv'ah 12:24

55) ketubot 2, 5, 6, 9

56) ketubah 10, "אפחל ואוקיר ואיזון ואפרנס ואכלכל ואכסה."

57) ketubot 11, 12

58) Tosefot to Ketubot 63a, under the caption "באומר" is written the observation "מפרש ר"ת דאפלח היינו עבודת הקרקע."

59) Falk, op. cit. page 217 n

60) loc. cit.

61) Nachalat Shiv'ah 12:44

62) ibid. 12:42

63) ibid. 12:52, paragraph 1. "וכל עקר נתקן כתובות שוות כדי שלא לבייש."

64) ketubot 2, 3

65) ketubot 1, 9

66) ketubot 2, 3, 4, 5, 7, 8, 9, 10

67) ketubah 5

68) ketubah 5

69) ketubot 2, 3, 4, 9

70) ketubah 12

71) ketubah 6

72) ketubot 5, 10

73) ketubot 2, 3, 4, 9

74) Qiddushin 3:4

75) Qiddushin 2:3

76) Ishut 6:1-2

77) Gittin 2:5 (=22b)

78) Deuteronomy 17:6

79) Rosh haShanah 2:6

80) Makkot 1:8, Sanhedrin 3:1, 4

81) Cohen, op. cit. 6:2

82) Gittin 88a. Similarly, a get cannot be witnessed by the scribe who drew it up (Gittin 66b).

83) Tosefta Sanhedrin 7:1

84) Choshen Mishpat 34

85) שבא יעקב, תשובה מיס י"ז, from Volume 84 of שואל ומשיב; cited in A. Scheinberg, Encyclopedia of Halachah, (New York, 1974)

86) Aruch haShulchan, Choshen Mishpat 34:19, 35:14

87) Deuteronomy 19:16-7

88) Hilchot Eduyot 9:2

89) מדריך לקדוש החיים/A Guide for the Sanctification of Life, CCAR, (Revisde Draft, June, 1976), page 60, note 22

90) Nachalat Shiv'ah 12:73

91) Cohen, op. cit. 6:4

92) ibid. 6:3

93) loc. cit.

94) ibid. 6:2

95) Nachalat Shiv'ah 12:69

96) loc. cit.

Chapter VII

1) Moses Mielziner, "The Marriage Agenda," CCAR Yearbook, Volume 1 (1890), page 34

2) CCAR, Rabbi's Manual, (New York, 1961), pages 24-39

3) תדריך, op. cit. page 59, note 10

4) Rabbi's Manual, op. cit. page 129

5) תדריך, op. cit. page 37

6) loc. cit.

7) Solomon B. Freehof, "Reform Judaism and the Law," Louis Caplan Lecture, 1967, page 5

8) CCAR Yearbook, Volume 45 (1935), page 24

9) CCAR Yearbook, Volume 46 (1936), page 20

10) תדריך, op. cit. page 42

11) Siegel, Strassfeld, and Strassfeld, The Jewish Catalog, (Philadelphia, 1973), page 165

12) Kenneth Leinwand, "An Alternative Ketubah: a Radical Approach to the Jewish Marriage Contract," (Presentation for the Samuel Weiner Memorial Scholarship, University of Manitoba, Winnipeg, 1972), pages 59-61

13) Falk, op. cit. page 216

14) Baba Metzia 59a

15) Ketubot 59b

16) Genesis 1:28

17) Yebamot 12b

18) Israel Jakobovits, "הערות ובירורים : שאלות והערות בענינים רפויים שונים", in נעם, Volume 6 (1963), page 272

19)

20) "קונטרס הרפואה", in נעם, Volume 16 (1973), pages 28-9

21) loc. cit.

22) loc. cit.

23) loc. cit.

24) loc. cit.

25) Deuteronomy 23:2

26) Jakobovits, loc. cit.

27) Yebamot 37b

28) Even haEzer 2:10. "לא ישא אדם אשה ודעתו לגרשה ואם הודיע תחלה שהוא נושא אותה לימים ידועים מותר."

29) v. supra pages 67-8

APPENDIX A

KETUBOT DISCUSSED IN THE TEXT

1) a Geniza ketubah form, or blank
Bilbeys, 1220 CE

Cambridge Library Collection, drawer 34

cited in Israel Abrahams, A Formula and a Responsum, (1906), Appendix I, page 105

בכך ובך בשבת שהוא כך וכך בחדש פלוני שנת אתקלב לשטרות בעיר בלבים
הסמוכה לארץ נשן רשותיה דארונינו נגידנו השר. הנדול בישראל כנק׳ מרי ורבי
אברהם שצ׳ ירום הודו וינדל כבודו איך מר פ׳ל החתן בר פ׳ל נ׳ע אמר לה
לפלאנה ברת פלאן הכהן ס׳ט הואי לי לאינתו כדת משה וישראל ואנא איפלה
ואיזון ואפרנס ואיקר ואיסובר יתיכי כהלכת נוברין יהוראין דפלחין וזנין ומסוברין
ית נשיהון בקושטא ובהימנו ושמעתיה פ׳ל כלתא דא והות ליה לאינתו ויהב
לה חתנא דנן עשרין וחמשה זוז׳ דכספא דאינון מאתן דתקינו רבנן ז׳ל סוהרי
בתולתא וצבי ואוסיף לה חתנא דנן על כתובתה כך וכך דינ׳ דדהבא קידם לה
סנהון עשרין דינ׳ דדהבא יהבנן לה במתנה נמורה משעת כניסתה לחופה
מתנה דלית בה חזרה מתנת עלמין ואתו תרין שהדי ואשהידו קמון בבי דינא
דאוריאת פלאנה כלתא דא דיסמא האי סוקדם לידה ואישתיירון לה עלוהי כך
וכך דינרין מאוחרין מאבי מעלי ורין נדוניא דהנעלת עלוהי מרילה סבית
אבוהא וידכר אלקטאש וקימתא ואיצא מא כאן מן מצאנ׳ ומהמנו כאן מן אניה׳
נחאם וידכר קימתהם כמנהג אותה העיר וינמל ואלנמלה ונקואל והוא כלל
כתובתא דא סוהרא ותוספתא ונדוניא כך וכך וקביל עלוהי חתנא דנן אחריות
כתובתא דא עלוהי ועל ירתוהי בתרוהי למינבי לה מכל שפר ארע ניכסין
קנין ומסון דאית ליה ודיהוי ליה תחות כל שמיא בביתא ובברא בין ממקרקע׳
בין ממטלטלי׳ ואפילו מנליסא דאכתפיה דלא כאסמכאתא ודלא כמופסי
דשטרי אלא כחומר וכחוזק כלו כתובאתא ותקנאתא דתקינו רבנן ז׳ל ונהנין בהון
ישראל מיומא דנן ולעלם וקביל עלוהי חתנא דנן שתהא פ׳ל נאמנת בכל מיני
מאכל ומשתה דמספקין בנו ביתא ולית ליה עלה שבועה לא קילתא ולא
חמירתא ואפ׳ ע׳ ידי נלנול ועור קביל עלוהי דלא למיסב עלהז איתתא אחריתי
ורלא ישהי ובית אמתא דסניא ואן פעל דלך קביל על נפשיה דישקול לה
מאוחרא דילה עד נמרא ולמיכתב לה מה דמנטר ביה וא׳ע׳ דאיהי בעיא ואיהו
לא באעי ואקנינא איצא מן אלכלה אלמרכורה שתסבול כל ומן שתצטרך
לנרתה מם אקנינא מן אלחתן אלמרכור על כל מה דכתיב ומפרש לעילא ויסדר
אל תלון ביני שימי והכל שלום ולחתימה וקיום׳ בית דין

2) a Geniza <u>ketubah</u> specimen
<u>Mastaura, 1022 CE</u>

(recto)

בשישי בשבת לירח ניסן בארבעה ימים בו בשנת ארבעת
אלפים ושבע מאות ושמנים ושנים לברית עולם למיניין
דירגילנא למנא ביה במדינת מסטורא הסמוכה לינהר
מיאנדרוס איך בא נמר בר אלקנה ואמר לזאת אברוקיאה
בת כלב הוי לי לאנתי כרת משה וישראל ואנא איפלח
ואוקיר ואפרנס ואסובר יתיכי כהילכת גוברין יהודאין
דפלחין ומוקרין ית נשיהון בקושטא ויהיבנא לך מוהר
בתילייכי אחיד וקיים עליי מן נכסיי כסף זוזי מאתן
דאינן תמני דינרין ותילתא דיחזיין ליכי מדאורייתא
ומזונייכי וכיסותייכי וסיפוקייכי עלי ומיעל עלייכי
כאורחא דארעא וצביאת אברוקיאה דא והות ליה
לאינתי ודן נדונייא דהנעלת אברוקיאה הכלה
מבית אביה מ̇ כלב לבית נמר בעלה
זוג ענילים שלזהב עם חולי כתם משקלם ששה שקלים
כבבין · בזהוב א̇ וְקוּטְקוּם לַבָּמִין בזהוב א̇ לקנין וקומקום
קטן בנוני וכף של נחושת בזהוב א̇ צעיף עם הכסוי
קשר שלכסף בב̇ זהובים סמיכה ואנפלין בזהו̇ א̇
בגדי נשים שניים בזהו̇ א̇ ובגד כפול בַּבָּקִירוֹן ארום
ובגד לבן בזהו̇ א̇ סודר נשים בילי בירופלמון
בשנים זהובים ואחרים שנים בשנים זהובים
בגד נשים וְסַקוּל שלמרחץ וּמַשְׁלִין קטון בזהוב א̇
בַּיָיאַיש ב׳ ואזור צמר יפה בזהוב׳ ואנטריכן
ושלשה מטפחות ידים בחצי זהו̇ וקידש
זה נמר ה[חת]ן לזו אברוקיאה הכלה בצמיד מוזהב
בעל שקלים עשרה וחצי שקל ואחר שלכסף
בב̇ זהו̇ אַנְקוּנבְּרַכִילא ב̇ בב̇ זהו̇ בעלי
שקלים יח̇ שמונה עשר ואזור צמר בחצי זהו̇
זוג עינלי זהב מְרִיבוּלָסָא וסבעת של זהב בעלי
שקלים שלשה ועוד נתנה אביה שלכלה לאברוקיאה
בתה בגד כפול ארום קולולריקון בזהוב וחיצי
ועלה סכום כולם עם נכסיה וקידושיה ומוהריה
ועם תוספת כתובתה זהובים שלשים וחמשה ושליש
וקיבל עליו נמר החתן ד̇נ̇ ועוד נתנה אמה שלכלה
לבתה הבית התחתון ומוצאו ומובאו יהיה במזרח סמוך
לנהר וחציה של באר יהיה לאחיה כלב ויהיה לו
רשות לכלב שיכנס מן השער המזרחית לעשות
בבאר כל צרכו
חסד ואמת נפגשו צדק ושלום נשקו

cited in
Jacob Mann,
<u>The Jews in Egypt and in Palestine Under the Fatimid Caliphs</u>, (New York, 1970), Volume II, pages 94-6 (Appendix B, #19)

(verso)

וקיבל עליו נמר החתן אחריות כתובתה דא
עלוהי ועל ירתוהי בתריה לפריעה מן שפר
ארג נכסין דאית ליה תחות שמייא בביתא
ובברא מן מקרקעי וממטלטלי ואפילו מן
גלימא דעל כתפיה דלא כאסמכתא ודלא
כטופסא די שטרי אלא כחומר כל תקנתא
דרבנן וקנינא מן נמר החתן דנא בכל פיתגמי
ועיניני אילין דכתבין ומפרשין מאחורי
שטר דנא במנא דכשר למיקניא ביה
שריר וקיים אקוליטום

3) the Maimonides <u>ketubah</u> form
Egypt, late 12th Century

Mishneh Torah, Hilchot Yibbum veHaliṣa 4:33

טופס הכתובה

ביום (ס) פלוני כו׳. איך פלוני בן פלוני אמר לפלונית בת פלוני בתולתא כלתא הוי לי לאינתו כדת משה וישראל ואנא במימר דשמיא אפלח ואוקיר ואסובר ואיזון ואפרנס ואכסי יתיכי כהלכות גוברין יהודאין דמוקרין ומסוברין וזנין ומפרנסין ומכסין ית נשיהון בקושטא ויהיבנא ליכי מוהר בתוליכי כסף זוזי מאתן דאינון מזוזי כספא כ״ה דחזו ליכי מדאורייתא ומזונייכי וכסותייכי וסיפוקייכי ומיעל עליכי כאורח כל ארעא. וצביאת פלונית דא והות ליה לאינתו לפלוני דנא ורצה והוסיף לה תוספת על עיקר כתובתה עד משלם כך וכך ודא נדוניא דהנעלת ליה כך וכך הכל נתקבל חתן זה ובא לידו ונעשה ברשותו וזקף הכל על עצמו כמלוה ורשו. וכן אמר לנא פלוני חתנא דנא אחריות כתובתא כולא עיקר כתובה ונדוניא ותוספת ושאר תנאי כתובה קבלית עלי ועל ירתי בתראי ועל כל שפר ארג נכסין וקנינין דאית לי תחות [כל] שמיא דקנאי ודעתיד אנא למיקנה ממקרקעי וממטלטלי אגב מקרקעי כולהון יהון אחראין וערבאין לכתובה דא כולא עיקר ונדוניא ותוספת לאתפרעא מנהון בחיי ובתר מותי ואפילו מגלימא דעל כתפאי וקנינן מפלוני דא מכל מאי דכתיב ומפרש לעילא קניין שלם דלא כאסמכתא ודלא כטופסא דשטרי אלא כחוזק וכחומר כל שטרי כתובות הנוהגות בישראל וכהוגן וכתיקון רבותינו ז״ל וחתמנו על שטר כתובה זו בזמן הנזכר לעיל והכל בריר ושריר וקיים:

4) an Italian ketubah

Trieste, 1773

HUC-JIR Gallery of Jewish Art and Artifacts, Cincinnati

בששי בשבת עשרה ימים לחדש מרחשון שנת חמשת אלפים וחמש מאות ושלשים ושלשה
לבריאת עולם למנין שאנו מנין פה טריסטי מתא דיתבא על כיף ימא הבחור היקר
דוד בן המפואר כמ"ר קולונימוס הלוי יצ"ו אמר לה להדא בתולתא הצנועה מרת
מלכה בת הנשא כמ"ר יוסף קושטנטיני הי"ו הוי לי לאנתו כדת משה וישראל ואנא
אפלח ואוקיר ואזון ואפרנס יתיכי כהלכות גוברין יהודאין דפלחין ומוקרין
וזנין ומפרנסין ית נשיהון בקושטא ויהבנא ליכי מהר בתוליכי כסף זוזי מאתן
דחזו ליכי מדאוריתא ומזוניכי וכסותיכי וספוקיכי ומיעל לותיכיכארח כל
ארעא וצביאת מרת מלכה בתולתא דא והית ליה לאנתו

ודא נדניא דהנעלת ליה מבי אבוה אלף ציקיני בכל כך מעות מחושבים לערך חמש
עשרה פטישי לציקינו ושני חליפות בגדים השייכים לגוף הכלה וצבי הבחור כמ"ר
דוד חתן דנן והוסיף לה מן דיליה שלוש מאות ושלושים ושלשה ושליש ציקיני
לערך הנ"ל נמצא סך הכל כתובה נדניא ותוספתא אלף ושלוש מאות ושלושים ושלשה
ושליש ציקיני לערך הנ"ל עם המאתן זוזי דחזו לה

וכך אמר כמ"ר דוד יצ"ו חתן דנן אחריות וחומר שטר כתובתא נדניא ותוספתא דא
קביליה עלי ועל ירתאי בתראי להתפרעא מכל שפר ארג נכסין וקנינין דאית לי
תחות כל שמיא דקנאי ודעתיד אנא למקני נכסין דאית להון אחריות ואגבן דלית
להון אחריות כלהון יהון אחראין וערבאין להתפרע מנהון שטר כתוהתא נדניא
והוספתא דא ואפילו מן גלימא דעל כתפאי בחיי ובמותא מן יומא דנן ולעלם

ואחריות וחומר שטר כתובתא נדונייתא ותוספתא דא קבל עליו כמ"ר דוד יצ"ו חתן
דנן כאחריות וחומר כל שטרי כתובות דנהיגי בבנות ישראל הצנועות והכשרות
העשויין כתיקוני חז"ל דלא כאסמכתא ודלא כטופסי דשטרי וקנינא אנן סהדי
דחתימי לתתא מיד כמ"ר דוד בן כמ"ר יוסף קולונימוס הלוי יצ"ו חתן דנן לזכות
הכבודה הכלה מרת מלכה בת כמ"ר יוסף קושטנטיני בתולתא דא על כל מאי
דכתיב ומפרש לעיל במנא דכשר למקניא ביה והכל שריר וקיים

5) Sephardic <u>ketubah</u> form, according to the Jerusalem <u>nusach</u>
Jerusalem, 1968

Judah Eisenberg, <u>Adam uVeito: Y'sodot Dinei HaMispachah b'Yisra'el</u>, (New York, 1968), page 25

בסימן טוב ובמזל טוב

ב______ בשבת __________ לחודש ______________ שנת
חמשת אלפים ושבע מאות _________ לבריאת עולם למנין שאנו מונין פעיה"ק ירושלם תובב"א.
אנן סהדי איך החתן ________________________________
אמר לה לכלה __________________________________
הוי לי לאנתו כדת משה וישראל, ואנא במימרא ובסיעתא דשמיא אפלח ואוקיר ואיזון ואפרנס
ואכלכל ואסובר ואכסי יתיכי כהלכות גוברין יהודאין דפלחין ומוקרין וזנין ומפרנסין ומכלכלין
ומסוברין ומכסין ית נשיהון בקושטא, ויהיבנא ליכי מוהר _______ כסף זוזי _____
דחזי ליכי ועלי מזוניכי וכסותיכי וסיפוקיכי ומיעל לותיכי כאורח כל ארעא. וצביאת כלתא
דא והוות ליה לאנתו. ודא ________________________________
____
____

והודה החתן הנזכר שקבלם ועלו ובאו לידו ורשותו במושלם עד סוף פרוטה אחרונה ורצה
והעלם על עצמו כנכסי צאן ברזל שאם פיחתו פיחתו לו ואם הותירו הותירו לו.
התנאים שהתנו ביניהם שרירין וקימין כתנאי בני גד ובני ראובן ואלו הן: מעשה ידיה
לו, מזונה וכל צרכיה עליו. הדירה _________ הירושה כפי ההסכמה הנהוגה בעיה"ק
ירושלם ת"ו, ולא ישא ולא ישדך ולא יקדש שום אשה אחרת עליה כי אם ברשות בית דין
הצדק, ולא ימכור ולא ימשכן שום חפץ מחפציה כי אם ברשותה ורצונה הטוב והגמור,
ולא יפתנה ולא יסיתנה שתמחול לו סכי כתובתה לא כולה ולא מקצתה ולא שום תנאי
מתנאי הכתובה, ואם תמחול הרי המחילה ההיא בטלה מעכשיו כחרס הנשבר וכדבר
שאין בו ממש ולא יצא מארץ ישראל כי אם ברשותה והסכמתה.
וכך אמר החתן הנזכר אחריות וחומר וחוזק שטר כתובתא דא קבליה עלי ועל ירתאי
בתראי ועל כל שפר ארג נכסין וקנינין דאית לי תחות שמיא מקרקעי ואגבן מטלטלי
דקניתי ודאקני כולהון יהון אחראין וערבאין ומשועבדין שעבוד גמור וישלם כתקנת
חכמים ז"ל להתפרעא מנהון שטר כתובתא דא בחיי ובתר חיי ואפילו מגלימא דאכתפאי,
והכל דלא כאסמכתא ודלא כטופסי דשטרי בביטול כל מודעי ובפיסול עדיהן לדעת
הרשב"א זלה"ה. וחומר וחוזק שטר כתובתא דא כחומר וחוזק כל שטרות הכשרים
ולא יבוטל ולא יפוסל שטר כתובתא דא.
וקנינא מיד החתן הנזכר קנין גמור ושלם במנא דכשר למקניא ביה מעכשיו כראוי
וכתקנת חכמים ז"ל על כל הנזכר למעלה. וגם נשבע שבועה חמורה בתקיעת כף על
דעת המקום ברוך הוא ועל דעת הנשבעים באמת לאשר ולקיים את כל הכתוב
עליו בשטר כתובתא דא בלתי שום שינוי ותמורה ותחבולה כלל ועיקר——

והכל שריר ובריר ואמת ויציב ונכון וקיים

נאם ________________ עד
נאם ________________ עד
גם אני החתן מודה על כל הנ"ל ובאעה"ח יום הנ"ל ___________________

6) Ashkenazic ketubah form, according to the Jerusalem nusach
Jerusalem, 1968

Judah Eisenberg, Adam uVeito: Y'sodot Dinei haMishpachah b'Yisra'el, (New York, 1968), page 24

בסימן טוב ובמזל טוב

ב___ בשבת ___ לחדש ___ שנת
חמשת אלפים ושבע מאות ___ לבריאת עולם למנין שאנו מונין פעה"ק
אנו סהדי איך ה"ה ___
אמר להדא בתולתא שפירתא שלמת חן מרת ___
הוי לי לאנתו כדת משה וישראל, ואנא במימרא ובסיעתא דשמיא אפלח ואוקיר ואיזון
ואפרנס ואכלכל ואסובר ואכסי יתיכי ליכי כהלכות גוברין יהודאין דפלחין ומוקרין וזנין
ומפרנסין ומכלכלין וסוברין ומכסין ית נשיהון בקושטא, ויהיבנא ליכי מהר בתוליכי
כסף זוזי מאתן דחזי ליכי ומזוניכי וכסותיכי וספוקיכי ומיעל לותיכי כאורח כל ארעא.
וצביאת מרת ___ בתולתא דא והות ליה לאנתו.
ודין נדוניא דהנעלת ליה בין בכסף בין בזהב בין בתכשיטין במאני דלבושא בשמושי
דירה ובשימושא דערסא (קבל עליו) במאה זקוקים כסף צרוף, וצבי החתן הנ"ל והוסיף
לה מדיליה עוד סך מאה זקוקים כסף צרוף אחרים כנגדן סך הכל מאתים זקוקים כסף
צרוף, ועוד הכניסה לו סך ___
והוסיף לה החתן כנגדן שליש העולה לסך ___
ס"ה כתובתא דא נדוניא דין ותוספתא דא עולים לסך ___
___ לבד כל בגדיה ותכשיטיה וחפציה השייכים לגופה. (והתנאים
שהותנו ביניהם שרירין וקיימין. ואלו הן. מעשה ידיה לו. מזונה וכסותה וכל צרכיה
עליו. הדירה הירושה וכל משפטי הכתובה, כמנהג אשכנז ועפ"י
תקנות שו"ם. ולא ישא ולא יקדש שום אשה אחרת עליה בחייה כמנהג רגמ"ה ז"ל. ולא
ימכור ולא ימשכן שום חפץ מחפציה כי אם ברשותה ורצונה הגמור. ולא יפתנה ולא יסיתנה
שתמחול לו סכי כתובתה לא כולה ולא מקצתה ולא שום תנאי מתנאי הכתובה, ואם תמחול
הרי המחילה ההיא בטלה מעכשיו כחרס הנשבר וכדבר שאין בו ממש ולא יעבור מאר"ץ
והלאה ולא מנא אמון והלאה ולא בדרך ים כלל עד שיניח לה נ"כ עם ספוק מזונותיה כפי
ראות עיני הבד"ץ). וכך אמר ה"ה ___
חתן דנן, אחריות שטר כתובתא דא נדוניא דין ותוספתא דא קבלית עלי ועל ירתאי בתראי
להתפרע מכל שפר ארג נכסין וקנינין דאית לי תחות כל שמיא דקנאי ודעתיד אנא למקנא,
נכסין דאית להון אחריות ודלית להון אחריות כלהון יהון אחראין וערבאין לפרוע מנהון
שטר כתובתא דא נדוניא דין ותוספתא דא ואפילו מן גלימא דעל כתפאי, בחיי ובתר
חיי מן יומא דנן ולעלם. ואחריות וחומר שטר כתובתא דא נדוניא דין ותוספתא דא,
קבל עליו ה"ה ___
חתן דנן כחומר כל שטרי כתובות ותוספתות דנהגין בבנת ישראל העשוין
כתקון חז"ל, דלא כאסמכתא ודלא כטופסי דשטרי, בביטול וכו' ובפיסול וכו'
וקנינא מן ה"ה ___
חתן דנן למרת ___
בתולתא דא על כל מה דכתיב ומפרש לעיל במנא דכשר למקניא ביה.

והכל שריר ובריר וקיים

נאם ___ עד
נאם ___ עד

גם אני החתן מודה על כל הנ"ל ובאעה"ח יום הנ"ל ___

APPENDIX B

SAMPLE MARRIAGE CONTRACTS

Source: Dr. Marvin Sussman, Director
Personal Contracts Study,
Institute on the Family and Bureaucratic Society
Case Western Reserve University
Cleveland, Ohio 44106

(Note: These contracts represent not mere specimens, but actual texts provided to Dr. Sussman by the couples who drew them up. Accordingly, such identifying variables as names, dates, and places were blacked out in the originals to guarantee the privacy of the contracting couple. In these copies, the groom is identified as X, the bride as Y, and all other features will be left blank.)

1) a Legal Contract

Antenuptial Agreement

On _____ __, 19--, at _____; X and Y, in contemplating marriage this day, have entered into an agreement with respect to such marriage for the following reasons and with reference to the following facts:

I--Purpose

A) Purpose of Agreement--We intend by this agreement to recognize each other as equal partners in our marriage, and to overcome the inequalities and unequal burdens thrust upon married persons by custom and tradition and by California's laws.

B) Intent to Define Property Rights--the parties to this Agreement intend and desire to define their respective rights in the property of the other, and to avoid such interests which, except for the operation of this Agreement, they might acquire in the property of the other as incidents of their marriage relationship.

C) Agreement Conditioned Upon Marriage--this Agreement is entered into in consideration of marriage, and its effectiveness is expressly conditioned upon such marriage between the parties actually taking place; and if, for any reason, the marriage is not consummated, the Agreement will be of no force or effect.

D) Respective Contributions to Household--the parties to this Agreement desire to define the respective contributions each will make to the expansion and maintenance of the household from their separate property and the community property in order to maintain the standard of living desired by both.

II--Recital

A) Disclosure of Property--both parties to this Agreement have made to each other, and in the future will make to each other, a full and complete disclosure of the nature, extent and probable value of all

(cont'd)

their property, estate and expectancies.

III--Agreements

A) Property of Each Spouse to be Separate Property: Exceptions--

1) Y covenants and agrees that all property now owned by X, of whatsoever nature and wheresoever located and any property which he may hereafter acquire, whether real, personal, or mixed, including but not limited to any earnings, salaries, commissions, or income resulting from his personal services, skills, and efforts shall be and remain his sole and separate property, subject to his control and management, to use and dispose of as he sees fit and as if no marriage had been entered into, except as herein otherwise provided.

2) X covenants and agrees that all property now owned by Y, of whatsoever nature and wheresoever located and any property which she may hereafter acquire, whether real, personal, or mixed, including but not limited to any earnings, salaries, commissions, or income resulting from her personal services, skills, and efforts shall be and remain her sole and separate property, subject to her control and management, to use and dispose of as she sees fit and as if no marriage had been entered into, except as herein otherwise provided.

3) Whenever any real or personal property, or any interest therein or encumbrance thereon, is acquired by either party by an instrument in writing, the presumption is that the same is his or her separate property, subject to his or her management and control.

4) The parties during the marriage may contract and agree from time to time to change certain items of property from separate property to community property and from community property to separate property, by a written contract duly acknowledged by the parties, or by oral contract if the contract is fully confirmed, ratified and executed after the marriage.

5) In the event either party is involuntarily employed or voluntarily unemployed by agreement of the parties, or is unable to work during the period of injury, infirmity, maternity, or illness, then the earnings, salaries, commissions, or income of both parties during any of said periods shall be deemed to be community property subject to the joint control of the parties.

B) Control of Community Property

1) The parties shall have joint control of the community personal property and community real property, and neither shall make a gift of, nor dispose of the same without valuable consideration, nor sell, nor convey, nor lease, nor encumber the real or personal property of the community without the voluntary, written consent of the other.

2) Either party may act as agent for the other.

C) Liability of Property for Debts and Torts of the Parties

1) Property designated as community property of the parties herein in accordance with the terms hereof shall be liable for the contracts and debts of the parties after marriage, if said contracts and debts are connected with community business, but only after resort is had to the separate property of the party incurring such contract or debt.

2) Property designated as community property of the parties herein in accordance with the terms hereof shall be liable for the contracts, debts and tortious obligations of the parties incurred before marriage, but only after resort is first had to the separate property of the party incurring such contract, debt, or tortious obligation.

3) The separate property of neither party is liable for the debts or tortious liability of the other, but such separate property shall be liable for the payment of the debts heretofore or hereafter incurred by the parties for the necessities of life furnished to them or either of them while they are living together or for debts heretofore or hereafter contracted for goods, materials, money, or services not considered by the parties to be necessities of life, provided both parties contract in writing with the furnishers of said goods, materials, money, or services.

4) The separate property of the parties shall not be liable for any debts or obligations secured by a mortgage, deed of trust, or other hypothecation of the community property unless each party expressly assents in writing to the liability of his or her separate property for such debts or obligations.

D) Responsibilities of the Parties to Each Other

1) Each party shall share the expenses of maintaining and expanding their household in the same proportion as their earnings shall bear to each other. Neither party shall expect to be reimbursed from community funds any amounts expended from their separate funds for the maintenance and expansion of their household.

2) Both parties shall be obligated to share the household duties, provide affection and companionship to the other, and to be available for sexual relations.

3) In the event the parties give birth to or adopt children, the parties shall share the responsibilities of and the privileges of the care of the children and shall provide for the support of the children in the same proportion as their earnings shall bear to each other.

E) Other

1) It is the parties' present intention that each shall continue working outside the household and shall continue further their educations.

2) The parties shall jointly head the family, and both shall choose the family residence and mode of living. Each party shall have

(cont'd)

the right to maintain his or her own legal residence, notwithstanding the legal residence or domicile of the other.

3) Each party shall, after the marriage, use the name he or she chooses.

4) Our children shall carry as their surname, "_____."

IV--Recordation

This Antenuptial Agreement, or a memorandum thereof, may be recorded in the Official Records of _____ County, or in any county where we hold real property or reside, by either of us.

V--Saving Clause

If any portion of this Antenuptial Agreement be unenforceable under the laws of California, it is the intention of the parties that the remaining portions thereof shall remain in full force and effect.

IN WITNESS WHEREOF, we have hereunto set our hands and entered into this Agreement at _____, _____, the date first herein above written.

(signed,) _____

(signed,) _____

Appendix B--Sample Marriage Contracts (continued)

2) a Personal Contract

I) Definition of Marriage:

Marriage for X and Y is a commitment; an emotional, spiritual, and social joining of two individuals which is a commitment to each other to work at the relationship and to be with each other for a time period; a compact between two individuals; an agreement to share mutual experiences and love.

II) Time Period of Contract:

This contract will last five years. At the end of the five years, the contract cen be renewed, renegotiated, or terminated.

III) Signing of the Contract:

We will sign the contract on the day most convenient for the two of us. This is to be a private day. We will try to have the contract witnessed by the Ethical Cultural Society rather than by a Justice of the Peace. This is purely to fulfill the state requirements. No special ceremony will accompany the signing. X is reaching out to satisfy Y's need out of love for her.

Since this is to be a private affair, neither parents nor friends will be invited.

IV) Living Arrangements:

We will live together. We also prefer to live in a household with other people.

NEATNESS--because Y cannot tolerate X in his most messy states, he will actively strive to be neater, e.g., use the clothes-tree, not leave his clothes lying around for two days, keep the desk top clean and neat (X must also do this), and generally make the room liveable. X agrees not to throw his underwear around on the floor. He will not allow a pile of stuff to accumulate by the bed, but will clean the accumulation daily. All watch equipment will be neat on the desk. Y will not discuss X's alleged sloppiness at mealtimes or at any other time that will cause considerable distress to X. Y does have the right to comment if X's level of neatness falls below her critical tolerance level.

CLEANING--all household chores will be shared. Most often they will be done on weekends. Y will refrain from yelling about undone chores until Sunday afternoon, but she reserves the right to tactfully remind about the chores.

If we share our living arrangements with other individuals, Y will refrain from mentioning their messes to X. She will tell her feelings

directly to the offending parties. Y does retain the prerogative of complaining about the general level of cleanliness or lack thereof in front of X.

In return for X keeping Y's car mechanically tip-top, Y will do X's sewing and mending, except for socks.

V) Finances:

X and Y will share equally the cost of maintaining the household, e.g., rent, utilities, food, etc.

We will keep separate bank and checking accounts. One may not tell the other how to spend their money, unless the money is to be placed in a mutually agreed on fund.

In situations where we want to save money for a joint project, a joint account will be established.

If one or the other of us is unemployed, or lacking money for a joint venture, the other will share his or her money. Savings can be excluded from this sharing, thus including only salary.

Each of us has his or her own car, unless we cannot afford it.

We will file separate or joint income tax (returns), whichever is most to our financial benefit.

VI) Fights:

Fighting can be helpful at times. All fights will not fall to the level of mud-slinging or kitchen-sinking. Communication will be kept open at all times, if possible. No physical assaults. Disagreements will not be viewed as necessarily destructive to the relationship.

We will not separate from each other for extreme periods of time still angry.

VII) Communication:

Communication is considered to be one of the most vital aspects of a working relationship. Good communication will be a goal at all times.

X will try to talk to Y when he is angry, and not maintain a wall of silence; X recognizes that Y reaches out verbally, and will try to respond. Y will try to keep physical contact with X, as she realizes that he reaches out physically.

X agrees to talk with Y about his inner thoughts and agrees to accept the signal "Please let me hear your voice" not as a demand, but as a request to discuss and relate.

VIII) Fidelity:

There will be no guarantee of exclusiveness in sex relations for

(cont'd)

either party. Freedom for outside relationships exists.

There is no commitment for either party to tell the other if they are engaging in outside sexual activity, but we believe that it is desireable to do so, so that there will be no stop in communication.

Both agree that outside relationships are secondary to our commitment to each other.

IX) Name:

X and Y do not wish a name to imply an appendage to each other, since ours is a relationship between two individuals and not the stereotyped husband-wife role relationship. Y believes that she has striven for far too long and with too much tribulation to establish her ego--which is so often symbolized in a name--to abandon it and take on another's name. For this reason we agree that Y will never be presented as Mrs. X Mxmxmxm.

At the same time we wish our names to signify the merging of our lives; therefore we agree to the following:

X- X Mxmxmxm.
Y- Y Xmxmxmx.

All bank accounts and ID cards, etc., will be changed to the above names when convenient.

X) Children:

It is agreed that we will not have children during the term of this agreement.

Y does not desire any children at this point in her life, but in about five years she most probably will.

X does not see his wanting any children, definitely at least not for the next five years.

Y accepts the fact that X may never want children and enters into this contract in full acknowledgement of this fact.

If Y get pregnant accidentally, the matter will be negotiable. Y believes that she may not be able to get an abortion; therfore it is agreed not to have any "accidental" pregnancies.

XI) Parents:

Each party will handle their parents as they deem fit for themselves.

Each will respect the stand of the other in relation to his or her parents, yet each retains the right to say whatever they feel

(cont'd)

necessary when pressured by the other person's parents; thereby each partner retains their own integrity.

XII) Friends:

We will leave our relationship as already defined with our various friends, meaning we will let them assume what they will about the legal status of our relationship. With new friends we will present ourselves as two separate loving human beings and allow the friends to draw their own conclusions about our legal status.

XIII) Body Control:

Each of us retains control over our own body. The other partner cannot try to determine the state or appearance of the other's body. Specifically, Y agrees not to pick, nag or comment about X's skin blemishes.

XIV) Divorce:

If at any time Y wishes a divorce, X will not contest it, and she agrees to pay for both lawyers. Similarly, if X wishes a divorce, Y agrees not to contest it.

All common property will be equally divided, and all personal property retained by the owner.

In the event of death, all property, both common and private, goes to the surviving partner.

XV) Terminology:

We agree not to use the following words and phrases in referring to each other and our relationship: married to, married, husband, wife, boyfriend, chick, engaged, spouse, and other derogatory terms. Instead, we agree to use phrases and words such as: committed to, commitment, relationship, contract, lover, partner, man, woman, and other non-derogatory terms in referring to us and our relationship.

XVI) Negotiations and Change:

This contract is subject to amendment, provided there is mutual agreement to the change.

Changes or additions will be entered into the contract following the signatures, and will be initialled by both parties.

XVII) Signatures:

This contract entered into, and freely agreed upon, on this ___ day of _____, 19--.

(signed,) _____
(signed,) _____

Appendix B--Sample Marriage Contracts (continued)

3) a Therapeutic Contract

Memorandum of Agreement

I, X, agree to arise from bed by 10:00 a.m. on Saturdays and Sundays and to spend one hour in some mutual activity with my wife on Saturday, Sunday, Tuesday, and Thursday evenings between 10:00 and 11:00 p.m. This mutual activity can include conversation, bowling, taking a walk, going to a movie, going out for coffee, or any other activity which involves both me and my wife. The decision about what shall comprise the activity for the evening will preferably be mutually agreed upon, but I understand that in case of a disagreement my wife's suggestion will be honored.

I also agree not to express hostility or exhibit "up-tightness" (coldness, rejection, annoyance, bitterness, silence, withdrawal) when Y asks me NOT to pursue sexual relations. Each instance of my succeeding at this to Y's satisfaction will result in my earning a receipt.

I, Y, agree to dress in a way that is more appealing to my husband (wearing dresses, buying some new clothes, avoiding baggy slacks and loose sweaters and blouses). Each day that my husband approves of my attire, I will receive a receipt.

I will also agree to INITIATE affectionate responses, including kisses, hugs, hand-holding, and caresses toward my husband. Each instance of my initiating affection will result in my receiving a receipt.

I, Y, agree to sit with my husband each morning, Monday through Friday, while he eats his breakfast. During this time we shall engage in conversation regarding the day's events, newspaper items, or family matters. I also agree to spend two hours each week thoroughly cleaning and dusting the living room.

I, X, agree to arrive at my home by 5:30 p.m. each day that I am working at _____. Each day I get home by 5:30 will lead to my obtaining a receipt.

This contract shall be monitored by a medium of exchange. Y shall give X a receipt for each successful completion of each term of her part of the contract. Each receipt will have the recipient's name, the date, and what was done to earn it. The receipts earned by each will be brought to the therapy session each week.

APPENDIX C

SAMPLE ALTERNATIVE KETUBOT

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1) a Model Based on the Traditional Form

Source: the author

באחד בשבת_____ ימים לחדש_____ שנת תש"_ _ לבריאת עולם למנין שאנו מנין פה_____ איך החתן_____ והכלה_____ אמרו זה לזה:

"שימני כחותם על לבך כשם שאשימך על לבי וכן נחלקה לב אחד בינינו ונהיה לבשר אחד כדבר ה' ונהיה לזוג יהודי בעיני אלהים ואדם כדת משה וישראל. ואני בס"ד אפלח ואוקיר ואיזון ואפרנס אותך כדרך שבה נוהגים זוגות ישראל להאמין ולטפל זה בזה מתוך קושט ובכונה ישרה ובאהבה."

והסכימו שניהם כאחד בכל הענינים האלה וקבלו טבעות זה מזה ונעשו לאיש ואשה משותפים מול הקדוש יתברך ומול כל עדת ישראל.

ויתרו על שילום שכר הנשואין המסורתי והסכימו במקומו שכל אחד יסקף את צורכי ביתם המשותף כיכולתו.

הרב_____ בחתימתו/בחתימתה מברך/מברכת את הזוג ומכשר/ומכשרת את נשואיהם כתיקון חכמינו זכרם לברכה.

לכן אין הכתובה הזאת או כאסמכתא או כטופסי דשטרי אלא כל ענינים היעדו על ידי עדים טובים וישרים ונאמנים ובשעה טובה ומוצלחת והכל שריר וקיים.

חתימת הרב_____ נאם_____עד

חתימת_____החתן נאם_____עד

חתימת_____הכלה נאם_____עד

On the Sunday of the week named for the Torah portion _____, _____ day of the month of _____, anno mundi 57___ according to the system by which we count time here in _____; did the groom _____ and the bride _____ say one to the other:

"Set me as a seal upon your heart, as I set you upon mine, and let us share one heart between us so as to be 'one flesh' in keeping with the Word of the Eternal; and let us thus be a Jewish couple in the sight of G-d and of humanity, in accord with the laws of Moses and of Israel. And thereby will I 'till' you and cherish and nourish and provide for you, in the manner in which all Jewish couples are accustomed to believe in and care for one another: truly, sincerely, and lovingly."

And they were in complete accord in all these matters, whereupon they received rings one from the other, and became a man and woman sharing before the Holy One Who is Blessed and before the entire congregation of Israel.

They waived payment of the traditional marriage-settlement, and agreed in its stead that each would provide for the needs of their shared household in accord with his or her own ability.

Rabbi _____ by his/her appended signature both blesses the couple and validates their marriage in accord with the provisions of our Sages of blessed memory.

This ketubah is not to be considered either an illusory obligation or as a mere document blank: for all of its concerns and matters have been attested by good and reliable witnesses, and at a good and propitious hour; and all is thereby valid and confirmed.

signature of the rabbi signature of a witness

signature of the groom signature of a witness

signature of the bride

Appendix C--Sample Alternative Ketubot (continued)

2) a contractual model with halachic elements

Source: Kenneth J. Leinwand, "An Alternative Ketubah: a Radical Approach to the Jewish Marriage Contract," (Presentation for the Samuel Weiner Memorial Scholarship, University of Manitoba, Winnipeg, 1972), pages 59-61

On the first day of the week, the ___ day of the month of ___, in the year 57__ since the creation of the world according to the Jewish calendar, and the __ day of the month of ___, in the year 19__, according to the secular calendar, in the city of _____, in the Province/State of _____, in the country called _____,

The groom X, son of Y, and his bride A, daughter of B, made the following mutual declaration:

Let us be wedded according to the laws of Moses and Israel. We promise to respect, love, work, and do all that we can to insure each other's happiness. All this will we do in faithfulness.

In addition, the above-mentioned bride and groom agree to abide by the following conditions. And they are:

1) We agree that all property, whether it be cash, stock, real estate or any other assets; whether it was acquired prior to marriage or after marriage, each shall have the usufruct thereof. If both of us are earning incomes, then __% proportional to the incomes shall be used for expenditures, __% for savings and investment, and __% is to be divided equally for private use. If only one of us earns an income and the other remains at home and performs household duties, the income earner shall pay the other __% of the income as a special salary for private use.

2) Whereas we vow to insure each other's happiness, we are also concerned with our own personal needs that at times may take priority over the other's. We recognize that there are instances in which for spiritual or educational needs it becomes necessary for one of us to separate for certain periods of time. We agree that if such a need arises, with the proper advance notice one may leave the other for a period of ___ days ___ times annually.

3) We are both concerned about the state of our planet and the environment we live in. In order to help keep the world's population at a stable level, we agree to have no more than two of our own natural children. Only if--heaven forbid!--one of our children should die, will we have another natural child. If we decide to have additional children other than our own, we will seek assistance from an adoption agency.

4) We further agree that if by accident the above-mentioned bride

(cont'd)

is to become pregnant and wishes to terminate her pregnancy--whether it be for physical, psychological, or moral reasons--that the final decision will remain totally her own, without interference or repercussions from the above-mentioned groom.

5) With respect to our future children, we agree to provide for all their needs, including material, educational, and spiritual--even if it requires us to deny ourselves our own material possessions. We further agree that we will maintain our home in accordance with Jewish tradition, and we will permit our children and encourage them to learn, practice, and explore as much of their inherited faith as they so desire.

Furthermore, we give our consent to the following conditions, which are binding upon us and are to be strictly observed and honored, as it is given with the same intention like those conditions agreed upon by the Children of Gad and the Children of Reuben. And they are:

6) We are aware of the possibility that one of us might abandon the other, whether it be voluntarily or involuntarily, or be lost in a calamity of natural or social cause--be it detention by civil or military authorities, or criminals; or the results of amnesia, insanity, or any other mentally incapacitating illness. In such a case that the period be longer than ___ years, we agree that if the non-missing party desires, this matter be brought before a proper Jewish court, and under the court's supervision a GET be issued (in accordance with the laws of Moses and Israel) in duplicate--one to be held by the divorcing party and the other to be held by the court, and is to be produced for the absentee party should that party return after the agreed-upon time.

7) We further agree that at any time either of us wishes to dissolve our marriage, we will together appear before a proper Jewish court and the party being divorced will give their unconditional consent immediately, and a GET is to be issued in accordance with the laws of Moses and Israel under the proper rabbinical supervision.

(THE FOLLOWING IS INCLUDED IN THE KETUBAH IF THE COUPLE IS BEING MARRIED AS WELL IN ACCORD WITH CIVIL LAW:)

With respect to divorce settlements and related matters, we agree to abide by the law of the land.

(THE FOLLOWING IS INCLUDED IN THE KETUBAH IF THE COUPLE IS NOT BEING MARRIED IN ACCORD WITH CIVIL LAW:)

8) In addition, we agree that:

a) All properties brought in by us prior to our marriage shall return to its original owner, and that all properties acquired after marriage shall be evenly divided.

b) If the divorcing party is the income earner, and the divorced

(cont'd)

party is unemployed, that the first party will pay the second party ___% of the income which will provide the divorced with sufficient sustenance for a period of one year's time.

c) In such cases where there are surviving and dependent issue, we agree to leave it to the decision of the court and the rabbi as to the custody of the child or children, and the amount of support to be given to the child9ren) and the guardian parent.

9) We declare that any statement to the contrary of the above--6, 7, and 8--that either or both of us may make at a later date, is to be null and void and incapable of destroying this instrument of our intention. We affix our signatures to this document before witnesses who also sign below.

Everything is established, valid and confirmed.

signature of the groom signature of a witness

signature of the bride signature of a witness

Appendix C--Sample Alternative Ketubot (continued)

3) "Equalized" ketubah; an Ethical Model with Jewish Commitments

Source: Rabbi Lawrence Kushner, in
Richard Siegel et. altri., ed.
The Jewish Catalog
Jewish Publication Society, Philadelphia, 1973
page 165

On the ___day of the week, the ___ day of ___, five thousand seven hundred _____ since the creation of the world as we reckon time here in _____;

The bride, ____ daughter of ___ and ____, promised the groom, ____ son of ___ and ___: "you are my husband, according to the tradition of Moses and Israel. I shall cherish you and honor you as is customary among the daughters of Israel, who have cherished and honored their husbands in faithfulness and in integrity."

The groom, ____ son of _____ and ____, promised the bride, ____ daughter of ___ and ___: "You are my wife, according to the tradition of Moses and Israel. I shall cherish you and honor you as is customary among the sons of Israel, who have cherished and honored their wives in faithfulness and in integrity."

The groom and bride have also promised each other to strive throughout their lives together to achieve an openness which will enable them to share their thoughts, their feelings, and their experiences;

To be sensitive at all times to each others' need; to attain mutual intellectual, emotional, physical and spiritual fulfillment; to work for the perpetuation of Judaism and of the Jewish people in their home, in their family life, and in their communal endeavors.

This marriage has been authorized also by the civil authorities of _____.

It is valid and binding.

signature of a witness signature of a witness

signature of the bride signature of the groom

signature of the rabbi

APPENDIX D

MONETARY NOTES

The mohar, or bride-settlement, established for a woman's first marriage, was set by the rabbis in the amount of 200 zuz (1). This sum is clearly the rabbinic equivalent of the Toraitic mohar of 50 silver shekels, payable to the father of a seduced maiden (2); the Biblical shekel was the equivalent of 4 rabbinic zuz. The import of this sum, in the context of the Mishneh, is obvious: at that time, 200 zuz was the minimum amount of money which would prevent one from being considered a public charge (3). The intention of the rabbis, clearly, is to provide for the widowed or divorced woman within the standards of the day.

There is some ambiguity, even in the Talmudic period, regarding the zuz mentioned in the Mishneh: it could refer to the "small coin," or country zuz, which was only 1/8 silver, or it could mean the Tyrian zuz, or "town coin," which was stamped of pure silver (4). It is to be assumed that most communities would want to adhere to the highest possible standard--that of the pure silver, or Tyrian, zuz--as the most effective protection for the bride: this is the conviction of Shmuel haLevi, who notes that the mention of "200 zuz of silver" in the ketubah refers specifically to the Tyrian zuz (5). But haLevi is removed from the Talmudic sages by a period of a thousand years, and he can only second-guess their intentions. It appears, in fact, that under some circumstances the Amoraim would intentionally allow a lower ketubah standard--that of the alloyed "small coin"--in order to facilitate marriage. A conspicuous case in point, is that of an orphan girl, whose 50-zuz mohar is expressly stated to be "50 small coins" (6).

In most communities and at most times, however, every effort was made to maintain a high ketubah standard, when the fortunes of the general Jewish community was such that to do so represented no hardship. For example, at the beginning of their settlement in Poland, Jews interpreted the customary Ashkenazic ketubah in terms of fine silver marks, so that the value

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1) Ketubot 1:2

2) Exodus 22:16, Deuteronomy 22:29

3) Mishneh Peah 8:8

4) Ketubot 65b

5) Sefer Nachalat Shiv'ah 12:30

6) Ketubot 67a

of the ketubah settlement was 200 marks (1). But as the fortunes of the Polish Jews suffered decline, they reinterpreted their ketubah standard in terms of less stable currencies to ease the hardship of a high settlement, thereby facilitating marriage. However, this strategy had the effect of making of the ketubah ultimately a mere ceremonial formality: so small was the actual amount of money involved, that there was no real meaning left to it. The only vestige of all this, is the notation still recorded in every Polish ketubah, that all obligations are to be paid in זקוקים כסף צרוף, "fine silver marks."

In most communities, whether a high or a low ketubah standard was maintained, the mohar and other obligations were paid as real debts in the coin of the realm. The Shulchan Aruch indicates that the mohar due a maiden is to be paid in local currency, in the amount of 37-½ silver drachmas (2). Even as late as 1910 the mohar was being computed in terms of current money: it was customary that year in Israel to write a woman's mohar in the sum of 1000 grush, which was considered the equivalent of 178 German franks (3). And in 1953, the Chief Rabbinate of the State of Israel required a standard payment of IL 200 for a woman's mohar, and IL 100 for a widow or divorcee.

In the Sephardic world, the mohar had become outmoded fairly early, and more emphasis was put on an adequate sum in consideration of the dowry and tosefet. In some communities the appropriate amount was fixed by convention, in others it was negotiable; but in every case, payment of these sums was a real obligation, due in the current coin of the realm. Two Italian ketubot, both dating from the end of the 18th Century, list a dowry settlement of 20 ליטרין, "litrin," or pounds, of silver (4). Another, more generous, ketubah of the same period lists

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1) Jacob Agus, "Development of the Money Clause in the Ashkenazic Ketubah," op. cit., pages 239-40

2) Even HaExer 66:6

3) Aaron Mendel Cohen, ספר כלילת חתנים :לקוטי דינים ומנהגים ארוסים ונשואין, קיירה, 1910, 6:5

4) ketubah #123, the Jewish National and University Library, Jerusalem; from Ancona, dated 1772; cited in David Davidovitch, The Ketubah, op. cit. page 58. Also, a ketubah from Finale, Italy, dated 1787, in the HUC-JIR Gallery of Jewish Art and Artifacts, Cincinnati

a dowry settlement of 100 דוקאטי, or ducats, with each ducat worth six litrin of silver (1), while another of the previous century lists the dowry value as 500 ducats, with each exchanged at the rate of

six troni and four marqiti, after the coin of Verona.

ששה טרוני וארבעה מרקיטי לאחר מסבע וירונה.(2)

Two Roman ketubot of the late 18th Century list dowry valuations of

six hundred scudi, at the rate of 10 giulii per scudo.

שש מאות סקודי לחשבון עשרה יולי ה׳סקודו. (3)

And a text from Trieste, dated 1773, lists a dowry evaluation of 1000 צקינני (zecchini, or sequins), each worth 15 p'tish (4). The Oriental communitites used the זהוב, z'huv--a generic name for a gold piece--as their ketubah currency: a Tunisian ketubah of 1835 lists a dowry valuation of 900 z'huvim (5), while a text from Herat, Afghanistan, commits the groom for payment of the more modest sum of 60 z'huvim (6). Even in our own time, the Spanish and Portugese Jews' Congregation of London is accustomed to write into their ketubah the following Money Clause:

> and the groom was pleased to add for this bride a sum of fifty pounds sterling; and he has received all upon himself--including responsibility for the bride--as a loan and an obligation, and as mortmain property (7).

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1) ketubah from Venice, dated 1776, in the HUC-JIR Gallery of Jewish Art and Artifacts, Cincinnati

2) ketubah #31.4, from Busseto, dated 1677; in the Klau Library, HUC-JIR, Cincinnati

3) ketubah #134 (Rome, 1771) and #331 (Rome, 1797) from the Jewish National and University Library, Jerusalem; cited in Davidovitch, op. cit., page 54 and 56, respectively

4) ketubah from Trieste, dated 1773, in the HUC-JIR Gallery of Jewish Art and Artifacts, Cincinnati

5) ketubah from Tunis, dated 1835; in Davidovitch, op. cit. page 78

6) ketubah from Herat, dated 1899; in Davidovitch, ibid. page 76

7) Wedding Customs of the Spanish and Portugese Jews' Congregation, (London, 1967), page 12, page 14

While the Ashkenazic communities would similarly write their ketubah settlement in terms of the prevailing currency, they were bound to a set standard. The German communities recognized early in the Middle Ages that a 200-zuz mohar was not adequate protection for a woman. The 200-zuz mohar could not be abrogated, since it was a rabbinic decree; it was retained as a formality, while the real settlement consisted of equal dowry and tosefet of fifty pounds of silver, making for a total ketubah juncture of 100 pounds of silver. This standard was adopted in Germany prior to the year 1000 (1), and was likewise adopted in Austria, Hungary, Bohemia, Poland and Lithuania. Variances in the Ashkenazic ketubah occured, therefore, not in the amount of the settlement, but rather in the coin in which it was paid. Each "litra," of pound, of the hundred could be paid by:

-2 marks, containing 16 ounces of silver;
-1 mark, containing 8 ounces of silver;
-240 Cologne dinarii, containing 11 ounces of silver;
-240 Halle dinarii ("hellers"), containing 3-½ ounces of silver.

A community could interpret the hundred-pound ketubah as they pleased; and, as mentioned previously, they generally chose to maintain it as high as possible when they could afford to. When the Jewish communities flourished, their ketubah standard was maintained high. When the pogroms and the Plague came, and their fortunes, like their lives, were lost, the ketubah standard was allowed to slip.

The German ketubah standard is an example of this trend. It was interpreted at the customary standard, 100 pounds of silver, with each pound being equal to one mark (זקוק). Radical fluctuations in the silver coinage of Germany threatened the mark in the 14th Century. Accordingly, a תקנה taqqanah, "reform," or 1381 reinterpreted the 100 marks of the German ketubah in terms of the more stable gold florin, establishing a new 600-florin ketubah standard (2). Jewish fortunes continued to slip through the 15th Century, while the gold florin proved to be too stable for comfort. Most German communities began paying their ketubah in the correct amount--600 gold coins--, but with the wrond coin: the Rhine gulden, rather than the florin. The gulden, like the florin, was a widely accepted gold coin: but it was not as stable. The common change from the 600-florin standard to that of 600 guldens,

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1) Agus, op. cit. page 221

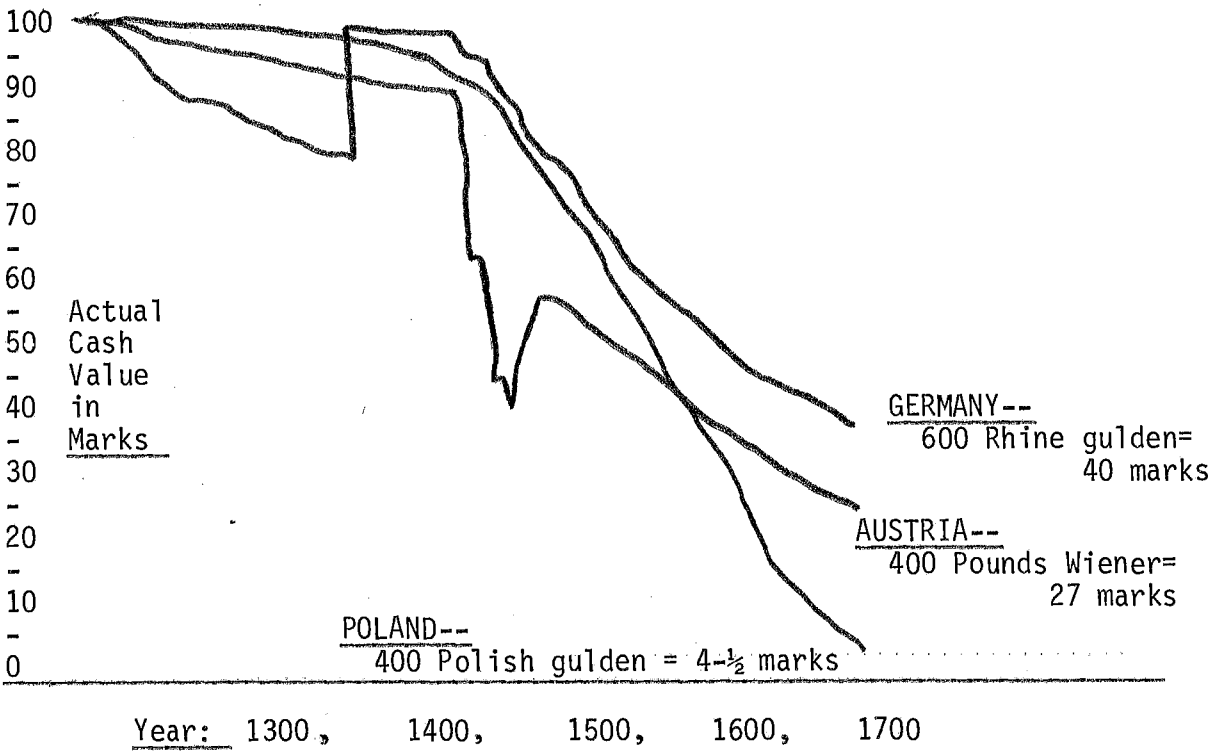
2) ibid., page 225

for all intents and purposes,

> marked the beginning of the decline of the 100-pound standard in Germany (1).

It was this development that made the ketubah of no real value as a marriage-settlement or as an impediment to divorce, and which led to the present status of the ketubah: that of a ceremonial formality only.

FLUCTUATIONS IN THE ACTUAL CASH VALUE
OF THE "100-Pound-of-Silver" ASHKENAZIC
KETUBAH STANDARD (after Agus)



APPENDIX E

STANDARD FORMS AND SPELLINGS

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1) Names of the Hebrew Months

Source: ספר נחלת שבעה, פרק ד

Nissan	ניסן	Tishrei	תשרי
Iyyar	אייר	Marcheshvan	מרחשון
Sivvan	סיון	Kislev	כסלו
Tamuz	תמוז	Tevet	טבת
Av	אב	Sh'vat	שבט
Elul	אלול	Adar	אדר (אדר שני/אדר ראשון)

2) Days of the Week

Source: ibid., פרק ה

Sunday	באחד בשבת	Thursday	בחמישי בשבת
Monday	בשני בשבת	Friday	בששי בשבת
Tuesday	בשלישי בשבת		
Wednesday	ברביעי בשבת		

3) Date in the Month

Source: ibid., פרק ו

1st	ביום אחד לחדש, באחד לחדש	16th	בששה עשר יום לחדש
2nd	בשני ימים לחדש	17th	בשבעה עשר יום לחדש
3rd	בשלשה ימים לחדש	18th	בשמנה עשר יום לחדש
4th	בארבעה ימים לחדש	19th	בתשעה עשר יום לחדש
5th	בחמשה ימים לחדש	20th	בעשרים יום לחדש
6th	בששה ימים לחדש	21st	באחד ועשרים יום לחדש
7th	בשבעה ימים לחדש	22nd	בשנים ועשרים יום לחדש
8th	בשמנה ימים לחדש	23rd	בשלשה ועשרים יום לחדש
9th	בתשעה ימים לחדש	24th	בארבעה ועשרים יום לחדש
10th	בעשרה יום לחדש	25th	בחמשה ועשרים יום לחדש
11th	באחד עשר יום לחדש	26th	בששה ועשרים יום לחדש
12th	בשנים עשר יום לחדש	27th	בשבעה ועשרים יום לחדש
13th	בשלשה עשר יום לחדש	28th	בשמנה ועשרים יום לחדש
14th	בארבעה עשר יום לחדש	29th	בתשעה ועשרים יום לחדש
15th	בחמשה עשר יום לחדש	30th	בשלשים יום לחדש שהוא ראש חדש לחדש

4) Notation of the Hebrew Year

Source: ibid., פרק ז

"The year 5000..." ...שנת חמשת אלפים
Hundreds are written in standard spelling, in the feminine.

Ten-year increments and single years are similarly written in the common spelling, in the feminine.
Tens of years may be entered either before or after single years: both are practiced, and either is correct. Viz.:

5737

חמשת אלפים ושבע מאות ושלשים ושבע

or

חמשת אלפים ושבע מאות ושבע ושלשים

5) Spellings of Standard Ketubah Terms

Source: ibid., פרק י"ב

עלום---לבריאת עולם may also be written defective, עלם.

מנין----written with one yod, to avoid confusion with mi-nayin, מניין

מנין----always written "defective," without a vav, to distinguish it from מונין (הפעיל בינוני, שרש י-נ-ה), "torment."

להדא בתולתא--or, for a widow, ארמלתא; and for a divorcee, מתרכתא . And if she had undergone the ceremony of release from her brother-in-law, one should write חלוצתא.

אנתו---הוי לי לאנתו is written defective, without a yod.

יתיכי---always written plene, with three yod's.

ליכי----only written in Polish ketubot, using three yod's in a plene spelling.

כהלכות--written defective, without a yod as matris lectionis.

וזנין---written defective, without a vav as matris lectionis.

ויהיבנא-written plene, with a yod between the hei and beit.

מהר-----written defective, without a vav as matris lectionis.

בתוליכי-and כסף ארמלותיכי for a widow, or כסף מתרכותיכי for a divorcee. The entire formula differs in such a case, viz:

for a widow: כסף ארמלותיכי זוזי מאה דחזי ליכי מדרבנן

and for a divorcee: כסף מתרכותיכי זוזי מאה דחזי ליכי מדרבנן

כאורח---written plene, with a vav as matris lectionis.

והות----written without a yod, והות and not והוית.

ליה---ליה לאנתו may be written either plene or defective; but, as noted above, לאנתו is written defective only, without a yod.

מבי-----written thus, without an aleph at the end.

אבוה----but if she is an orphan, we write מבי נשא; and if she is a woman of uncertain paternity (a שתוקית; see Qiddushin 4:2), we write simply דהנעלת ליה, "which she brought him." And evidence indicates that we write the same for a widow, even though she has a father.

בדהב----this is the Aramaic spelling employed by Ashkenazic Jews; but Polish communities write the Hebrew spelling, בזהב. There is ultimately no difference between the two, save for custom.

במאני דלבושא---במאני is intentionally spelled with a yod rather than an aleph at the end, to demonstrate as a compliment to the bride that her dowry consisted of more than one piece of clothing. The aleph in the middle of the word is required, as a matris lectionis.

קבלית---the yod is required as a matris lectionis, to indicate the correct conjugation of the verb: lacking it, the verb could refer as well to the bride!

וקנינין---written thus, with a yod between every nun.

כלהון---written thus, with only one vav.

במות----also במותי or במותא or בתר חיי.

נדוניא דן---also דין.

כחומר---also כחמר.

דנהגין--and not דנהיגין

בבנת----written defective, without the vav as a matris lectionis.

נאם-----written without a vav as matris lectionis.

6) Common Honorifics

Of the groom:

שליטייא--שיחייה לאורך ימים טובים אמן
"May he live for many good years, amen."

יצ"ו----ישמרהו צורו וגורלו
"May his Rock and Redeemer keep him."

כ"מ-----כיצד מברכין
"How can we adequately bless him?"

כבוד מורנו רבי----כמ"ר
"Our revered teacher, Master P."

Of the bride:

מכל בנות תתברך----מב"ת
"May she be blessed above all women."

תבורך מנשי אוהל----תמ"א
"May she be blessed from all the women in the Tent."

Of the town or community:

יהי עמה אלהים----י"ע"א
"May G-d be with them."

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COLOPHON

Towards Guidelines for a Modern Ketubah

Designed by Mark Gross

Composed in IBM Letter Gothic-12 Type

With Display Lines in upper-case IBM Letter Gothic-12 Type

And Hebrew Lines in IBM Aviv-12 Type

On Cascade OM/Bond 20-pound, a paper

For Bond, Offset and Mimeographing Uses

Typed by Mark and Carol Gross

Bound in the HUC-JIR Bindery, Cincinnati, in buckram, and stamped in gold leaf

כתוב וכרוך בעיר סינסינאטי יע"א בשנת תשל"ז

בס"ד