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Report on the Rabbinic Dissertation Submitted

by

Deborah Joselow

in Partial Fulfillment of the Requirements for Ordination

WOMEN AND KETUBAH LAW:  
THE GOOD, THE BAD, AND THE UGLY

Ms. Joselow's thesis concentrates on the institution of the ketubah, the Jewish marriage contract. She describes the rabbinic claims about its history, namely, that the document existed to protect women from whimsical divorce. . Using Maimonides' exceptionally lucid description of the rights and obligations accorded husband and wife via the ketubah as her framework, Ms. Joselow analyzes the ketubah in terms of equity. Is the ketubah "fair" to men and women? What does "fair" mean in antiquity and in a modern context? What is the ketubah's "picture" of marriage? Does this picture conform in any way to contemporary sensibilities? Are there particularly jarring aspects of ketubah rules or their extensions? Are the ketubah's conditions absolute or is it a negotiable document? These and other questions are the core of this thesis.

Methodologically, Ms. Joselow begins with Mishnah's ketubah rules and compares them with Maimonides' Code. The obvious differences between one and the other are assumed to be part of the Talmudic

development of Mishna's basic positions. Thus, when Ms. Joselow noted differences, she sought the roots of these developments in the Talmud.

The results are instructive about halakhic development and the changing position of women in Jewish society from Mishnaic to late Talmudic times and into the medieval, Sephardic world. They also point to the good, the bad, the "ugly." That is, the ketubah is, in fact, "good." It is protective of both men and women, realistically cognizant of the physical, financial, and sexual aspects of marriage no less than the "romantic," and open to considerable negotiation allowing for individualistic constructions of a marriage. It is "bad" in that it maintains in its unnegotiated form, and even in its negotiated form, the view of woman as, at least in part, property. It also views men mostly as bank accounts and sex objects. The "ugly" has to do with the objectification of women which is part of the extreme (obsessive?) concern of the mishnaic heritage with female physical imperfections and overt display of femininity. Many of the ketubah's problematic aspects underwent improvement over time, but many did not. In short, the rabbinic ambivalences about women, though modified, were never truly overcome.

Ms. Joselow's more general conclusion sees in the ketubah a basically positive thrust in Jewish law: a realism about human and basic responsibilities in a situation, namely marriage, filled with highly emotional and sensitive possibilities; and an ability to

change and ameliorate as time shows new realities to be existent  
and in need of legal response and change.

Respectfully Submitted,

Dr. Michael Chernick  
Professor of Rabbinics



WOMEN AND KETUBAH LAW:  
The Good, the Bad, and the Ugly

DEBORAH A. JOSELOW

Thesis Submitted in Partial Fulfillment of  
Requirements for Ordination

Hebrew Union College-Jewish Institute of Religion  
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New York, New York

March 18, 1991

Referee: Dr. Michael Chernick

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## LIST OF ABBREVIATIONS

B.T. Babylonian Talmud

M. Mishnah

M.T. Mishneh Torah

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## INTRODUCTION

According to Jewish legal tradition, marriage is a contractual relationship. A husband and wife are products of an explicit and figured arrangement authorized and enforced by the court.

One result of this concept of union is the marriage contract or ketubah. The ketubah was designed as a written record of personal obligation. Yet this document did not necessarily circumscribe the complete conditions of marital bonds as prescribed by the court. Certain laws of marriage existed as the legal framework of betrothal whether or not a wedding contract was secured. Ketubah law, therefore, extends beyond the boundaries of the written document. For the purpose of this thesis, the reader must regard the wedding contract as an object of various dimensions.

This thesis is an attempt to examine the rubrics of ketubah law as it reflects the Rabbinic view of women. I was drawn to the topic because of a persistent image of conflict I acquired in attempting to combine my gender with my Rabbinic studies. Halakha, it seemed, was not on my side as a liberal woman Rabbi. By

investigating the relationship between women and the law I hoped to acquire a more exact view of this dynamic.

The ketubah is only a single prism through which one can analyze the position of women within Jewish law. It is however, highly suggestive. Marriage represents a fundamental change in status. It generates effects personally, socially and economically. By extension, marriage law accounted for many aspects of a woman's life and relationships.

Ketubah law evolved in increasing detail. This paper traces the development of the wedding contract in legal texts from the Torah to the Mishneh Torah of Maimonides. Each chapter of the thesis compares this source material in a different way. The final analysis of the law is chronological for only in a progressive study can the refinement of the law can be judged and evaluated.

Modern sensibilities are often offended by this legalistic framework for marriage. Reduced to law, the bliss of betrothal seems significantly undermined. It is important, in this regard, to remember that Judaism does not distinguish between the religious and the secular. Halakha is not an atheistic activity. In undertaking the explication of what was always considered an intimate and

sacred relationship, the primary concern of the Jewish legal system is guaranteeing a standard of married life for both parties which most accurately reflects Jewish principles.



## CHAPTER ONE: THE WEDDING CONTRACT

### Background and History

Marriage is not a natural or biological relationship. It is a union which demands legislation because it has no inherent guidelines. The Rabbis struggled to create ties between husbands and wives. The idea of a wedding contract was to insure the obligatory nature of marriage by placing it within a formal and secure structure.

As an effective protective device, the ketubah evolved slowly. It took a period of development before the structure of the document could adequately fulfill the proposed intent.

The Rabbinic version of the history of the wedding contract is found in Tractate Ketubot 82b, of the Babylonian Talmud. According to the Talmud, the ketubah underwent at least four major revisions. Each change was an attempt to make the document practicable especially for the potential bride, who had the most to lose by becoming someone's wife.

Yet, the concern for women's security was not the only factor which inspired these developments. The Rabbis were also struggling to protect a fundamental and sacred relationship. Marriage represented the cornerstone of Jewish family life. The union between a husband and a wife had to be instilled with some measure of seriousness or the entire belief system was in jeopardy.

With marriage a woman relinquished her entire identity: both she and her property were subject to her husband's control. Prior to the ketubah, a married woman placed herself in a tenuous position. Being married offered women no assurances. A wife's personal and economic life depended upon her husband's continued financial and emotional generosity. The Rabbis wanted to encourage women to marry by guaranteeing them security within the parameters of marriage and in the event that their husbands should decide to divorce them.

Following the Talmudic chronology, the first version of the ketubah was a written promissory. A certain sum was pledged to a woman by her husband in the event of a divorce, the exact amount fixed according to the wife's premarital status as a virgin or a widow. This design was regarded as precarious because there was

no mechanism for enforcement. A promise did not insure collection. And so, the text states, men "grew old and could not take any wives."<sup>1</sup>

The second rendition of the wedding contract insisted that the amount of the ketubah had to be deposited in the house of the bride's father. In this way, the money was at least in hand. This system did not, however, prevent husbands from dismissing their wives at the slightest provocation. While the monetary concerns of the women were resolved by this version, the sanctimony of marriage was not safeguarded.

The third attempt at modifying the ketubah was a slight emendation of the previous rendition. This plan called for the money to be deposited in the husband's home. The amount of the wedding contract, however, was not fixed but was adjusted according to the property a woman brought with her to her marriage. She received a ketubah sum that was commensurate to the value of her personal holdings. A wife lived with her settlement, but throwing her out of the house meant evicting her as well as her funds. Divorce was made an action with double consequences in the hope that it would

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<sup>1</sup> B.T. Ketubot 82b.

be more seriously considered before it was pursued. This strategy also fell short of procuring the Rabbis goals: with an accessible settlement a divorce remained easy for it required no sacrifice on the part of the husband.

The final form of the ketubah is attributed to the wisdom of Rabbi Simeon ben Shetah, a scholar in the first century B.C.E. He is credited with inserting the clause "all my property is mortgaged to your ketubah,"<sup>2</sup> a statement sworn by the groom in reference to his bride. The amount of the wedding contract was not secured prior to the union but was guaranteed by everything the husband owned. Should the marriage be terminated, collection of the ketubah amount involved the liquidation of the husband's holdings, as much as was needed to gather the required sum of money. As much is at stake for a male in contemplating a divorce as was at stake for a female in agreeing to marry.

The Talmudic history is important because it focuses on the basic principles of the wedding contract: marriage is regarded as a sacred relationship, one which is difficult to forfeit both economically and philosophically. The "true" record of the

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<sup>2</sup> Ibid.

development of the ketubah is inconsequential. The Rabbis are clear in their concept of the document and it is this ideology that is refined in further legal texts.

In addition to Talmud, the boundaries of ketubah law are defined by two other works. The Torah and the Mishnah provide critical theoretical and practical background.

Marriage receives its first legal treatment in the Torah, in the twenty-first chapter of the Book of Exodus. While the Torah provides minimal amplification of the marital relationship, the Biblical decrees become important foundation pieces in the formulation of the wedding contract. Indeed, given the centrality of Torah in Jewish law, later legal codes take great pains to accurately incorporate these edicts. The ketubah, however, is not a Toraitic construct.

The idea of a wedding contract first appears in the Mishnah, in a tractate devoted to the subject. Tractate Ketubot provides a detailed account of the precise legal stipulations of marriage. According to the Mishnah, the obligations of marriage are fixed and binding with or without a written contract. While the Mishnah does

not claim these laws as its own innovation, the status of these conditions as obligatory are ascribed to decrees of the "court."

The Mishnah suggests the ketubah as a general document which applies to all marriages in any circumstance. The wedding contract is assumed as the basic parameter of any Jewish union.

With the publication of the Mishneh Torah, the legal framework of the wedding contract was articulated in its most precise and comprehensive form. Maimonides' formulation of the ketubah is original and cumulative: it reflects and absorbs previous attempts while shaping the document in a novel manner. For this thesis, the contract outlined by the Mishneh Torah is utilized as the definitive legal form. The sections that follow are organized according to the Mishneh Torah guidelines, but include the contributions of the Torah and the Mishnah where these works either modify or contradict the Maimonidean material.

### The Framework

In the twelfth section of Hilchot Ishut, Maimonides explicates the conditions and obligations of marriage as prescribed by Jewish law. This code stipulates that a husband is obligated to his wife in

ten ways while as a husband, the male spouse is entitled to four specific privileges (see chart below). These fourteen provisions are effective with or without a written marriage contract.<sup>3</sup>

TABLE 1  
RESPONSIBILITIES AND PRIVILEGES

<u>Husband's Responsibilities To Wife</u>	<u>Husband's Merits From Wife</u>
1. Sustenance	1. Handiwork
2. Clothing	2. Findings
3. Sexual Duty	3. Fruits of Property
4. Monetary compensation	4. Inheritance
5. Healing	
6. Ransom	
7. Burial	
8. Provision through Widowhood	
9. Sustenance for Female progeny	
10. Sustenance for Male progeny	

According to Maimonides' description of ketubah law, there is a direct connection between entitlement and obligation. The Mishneh Torah creates an exact linkage between the behavior and the corresponding merit. What is due a husband is dependent upon his fulfillment of the corresponding responsibility assigned to him.

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<sup>3</sup> M.T. Hilchot Ishut 12:5; and B.T. Ketubot 51a.

Similarly, a wife cannot make claims against her husband if she has the parallel obligation, from among the four relegated to her, outstanding. The chart below diagrams the specific connections.

TABLE 2

## LINKAGE OF RESPONSIBILITIES AND PRIVILEGES

<u>Husband's Responsibilities To Wife</u>		<u>Husband's Merits From Wife</u>
Sustenance	=	Handiwork
Ransom	=	Fruits of her Property
Burial	=	Inheritance

Of the ten liabilities assigned to the husband, three are substantiated as being "from Torah." Indeed, in Exodus 21:10, sustenance, clothing and marital duty, the first three obligations on Maimonides' list, are designated as the minimal requirements of husband toward his wife. The origin of these three responsibilities sets them apart and makes them, as Torah precepts, immune to emendation.<sup>4</sup> The remaining seven Mishneh Torah provisos are credited to the period of the Soferim and are described as Bet Din or

<sup>4</sup> M.T. Hilchot Ishut 12:6; and B.T. Kiddushin 19b.



court ordinances. Therefore, they may be modified by either party negotiating the ketubah.

### Sustenance

Sustenance represents a large category of items that might be classified as "basic necessities." All the elements circumscribed by the title are means of livelihood. The Mishnah describes the husband's responsibility of sustaining his wife as including both food and bedding of specific varieties and amounts.<sup>5</sup> The Mishneh Torah legislates more generally, preferring to allow for regional peculiarities. A wife is granted daily portions food according to "the average size meal" eaten by "a normal person in the city"<sup>6</sup> from among types that are locally customary. Provisions are made for an extra meal on Shabbat and the drinking of wine.

The Mishnaic precept of "bedding" is, in Mishneh Torah,

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<sup>5</sup> M. Ketubot 5:8 and 9.

<sup>6</sup> M.T. Hilchot Ishut 12:10.

included under the rubric of "household items"<sup>7</sup> which covers all property and goods necessary for maintaining one's self in a home, such as kitchen equipment and utensils for eating and drinking.

Shelter is not a separate obligation of the ketubah but rather is addressed in the Mishneh Torah as part of the definition of sustenance. A husband must provide his wife with a dwelling of specific minimal dimensions and a layout that provides indoor and outdoor space for living, storage and sanitation.<sup>8</sup>

Another dimension of the sustenance category is personal necessities. According to the Mishnah a husband must give his wife a ma'ah of silver each week so that she may purchase what she "needs."<sup>9</sup> The text does not elaborate, either by specifying or restricting a wife's use of this money. The Mishneh Torah repeats the condition but does, however, give examples of what the sum might be used for. The possibilities include laundry and bathing and,

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<sup>7</sup> M.T. Hilchot Ishut 13:3.

<sup>8</sup> Ibid.

<sup>9</sup> M. Ketubot 5:9.

again, spending according to the prevailing local custom is the operative guideline.<sup>10</sup>

A husband's obligation for sustaining his wife begins at the designated date of marriage and continues until the wife's own death. According to the Mishnah, in the event that a wedding is postponed the bride nonetheless is maintained by her future husband's property.<sup>11</sup>

The Mishneh Torah is clear that the standards established for the level at which a wife is to be sustained are minimal, applicable to the poorest in the Jewish community.<sup>12</sup> If a husband cannot provide these items or their stated amounts, the court mandates that the wife is divorced. Similarly, a rich husband is required that his wife's provisions and lifestyle be commensurate with his own wealth. Again this rule is established by force, under order from the court.<sup>13</sup>

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<sup>10</sup> M.T. Hilchot Ishut 12:10.

<sup>11</sup> M. Ketubot 5:2.

<sup>12</sup> M.T. Hilchot Ishut 12:10; and B.T. Ketubot 60b.

<sup>13</sup> M.T. Hilchot Ishut 13:5.

### Handiwork

Sustenance is a category complicated by its connection to both the behavior of the husband and the wife. A husband must maintain his wife, but her "handiwork," one of the four things he merits, represents the second half of the equation.<sup>14</sup> This direct exchange emphasizes the contractual nature of the marital arrangement.

Handiwork may be defined as those things which a wife produces as a working member of her husband's household. The Mishnah assigns a value to a woman's work, a level of output which a wife must meet in order to have fulfilled her "handiwork" duty to her husband.<sup>15</sup> The Mishneh Torah does not fix the type or amount of work, but rather ordains that it be in keeping with the prevailing custom.<sup>16</sup> According to this legislation a wife may not be forced by her husband to do work that her counterparts are unaccustomed to.

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<sup>14</sup> M.T. Hilchot Ishut 12:4.

<sup>15</sup> M. Ketubot 5:9.

<sup>16</sup> M.T. Hilchot Ishut 21:1.

with the exception of spinning that is characterized as a "special" task of women.<sup>17</sup>

According to the examples in the Mishneh Torah, handiwork is quite literally that which a woman produces by hand, such as weaving or embroidery. In the Mishnah, housework is not expressly differentiated from handiwork, but what we might characterize as household duties does inspire a separate set of Mishneh Torah rulings. Tasks such as cooking, baking, washing, and caring for children and flocks are assigned to women during the "time that they [the family] are poor."<sup>18</sup> In better economic circumstances, this work is the legitimate responsibility of hired female servants. According to this description, every woman in her capacity as "house" wife must, however, perform duties with intimate, sexual overtones, such as preparing a husband's bed or washing his hands and feet.

It is forbidden in the Mishneh Torah for a wife to do work.<sup>19</sup> Although the law maintains that a wife work only in accordance

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<sup>17</sup> Ibid.

<sup>18</sup> M.T. Hilchot Ishut 21:5.

<sup>19</sup> Ibid 21:3.

with the economic standard of her husband, even a woman who has married well is required to occupy herself for, as stated in both the Mishnah and Mishneh Torah, the Rabbis believed that "idleness" led to "lewdness."<sup>20</sup>

The law recognizes that a woman may require a different level of sustenance based on a change in her physical condition. Motherhood, for the duration that the wife is nursing her child, is legislated as a special bodily phase. A husband must increase the amount and variety of foodstuffs, giving his wife products which are "good for milk" in quantities she "deserves."<sup>21</sup>

### Findings

Findings are another form of a woman's earnings.<sup>22</sup> It is a designation that must be understood literally as a reference for whatever a woman finds that is of value. Under the laws of the

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<sup>20</sup> M. Ketubot 5:5; and M.T. Hilchot Ishut 21:2.

<sup>21</sup> M.T. Hilchot Ishut 21:11.

<sup>22</sup> M. Ketubot 4:1 and 4:4.

ketubah, findings are automatically considered the husband's property.<sup>23</sup>

### Clothing

The second obligation Maimonides assigns to a husband is clothing. The Mishnah designates this requirement as a head covering, girdle and shoes worth fifty zuzim.<sup>24</sup> This amount is an annual cost and the clothing must be given at and appropriate to every season. The Mishneh Torah, aside from categorizing clothing as a precept from Torah, makes no comment on the nature or extent of this responsibility.

Yet clothing is not presumed as a frivolous matter. Dressing inappropriately constitutes a transgression of Jewish law<sup>25</sup> and is grounds for divorce without restitution for the wife. Jewish custom is equated with the custom of modesty<sup>26</sup> and is assigned to all

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<sup>23</sup> M.T. Hilchot Ishut 12:3 and 21:3.

<sup>24</sup> M. Ketubot 5:8.

<sup>25</sup> M.T. Hilchot Ishut 10:11.

<sup>26</sup> M.T. Hilchot Ishut 24:12; and B.T. Ketubot 72b.

"daughters of Israel."<sup>27</sup> Violation of this code of behavior is of equal gravity to all types of infractions and demands that a woman dress in certain manner while in public. A veil, sleeves, and covering for the hair, are basic wardrobe items within the confines of these requirements.

The regulations involving clothing do not relegate a woman to perpetual sobriety. A marriage can be invalidated if the bride is found to be under a vow which prohibits her from wearing "colorful" clothing.<sup>28</sup> This is only one of three vows which can nullify a union, all three involving what the Talmud explains as matters of "self denial."<sup>29</sup> A woman must make herself attractive so as not to shame her husband or evoke his feelings of repulsion.

The heading of clothing reappears in discussions pertaining to a moredet or "rebellious" wife.<sup>30</sup> According to these passages, a wife's clothing is at all times, even after it has been received and worn, quantified as the property of the husband. Items as basic and

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<sup>27</sup> Ibid.

<sup>28</sup> M.T. Hilchot Ishut 87:6; and B.T. Ketubot 50b.

<sup>29</sup> B.T. Ketubot 62b.

<sup>30</sup> M.T. Hilchot Ishut 14:8.



required as footwear or a scarf, though they clearly correspond to the husband's marital obligation, are treated as gifts and are to be returned in the case of a divorce predicated upon a wife's declaration of incompatibility. An exception is made for clothing which is very old,<sup>31</sup> the remnants of which the Mishnah claims do belong to a wife.<sup>32</sup> In the case of a moredet who seeks a divorce because she wishes to cause her husband pain, the old garments are only hers if she seizes them.<sup>33</sup>

Clothing, like handiwork, is subject to personal economics. A wife's ornamentation must reflect her husband's financial status. The court forces a man to purchase such luxury items of clothing as silk and embroidered garments for his wife's wardrobe if he is prosperous enough to afford it.<sup>34</sup>

### Sexual Duty

The last of the obligations from Torah, and the third on the

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<sup>31</sup> Ibid.

<sup>32</sup> M. Ketubot 5:8.

<sup>33</sup> M.T. Hilchot Ishut 14:13; and B.T. Ketubot 63a.

<sup>34</sup> M.T. Hilchot Ishut 14:13.

Mishneh Torah list, is a husband's sexual duty. According to the statement in Torah, a wife controls the sexual relationship between herself and her husband. Intercourse is described as "her" right<sup>35</sup> which shall not be diminished by her husband.

The Mishnah is exact in the guidelines it provides for the pattern of copulation.<sup>36</sup> A husband must have sexual intercourse with his wife at intervals which are commensurate with his occupation. Those jobs which require travel are given a more lenient schedule than those which put a husband in closer and more constant proximity to his wife.<sup>37</sup>

The Mishneh Torah examines the issue of sexual responsibility from the perspective of non-compliance. The code develops a category of violation which translates as "rebellion" and is used to specify a man or woman who has refused his or her spouse sexual intercourse. Although the law is applicable to both men and women, each gender has its own policy of retribution.

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<sup>35</sup> Exodus 21:10.

<sup>36</sup> M. Ketubot 5:6.

<sup>37</sup> Ibid.

According to the Mishneh Torah, a man who vows to refrain from sexual relations with his wife, a mored, and abides by this oath for more than seven days, must divorce her and pay all debts of marriage.<sup>38</sup> Even though the husband may be a sailor, whose obligation for intercourse is once every six months, maintaining a vow of abstinence for more than a week is tortuous for his wife and therefore "forbidden."<sup>39</sup> Furthermore, because sexual duty is prescribed by Torah, any reduction of conjugal rights is prohibited.<sup>40</sup> The Mishnah states that a mored is subject to fines of three dinar per week which are added to the value of his wife's wedding contract.<sup>41</sup> Lashes, the normative punishment for a transgression of Torah, are replaced by a monetary penalty because his is a passive offense, a violation via non-action.<sup>42</sup>

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<sup>38</sup> M.T. Hilchot Ishut 14:6; and B.T. Ketubot 61a.

<sup>39</sup> M.T. Hilchot Ishut 14:15; and B.T. Ketubot 70a and 71b.

<sup>40</sup> Ibid.

<sup>41</sup> M. Ketubot 5:7.

<sup>42</sup> M.T. Hilchot Ishut 14:15.

The Mishnah establishes a comparative system of compensation for a husband: a wife who rebels has her wedding contract reduced by at least seven dinar a week.<sup>43</sup> The Mishneh Torah, however, deciphers the situation more exactly. In this text, the procedure for a woman who refuses to have sexual intercourse with her husband, a moredet, is dependent upon the reasons for her defiance.

Following the law of the Mishneh Torah, initially a woman must be asked to state the reason for her refusal. The first category of rebellion is the woman who refrains from sexual relations because she claims that her husband repulses her. In this case, where physical incompatibility makes reconciliation impossible, a divorce is to be granted immediately. While the woman gains her freedom, the price is steep: the forfeiture of her wedding contract and all possessions, including such basic provisions as shoes, that became hers by virtue of her marriage. Whatever property she owned

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<sup>43</sup> M. Ketubot 5:7.

prior to betrothal is hers but her husband makes no restitution for any sale, use, or damage that may have occurred.<sup>44</sup>

The second case of rebellion involves the woman who has abstained from intercourse in order to cause her husband pain "because of something that he did to her."<sup>45</sup> In an effort to reunite the spouses, the law establishes a slow and lengthy course of action. The court first warns a woman that her actions may result in the loss of her wedding contract, her only sure sources of income in the advent of a divorce. Simultaneously, her actions are announced publicly for four continuous weeks. Should she remain resolute for this duration, her ketubah is declared void and her divorce document is withheld for twelve months. During this time she receives no food or other means of support.<sup>46</sup> This legislation applies to a woman who is married or engaged, whether she is sick or otherwise unfit for sexual relations.

After the twelve month period, before she leaves her husband's house, the moredet must return everything that she has which once

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<sup>44</sup> M.T. Hilchot Ishut 14:8.

<sup>45</sup> M.T. Hilchot Ishut 14:9.

<sup>46</sup> Ibid.

belonged to or was granted to her by her husband. If she manages to seize the property which she brought to her marriage she is allowed to keep it but should her husband take possession of these things before her, they belong to him. In these circumstances, a husband is not accountable for property losses.

#### Monetary Compensation

The fourth ketubah provision, and the first among the group attributed to mandates of the court, is monetary compensation.<sup>47</sup> This obligation establishes that money is to be paid by the husband in the event of a divorce as restitution for the damage done to the woman by the dissolution of her marriage. The basic sum guaranteed by the wedding contract is 200 zuzim, if at the time of the marriage the woman was a virgin, and one hundred zuzim or one maneh for a bride who was a widow.<sup>48</sup>

With chastity meriting the higher price, this payment schedule clearly values a woman according to her lack of sexual experience. Since virginity can in no way be recovered, a woman married for the

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<sup>47</sup> M.T. Hilchot Ishut 12:2.

<sup>48</sup> M. Ketubot 4:7.

second time is worth less. It can be expected that this devaluation extends to all other monetary settlements pertaining to marriage: a widow's dowry will be less than the price commanded by a bride-to-be who is a virgin. Therefore the damages a woman incurs at the time of a divorce are to her market price. She is compensated for this expected loss.

In hebrew, these monies are referred to as "the principle," for they represent only the minimal amount fixed by the ketubah. A husband may pledge additional amounts called tosefot but may not negotiate a reduction: anything less than the established rates is considered an act of prostitution and a violation of Torah.<sup>49</sup> Elsewhere in Mishneh Torah, the responsibility of monetary compensation is declared to be immutable, that is in the category of de-oraita.<sup>50</sup> Both these pronouncements conflict with the stated origins of this ordinance.

Indeed, the roots of this obligation are confusing and seem to account for the discrepancies in the rules of enforcement. This concept of compensation is first presented in Deuteronomy, chapter

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<sup>49</sup> M.T. Hilchot Ishut 12:8; and B.T. Kiddushin 19b.

<sup>50</sup> M.T. Hilchot Ishut 12:6.

22, verses 16 through 29. The text describes several circumstances in which a man who rapes a virgin is liable to the girl's father for the loss of her virginity. The fine levied against the perpetrator is dependent upon the specific conditions under which the event transpired, but the rapist is forced to remunerate for his actions. It is not until the Mishnah, however, that imbursement was absorbed into the body of marriage law. While it draws its theoretical basis from the Torah, the exact parameters of ketubah compensation are first established in the Mishnah.

Beginning with the Mishnah, the ketubah amounts are fixed. These figures, however, are not arbitrary and evolved only after a difficult history of experimentation and failure which is recorded in the Babylonian Talmud, Tractate Ketubot 82~~b~~ (see introductory section).

This section of text describes the problems inherent in requiring money in order to complete a legitimate proposal of marriage. The amount can be neither prohibitively high nor so low as to be devoid of significance. Additionally, the sum cannot be given only in the form of a written promissory. It was therefore ordained that the money would be deposited and held until such time as



needed. This however, permitted an easy and quick divorce. Finally, Rabbi Simeon bar Shetah insisted that husbands pledge their property. This was accepted and transmitted as law.<sup>51</sup>

### Healing

The fifth regulation assigned by the ketubah is the husband's obligation to finance his wife's recovery from illness. Healing is also stipulated in Mishnah,<sup>52</sup> but with an important and consequential caveat. a husband is entitled to decline this responsibility and instead divorce his wife, give her the amount of her wedding contract, and thereby force her to cover her own medical expenses. The Mishneh Torah softens this proposal by allowing a husband's refusal only if a wife's illness is prolonged and the cost of curing her will deplete his resources.<sup>53</sup> Yet, while this

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<sup>51</sup> M. Ketubot 4:7; and M.T. Hilchot Ishut 17:10.

<sup>52</sup> M. Ketubot 4:9.

<sup>53</sup> M.T. Hilchot Ishut 14:17.

is a legal procedure, the code declares such behavior as morally deficient "because of the requirements of proper conduct."<sup>54</sup>

### Ransom

Redemption is the next responsibility of a husband as assigned by the wedding contract. This ruling insists that when a wife is captured and held for ransom the husband is obliged to make the payment and recover her.<sup>55</sup> Yet, the outcome of this situation is not assured. The resolution of the marital relationship in the aftermath of an abduction is dependent upon various factors of wealth and personal standing.

A female who is kidnapped is presumed to have been the victim of rape unless there is evidence to the contrary. A married woman raped by either a Jew or Gentile has the status of a prostitute and is therefore subsequently forbidden to a Cohen.<sup>56</sup> If a captured woman's husband is a member of the Priestly caste, a divorce is automatic upon her release. Her spouse, however, remains

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<sup>54</sup> Ibid.

<sup>55</sup> M. Ketubot 4:9; and M.T. Hilchot Ishut 12:2.

<sup>56</sup> M.T. Hilchot Ishut 14:8.

responsible for her until she is safely transported to her home city.<sup>57</sup>

If the husband is a Levite or Israelite, the Mishnah insists that the woman be returned as his wife while the Mishneh Torah allows a husband the privilege of divorce if he has come to desire another woman in his wife's absence.<sup>58</sup>

This obligation does not require a husband to make financial sacrifices for the sake of his wife's freedom. The rule of capture is that every woman is assigned a value according to the fair market price of a female slave of a similar age.<sup>59</sup> A husband is not required to pay more than a wife's worth.

The value of a woman may appreciate if tosefot, or "additional sums," have been negotiated into her wedding contract. Under these circumstances a husband is obligated to this higher value and must pay it up to ten times the minimal ketubah amount even if payment results in his bankruptcy. He may not divorce his wife and thereby force her to redeem herself with the monies due to her in order to avoid his own financial ruin. The Mishneh Torah enforces this

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<sup>57</sup> M.T. Hilchot Ishut 14:8.

<sup>58</sup> M.T. Hilchot Ishut 14:8.

<sup>59</sup> M. Gittin 4:6; and B.T. Niddah 52a.

regulations only for the first capture. If a woman is captured more than once, a husband may pay off his monetary obligation to her and she is consequently forced to redeem herself.<sup>60</sup>

### Fruits of Property

In exchange for the responsibility of ransom, a husband is awarded the use and benefit of his wife's property for the duration of her life.<sup>61</sup> These "fruits"<sup>62</sup> are the interest or profits accrued from possessions which at the time of marriage are classified as melog.

Melog represents a category of goods which belong to the wife but which the husband can make use of without responsibility for their loss or deterioration. While the woman retains control for the sale and management of this property, her husband acquires all benefits of ownership.<sup>63</sup> If the couple should divorce or in the event

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<sup>60</sup> M.T. Hilchot Ishut 14:19.

<sup>61</sup> M. Ketubot 4:4; and M.T. Hilchot Ishut 12:4.

<sup>62</sup> M.T. Hilchot Ishut 12:3.

<sup>63</sup> M.T. Hilchot Ishut 22:7.

of the wife's death, a husband is exempt from restoring the original value of the melog property if by his use the value has depreciated.

### Burial

A husband's obligations to his marriage continues beyond the lifetime of his wife. Burial represents the first of the husband's post-mortem responsibilities.

According to the Mishneh Torah a woman "rises in status with her husband and does not descend even after her death."<sup>64</sup>

Consequently a woman's funeral must at least reflect the economic stature of her husband. The Mishnah stipulates that "even the poorest in Israel can have no less than two flutes and one wailing woman"<sup>65</sup> at the burial of his wife. Maimonides legislates these accompaniments as minimal. If a woman entered a marriage more prominent than her spouse, funeral provisions are made in accordance with her own standing.

### Inheritance

In return for the burial provision, a husband is appointed as his

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<sup>64</sup> M.T. Hilchot Ishut 14:23.

<sup>65</sup> M. Ketubot 4:4.

wife's sole beneficiary upon her death. The right of inheritance is first accorded to a husband in the Mishnah<sup>66</sup> but the idea of bequeathment appears in the Torah as a debate of the law of primogeniture.<sup>67</sup> The Biblical discussion impacts more directly on the last two stipulations of the wedding contract (see appropriate sections below), but the appearance of the category of inheritance in Torah forces the Rabbis to be stringent in all related legislation.

There is no agreement in the Mishnah concerning the flexibility of the inheritance statute. Rabbi Yehuda contends that a husband can relinquish his claims to his wife's estate, while Rabbi Simeon insists that no such stipulation is possible as it would be "contrary to Torah."<sup>68</sup> The Mishneh Torah restates the strictest position, asserting that all matters of inheritance are immune to stipulation<sup>69</sup> "in order to protect Torah,"<sup>70</sup> but provides room for

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<sup>66</sup> M. Ketubot 9:1.

<sup>67</sup> Numbers 27:6-11.

<sup>68</sup> M. Ketubot 9:1.

<sup>69</sup> M.T. Hilchot Ishut 12:6 and 23:7.

<sup>70</sup> M.T. Hilchot Ishut 12:9.

arbitration by adopting the Biblical injunction in its most literal form.

The passage in Numbers insists that inheritance is a familial right, an automatic privilege of a natural, genetic relationship. Husbands and wives are in fact not related until after a marriage is contracted and consummated. The Mishneh Torah therefore allows inheritance to be negotiated only before a wedding takes place, when the bride and groom are not yet considered kin.<sup>71</sup> Additionally, a husband is permitted to partially relinquish his right of inheritance: conditions may be made whereby he will only accept a piece of his wife's estate.<sup>72</sup> A husband can forego his entire privilege if the couple has no children and arrangements are made for the wife's property to be returned to her father's house.<sup>73</sup> This is legal because it fulfills the obligation from Torah.

Inheritance is not a reciprocal privilege. A woman has no

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<sup>71</sup> M.T. Hilchot Ishut 23:6.

<sup>72</sup> M.T. Hilchot Ishut 23:5.

<sup>73</sup> Ibid.

automatic claim to her husband's property at the time of his death. Consequently, Ketubah law provides for a wife in the event that her husband predeceases her.

### Widowhood

A husband's death disrupts the order of the entire family unit. The ketubah responds to this shift by adjusting the marital responsibilities.

Throughout widowhood a woman must be maintained by her husband's property and is allowed to remain in his home for the remainder of her lifetime.<sup>74</sup> This responsibility is assigned to the husband's appointed heirs and is acquired as a portion of the estate.

The Mishnah is divided about whether widowhood is an expendable obligation. Two different versions of the law are cited. The first ruling, practiced in Jérusalem and the Galilee, is a duplicate of the above Mishneh Torah legislation and unequivocally binds the heirs to this responsibility. The second formula, the custom of Judah, includes the provision that the heirs can conclude their duty by paying the widow the price of her wedding contract.

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<sup>74</sup> M.T. Hilchot Ishut 12:2.



Having acquired the ketubah amount, the widow is considered to be divorced and all marital obligations nullified.

The initial statute in Mishneh Torah has two parts, the first of which provides the widow sustenance and the second of which guarantees her housing. Although the obligation is stated unequivocally, Maimonides does adapt the Mishnaic variant in a reconsideration of the heir's responsibility to sustain a widow indefinitely. The second version stipulates that the husband's inheritors fulfill their obligation to sustenance when the woman has collected the amount equivalent to her wedding contract.<sup>75</sup> This emendation does not, however, effect a woman's right to remain in her husband's house: a widow's right to this shelter remains fixed.

A woman jeopardizes her rights as a widow by contesting the payment of her wedding contract. If she proceeds against her husband's heirs in court, because of a dispute, she forfeits her sustenance that the estate would otherwise be required to provide. Any disagreement of ketubah terms are therefore a loss that the woman must absorb. Furthermore, if a woman transacts her wedding

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<sup>75</sup> M.T. Hilchot Ishut 18:1.

contract for the purpose of sale or the acquisition of property, her conduct costs her.<sup>76</sup>

### Female Progeny

Ketubah law recognizes that marriage normally includes parenthood. Curiously, this aspect of married life receives legal attention only after the death of the husband.

The ninth provision of the wedding contract applies to female children born of the union. After their father dies, these daughters are fed from the property of his estate<sup>77</sup> until the day they become engaged or reach the age of maturity (see Chapter 2 for details).

Losing a parent guarantees a daughter a new degree of freedom: after her father dies she is allowed to keep her handiwork.<sup>78</sup> Unlike a wife's debt, the law does not bind a daughter's earnings in exchange for receiving food and shelter.

Sustenance is not a surprising responsibility. A father is legally obligated to feed his children from the time of their birth

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<sup>76</sup> Ibid; and B.T. Ketubot 97a.

<sup>77</sup> M.T. Hilchot Ishut 12:2.

<sup>78</sup> M.T. Hilchot Ishut 19:10.

according to the strength of his personal finances. A poor man discharges this duty on his child's sixth birthday. A man who is judged as wealthy must continue to sustain his children until they have reached the age of maturity.<sup>79</sup>

#### Male Progeny

The Mishnah insists that sibling privileges are accorded equally.<sup>80</sup> Just as sustenance is a post-mortem privilege for the daughters, sons are appointed as their father's natural heirs. In addition to receiving shares of the patriarchal estate, sons collect the amount of their mother's ketubah after her death.<sup>81</sup> A mother's remaining property may be designated as she wishes, to males or females, sons or daughters.

#### Conclusion

It is difficult to judge the equity of this distribution. Quantitatively, the law seems to favor women by burdening men

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<sup>79</sup> M.T. Hilchot Ishut 12:14; and B.T. Ketubot 65b.

<sup>80</sup> M. Ketubot 4:6.

<sup>81</sup> M.T. Hilchot Ishut 12:2; and B.T. Ketubot 52b.

with the greatest number of obligations. The quality of the responsibilities also seems disproportionate.

Men are forced to become perpetual caregivers. From marriage until death, a husband is constrained by fiscal and physical obligations. Personal and economic movements are dictated by his wife's mere presence.

The return for this assignment cannot be predicted. A wife may have no property, find nothing of value, and make no money above the amount needed to offset the expenditure for her sustenance. A husband could, in reality, derive no monetary benefit from his wedding. Finally, if a husband predeceases his wife, the privilege of inheritance loses all significance.

Financially a wife is permanently conscripted to her husband. In return for a husband's prolonged contribution to her livelihood, a wife relinquishes all independent means of support. In addition, after marriage, everything that constitutes her property is subject to her husband's interference and use. A husband does not, however, acquire ownership of his wife's holdings. Her things remain in her name for all of her life.

This limitation may seem inconsequential but it is more than a semantic concession. As long as a couple remains married, the husband may claim access to his wife's property. Yet, if a marriage is dissolved, under most conditions, a wife leaves with what is and always has been her's.

The sexual component of marriage is the domain of the wife. A husband must satisfy this obligation according to his spouse's desire and direction.

There is no hierarchy between sex and money. The welfare of a marriage depends equally on the satisfactory fulfillment of both components.

The object of the ketubah is not to subsume a woman and her identity but to achieve a middle ground in which each party assumes a fair share of the risk and the management. In this form, the ketubah seems to provide both the husband and the wife with credible amounts of security and privilege. Neither men nor women are completely autonomous nor all-together dependent. Marriage represents a compromise of goods and activities.

Sanctity is a more difficult quality to insure. Certainly the Rabbis made marriage a serious endeavor simply by complicating the

process. Love and attraction had to survive an extended period of negotiation and were forced into specific and tangible expressions. Furthermore, romance was subject to legal surveillance and enforcement. If nothing more, the prospect of marriage must have inspired an appropriate amount of fear.

We like to believe that all things which are deemed "holy" are made so by divine appointment. With the inception of the ketubah, marriage was circumscribed by a great deal of legislation but the union of a husband and wife has its fundamental roots in the acts of creation. Men and women were created in the image of God and so together or alone they continue to reflect this most sacred of origins. Ketubah law does not negate this beginning. The legal guidelines were inspired by a desire to preserve God's creatures in a manner which protected both their divinity and their humanity.

## CHAPTER TWO: PHYSICAL CONSIDERATIONS

### Introduction

The ketubah is an agreement between two parties, the bride and the groom. As with any other negotiated contract, it is designed to be equitable, benefiting and binding the signatories in a comparable manner. This balance can only be achieved if the resources of each side are measurable and analogous.

Marriage is a economic and a physical partnership, involving people as well as property. In our society, these dimensions are disparate to the point of exclusivity. Although it is normative for our courts to award financial settlements for physical damages, we recoil at the idea of assigning a body a price within the framework of marriage. In Jewish law, as early as the Torah, currency was the primary medium of exchange. Slaves were bought and sold, monetary reparations made for bodily harm and physical injury (See for example, Exodus 21:22 or 32). The ketubah continues this tradition of transaction and uses money as the instrument of negotiation for both the body and belongings.

Although it is a mutual transaction, the ketubah is negotiated according to the bride's value, a figure determined by a complete survey of her physical and familial assets. The terms of the wedding contract are, therefore, impacted by a woman's personal history. Each facet of the bride's life is assigned a value in order to determine the price of the marriage.

Marriage law does not limit a woman's physical identity to her personal form. A female's own flesh is transcended by broader associations. Geneology and social standing are as imperative to the judgment of a woman's worth as are her physical characteristics. The concept of forbidden marriages<sup>1</sup> is, for example, predicated on the idea that lineage is an affective trait bearing directly upon value of the individual family member.

In order to negotiate an equitable ketubah, the corporeal is translated into economic terms. Quantifying the body poses a particular challenge. Jewish law developed so that by the publication of the Mishneh Torah several different physical elements are assigned their own category of legislation. The two rubrics which will be examined below are "Defects" and "Age."

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<sup>1</sup> M. Kiddushin 4:1.



The decision to allow money primacy in both the physical and economic realms has provoked some stinging criticism of the wedding contract. It is also a decision that cannot be analyzed with any degree of accuracy. Seemingly, the lawmakers selected the most practical and normative system of transaction available to them. Making the body a commodity, placing sexuality within a economic context, was not designed to degrade women or men but to insure their well-being. The ketubah could have ignored the physical dimension of marriage altogether. Instead, it choose, to incorporate it as a central tenet of a proper union. In this way, the law could attempt to regulate the parameters of the physical relationship.

In legislating the body, the Rabbis may indeed have dealt with women unfairly. This however is not predestined because of the system of accounting they selected. The equity of the physical component of the ketubah can only be judged by examining the relevant legislation.

#### Defects

There is no descriptive model of the physically perfect wife,

but the law is explicit about attributes which permanently disqualify a woman from marriage.<sup>2</sup> The Talmud judges a woman's bodily viability by the same standards applied to a candidate for the Priesthood.<sup>3</sup> In addition, the Rabbis describe nine defects which are particular to the exclusion of females as wives. These include body odor, profuse sweating, a deep voice, having breasts which are larger than a woman's hands by a hand-breadth, having breasts which are a hand-breadth apart, a mole on the forehead, a scar from a dog's bite, and baldness.<sup>4</sup> Some of these are defects of birth, others acquired by injury or accident. The law does not differentiate. If a marriage is arranged and one of these deficiencies is subsequently discovered, the union is invalidated and the woman forfeits her wedding contract.<sup>5</sup> Furthermore, even if a woman is successfully treated for one of these blemishes, her

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<sup>2</sup> M.T. Hilchot Ishut 7:7.

<sup>3</sup> M. Bekhorot 7; and B.T. Ketubot 72b.

<sup>4</sup> Ibid.

<sup>5</sup> M.T. Hilchot Ishut 7:9; and B.T. Ketubot 75b.

marriage is invalidated.<sup>6</sup>

The law does, however, distinguish between apparent and concealed defects. A deformity is categorized according to the local customs which dictate the public appearance of women. In a community where the visibility of women is severely limited, physical flaws are considered concealed and a husband may contest the marriage on the grounds that he did not know of his bride's prior condition. If the future husband or any of his family had opportunities, because of the natural routine of the community, to see the bride before the wedding (For example, in city with a communal bath or one in which the dress code permits women to expose their faces<sup>7</sup>), her defects are considered to be apparent and the groom and his family are held accountable for this knowledge. In this case the marriage contract is assumed as an implicit acceptance of the woman's pre-existing condition.

The law has no such standards for potential husbands. The Mishneh Torah acknowledges that men may be physically afflicted but only a small number of conditions developed after marriage are

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<sup>6</sup> Ibid.

<sup>7</sup> M.T. Hilchot Ishut 25:2; and B.T. Ketubot 74a.

consequential to the feasibility of the union. A woman cannot leave and collect her wedding contract because of a "small" defect which afflicts her husband, such as the loss of a limb or blindness,<sup>8</sup> but "large" physical ailments, such as a smell in the mouth or nose, or the eruption of boils, can be the basis for a permitted or even forced divorce.<sup>9</sup>

The difference in the way a husband's infirmity is categorized seems to depend upon the physical affect it produces in the non-afflicted partner. The loss of a limb or an organ does not produce a smell or an odor that is overwhelming or inescapable. The legislators understood the power of the affective response and that certain non-rational reactions could never be overcome. The law does not try to force physical repulsion into acceptance, even when no defect is involved.<sup>10</sup>

Certain professions are labeled as defective and are granted as legitimate grounds for divorce. If a husband engages in work which

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<sup>8</sup> M. Ketubot 7:9; and M.T. Hilchot Ishut 25:11; and B.T. Ketubot 76a.

<sup>9</sup> Ibid; and M.T. Hilchot Ishut 25:12.

<sup>10</sup> M.T. Hilchot Ishut 14:8; and B.T. Ketubot 64.

is degrading, such as collecting dog excrement, or which is odious, such as tanning or mining copper, a wife may leave and receive the full amount of her ketubah.<sup>11</sup>

Blemishes which are not included among the Talmud's official list of feminine flaws are of a different category of law. As the Mishneh Torah states, any "other" defect, and a woman's marriage stands.<sup>12</sup>

Between the date of the engagement and the day of marriage, there is a time lapse. Since the wedding contract is a pre-nuptial agreement, it is possible that the bride or groom's bodily condition will have changed before the actual marriage ceremony. The law recognizes that defects are physical manifestations which may in fact develop during this span. Legislation pertaining to posteriori conditions is limited to women.

In the matter of a woman's physical condition, the law grants men both the power of accusation and the burden of proof. A husband may contest a marriage if at the time his wife enters his household he discovers that she is damaged. If the flaw is of a type

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<sup>11</sup> M.T. Hilchot Ishut 25:11.

<sup>12</sup> M.T. Hilchot Ishut 7:7.

that was certainly upon her at the time of the engagement (e.g. an extra finger), it is the bride's father who must prove that the defect was apparent and therefore known to the husband. If no evidence can be produced to support the father's claim, the marriage is declared invalid and the woman forfeits her wedding contract. If the blemish could have been acquired since the time of the engagement, the husband can bring proof that he married in error, that he is unaware of the condition. If a defect was discovered after the engagement but while the woman was still in residence with her father, her father must defend her condition. If he has evidence that the imperfection developed in his home but after the wedding plans were fixed, the husband must absorb the woman's condition.<sup>13</sup>

A husband can assure himself of his wife's physical condition by negotiating a conditional wedding contract. The document may stipulate the fitness of the woman at the actual time of the marriage but only against those infirmities that are found within the category of womanly defects. If the woman does not satisfy these provisions, no matter how the condition transpired, the

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<sup>13</sup> M.T. Hilchot Ishut 25:4.

marriage is not recognized and the woman receives no compensation.<sup>14</sup>

Sexual experience is considered as a separate form of a womanly defect.

The law clearly devalues female sexual experience. A woman is worth less if she has been previous married: that is, if she is no longer a virgin. This standard has its roots in Torah which insists that the only acceptable bride is a woman who has never had intercourse. A widow, a divorcee, and a prostitute are grouped together as forbidden.<sup>15</sup> Marrying a "used" woman is considered an act of profanation.

By the time of the Mishnah this stance was mitigated - women could at least remarry - but virginity remained the most highly valued status. The ketubah amount for a virgin was fixed at two hundred zuzim while a widow received one maneh.<sup>16</sup>

In negotiating a wedding contract, men's sexual experience is free from evaluation. Women are forced to accept the ultimate

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<sup>14</sup> M.T. Hilchot Ishut 7:7.

<sup>15</sup> Leviticus 21:7-15.

<sup>16</sup> M. Ketubot 5:1.

blame for a terminated marriage by accepting a loss to their personal worth and marital benefits.

Rape produces an exception to this statute. Forced intercourse is an act classified as a bodily injury which may be compensated by money.<sup>17</sup> This type of defloration is reparable and with the punishment of the perpetrator, a woman's condition is fixed so that she is able to regain the status of a virgin.<sup>18</sup>

In isolation, the laws pertaining to defects seem to particularly handicap women. There is a fixation with the proper bodily form of the female that is evident in both the quantity of the rulings and the stringency of the pronouncements. There is no evidence of any legal flexibility. For example, once a woman is ruled ineligible for marriage she is prohibited from marrying regardless of who may want to choose her as a wife despite her flaw. Furthermore, women who have prohibitive defects, even if they can "fix" themselves with medical help, are never considered free of

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<sup>17</sup> Deuteronomy 22:28-29.

<sup>18</sup> M. Ketubot 4:1.



their infirmities.<sup>19</sup> The prohibition is permanently binding.

The physical standards and legal judgments are not limited to a woman's outer form. The Rabbis are so obsessed with the purity of females that a woman's sexual condition is considered valid legal material. A woman's body is devalued because of the death of a spouse. Widowhood, a circumstance which is beyond her control, results in the decrease of her ketubah amount. Additionally, before the age of maturity, a female is guilty defacto if her first marriage ends in divorce: the monetary and legal consequences are hers alone.

There is no balance here. Men are not only exempt from premarital physical exams but any bodily harm they may inflict on potential brides is rectifiable. They may rape a woman and be exonerated by paying a fine to the father.

The principle players, even in so intimate an arena, are all men. The bride cannot defend her body from either accusation or examination. Neither can she protect her own physical interests. The groom and the father-in-law are responsible for assuring themselves of the bride's fitness.

In this portion of the ketubah negotiations the bride is the

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<sup>19</sup> M.T. Hilchot Ishut 7:9 and B.T. Ketubot 75.

commodity. Her personal and physical status are central to the determination of the monetary terms of the wedding contract. Yet, despite the economic context, women are not in the category of property. In fact, the legal scrutiny is greater for wives than for any ordinary piece of chattel.

### Age

The Mishnah develops a chronology of a woman's life. The system is progressive, with each level reflecting an expectation of the female's growth. This development is directly proportional to the allocation of legal rights. As a woman gets older she is granted more autonomy. Maturity is assumed to bring with it a physical and mental evolution deserving of greater legal independence. The following passage from Mishnah illustrates the Rabbinic view:

The Sages spoke in a parable about woman: She is like an unripe fig, or a ripening fig, or a fully ripe fig. 'An unripe fig' - while she is yet a child; and a 'ripening fig' - those are the days of her girlhood; and 'a fully ripe fig' - after she is past her girlhood, when her father no more has any rights over her.<sup>20</sup>

According to the Mishnah, a female passes through three distinct stages of life, each of which impact upon her marital rights

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<sup>20</sup> M. Niddah 5:7.

and privileges. Furthermore, her age determines the legal relationship she has to her male kin. Under Jewish law, a female's bonds to her father and her brothers change as she grows older

From the age of three years and one day a girl is identified as a k'tanah, or "minor." At twelve years a female becomes a na'arah, or "maiden," a category which she outgrows at the age of twelve years and six months. After this, a young woman is identified as a bogeret, literally translated "mature."

Before a female child attains the status of a minor, she is legally invisible. There is no term for this pre-k'tanah age group: by omission the law makes a strong statement of the inappropriateness of marriage at this stage. This aversion is fortified by a single piece of legislation applied to girls of this age. The Mishneh Torah prohibits any proposal of marriage which is sexually consummated before a girl's third birthday.<sup>21</sup>

As a minor, a female has little autonomy. According to the Mishnah, her father is entitled to control her and her "things,"<sup>22</sup> with the single exception being property the girl may have inherited from

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<sup>21</sup> M.T. Hilchot Ishut 3:11; and B.T. Niddah 44.

<sup>22</sup> M. Ketubot 4:4.

her mother.

While a minor, a daughter is economically and physically indebted to her father. Anything she earns or finds is automatically granted to her father and absorbed as part of his holdings.<sup>23</sup> The marriage of a minor daughter is granted as a basic paternal right. The father may determine whether a wedding proposal is effected by money, contract or sexual intercourse.<sup>24</sup> If a minor female is involved in a divorce, the settlement belongs to her father,<sup>25</sup> yet she herself is no longer his responsibility.

Marriage is affected by the physical transfer of the bride from the home of the father to the home of the husband.<sup>26</sup> This relocation marks a permanent change in the relationship between a father and his daughter of any age. Once a female has been married, even if she is a minor, the paternal obligations are forever terminated<sup>27</sup> and

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<sup>23</sup> Ibid.

<sup>24</sup> Ibid.

<sup>25</sup> Ibid; and M.T. Hilchot Ishut 10:11.

<sup>26</sup> M. Ketubot 4:5.

<sup>27</sup> M. Ketubot 2:4.

"she is never again her father's responsibility."<sup>28</sup> This personal freedom is not without its price: if the first marriage of a k'tanah or na'arah ends because of death or divorce the ketubah amount belongs to the father.<sup>29</sup> A woman may, therefore, find herself without a husband and without the monies to support herself. Once married, a woman may acquire certain benefits, but she also accepts the punitive damages if her marriage is terminated.

At twelve years and six months, as a bogeret, a female has complete control over herself and her wedding plans.<sup>30</sup> Neither her father nor her brothers can determine the course of her personal decisions. Her independence extends to her property, whether found, made, or inherited. Her things are hers alone.<sup>31</sup> What is not severed is the paternal obligation of sustenance. This can only be revoked by marriage.

The Codes declares that a father controls the marrying of his

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<sup>28</sup> M.T. Hilchot Ishut 3:12.

<sup>29</sup> M. Ketubot 4:2; and M.T. Hilchot Ishut 10:11.

<sup>30</sup> M.T. Hilchot Ishut 3:12.

<sup>31</sup> M.T. Hilchot Ishut 3:11.

daughter "from birth until maturity,"<sup>32</sup> but recommends that this right not be exercised until a girl is mature and therefore old enough to declare her own preference for a spouse.<sup>33</sup> This precaution is extended to male as well as female progeny. There is obvious concern for the longevity of the union. Consent serves as a small assurance of the compatibility of the partners.

Paternity is not a declaration of obligation. A father is limited in his responsibilities to his daughter. The benefits of the birth of a daughter are clearly in the father's favor. Ketubah law insists that female children must be sustained by the father's property, during his life and after his death, until these progeny are engaged to be married.<sup>34</sup> Although proper conduct dictates otherwise, this condition can only be enforced until the child is six (for a more complete explication of this stipulation see the sections on progeny in Chapter One). Certainly the period of this responsibility may be prolonged, yet, in most cases, it is a finite liability.

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<sup>32</sup> Ibid.

<sup>33</sup> M.T. Hilchot Ishut 3:19; and B.T. Kiddushin 41b.

<sup>34</sup> M.T. Hilchot Ishut 12:2.

In exchange for his role as procreator, a father is given exclusive rights to his daughter's economic, physical, and mental welfare.<sup>35</sup>

Brothers receive their privileges patrilineally. As the natural heirs of their father's property,<sup>36</sup> they automatically assume the obligations of the estate which may include their sisters' sustenance. Yet, the relationship between male and female siblings is not solely hierarchical. Brothers are not automatic successors to all the privileges enjoyed by their father.

With the death of the father, a woman earns certain economic freedoms. Her handiwork and findings are her own property<sup>37</sup>. Punitive damages, the sum of money awarded to a rape victim, which are paid after a father's death belong to the female and not her male siblings.<sup>38</sup> Although a woman may continue to rely on her father's estate for her sustenance, she is not indebted to the natural heirs. Her relationship with her brothers is not equivalent to her

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<sup>35</sup> M. Ketubot 4:4.

<sup>36</sup> M.T. Hilchot Ishut 12:2.

<sup>37</sup> M.T. Hilchot Ishut 19:10.

<sup>38</sup> M.T. Hilchot Na'arah 2:14.

relationship with her father.

There is a similar chronology which is applied to males. Both these systems strive to incorporate the realities of human development into the legislative process. There is a recognition that people are not equally accountable during all stages of their life; that age brings with it certain advanced capacities that effect the legal standards.

#### Conclusion

The stipulations outlined in the section titled "Defects" seem particularly incriminating. They reveal a preoccupation with the female physical form that goes far beyond the usual male interest.

Many of these physical evaluations are premarital, involving conditions which precede the actual arrangement of the wedding contract. The impact is therefore limited and says nothing of the length or quality of the marriage. Yet, this system of judgment does precondition the partners to a particular perspective. A husband cannot be expected to look beyond his wife's form if her body has produced the primary terms of the marriage.

The force of this physical obsession is somewhat mitigated by



the psychological insights displayed in the Rabbinic demarkation of a woman's lifespan. With this chronology, development is incorporated as an important and natural process with personal as well as legal repercussions. The Rabbis were willing to have the law feel the affect of normative human changes of both the body and the mind. They do not, however, let bodily considerations dominate. Although the divisions of age clearly have a physiological basis, the legal privileges are acknowledgement of mental and emotional maturity. Women are not merely objects but complete beings with subjective needs and capabilities.

### CHAPTER THREE: LEGAL DEVELOPMENT

#### Introduction

As stated in the introduction, this research was stimulated by a desire to understand the Rabbinic attitude toward women. Attitude is a difficult attribute to measure. In that Rabbis were primarily legislators, Jewish law stands as the best representation of Rabbinic belief and vision.

Jewish law is not stagnant. The Rabbinic judicial system was designed to evolve; in the halakhic method there is an inherent accommodation of development. Legal changes were pursued as a method of refinement. By examining an issue over time, it is therefore possible to accumulate evidence of both the legislative trends and long term judicial goals.

This thesis covers ketubah law through a period of more than one thousand years. In an attempt to discover the direction of legal motion, two different types of analysis can be made. The first involves a detailed chronological survey of laws which are directly applicable to women. This effort is made in order to isolate and

evaluate legal changes or modifications which impacted women's rights and living conditions. The information covers an extensive time period and so can be analyzed for both progressive and regressive elements. This method of research is suggestive only if the categories of the legal texts can be made to correspond.

The second mode of assessment responds to the shortcomings of the first method. While the chronology may be enlightening in terms of women, it says nothing of the general levels of justice being pursued by Jewish lawmakers. The halakhic system must also be surveyed holistically, in terms of its overall policies. Fairness can not be demanded for one gender if fairness is not a consistent legal aim.

This chapter is divided into two sections. The first outlines the official position of women under ketubah law, as promoted over two thousand years by mainstream Jewish legal texts. This looks at rights and privileges specifically as they have been accorded to females in marriage. The second section compares the treatment of husbands and wives within the framework of the wedding contract.

This survey can in no way be considered definitive. What we recover is only a written documentation of ideal circumstances. The

law may say little or nothing about the real conditions that existed. Women and men may have had options far beyond the confines of the law.

### Women and Marriage Law

The portrait of women which emerges from Torah is one dimensional. A wife is characterized by her physical needs. The responsibilities of marriage are satisfied by an ample amount of food, clothing, and sex.

These marital obligations are controlled by the female. Food, clothing, and sexual duty are described as responsibilities of the husband that belong to the wife. This assignment is permanent and it is forbidden for a husband to renege or reduce his burden and remain within the legal bounds of marriage.

In this early formulation, women established the tempo of their marital relationship in two important areas. Both the physical and the economic components of the union are subject to the wife's needs. According to the Torah, a woman does not relinquish control of either her body or her household to her husband. Under the law, a husband must work to satisfy the sexual and material standards

established by his spouse.

The Mishnah institutes a system of regulation. A husband continues in the role of the provider with his wife as the principle recipient of his efforts, but specific minimum levels of foodstuffs and household goods are established,<sup>1</sup> as well as a time schedule for sexual relations.<sup>2</sup> A woman's needs still have precedent but they must at least correspond to the legal standard.

The Mishnah's standards have no bearing on a woman's professional pursuits. The Mishnah asserts that a wife must do some work,<sup>3</sup> even if she allocates the majority of household duties to hired servants, but the kind and quantity are self-determined. No occupational sector is expressly prohibited to women as long as the basic requirements of the home are satisfied. The Mishnah specifically mentions women operating in the fields of business<sup>4</sup>

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<sup>1</sup> M. Ketubot 5:8-9.

<sup>2</sup> M. Ketubot 5:6.

<sup>3</sup> M. Ketubot 5:5.

<sup>4</sup> M. Ketubot 9:4.

and administration.<sup>5</sup>

In the time of the Mishnah, because a female was granted no independent means of acquisition at any stage of her life, the financial constraints of betrothal mirrored the circumstances of being single. Married or unmarried, a woman could not make or keep her own monies and so was consequently completely dependent upon her father or her husband for her upkeep and maintenance.

According to the developments of the Mishneh Torah, for some women marriage did involve a monetary sacrifice. Because in Maimonides' codex maturity brought with it the right to retain personal profit,<sup>6</sup> consenting to marry represented a loss of financial independence to any woman who was beyond the age of twelve and a half. Once grown, then, a woman would only pursue partnership for other than monetary reasons.

The Mishnah asserts that a husband acquires the absolute rights to his wife's belongings. While acknowledging this privilege, the Mishneh Torah protects a woman's assets by dividing her property into two categories. Melog represents those goods which a

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<sup>5</sup> M. Ketubot 9:6.

<sup>6</sup> M.T. Hilchot Ishut 12:3.

husband can use without restriction.<sup>7</sup> Anything labeled barzel, is the portion of a wife's property which, in the event of death or divorce, the husband must restore to their original condition.<sup>8</sup> There are no guidelines for the classification of assets. The division is the prerogative of the spouses and may reflect the wife's desire to preserve the integrity and value of certain pieces of her estate.

Whether classified as melog or barzel, a woman never relinquishes ownership of her holdings even though her husband may enjoy their benefit. A wife continues to hold and manage those possessions that were hers prior to the marriage.

Control of a woman's sexual experience becomes an obsession beginning with Torah. The fundamental requirement of a bride is virginity. Any other condition is labeled an abomination. Certainly women without intact hymens could marry but they were financially stigmatized by their sexually "impurity."

According to the Mishnah, womens' sexuality is a threat to the public and legal order. Unlawful acts perpetrated by women are

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<sup>7</sup> M.T. Hilchot Ishut 22:7.

<sup>8</sup> Ibid.

divided into two categories.<sup>9</sup> The first is called "transgressions of the law of Moses" and incorporates acts which are blatant violations of the written law. The second classification is "transgression of Jewish practice" and includes behaviors which, while not in violation of the legal code, trespass the boundaries of acceptable public conduct.<sup>10</sup> Among the transgressions of Jewish practice are behaviors - such as disheveled hair - which are deemed to connote wantonness or a lack of chastity.<sup>11</sup>

The Mishnah deems the transgressions of women to be infectious. Anything a woman touches may be tainted. Food must be tithed; a wife's body isolated and purified, before either is fit for a husband's consumption. If a woman is found to have contaminated her marital relationship - whether by laxity or intent - divorce is immediate.<sup>12</sup>

Maimonides insists that a wife can never designate her sexual

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<sup>9</sup> M. Ketubot 7:6.

<sup>10</sup> M. Ketubot 7:6.

<sup>11</sup> Ibid.

<sup>12</sup> M. Ketubot 7:6.



responsibilities.<sup>13</sup> Intimacy is the strict province of the married partners. The obligations of a spouse are explicitly differentiated from the type of attention and care that is given to a parent or a sibling to illustrate the exclusive nature of the marital relationship.

With the publication of the Mishneh Torah, control of a woman's physical activities is not limited to the evaluation of her sexual behavior. The law further restricts a woman's outward appearance, both in terms of acceptable garments<sup>14</sup> and acceptable physical looks. In public life, modesty becomes the watchword of women. A wife's movements and habits are restricted by local protocol. Bodily defects are solidified as a legal category only applicable to the marriageability of women.

The Mishnah introduces a developmental perspective of women by establishing the categories of k'tanah and na'arah. Similarly, marriage is considered an indication of personal responsibility; once married, a woman is permanently beyond her father's

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<sup>13</sup> M.T. Hilchot Ishut 21:3.

<sup>14</sup> M.T. Hilchot Ishut 24:12.

authority.<sup>15</sup> This view acknowledges the validity of emotional and physical needs as well as life experience. The Mishneh Torah further expands the influence of this type of legal reasoning. Bogeret is added as a descriptive and a woman's abilities and privileges are judged and apportioned according to her age. Puberty, Pregnancy, Motherhood: each is considered by Maimonides as a unique period of life which requires modification in legislation.

The Mishneh Torah develops a code which runs parallel to the specific legal requirements of marriage. Maimonides recognizes the gap between legislation and custom: the law is not inherently suited to all communities and locations. Propriety, conforming to what is understood as fitting behavior, assumes a significant position along side the formal legal text. Rights are mitigated by the force of proper conduct.

In the Mishnah, the decision to marry is a strict paternal privilege until a daughter reaches the age of maturity. The Mishneh Torah, while upholding this decision, insists that women should be

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<sup>15</sup> M. Ketubot 4:2.2

willing partners in any proposed marriage.<sup>16</sup> A father retains his legal right to assign her a spouse but the strong suggestion is against this authoritarianism.

The Mishnah presents the ketubah as a fixed series of conditions applicable to all marriages, under any circumstances. According to the Mishnen Torah the ketubah is a contract. It is an agreement established between two parties, each one upholding his or her own interests. Women are assigned an equal share of the bargaining, a responsibility which requires some personal adjustment.

In the final form, the wedding contract requires women to compromise. In exchange for a husband, females forfeit their own opportunities for financial gain and monetary independence. Yet, marriage does not constrain a woman in her personal and professional accomplishments. There is a lot of latitude in the functioning of a wife.

Ketubah law is most stringent in its physical restrictions. Yet, these strictures exist whether or not a woman is married. Females are handicapped by birth.

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<sup>16</sup> M.T. Hilchot Ishut 3:19.

### Husbands and Wives

The Torah exempts husbands from the physical constraints of monogamy. If, after marriage, a female engages in intercourse with someone other than her spouse she is prosecuted for adultery.<sup>17</sup> Yet adultery is not applicable to a man who has an extramarital affair. It is by definition a crime involving a married female.

If a man, married or unmarried, has sex with a single woman who is a virgin, the crime is rape and his punishment is marriage.<sup>18</sup> After paying a monetary fine, a rapist becomes a husband. A woman is forced to live with the man who violated her. A relationship predicated on violence is continued without the chance that the man or woman may escape a life together.

According to the talmudic version of events, the ketubah was instituted in order to insure the security of women. It was women's unwillingness to marry under precarious conditions that inspired a series of changes in the marital arrangements. This reticence encompassed both the economic and relational aspects of marriage:

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<sup>17</sup> Deuteronomy 22:22-24.

<sup>18</sup> Ibid.

women wanted insurance against their husbands' emotional whims and protection from a life of destitution. The wedding contract bound men to their wives while the women's commitment to the marriage was assumed.

The Mishnah's legal efforts are both expansive and restrictive. The details of the wedding contract are more fully explicated, yet there is a distinct shift in the locus of control.

The Mishnah asserts that wives are subject to the mastery of their husbands.<sup>19</sup> Men are granted sweeping marital liberties. For the first time a husband has rights which he may claim both during a wife's life and after her death.<sup>20</sup> Marriage itself represents a transfer of male power: the Mishnah asserts that a wedding is concluded when the female passes from her father's grip into the command of her husband.<sup>21</sup>

At face value, this statement negates any progressive element in ketubah law. Yet, upon examination, a husband's authority does have certain limitations. At best a husband's control may be defined

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<sup>19</sup> M. Ketubot 5:5.

<sup>20</sup> M. Ketubot 4:4.

<sup>21</sup> M. Ketubot 4:5.

as the right to intrude to some degree and in some but not all provinces of a woman's life.

Economically, a woman's premarital world is permanently off-limits to her husband's meddling. Anything she has done, acquired, or transacted prior to her marriage remains intact. Even after marriage her property is categorized so as to preserve certain holdings from a husband's misuse and maltreatment.

A husband's rights are carefully constrained by the threat of divorce. The Mishnah states that vows, restrictions, property, and earnings are the purview of the male partner. Yet, the law strives to insure that a husband does not abuse his privileges. The Mishnah states that a husband must fix a specific length of time for a restraint upon his wife and any prohibitions he places on his spouse cannot be excessive or painful.<sup>22</sup> A husband can never prevent his wife from the performance of a mitzvah. A wife's movements can only be restricted if her proposed activity places her in an uncompromising situation or among questionable company.<sup>23</sup>

In the Mishnah, the male partner has specific obligations while

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<sup>22</sup> M. Ketubot 7:1-5.

<sup>23</sup> M. Ketubot 7:5.

his spouse may select from a variety of work options whose total output is given a fixed monetary value.<sup>24</sup> A woman has the ability to design her role as a wife as long as she meets her quota of productivity.

According to the version of ketubah law described in the Mishnah, a wife is subject to the status of her husband.<sup>25</sup> The material circumstances of the marriage are made dependent upon the man's social and economic standing. The Mishneh Torah, however, prevents a descent by insisting that the position of a woman can never be lowered, only raised, by marriage.<sup>26</sup>

Chapter two of this thesis explores the system of physically evaluating women to determine their marriageability. As established in the Mishnah, women are the sole subjects of this investigation. Men do not have to comply to any similar standards. Furthermore, married women, except in particularly vile circumstances and where intercourse may exacerbate the husband's condition, are required to accept their husband's infirmities.

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<sup>24</sup> M. Ketubot 5:9.

<sup>25</sup> M. Ketubot 4:4 and 5:9.

<sup>26</sup> M.T. Hilchot Ishut 14:23.

It is important to understand that this category of legislation is nearly restricted to the premarital time period. Marriage is assumed as an implicit acceptance of a wife's physical features. If after the wedding a husband claims that he has been deceived about his wife's bodily condition, he must prove his own allegations.

By the publication of the Mishneh Torah, physical compatibility, not just bodily attractiveness, is recognized as vital to the viability of the union.

The Mishnah credits men with the stronger sexual drive by penalizing women for their husbands urges. Sexual rebellion, the refusal to have intercourse with a spouse, is more heavily punished when the wife resists<sup>27</sup> because abstinence is considered the greater burden to the male partner.

The ten ketubah obligations outlined in the Mishnah Torah grant both men and women irrevocable rights and privileges. Quantitatively, the law seems to burden men. The number of items assigned to husbands is not evenly matched by the corresponding benefits. More importantly, the quality of these responsibilities suggests a legal lopsidedness in favor of wives.

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<sup>27</sup> M. Ketubot 5:7.



Husbands are required to care for their wives perpetually. The return rewards are a series of benefits which in fact may never be collected. Inheritance is of no consequence if the wife is predeceased; property and findings may be either non-existent or non-profitable; a wife's handiwork is a financial "wash" since it need only be equal to a husband's output for food. Furthermore, while a husband may make use of his wife's property, he never gains its ownership until after her death.

Chapter Nine in Tractate Ketubot of the Mishnah begins with a series of formulas by which a husband can permanently relinquish some of his marital benefits. The text specifically mentions the rights to property "fruits," possessions, and inheritance.<sup>28</sup> In his reformulation of the wedding contract, Maimonides suggests that these privileges are quid pro quo; that is, linked to specific immutable responsibilities. Yet, as the Mishnah explains and the Mishneh Torah confirms, these associations are not absolute. The legal connection does not dictate the final domestic arrangement. A husband cannot renounce his ketubah obligations but, in negotiating

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<sup>28</sup> M. Ketubot 9:1.

the wedding contract, his rights to his wife's assets may be restricted.<sup>29</sup>

The ten basic principles of the wedding contract as outlined in the Mishneh Torah do not require a wife to make an annual monetary contribution to her marriage beyond the cost of her own upkeep. She is responsible for earning the value of her sustenance, nothing more. "Pressing herself" to produce larger earnings is an act of a wife's own volition.<sup>30</sup>

As described by Maimonides, the ketubah assigns men specific obligations. Women have few proactive responsibilities, little they must do on a regular basis to preserve their marital relationship. Although women relinquish their material gains, by the writing of the Mishneh Torah their actions are not circumscribed by any specific obligation other than the directive that they not be completely idle.<sup>31</sup>

The ideal Jewish marital relationship might be described as a dynamic hierarchy. Obligations are mitigated by benefits;

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<sup>29</sup> M.T. Hilchot Ishut 23: 2.

<sup>30</sup> M.T. Hilchot Ishut 5:2.

<sup>31</sup> M.T. Hilchot Ishut 21:2.

privileges are modified by responsibilities. The primacy of one spouse is continually contested by the negotiated rights of the other. Ultimately, both the burden and the advantage of the marriage are shared.

### Conclusion

There are no legal fireworks. The law does not evolve rapidly or dramatically. Instead it seems to make a concerted progress towards fairness and equity. Where ketubah law fails, it is the direct result of centuries of misapprehension and paranoia. Clearly the (male) Rabbis had a tremendous fear and ignorance of women's sexuality. Their own insecurity allowed suspicion to flourish into legislation.

Ketubah law severely limits a woman's right to publicly express her own gender. It is easy to view this category of legislation as oppressive. Yet, such a designation suggests a misuse of power and authority. This would require proof that the Rabbis instituted a conscious policy of cruelty. It is difficult to justify such a stance in light of the broad efforts made to include women. The very creation of a wedding contract contradicts this indictment

Jewish law strives to recognize women as full beings with both physical and material interests.

In the realm of sexuality, Jewish law is accused of being invasive. If legislation pertaining to marriage were restricted to the public domain, a husband and wife would only represent an economic partnership. Legislating intimacy may be controversial, but it does at least acknowledge a critical component of married life.

Ketubah law insists that marriage involves real obligations, not just professions of ardor and caring. A couple is forced to remit their promises to paper. Love is demonstrated practically, in terms of goods and services of the edible and physical varieties. Neither the husband or the wife can deny their responsibilities without jeopardizing the legal basis of the marriage.

A ketubah is not effective unless it is agreed to by two parties. The wedding contract is a written expression of a negotiated agreement. While parameters do exist, each couple must shape the wedding contract categories according to their own specifications. No obligation or privilege is unalterable.

The primary goal of ketubah law is the preservation of the

marriage. For example, the laws of the moredet are attenuated to allow the rebel time to rethink her intransigence. The more severe punishment is preceded by a series of warnings.

Although the wedding contract provides women with a multitude of benefits, the security of the system is still, even in its final form, dependent upon the attitude and behavior of men. Fathers and husbands are the predominant players and so they retain the power of abuse.

## CONCLUSION

In our society, dependency is a dirty word. A person's or institution's attitude towards women is often judged by how much freedom is allocated. Marriage involves a commitment to another human being. By definition, becoming a spouse constrains personal liberties.

Ketubah law does not require that either party sacrifice their best assets, only that the husband and wife contribute towards a satisfactory median. Males do gain control of certain spheres. Yet, any advantage is always in some way limited. Jewish law establishes a careful balance of power: no one gender is allowed to dominate any sector completely.

The one legal area without a suitable counterpart is a woman's body. Justice does not require the suppression of difference. Yet, the Rabbis discriminate between male and female anatomy to the point of distortion. Physically and sexually, women are unfairly encumbered by a male heritage of insecurity and ignorance.

This grievous shortcoming does not invalidate ketubah law in its entirety. The wedding contract remains a critical document

because it places marriage in both a human and a holy context. As law, the wedding arrangements are elevated from the ordinary to the extraordinary. This thesis has traced a history of change and development. Jewish law is not over yet. If contemporary Jews find fault with their legal tradition it is their responsibility to force a transformation.

## APPENDIX OF SELECTED TEXTS













דבילה: ואם אין לו - פוסק לעסקן פרות במקום אחר. ונתן לה מטה, כסף, ומחצלת, ונתן לה כפה לראשה, וחגור לקמנתה, ונעליים כנעניי לפרעה, וכלים שלהמישי וזו מקנה לשנה, ואין נתן לה, לא חדשים בנמות החמה, ולא שחקים ביכרת הנשים, אלא נתן לה כלים שלהמישי וזו בנמות הנשים, והיא מתכסה בבקאותיהן בימות החמה, ונתתקים שלה.

ט נתן לה קעה כסף לצרכה, ואכלת עמו מליל שבת לליל שבת. ואם אינו נתן לה קעה כסף לצרכה, מעשה ידיה שלה. ומה היא עושה לו? משקל חמש סלעים שתי בהמה, שתי עשר סלעים בגליל; או משקל עשר סלעים ערב בהמה, שתי עשרים סלעים בגליל. ואם היתה מעקה, פותחים לה ממעשה ידיה, ומספיין לה על מונתיה. במה דברים אמורים? בעני שבשאריל, אכל במכבד - הפל לפי כבודו.

כ מנה - משקל פאה דנה, שהוא קרוב לארבע מאות גראם. כל דבילה - מאים דרובות ומרובות. כל ואם אין לו - גרוגרת או דבילה. כל פוסק לעסקן וכו' - קוצץ לה כנגד שירות אחרים המצויים ביהו. כל מפין - מפין ר' של גמא (כיצוד בה) כל ומחלילת - גומא אחר: ואם אין לו כסף נתן לה מחלילת. כל כנעני לפרעה - פרס לגל, בשלושה דגלים. כל וכלים וכו' - בגדים בשווי של חמישים דינר. כל לא חדשים וכו' - לא בגדים חדשים, שמתקנים הרבה. כל שחקים - בגדים שנישחקו, כל כלים - חדשים. כל בכלאותיהן - כללים שנתבולו (ועי' ירמיה לז, יא), והשחקים שלהם - כשנתן לה בגדים חדשים שנתבולו. אין היא מחזירה לו את השחקים, נתן לה - כל שבע. כל מעה כסף - שישות הדנה. כל לצרכה - להוצאות קטנות. כל ואכלת עמו וכו' - שהוא חייב לאכול עמו בכל ליל שבת. כל משקל וכו' - היא טוה בעצמו את החמישים הדיקים של האור במשקל משה סלעים, והפל הוא ארבעה דינרים. כל בגליל - שהמשקלות שהיו נהגים בהן היו כמליים כשל גליל. כל עשר סלעים ערב - חושי הרחוב, שהם בגדים טובים סוויים מנצח משל שתי. כל פותחים לה כנעניי ידיה - שאין היא צריכה לעשות את המעשה הדגום. כל על מונתיה - על הישעור הדגום בעמדה. כל במה דברים אמורים - שאין נהגים לה אלא הישעורים הקצרים לעלה.

הפועלים - שבת אחת, חטונה תאמורת בתורה: תשקילין - בקלילים: הפועלים - שהם בשבת: התפירים - אחת בשבת: תפירים - אחת לשלשים יום: תפירים - אחת לששה חודשים: דברי רבי אילעזר.

ז המורדת על בעלה, פותחין לה מתקנתה שבעה דגין בשבת. רבי יהודה אמר: שבעה סרפסקין. עד מתי הוא פותח עד כנגד כתבתה. רבי יוסי אמר: לעולם הוא פותח וחולף, שפא תפל לה ר' רשה במקום אחר, וכו'. ור' זענא וכן המורד על אשתו, מוסיפין לה על מתקנתה שלשה דגין בשבת. רבי יהודה אמר: שלשה סרפסקין.

ח המפשרת את אשתו על ידי שליש, לא נפחת לה משני קבין חטין, או מארבעה קבין שעורים. אמר רבי יוסי: לא פסק לה שעורים אלא רבי ישמעאל, שהיה סמוך לאדום. ונתן לה חצי קב קטנית, וחצי לג שקין, וקב גרוגרת, או קנה

שרשאים לשהות שם שלושים יום בלבד. כל המעלים - שמלאכתם בעיר אחר יוצאים לשם שלא כרשות נשים. כל שבת אחת - ושהים שם שבעה אחר לבלב. כל העונה וכו' - עונה הביאה אל אשה, הכתובה בשבת כ"א, וזונה לא יגע. כל חטילין - חולכי כסל. כל החמרים - המוליכים סחורה בחמיריהם למקומות המוכרים. כל המללים - המולכים עם גמלים למקומות רחוקים. כל המספים - המפשיים לים.

ט המורדת על בעלה - שהיא מוכרת לעשות את חובתה שהוא חייב להעלה. כל סרפסקין - מרשעין הוא חצי דינר. כל עד כנגד כתובתה - וכשחט את כולה, גרשה ונצא בלא כתובה, אבל אינו משהה אותה כדי לשחות לה מכנסת שיהא, העומדים ברישותה. כל לעולם הוא פותח וכו' - שאינו מגרשה והוא פותח לה אסילי מן הנכסות שנפלו לה לאחר שמרדה. כל המורד על אשתו - שהוא מסרב לעשות את חובתו שהוא חייב לאשתו.

י המשרה - המאכיל, כלומר המספיק. כל שליש - פונם, ואין תכלה אכל עמו. כל לא נפחת לה - לכל שבע. כל משני קבין - הקב הוא שישית חסא, כדי ביצים, שהן כשני ליטרים. כל לא פסק לה שעורים - לא קצץ לה שעורים ונבבלי ממשרה, שאם פסק לה שעורים כמליים בחיטים. כל שהיה סמוך לאדום - לאצין אדום (והדום שבידוהו), שיש היו רגילים לאכל שעורים (ועי' ספחים ג', א, וספ' ב', א, ובבלי ספחים ג', ב), ולפי מידה הנבלי: ששם המעורר דעת ביהוה. כל לוג - רביעית הקב. כל גרוגרת - מאים גרשות.











מִשְׁלַל לְמִשְׁלַל מִשְׁלַל – אִמָּה מִי מִשְׁלַל מִי אִמָּה  
לְמִשְׁלַל מִי אִמָּה לְמִשְׁלַל מִי אִמָּה לְמִשְׁלַל מִי אִמָּה  
לְמִשְׁלַל מִי אִמָּה לְמִשְׁלַל מִי אִמָּה לְמִשְׁלַל מִי אִמָּה

בדקלים כחבת אמן ואין שם אלא שתי כחבות - חולקין בשות. הנה שם מתור דרך - אלא נחלקין כחבת אמן. ואילו נחלקין כחבת אמן. אם אמרו היתומים: 'אנחנו מעלים על נכסי אבינו הנה דורנו', כדי שישלנו כחבת אמן - אין מקומין לזה. אלא שפירא את היתומים בבית דין.

וְהָיָה שֶׁנִּסְמָךְ בְּרֹאשׁוֹ, אֵיךְ כְּבֹדָתוֹ, רַבִּי שְׁמַעוֹן אֹמֵר: 4  
עַד אֲפֹלָר, שֶׁ שָׁם נִכְסִים שֶׁאֵין לָהֶם אֲחֵרִית - אֵיךְ כְּלָם, עַד  
שִׁדְרֵי שֶׁם וְנִכְסֵי שֶׁשֶׁלָּהֶן אֲחֵרִית וְיִתְעַלְעֵל שִׁדְרֵי הַכִּתְּבוֹת דִּיקָר.

הראשונה — זו שהתחבה נהמה ראשונה. ׀ קדמה לשנה — נהמית  
נהמה: ׀ יורשע הראשונה וכו' — אם מה ניש אחר קום שמשפיק  
למה נהמה: ׀ נהמה — נהמה שהפעל יורשע. ׀ נשא את השנה — לאחר  
שנת הראשונה. ׀ השנה ויורשע וכו' — שהשנה היא בעצמה חובה שראש  
באה למה נהמה: ׀ שנה שנה ׀, ואילו יורשע בעצמה באה לרשע  
נהמה בנין ריבוי: ׀, הנהב קום יורשע. למה שרשעם לשנת חוללה  
הורשעה: ׀ בפקדים נהמה אלו — ונהב ׀ אתה בפקדים לתן וכו' אם  
נהמה אפי, מה נהא נהמה בנין ריבוי: ׀, לא חילקו את הנשים בהשוע  
משני המנהגים נהמה בנין ריבוי. ונהב שהנהב אפי נהמה אפי נהמה, נהמה.  
׀ ואן ׀ — בירשע אפי. ׀ אא שני נהמה — אא שני שיעור שני  
יורשע שיהא בנין הנהמה או שהשני עוד יורשע ונפאט עקר שנות  
לחילוק בשנה — ואן הנהמה נפלים נהמה בנין  
לחילוק. ׀ מהלך דינך — דינ יתן על דינ שני הנהמה, ושהנהמה בנין  
הנהמה חלוקים שנות יורשע. ׀ אנהל מללים וכו' — הנהי לקוחם אפי  
כפי אפי אנהל שפוסים וכו' וכו' על שפוסים. והם אפריים כד, כדי שישפיק  
נין לירשע וינהל לישל נהמה אפי.

אזרחים ו. יצחק בברוקמן — אינם נחשבים כאילו הם עובדים בדם וזאת מאן כבוד שראוי לפעול להם יחסים מאד אכזריים אז שיהיה פהו אכזריים כליו בדין, ודאיים ועומדים לנאם בראי — נכסים בראי —

[illegible]

אטיסיוטא כחיי ולא ססרה מן שמעון חולק על ההלכה שבמסיוות ד'ה'.

[illegible]













ת' כעז ולא מקרה אלא שהתה עד שבא, הוא אומר: הנחת  
והיא אומרת: לא הנחת אלא ליתי מזה ונתפרנסתי יי' — נשבע  
שבועת הסת' יי' שהניח לה ונפטר, וישאר החוב עליה יי'.

כב מקרה משלטין ואמרה: למזונות מכרתי, והוא טוען ואומר:  
מזונותיך הנחתי — נשבעת שבועת הסת' שלא תניח יי'.  
הרי שלא תבעה יי' ולא לותה ולא מקרה, אלא דחקה עצמה ביום  
ובלילה וצשתה ואכלה — אין לה כלום יי'.

כג המדיר את-אשתו מלהנות יי' לו, בין שפרש עד זמן פלוני  
בין שלא פרש אלא סתם — ממתינין לו שלשים יום. אם  
תמו ימי נדרו יי', או שלא תמו יי' והתיר נדרו — הרי זה מוטב:  
ואם לאו — יוציא ויתן כתובה יי' ובאותם השלשים יום תהיה היא

[צ] (משנה בכתובות קה): "חנן אומר תשבע בסוף" ומפרש רבינו: בסוף —  
כשיבוא הבעל לטעון כנגדה: "הנחתי לך מזונות". ודין שבועת המשנה בנקיטת  
ספץ (מגיד משנה). [צא] כאן היא תובעת שישלם חובה והוא כופר בכל. [צב] כדין  
כופר בכל שפטור משבועה מן התורה אלא שחכמי הגמרא תקנו שישבע, ואינה  
בנקיטת ספץ כמבואר בהל' טוען ונטען פ"א, ג. ובהל' שבועות פ"א, יג. היסת —  
לשון שימה ששמו חכמים עליו שבועה כמו (שמואל"א כו. יט): "אם ה' הסיתך  
ביי' (רש"י לשבועות מ' י): וראה ברש"י לאלפסי ב"מ פ"א: "שהשיאו חכמים לכך  
להסיתו להודות". וגאון פירש היסת כטי"ת, לשון כבידות שהכבידו עליו להשבע  
(הערוך ערך הסת). [צג] וכשתשיג ידה תשלם למלואה. והמקור לדברי רבינו הבריייתא  
בכתובות קו. "ואם בא ואמר פסקתי לה מזונות נאמן" ומפרש רבנו נאמן בשבועת  
היסת. במקרה שלותה ורוצה להפקיע ממנו (מגיד משנה). [צד] הואיל והיתה יכולה  
להבריא את המטלטלים ולומר אין לך בידי כלום, שנאמר וכיוצא בזה, ואז היתה  
פטורה משבועת המשנה, שהרי היא "כופרת בכל" — אף כשטוענת מכרתים למזונות  
אינה נשבעת בנקיטת ספץ אלא "שבועת היסת" בעלמא. [צה] מזונות על ידי בית  
דין. [צו] כדברי הבריייתא עפ"י גירסת רבינו: "מי שהלך למדינת הים ואשתו  
תובעת מזונות ואמר הוציאו לה מעשה ידיה במזונותיה רשאי" וסובר רבינו: אחר  
חזרתה — אשתו תובעת מזונות — שכבר אכלה על ידי מעשה ידיה שדחקה עצמה.  
רשאי הבעל לומר יצאו מעשי ידיה במזונותיה ואין לה כלום עליו, ומובן שאם  
עשתה והותירה הכל שלה, הואיל ולא העלה לה מזונותיה, אכתה במעשי ידיה  
(רמב"ן). [צז] מממנו וממנסי. [צח] שלא הדירה יותר משלשים יום. [צט] שהדירה  
יותר משלשים יום. [ק] (כתובות ע'): עד שלשים יום לא שמעו אנשים על כך  
ואין זה בויהו ובשבילה — יותר משלשים כבר נודע הדבר ברבים והיא מתבזה מזה  
הדבר. ומה שכתבנו לעיל ב"מ פ"א הל' טז. "אם לא שמעו אנשים על כך" — יסע

עושה ואוכלת ויהיה אחד מחבריו מפרנס אותה יי' דברים שהיא  
צריכה להם יתר על מעשה ידיה. אם אין מעשה ידיה מספיקין לכל.  
כד המדיר את-אשתו שלא תטעם אחד מכל-הפרות יי' —  
ממתינין לו עד שלשים יום; יתר על כן — יוציא ויתן  
כתובה יי'. אפלו הדירה שלא תאכל מאכל רע, אפלו הדירה ממין  
שלא אכלה אותו מימיה — יוציא אחר ל' יום ויתן כתובה יי'.  
נדירה היא שלא תאכל אחד מכל-הפרות וקים לה הוא את-  
נדירה יי'. או נדירה בגזיר ש' ולא הפר לה, — אם רצה יי' שפושט  
תחתיו ולא תאכל פרות או תהיה נזירה, תשב; ואם אפר: איני  
רוצה באשה נדרנית — יוציא ויתן כתובה, שהרי היה בידו להפר  
והוא קים לה כרצונה יי'.

### פרק שלשה עשר

א כמה הקסור שהיא חייב לתן לה? בגדים של חמשים זוז  
משנה לשנה ממטבע אותם הימים שנמצאו החמשים ששה

קונמות — זהו נדר שאומר איסור על עצמו איזה דבר כהקדש, — "קונם" כגון  
לקרבן הוא כלשון עלנים, וכל הקדש שאינו לכל אלא על אדם אחד נקרא "קונם"  
ומתוך שנדר זה אינו ניתן לפדיון כשאר קדושת דמים, אלא אסור הוא על האדם  
המודר כקדושת מזבח שהיא קדושת הגוף שאין לה פדיון. הוא חמור ביותר שמפקיע  
מידי שעבוד, ולפיכך חל הנדר לאסור את אשתו מליהנות מממנו (ר"ן לכתובות  
פ"ו). [קא] ואין הוא נקרא שלוחו של הבעל המדיר, כיון שהבעל לא אמר לו לפרנסה,  
אלא הודיע ברכים: "כל הון אינו מטעיר" (כתובות ע'). והל' נדרים פ"ו, ה"ב.  
[קב] שאסר הנאת ממנו עליה אם תטעם מין פירות פלוני, אבל אם אמר לה הריני  
אוסר עליך מין פלוני לא אמר כלום, כי אין אדם יכול לאסור על חברו אכילת  
פירות שאינם שלו (מגיד משנה). [קג] אם לא התיר נדרו. [קד] כתובות עא. לדעת  
שמואל. [קה] שהחריש ביום שמעו הנדר, ולא הפרה וממילא הנדר קיים מלשון  
הכתוב (במדבר ל' ח): "ושמע אישה ביום שמעו והחריש לה וקמו נדריה".  
[קו] שאמרה הריני נזירה. [קז] הבעל. [קח] לפיכך עליו לתת כתובתה כלשון הגמרא  
(כתובות עא): "הוא נתן אצבע בין שניה" להנשך, ועל כרחו ישלם לה כתובתה. בדין  
זה לא הוכרז רביט על המתנת שלשים יום, הואיל וקיים לה ברצונה אין לצפות שומר  
נדרה כי אינו רשאי ואינו חייב לכך, ולפיכך ביום חציו למעשה נדרה — יכיר  
אם יצא נדרה בלילה בדינה (שם) אלא מדריך הדיו כי ליל מונות ונדרים נעשו  
ביום למעשה אפילו אם יצא נדרה למעשה, כפינו אומרים: "הואיל ולא חסר פה נדרה"



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