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Ha-Ezer An Annotated Translation"

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## DIGEST

This thesis, which reflects the author's interest in the laws of Jewish divorce, was written to present those cases for which the Rabbis of our tradition decreed that divorce should be mandatory. To that end it was felt that such an undertaking would best be served if a translation were prepared of those sections, concerning divorce, in the Shulhan Aruk for which no translation into English presently exists. Thus, the following sections of Shulhan Aruk, Eben ha-Ezer have been chosen for this thesis: paragraph five of chapter seventy-three, chapters seventy-four and seventy-five in their entireties, paragraphs eleven through thirteen of chapter seventy-six, and all of chapters one hundred fifteen and one hundred seventeen.

In order to maintain faithfulness to the original text the translation is as literal as an understanding of the text will allow. Thus, for example, all material which appears, in the text, in round brackets also appears in round brackets in the translation. Words added to the translation for purposes of clarification but which do not appear in the original text, appear in square brackets.

The translation has been annotated in the footnotes which follow as a means of clearing up and accounting for possible textual emendations, discrepancies, and ambiguities. As well, all quotations which appear in the text from other sources and all Rabbinic authorities mentioned in the text

are cited in the footnotes to provide a clearer understanding of the language and history of the material presented.

The thesis is divided into two major sections: the first section presents the translation of all the textual material and the second section contains the footnotes or annotations for the entire translation.

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### CHAPTER SEVENTY-THREE

A man is obligated to provide his wife with clothing, a dwelling place, and the vessels for a household; in nine paragraphs.

5. If he is unable to provide for her even as much as the poorest Jew would do then he may be compelled to divorce her. (The Ketubah<sup>1</sup> is binding on him until he becomes wealthy.<sup>2</sup>) (See above: Chapter seventy, paragraph three.)

CHAPTER SEVENTY-FOUR

Concerning a man who prohibits his wife several things by making a vow<sup>1</sup>; in twelve paragraphs.

1. If he vowed that she<sup>2</sup> should not adorn herself and connected this with intercourse, namely, he said: "I vow that the pleasure of your intercourse shall be forbidden to me if you adorn yourself." She may adorn herself immediately and then she shall be forbidden to have intercourse. He can keep her for seven days then he divorces her and gives her the Ketubah. There are those who say that in a case where he vowed that she should not adorn herself in poverty<sup>3</sup> for one year he should keep her but longer than that<sup>4</sup> he should have his vow annulled or divorce her and give her the Ketubah. If he makes the vow when they are rich then he should keep her for thirty days but [if he made the vow for] longer than that time<sup>5</sup> then he should have his vow annulled<sup>6</sup> or divorce her and give her the Ketubah.

2. If she makes a vow that she will not adorn herself, or she says: "I vow that your<sup>7</sup> intercourse shall be forbidden to me if I adorn myself," if he hears<sup>8</sup> her but does not void her vow then he should divorce her and give her the Ketubah. (See also further legal differences concerning these laws in Yoreh De'ah,<sup>9</sup> chapter two hundred thirty-five.)

3. If the husband forbade the utensils of his neighbors for himself<sup>10</sup> or his own vessels to his neighbors lest she

lend them or borrow from them. Or if she said: "I vow that your intercourse shall be forbidden to me if I borrow vessels from my neighbors or if I lend my vessels to them."<sup>11</sup> If he hears it and he confirms it<sup>12</sup> then he should divorce her immediately and give her the Ketubah. But if he says: "I vow that your intercourse shall be forbidden to me if you borrow vessels from them<sup>13</sup> or if you lend them"<sup>14</sup> you do not say to her that she shall not borrow from them and not lend them. Then, behold, she becomes prohibited<sup>15</sup> immediately and he should divorce her after seven days and give her the Ketubah. If she forbids the vessels of her neighbors to herself by a vow so that she will not borrow them or if she forbids<sup>16</sup> the vessels of her husband to herself, that she not be able to lend them<sup>17</sup> so that they<sup>18</sup> should not be grateful to them,<sup>19</sup> or she vows that she will not weave fine clothes for his children, he may not void it<sup>20</sup> for this is not a matter between husband and wife.<sup>21</sup> Then she is forbidden to weave, to borrow, and to lend vessels and he may then divorce her without the Ketubah<sup>22</sup> because she will bring him a bad name in the eyes of his neighbors.

4. In the case where she vows that she will not go to her father's house and she made this dependent on intercourse, namely, she said: "I vow that your intercourse shall be forbidden to me if I go to my father's house." While she had not made it dependent on intercourse but

rather would only have said: "I vow that my father's house shall be forbidden to me," then he could not have voided her vow, however, here, because she made it dependent on intercourse, he may void her vow.<sup>23</sup> But since he heard the vow<sup>24</sup> and did not void it, he should divorce her immediately and give her the Ketubah. If he says: "I vow that your intercourse shall be forbidden to me if you go to your father's house for longer than a month" if he<sup>25</sup> lives with her in the city, Or more than a festival<sup>26</sup> if he lives with her in another city,<sup>27</sup> then he can keep her for seven days and then divorces her and gives her the Ketubah.

5. In the case where she vows and says: "I vow that the pleasure of your intercourse shall be forbidden to me if I go to a house of mourning or to a house of festivity" if he hears the vow but does not void it then he should divorce her immediately and give her the Ketubah.

6. If he vows by saying: "I vow that the pleasure of your intercourse shall be forbidden to me if you go out"<sup>28</sup> he may divorce her after seven days and give her the Ketubah. But if he claims that he made the vow concerning her<sup>29</sup> because of licentious people who happen to be there, if they are known to be there he is believed. If not,<sup>30</sup> he is not believed.

7. In the case where he vows that she must not go to a bath house, if this pertains to cities this vow is valid for one week, or if it pertains to villages it is valid for



two weeks. [If he vows that] she must not put on shoes<sup>31</sup>, if this pertains to villages she may do this for three days, but with reference to cities she may only do this for twenty-four hours. If she does this longer than this<sup>32</sup> then he divorces her and gives her the Ketubah.

8. If he vows concerning her and he says to her: "I vow that your intercourse shall be forbidden to me if you go to a bath house" in cities if the vow is more than one week, in villages for longer than two weeks. Or if he prohibits her from putting on shoes, if they live in villages for more than three days or if they live in cities for longer than twenty-four hours, then he should wait for seven days and afterwards he divorces her and gives her the Ketubah.

9. If a man says to his wife: "It is not my will that your father, your mother, your brothers, or your sisters come to my house" they obey him.<sup>33</sup> She may go to them if something happens to them. She may go to her father's house once a month and on every festival. They shall not enter to her<sup>34</sup> unless something happens to her, for example, an illness or a birth.

10. Likewise in the case where she says: "It is not my desire that we come to the house of your father, your mother, your brothers, and your sisters. I will not live with them in the same house because they make me miserable and troubled." She is listened to.<sup>35</sup>

Note:<sup>36</sup> But only when it appears to the court<sup>37</sup> that there is substance to her words that they make her miserable and cause a quarrel between her and her husband. But without this we do not listen to her for, behold, the dwelling is not hers but her husband's. (Chapter thirteen of *Avot*<sup>38</sup>) And it is customary to appoint a man or a woman between them,<sup>39</sup> who is trustworthy, and that person lives with them until it is made clear who caused the argument and the quarrel.

11. Concerning the man who says: "I will not live in this lane because there are evil and licentious men and Gentiles"<sup>40</sup> in my neighborhood and I am afraid of them." We listen to him even though they are not known for licentiousness and even if the dwelling was hers, they remove her from there.

12. Likewise in the case when she says the same thing even though he says: "I am not concerned about them."<sup>41</sup> We listen to her. (Concerning a man who strikes his wife or she curses him; see the laws concerning these matters below in chapter one hundred fifty-four.)

CHAPTER SEVENTY-FIVE

The difference between the lands concerning the laws of marriage and the laws of the land of Israel; in five paragraphs.

1. Three areas within the land of Israel differ with each other over the matter of marriage. They are: Judah, the East bank of the Jordan, and Galilee. The remainder of the Jewish settlements are lands such as Canaan, Egypt, and Yemen. (These countries are different in their language.) (Meir of Rothenburg<sup>1</sup> chapter one hundred seventeen) Someone, from one of the lands, who marries a woman from another land, she is forced to go with him to his own land or she is divorced without her Ketubah and without any additional amount<sup>2</sup> because he married her under this condition<sup>3</sup> even though he did not state it explicitly. However, he may not bring her from a small city to a large one or vice versa within one district even though he stipulated with her that he would bring her from Galilee to Judah. (Nissim ben Reuben Gerundi<sup>4</sup> chapter ארבעה עשר פרקים<sup>5</sup> and so it is in all similar cases.) But in the case where a man marries a woman in one of the lands and he is himself a man of that same land, he may not bring her to another land but he may take her from one province to another or one village to another within that same land. However, he may not take her from a city to a village or from a village to a city. (See commentaries)

Note: There are those who say that if both of them are from one land and they marry in another land she may force him to go with her to her land, even from a village to a city or vice versa. (Tur<sup>6</sup> in the name of Rabbenu Tam<sup>7</sup>) But if both of them are from one land and he married her in the very same land, no one of them may force the other to bring him or her from a city to a village or vice versa. But from one city to another or one village to another the woman may force the man against his will to go with her to her place since they are equal places. If he lives with her in his city but they cannot live there<sup>8</sup> he travels with her to her city accidentally. If he cannot settle there<sup>9</sup> he may return and divorce her. (Isaac bar Sheshet<sup>10</sup> chapter forty-eight) Others say if he is not able to make a living and support himself, his wife is forced to go with him to any place he wishes. (יגג אהמ<sup>11</sup> chapter four hundred sixteen) Others differ (Bet Yosef<sup>12</sup> and this is the implied meaning in Isaac bar Sheshet<sup>13</sup> chapter eighty-one) if someone from one country has a wife there and marries another woman in another country she<sup>14</sup> must go with him to his city. He certainly married her on condition that he would return to his house. (Bet Yosef<sup>15</sup> in the name of Simon ben Zemaḥ Duran<sup>16</sup>) (and furthermore below: chapter one hundred fifty-four, paragraph nine) See more details concerning these laws.

2. When he takes her out from one province to another

or from one village to another within the same land, he may not take her out from a superior dwelling to an inferior one nor from an inferior dwelling to a superior one. Likewise he may not take her out from a place where the majority of people are Jews to a place where the majority of people are Gentiles.<sup>17</sup> In all cases he may take her from a place where the majority of people are Gentiles to a place where the majority of people are Jews.

Note: Furthermore, he may not take her from a place where the ruler is good to a place where the ruler is bad. (Notes on Maimonides<sup>18</sup> chapter thirteen of *א'ע"ב*)<sup>19</sup> Every case where he may take her from her place is after he has consummated the marriage and married her. But before marriage he may not take her out. He must marry her in her place provided he has not stipulated explicitly otherwise with the woman.<sup>20</sup> But if he stipulated it with her mother this has no validity. (Isaac bar Sheshet<sup>21</sup> chapter one hundred seventy-seven) But if there are legitimate excuses or reasons for his words [his request]<sup>22</sup> the woman must go with him. (the Responsa of Maimonides<sup>23</sup> to *פ'ע"ב*<sup>24</sup> chapter twenty-eight)

3. These matters apply in the case of from one place outside of Israel to another outside of Israel<sup>25</sup> or from one place in the land of Israel to another in the land of Israel.<sup>26</sup> But if he wants to move from outside of Israel to the land of Israel she is forced to go [with him], even

from a place where the majority of people are Jews to a place where the majority of people are Gentiles.<sup>27</sup> However, he may not take her from the land of Israel to a country outside of Israel even if it is from an inferior dwelling to a superior dwelling and even if it is from a place where the majority of people are Gentiles<sup>28</sup> to a place where the majority of people are Jews.

4. If the man says: "We should go up to the land of Israel" but she does not want to go then she is divorced without the Ketubah.

Note: But with regards to her נכסי מלאו<sup>29</sup> and the נכסי צאן ברזל<sup>30</sup> which still exist, she takes them. But if they do not exist anymore, if he<sup>31</sup> had caused the loss of the נכסי צאן ברזל<sup>32</sup> he does not have to compensate for it. But נכסי מלאו<sup>33</sup> he must compensate for it. If נכסי מלאו<sup>34</sup> had been stolen or got lost then she does not get compensation. But if it happens to נכסי צאן ברזל<sup>35</sup> then he must compensate for it. (Mordecai ben Hillel<sup>32</sup> end of tractate כהן וכו' in the name of Meir of Rothenburg<sup>34</sup>) The fact that she does not get the Ketubah is only if he remains in the land of Israel. But if he returns after several years to live outside the land of Israel then he must pay even the Ketubah to her or to her heirs. If she says they should go up<sup>35</sup> but he does not want to, he should divorce her and give her the Ketubah. The same is the law with respect to moving from any place in the land of Israel to Jerusalem be-

cause you can make everyone go up to the land of Israel and you cannot make anyone leave the land of Israel. You can make everyone go up to Jerusalem but you cannot make anyone leave Jerusalem.

5. Someone who says<sup>36</sup> the rule that we can force someone to go up to the land of Israel, this holds true if it is possible without danger. Therefore, from the extreme west to No-Amon<sup>37</sup> one cannot force the family to go up.<sup>38</sup> But from No-Amon and upwards<sup>39</sup> one can force his wife or family to go up<sup>40</sup> by land and also by sea in hot weather<sup>41</sup> if there are no robbers there.

CHAPTER SEVENTY-SIX

The obligation for intercourse; in thirteen paragraphs.

11. A man is forbidden to withhold intercourse from his wife. If he withholds in order to cause her suffering he transgresses the negative commandment of "do not withhold intercourse."<sup>1</sup> If he becomes sick or his strength weakened so that he was not able to perform the intercourse he should wait six months until he becomes well because there is not a greater time space for intercourse than this.<sup>2</sup> After six months either he should get permission from her<sup>3</sup> or he should divorce her and give her the Ketubah.

12. If a woman makes a vow of self-affliction<sup>4</sup> or other matters concerning husband and wife, which he may invalidate<sup>5</sup> and he says to her: "I will invalidate your vow on condition that you say to some individual<sup>6</sup> what we spoke of together with respect to matters of flirting" which a man talks about matters of intercourse (for example, she wiggles herself after intercourse so that she would not conceive; or on condition that) she does something foolish like filling ten vessels with water and pour them on a pile of garbage and similar foolish vows. Then he should divorce her immediately and give her the Ketubah.

13. If he says: "I will not live with her unless I can remain in my own garments and she remains in hers"<sup>7</sup> then he should divorce her and give her the Ketubah. More so if he will not have intercourse with her at all. Likewise if she



says: "I will not live with him unless I can remain in my clothes and he remains in his."<sup>8</sup> Then she is divorced without the Ketubah.

CHAPTER ONE HUNDRED FIFTEEN

The laws concerning a woman who is divorced without the Ketubah and one who loses her Ketubah; in ten paragraphs.

1. These women shall be divorced without the Ketubah: She who transgresses the law of Moses and Rabbinical law. And which is the law of Moses? She who gives her husband food to eat which is not tithed or any of the other prohibited foods or she allows him to have intercourse during her menstrual period<sup>1</sup> and he learns of it afterwards. For example: she says a certain sage fixed this pile of grain for me<sup>2</sup> or he permitted me this piece of meat<sup>3</sup> or he declared this blood pure;<sup>4</sup> and subsequently she is found to be a liar. However, this is so only if she is contradicted by witnesses. For example: if they testify that at the same time that she said a certain sage fixed the pile of grain for her that this certain sage was not in the city. And also there are witnesses that she said to him: "It is fixed,"<sup>5</sup> so he<sup>6</sup> ate it at her word. But if there are no witnesses and she denies that she made him eat or she contradicted the sage who said that he did not fix it for her and she says that he did fix it for her, then she is to be believed. But only if she causes him to sin and he eats at her word. But if she wants to make him eat a forbidden thing [and he does not do it] she does not forfeit the Ketubah.<sup>7</sup>

2. If she is known to be a menstruant by neighboring women who saw her putting on menstrual clothing but she

says to him; "I am pure," if he has intercourse with her then she is divorced without the Ketubah.<sup>8</sup>

3. If a woman makes a vow but does not fulfill it she is divorced without the Ketubah.

Note; And likewise if she transgresses the oath or the herem.<sup>9</sup> (Notes on Maimonides<sup>10</sup> chapter four) But if she brings witnesses that he also transgresses a vow, an oath, and a herem then she does not forfeit the Ketubah even if she transgresses them. (In the Responsa of Maimonides<sup>11</sup> and in the Responsa of Solomon ben Adret<sup>12</sup> chapter five hundred sixty-six.) If a woman changes her religion<sup>13</sup> and then returns<sup>14</sup> she is like one who commits a religious transgression and she only suffers a loss of her Ketubah after a warning.<sup>15</sup> (Responsa of Asher ben Yehiel<sup>16</sup> chapter thirty-two.)

4. What is the Rabbinic law? It is the custom<sup>17</sup> of chastity as practised by the daughters of Israel.<sup>18</sup> These are the things which if she transgresses one of them she is a transgressor of the Rabbinic law; If she goes out into the street or to an open alley<sup>19</sup> or into a courtyard which people use for crossing<sup>20</sup> and her head is uncovered with no veil upon it as all other women do<sup>21</sup> even though her hair is covered with a scarf. Or she spins in the street rose colored wool and the like before her face or forehead or cheek in the manner that the loose Gentile women do. Or she spins in the street and shows her naked arms to people<sup>22</sup>

(and does this regularly) (Solomon ben Adret<sup>23</sup> chapter five hundred seventy-one). Or she flirts with young men or she demands intercourse from her husband in a loud voice so that her neighbors hear her speaking about matters of intercourse. Or she curses the father of her husband in her husband's presence. (There are those who say that this is the case even if she curses her husband's father before himself<sup>24</sup> and this is the implied meaning according to Rashi<sup>25</sup> in the Talmud cited by Bet Yosef<sup>26</sup>) (and see below chapter one hundred fifty-four). The same rule applies for a woman who curses her husband to his face. (The Ramban<sup>27</sup> chapter one hundred two) For each of these she is divorced without the Ketubah. If there are witnesses that he first warned her but she transgresses his warning, if there are no witnesses she swears that it was according to her words, if he wants to keep her afterwards<sup>28</sup> we do not force him to divorce her. But at any rate it is a good deed<sup>29</sup> that he should divorce her.

Note; She is not able to prevent him from divorcing her and he may divorce her against her will. This does not constitute the violation of a herem by Rabbenu Gershom.<sup>30</sup> (Responsa of Meir of Rothenburg<sup>31</sup> in connection with the notes on Mordecai<sup>32</sup> in ש"ת,<sup>33</sup> and likewise in Solomon ben Adret<sup>34</sup> chapter five hundred fifty-seven) A woman who threatened her husband that it is her will to hire Gentiles<sup>35</sup> to kill him if he does something to her, this is called a transgressor

of the law. (Notes on Maimonides<sup>36</sup> chapter twenty-four)  
A woman who is habitually alone with Gentiles<sup>37</sup> is called  
a transgressor of the law. (  $\text{לעצמה} \text{ללכת}$ <sup>38</sup> chapter two hun-  
dred forty-two)

5. All these<sup>39</sup> do not receive the basic Ketubah,<sup>40</sup>  
nor matters stipulated in the Ketubah nor the additional  
Ketubah.<sup>41</sup> But she takes that which she brought to him be-  
fore the marriage and that which still exists either from  
 $\text{הכלים} \text{הבית}$ <sup>42</sup> or from  $\text{הכלים} \text{הבית}$ .<sup>43</sup> If it perished or it<sup>44</sup>  
was stolen or lost we do not take [compensation] from him.<sup>44</sup>  
The same is the law with regards to one who was licentious<sup>45</sup>  
or one who was divorced because of a bad reputation. She  
loses the basic Ketubah and the additional Ketubah but she  
takes what still remains in substance of all that she brought.<sup>46</sup>  
Likewise this is the law concerning all those women concern-  
ing whom we taught she has to be divorced by both husbands.<sup>47</sup>

6. If there are no witnesses that she was licentious  
other than she herself says she was licentious we do not  
take this word into consideration to forbid her because  
perhaps she cast her eyes on another man.<sup>48</sup> (But only if the  
matter has no basis.<sup>49</sup> But if the matter has a basis<sup>50</sup> she  
is believed.) (  $\text{לעצמה} \text{ללכת}$ <sup>51</sup> of Isserlein<sup>52</sup> chapter two hundred  
twenty-two.) But she loses her Ketubah, both the basic  
Ketubah and additional Ketubah and whatever is not present  
in substance of what she brought him.<sup>53</sup> (If she retracts  
the story and gives a legitimate excuse for her words as

to why she said it in the first place then she is believed.) (The notes on Mordecai<sup>54</sup> in *י'ר'י'ר'*<sup>55</sup>) If he believes her and his thought supports her words<sup>56</sup> then, behold, he is obligated to divorce her. But we do not force him to divorce her. But if she was raped she does not lose her Ketubah, neither the wife of an Israel nor the wife of a Cohen.

Note: See below chapter one hundred seventy-eight, paragraph nine somebody says about a woman that she was licentious with him.<sup>57</sup> He is believed about her as one witness for we divide his utterance.<sup>58</sup> (Solomon ben Adret<sup>59</sup> chapter five hundred fifty-two) If she admitted that she had relations<sup>60</sup> in the presence of a man who is under the suspicion of sinning then this man is combined with another man<sup>61</sup> to forbid her to her husband. (*י'ר'י'ר'*<sup>62</sup> of Isserlein<sup>63</sup> chapter two hundred twenty-two) If she admitted in the presence of one man that she was licentious and afterwards she says that it was a lie<sup>64</sup> and she contradicts the witness who testified against her, she is permitted to her husband even if the husband believes the witness who testifies against her. [This is so] because we say that at first when she admitted<sup>65</sup> she had cast her eyes at some one else but now she changed her mind. (ibid, Joseph Kolon<sup>66</sup> chapter eighty-two) If a woman says to her husband that she was licentious even though she is not believed, if he divorces her it is forbidden to take her back. Even if he does take her back we still suspect her.<sup>67</sup> (Meir of Paduah<sup>68</sup> chapter thirty-four)

7. If a man saw his wife committing a licentious act or one of his relatives or her relatives, whom he believes, tells it to him<sup>69</sup> and his thought relies on them<sup>70</sup> that his wife committed a licentious act, whether it was a man or a woman who told him, he is obligated to divorce her and he is forbidden to have intercourse with her and he gives her the Ketubah. Therefore, he makes her swear by holding a holy object<sup>71</sup> that she did not commit adultery, even if he saw her himself, and afterwards she collects her Ketubah. But at the words of another person he may not make her swear except by implication.<sup>72</sup>

Note: Many relatives together only count as one witness. (Notes on Mordecai<sup>73</sup> in *MINA!*)<sup>74</sup> See below chapter one hundred seventy-eight, paragraph nine. There are those who say that one cannot say that he believes a witness unless he believes him about other matters.<sup>75</sup> But if he does not believe him about other matters but only about this matter because without it<sup>76</sup> she was to him a little suspicious<sup>77</sup> she is not prohibited to him because of this. (Joseph Kolon<sup>78</sup> chapter twenty-two)

8. If a man says to his wife in front of witnesses: "Do not hide yourself with a certain man." and there are witnesses to her going and hiding with him and she stays with him<sup>79</sup> long enough for defilement<sup>80</sup> she is forbidden to her husband and she is divorced without the Ketubah and he is forbidden to be alone with her,<sup>81</sup> We compel

him to remove her out of his house.<sup>82</sup> (But only when he says to her the prescribed form of warning.<sup>83</sup> Jacob Weil<sup>84</sup> chapter eight and in the manner that it is explained below, chapter one hundred seventy-eight.)

9. If he said to her when they were alone together: "Do not go off and hide with a certain man." and he saw her hide with this certain man, staying with him long enough for defilement, she is forbidden to him<sup>85</sup> and he is obligated to divorce her and give her the Ketubah. But if she admits that she hid herself after he<sup>86</sup> warned her, she is to be divorced without the Ketubah. Therefore, he makes her swear an oath concerning this matter<sup>87</sup> and afterwards he gives her the Ketubah.

10. If he makes his wife swear an oath that she shall not speak with some man but she transgresses the oath and speaks with him, then she is a transgressor of the law and she loses her Ketubah if he first warned her: "If you transgress your oath you will lose your Ketubah."



CHAPTER ONE HUNDRED SEVENTEEN

The law concerning the Ketubah of a woman who does not have a regular time<sup>1</sup> or any other blemishes and the law concerning the killer<sup>2</sup>; in eleven paragraphs.

1. If a man marries a woman and she examines herself<sup>3</sup> and has intercourse but when she wipes herself<sup>4</sup> either she or he finds blood on a witness (this is explained as the rag or cloth that she examines herself with<sup>5</sup>) or on his cloth if this happened time after time, three times, close to each other,<sup>6</sup> then, behold, she is forbidden to live with her husband and she is divorced without the Ketubah, without the additional amount in the Ketubah, and without any other asset stipulated in the Ketubah for this woman is not fit for intercourse. He must divorce her and never take her back. This refers to the case where she is like this from the beginning of the marriage and after the first intercourse she saw blood. But if this illness happened to her after marriage, it is his misfortune. (This explanation comes from מקדש אברהם,<sup>7</sup> namely, she was blemished and she lost something to your bad luck.) Therefore, if he has intercourse with her once and did not find blood and afterwards she sees blood every time they have intercourse then he should divorce her and give her the entire Ketubah and never take her back again. Note: There are those who say that if he does not want to

marry anyone else but wants to let this woman<sup>8</sup> live supporting her through an agent for one year so that he would not go to her without witnesses,<sup>9</sup> then he does not have to divorce her. (Bet Yosef<sup>10</sup> in the name of the Responsa of Meir of Rothenburg<sup>11</sup> and likewise it is in the Responsa of Solomon ben Adret.<sup>12</sup> Chapter eight hundred sixty.) Much the more so if she commits adultery while married when she becomes despicable to him, it is permitted to care for her in such a manner.<sup>13</sup>

2. If a woman is examined by other women and they say that she is not fit for a man, she has no Ketubah nor the stipulated items of the Ketubah. If the husband makes such a claim against her<sup>14</sup> as long as she was not examined<sup>15</sup> he is not obligated to provide her with food.

3. If a man marries an unchecked woman and he later found that she had vows upon her<sup>16</sup> which are explained in chapter thirty-nine, then she is to be divorced without the Ketubah, without the basic Ketubah, and without any additional amount to the Ketubah.

4. Likewise a man who takes an unchecked woman home<sup>17</sup> and then they found on her one of the blemishes of women that are explained in chapter thirty-nine. If the husband did not know about this blemish then she is to be divorced without the Ketubah, without the basic Ketubah payment, and without any additional amount to the Ketubah.

5. If there is a bath house in the city and he has

relatives there he may not say: "I did not know about these blemishes." Or even hidden blemishes because he examines<sup>18</sup> by his female relatives and his presumption<sup>19</sup> that he heard<sup>20</sup> and he was satisfied.<sup>21</sup> If there is not a bath house there and he does not have relatives there then he may claim that she had hidden blemishes; and if she is an epileptic at certain times,<sup>22</sup> then this is like a hidden blemish. But in the case of visible blemishes he may not make a claim because we presume that he heard about them and was satisfied. If she wets in bed permanently, some say this is not always a blemish. Bet Yosef<sup>23</sup> in the name of Solomon ben Adret.<sup>24</sup> But some say this is a blemish (Bet Yosef<sup>25</sup>) and the latter view seems to be correct. If he claims<sup>26</sup> that his wife is a leper, this is a blemish. (Bet Yosef<sup>27</sup>)

6. What we said refers to a case in a place where women customarily go into the street with their faces revealed but in a place where it is not customary for women to go into the street at all and when she goes to the bath house she goes disguised<sup>28</sup> then he may claim against her of having an open blemish. If there is a bath house there and if he has a relative, he may not claim against her for certainly everyone sees her naked in the bath. But if it is their way to hide themselves in the bath<sup>29</sup> he may even claim against her open blemishes. (There are those who say that even if he does not have

relatives in the city, he has friends and he may examine her through their wives.) (Tur<sup>30</sup> in the name of the Geonim.<sup>31</sup>)

7. What is the manner of making a claim pertaining to her blemishes if the blemishes that were found on her were certainly blemishes that she had before she was betrothed? For example: an additional finger and similar things. It is incumbent on the father to bring proof that the husband knew and was satisfied or that he was presumed to know. But if he<sup>32</sup> did not bring proof she is divorced without the Ketubah at all.

8. If she had blemishes which perhaps developed after the betrothal, if they are found on her after he took her into his house,<sup>33</sup> it is up to the husband to bring proof that they were there before the betrothal and the purchase was an erroneous purchase.<sup>34</sup> If they are found on her and she is still in her father's house it is up to the father to bring proof that they developed after the betrothal and it is his misfortune.<sup>35</sup>

Note; There are those who say that if the father makes a definite claim<sup>36</sup> it is up to the husband to bring proof.<sup>37</sup> (Ha-Magid Mishne<sup>38</sup> chapter 25 in the name of Solomon ben Adret.<sup>39</sup>) There are those who say if the time of marriage arrives even though he has not married her, it is as if she had been a fully married wife. (Yeruchem<sup>40</sup> chapter twenty-three, part five)

9. If the husband brings proof that before she was betrothed they were on her<sup>41</sup> or she admits to him about them and if the father brings proof that he<sup>42</sup> saw and was quiet and he was satisfied or we presumed that he knew about them and he was satisfied then, behold, he is obligated to the Ketubah.

10. If he has intercourse with his wife and lives with her awhile and then claims that this blemish was not visible to him until now,<sup>43</sup> even if it<sup>44</sup> is in a fold of the body (this is explained as, for example, under the arm pit or under the breasts and the like) or on the sole of the foot, we do not listen to him. It is a presumption that no man drinks from a cup until he has examined it, but that he knew it and accepted it.

Note: If he lived with her thirty days he is not believed if he says he has not had intercourse with her. (Joseph Kolon<sup>45</sup> chapter one hundred five)

11. If a man knows that his wife was epileptic and he wants to divorce her but he does not have enough money to pay her Ketubah we force her to accept a Get.<sup>46</sup> (This does not violate the herem of Rabbenu Gershom.<sup>47</sup>) He must give her whatever he has in his hands as payment towards her Ketubah and the balance he should pay when he can afford it. If she refuses to accept the Get he may withhold from her "her food, her raiment, and her conjugal rights."<sup>48</sup>

Note: But only in the case of a major blemish which is such a one that if it were on a man we would force him to divorce her from a law of the Talmud because Rabbenu Gershom did not make his ordinance in such a way that the woman should be better off than the man. (Responsa of Asher ben Yehiel<sup>49</sup> chapter forty-two) But he may not divorce her for the minor blemishes against her will, but in every case we do not force him to be with her after she becomes despicable to him and he wants to divorce her and give her her Ketubah. (Joseph Kolon<sup>50</sup> chapter twenty-seven)

FOOTNOTES TO CHAPTER SEVENTY-THREE

1. The Ketubah was, originally, the price paid by the husband for his wife. The sum to be paid was a basic amount of two hundred zuz for a virgin and one hundred zuz for a non-virgin. The Ketubah is a marriage contract containing among other things the settlement on the wife of a certain amount payable to her at her husband's death or on her being divorced. It was established by the Rabbis to provide some alimony for the widow and divorcee, but it also serves as a check on the freedom of divorce. The Ketubah also mentions the amount of dowry and the addition thereto made by the husband. It contains the obligations of husband to wife. The Ketubah formed a lien on all real estate and chattels owned by the husband. Originally the marriage settlement was deposited with the wife's father. It was in later times converted into some valuable household utensil of which the husband could also make use, and entrusted to the wife. Finally Simeon ben Shetah ruled that the amount of the Ketubah should remain with the husband but become a lien on his property. The Geonim strengthened the security of the Ketubah by making his personal estate also liable for the Ketubah. If the Ketubah document was lost a new one had to be written. There could be no sexual relations between a husband and wife until a Ketubah was drawn up and

handed to the wife.

2. And then he must pay the price entered in the Ketubah.



FOOTNOTES TO CHAPTER SEVENTY-FOUR

1. Vows are technically promises made under religious sanction. There are two kinds in the Talmud:

1. A voluntary promise to bring a sacrifice which one is not bound to bring or a promise to give a certain sum to charity. These are called nidre hekdesch or "dedications."

2. Promises to abstain from the enjoyment of certain things. These are called nidre issar or promises of "prohibition" or "deprivation."

A vow is valid only if it is made voluntarily without external compulsion. The person making the vow must be aware of its scope and character. Males are considered able to make vows as of their thirteenth year while females may do so from their twelfth year. A father may annul his daughter's vows and a husband may annul his wife's vows but only if they do so on the very day on which they either overhear the vow or are told about it. A vow in general may be declared void by an ordained teacher, preferably, however, by a Bet Din. The Rabbis discouraged the practice of making vows.

2. i.e., his wife.

3. i.e. because they are poor people at the time of the vow.

4. i.e. longer than one year.

5. i.e. longer than thirty days.

6. A vow concerning a woman may be annulled in two ways:
  1. When the term נדר is used it indicates a vow of a woman being annulled by her father or husband. This type of cancellation is valid only from the time of the cancellation and onward.
  2. When the term נאד is used it indicates an annulment by a sage. In this case the vow is voided retroactively from the moment it was made. Thus, in this case it would be considered as if no vow had been made. Likewise in the case of נדר, if it is annulled by a sage then the annulment is retroactive.
7. i.e. her husband.
8. If a husband or father overhears the vow of a wife or daughter, he has the right to void her vow. Such a cancellation is valid only from the time of cancellation and onward. (See above.)
9. One of the sections of the Shulhan Aruk. This work was written by Joseph Caro as a more simplified, or almost a layman's version, of his larger, more scholarly work Bet Yosef. The Shulhan Aruk follows the order of Jacob ben Asher in his Arba'ah Turim but is more concise and does not often cite authorities. The work is divided as follows: Orah Hayyim which deals with ritual laws of daily prayers, sabbath, and holy days. Yoreh De'ah dealing with a great variety of religious laws not included in the other sections, e.g., Kashrut, vows, charity, conversions, mourning. Eben

ha-Ezer dealing with the laws of marriage, divorce and legitimacy. Hoshen ha-Mishpat dealing with civil laws.

10. i.e. he will not use them himself.
11. i.e. to the neighbors.
12. i.e. he overhears her vow and then validates it in her behalf.
13. i.e. from the neighbors.
14. i.e. the vessels.
15. i.e. to her husband for intercourse.
16. By a vow to herself.
17. i.e. to others, like her neighbors.
18. i.e. she and her husband.
19. i.e. to the neighbors.
20. i.e. the vow.
21. A husband may only cancel vows made by his wife which affect their personal relationship. If, for example, shw vows not to take a bath then he may void this vow as it affects their relationship.
22. i.e. without paying the amount of the Ketubah. The basic amount is two hundred zuz for a virgin and one hundred zuz for a non-virgin. (See also Chapter 73, footnote 1.)
23. See above: page 31, footnote 21.
24. And may therefore void his wife's vow.
25. i.e. her father.
26. i.e. when the next festival comes up.

27. If the vow is for a period of time less than a month (in the case of the same city) or less than a festival (in the case of a different city) then the vow is not grounds for divorce. In each case the vow must be longer than a month or a festival in order to be grounds for divorce.
28. i.e. from her house.
29. i.e. to prohibit her from going out of her house.
30. i.e. if it is not generally known that licentious people are there.
31. i.e. she vows that she will not wear shoes.
32. i.e. longer than three days in villages and longer than twenty-four hours in cities.
33. i.e. this is legally valid.
34. i.e. enter her and her husband's house.
35. i.e. they have to comply with her wishes.
36. This commentary, introduced by the word וְעַתָּה was written by Moses Isserles. Isserles lived in Cracow, Poland. He was born in 1520 and died in 1572. This commentary is called "Mappah" or "The Table Cloth" for Caro's Shulhan Aruk or "Prepared Table." Isserles intended this commentary as a criticism and as a supplement to Caro's work. It consists of notes or Haggahot which are inserted into the text of the Shulhan Aruk. Isserles presents Ashkenazic practises as a supplement to Caro who was a Sephardi. Isserles placed great importance on minhag or custom which he often established as law or Halakah.

37. i.e. a Rabbinic court. The Bet Din had the authority to try both civil and religious cases although in later years it lost the authority to try civil cases. It usually consists of three Rabbis and in the past when important cases were to be decided, often was composed of more Rabbis.
38. אורח: a section of the Mishneh Torah by Maimonides.
39. i.e. as an observer.
40. The actual reading in our text is אורח or Samaritans. This reference to Samaritans is probably a later editorial correction so as not to offend the non-Jewish community and thus not bring calamity down upon the Jews. It is likely that the original text read אורח or אורח, Gentiles.
41. i.e. they do not bother me if they are there.

FOOTNOTES TO CHAPTER SEVENTY-FIVE

1. Meir of Rothenburg was a thirteenth century German scholar who was born in Worms about 1215 and died at Ensisheim, Alsace, on May 2, 1293. He was a prolific writer and commentator and his best known works include the following: Tosafot to several Talmudic treatises; Responsa; Hilkot Berakot or Seder Berakot which has regulations for various formulas of blessings to be pronounced in performing certain actions; Hilkot Shehitah dealing with ritual slaughter and examination; Hilkot Abelut or Hilkot Semahot dealing with mourning customs; Halakot Pesukot dealing with decisions on various manuscripts; Piske Erubin which dealt with regulation of the erub; Hiddushim which were novellae to various treatises of the Talmud; Minhagim of ritual ceremonies in the synagogue; Treatise on the marital duties of husband and wife; a commentary on the sixth order of the Mishnah; and various Masoretic notes.
2. שתיקא אגדא is any extra amount of money added to the Ketubah above the usual amount of two hundred zuz for a virgin and one hundred zuz for a non-virgin. This is any increase to the basic Ketubah by the husband and is usually mentioned in the Ketubah.
3. i.e. that she would go with him when he moved.

4. Nissim ben Reuben Gerundi was born about 1340 and died in 1380 in Barcelona. He was known for his commentaries on Alfasi's Halakot and on various Talmudic treatises. He wrote a number of responsa and as well a philosophical work.
5. Chapter thirteen of Ketubot in Seder Nashim of the Mishnah.
6. Any reference to the Tur is a reference to the work of Jacob ben Asher, known by its full name the Arba'ah Turim or Four Turim. The Turim is a code. Among its sources is Maimonides' work the Yad ha-Hazakah. It simplified the Yad by omitting all laws which could not be applied after the destruction of the Temple. The Tur thus became a code of four parts into which Jacob ben Asher inserted an account of the customs which he observed in various countries. The four parts are: Tur Orah Hayyim, Tur Yoreh De'ah, Tur Eben ha-Ezer, and Tur Hoshen ha-Mishpat. The contents of each section are the same as those outlined in the Shulhan Aruk above on page 30, footnote 9. Jacob ben Asher died in Toledo, Spain, about 1340. Otherwise, very little is known about his life.
7. Jacob ben Meir Tam, also known as Rabbenu Tam. He was a French Tosaphist who was born in 1100 and died in 1171. He was known for his Takkanot or ordinances especially with regards to marriage and divorce. His

best known work is Sefer ha-Yashar. The first part contains Rabbenu Tam's explanations and novellae to thirty Talmudic treatises and the second part contains his responsa. The purpose of this work was to criticize those Talmudic interpreters who emended or changed the ancient texts. He felt the students of Rashi had emended too carelessly. He was more strict in his analysis of textual problems. He did attempt, however, to reconcile the contradictory decisions of the Talmud. As well, Rabbenu Tam was known as a liturgical poet and as a grammarian.

8. i.e. living conditions are very bad.
9. Or he does not want to live there.
10. Isaac bar Sheshet Barfat is known for his legal decisions. He was a Spanish authority who was born in Valencia in 1326 and died in Algiers in 1408. He studied under Nissim ben Reuben (see below) and wrote four hundred and seventeen responsa of great halakic value. As well, he wrote novellae on the Talmud.
11. Terumat ha-Deshen was written by Israel ben Petachia Isserlein. It deals with all kinds of various laws. Terumat ha-Deshen consists of three hundred and fifty-four responsa (three hundred and fifty-four being the numerical value of deshen and of the days in the lunar year). These responsa deal with synagogal, ritual, and legal subjects. Isserlein was born in the first



half of the fifteenth century and died near Vienna in 1460. His other well known work was Pesakim u-Ketabim which has two hundred and sixty-seven responsa of which one-third dealt with various rules regarding marriage laws. This work was collected and edited by Isserlein's pupils after his death.

12. Bet Yosef was written by Joseph Caro. It is more detailed than the Shulhan Aruk and was intended for use by scholars. He began to write it in 1522 and finished it in 1542. It was first published between 1550 and 1559. Essentially Bet Yosef is a commentary on Jacob ben Asher's Arba'ah Turim. He sums up thirty-two authorities beginning with the Talmud and ending with the works of Isserlein. Thus it includes a wealth of post-Talmudic literature.
13. Isaac bar Sheshet, op. cit., page 36, footnote 10.
14. i.e. the second wife.
15. Bet Yosef, op. cit., page 37, footnote 12.
16. Simon ben Zemaḥ Duran was a Spanish scholar born in 1361 and died in 1444. He wrote commentaries on several tractates of the Talmud and Mishnah and on Alfasi. He was known for his responsa and for a work known as Magen Abot which was a theological and philosophical work. As well, he wrote religious and secular poetry and many pamphlets.
17. Gentiles, op. cit. The case here is the same as that cited on page 33, footnote 40.

18. Maimonides, Moses ben Maimon, is also known as the Rambam. He was a Talmudist, philosopher, astronomer, and physician. He was born in Cordova in 1135 and died in Cairo in 1204. His best known works include: Kitab al-Siraj, a commentary on the Mishnah; Kitab al-Fara'id, a book on the precepts; the Mishneh Torah or Yad ha-Hazakah, his most famous code; the Moreh Nebukim, his greatest philosophical work known as The Guide to the Perplexed; other philosophical works; commentaries on the Talmud and Mishnah; and scientific works on astronomy and medicine.
19. Section of Maimonides' Mishneh Torah.
20. i.e. that he has not stipulated something to the contrary.
21. Isaac bar Sheshet, op. cit., page 36, footnote 10.
22. i.e. for his wish to the contrary.
23. Maimonides, op. cit., page 38, footnote 18.
24. Order of the Talmud.
25. i.e. moving from one place to another.
26. i.e. moving from one place to another.
27. Gentiles, op. cit. The case here is the same as that cited on page 33, footnote 40.
28. Gentiles, op. cit. The case here is the same as that cited on page 33, footnote 40.
29. This is the wife's estate of which the husband has the fruition without the responsibility for loss or deterioration. It is the property a woman brings to

the marriage and remains hers but the husband has use of it. At divorce or death of her husband, she gets this property back in its present condition.

30. This is property brought to the marriage stipulating that at the time of divorce or death of her husband, that the property must have the same value as at the time the marriage was contracted. If the value is more then the husband keeps the excess but if it is less he must make up the difference.
31. i.e. her husband.
32. Mordecai ben Hillel was a German halakist who died in 1298. He is best known for Sefer ha-Mordecai which was a legal code also called by the name Mordecai ha-Gadol or Mordecai he-Aruk. This work is found as glosses to Alfasi's Halakot. It quotes three hundred and fifty authorities and is a compilation intended to furnish halakic material.
33. A tractate of the Talmud.
34. Meir of Rothenburg, op. cit., page 34, footnote 1.
35. i.e. to the land of Israel.
36. i.e. there is an opinion.
37. No-Amon is a place name better known as Thebes, the capital of the Two Lands of Upper and Lower Egypt, first in the Middle Kingdom and then under the eighteenth Dynasty and onward.
38. i.e. to the land of Israel.
39. i.e. places closer to the land of Israel.

- 40. i.e. to the land of Israel.
- 41. i.e. when it is too hot to travel by land.

FOOTNOTES TO CHAPTER SEVENTY-SIX

1. "Do not withhold intercourse." Exodus 21:10.
2. The law allows no longer an interval between one intercourse and the next than six months. This is found in Mishnah Ketubot where six months is the interval permitted to the sailor.
3. i.e. from his wife to refrain from intercourse for a longer period of time.
4. i.e. to refrain from intercourse.
5. See page 30, footnotes 6, 8, and page 31, footnote 21.
6. The Hebrew word אֶחָד is the term for an indefinite third person. For example, "one," or "some person."
7. i.e. he wants to have intercourse while dressed.
8. i.e. during intercourse.

FOOTNOTES TO CHAPTER ONE HUNDRED FIFTEEN

1. Intercourse is forbidden during the menstrual period and for seven full days after the last blood appears. Purification must be attained through the ritual bath before intercourse may be resumed.
2. i.e. that he tithed the grain for her so they could eat it.
3. i.e. he declared it kasher or fit to eat.
4. i.e. after examination he declared that it was not menstrual blood.
5. i.e. she told her husband that the grain had already been tithed so that it could be eaten.
6. i.e. her husband.
7. She only forfeits the amount of the Ketubah if she intentionally deceived him.
8. The logical question here is if the neighbors saw her menstrual condition by virtue of the clothes she wore, is it not logical to assume that the husband would also see it? However, since intercourse is to be performed in total darkness and since it is assumed that the husband comes home at night, this situation would be possible, namely, that the husband would not know that his wife is menstruating.
9. A herem may designate a special kind of vow which prohibits something in a negative sense.

10. Maimonides, op. cit., page 38, footnote 18.
11. Maimonides, Responsa, loc. cit.
12. Solomon ben Adret was a member of a famous Spanish family. He was born in 1235 and died in 1310. He was best known for the following works: his responsa; Torat ha-Bayit ha-Aruk, a manual on ceremonial laws to be observed in the home; Torat ha-Bayit ha-Kazir, a shorter manual on the same material as the one above; Commentaries on seven Talmudic treatises; Piske Hallah, decisions on tractate Hallah; Abodat ha-Kodesh, concerning laws of the sabbath and festivals; and a Polemic against Mohammedanism.
13. i.e. she becomes an apostate.
14. i.e. to Judaism.
15. i.e. she is warned not to become an apostate or to return immediately to Judaism.
16. Asher ben Yehiel was a Spanish halakist born in Germany around 1250 and died in Toledo, Spain, in 1328. He was a pupil of Meir of Rothenburg and was opposed to both lenient halakic decisions and to secular knowledge. He wrote various commentaries and glosses on tractates of the Mishnah and Talmud as well as a volume of responsa. His best known work is his Halakot which was an abstract of Talmudic laws. It was based on the style and format of Alfasi. It deals with practical halakah and leaves out the discussions and only cites the final decisions.

17. i.e. to conduct one's self in such a fashion.
18. i.e. any Jewess.
19. i.e. a street which has an outlet at both ends so that it is not closed off at all.
20. i.e. they cross this courtyard in order to go from one street to another.
21. i.e. it is the custom for the Jewess to go out with her head covered.
22. As with the head, it is customary for the Jewess to have her arms fully covered in public.
23. Solomon ben Adret, op. cit., page 43, footnote 12.
24. i.e. before her father-in-law.
25. Rashi is Rabbi Solomon bar Isaac. He was a French commentator on Bible and Talmud. He was born in Troyes in 1040 and died there in 1105. His commentary on the Pentateuch was first published, without the text, in Reggio in 1475. His commentaries on other Biblical books were published in later years. These commentaries were deemed important even for the Church and were thus translated by Christian scholars into Latin. The commentaries attempt to clear up textual difficulties and to explain obscure or disputed points. His commentary on the Talmud was extensive and includes the Mishnah when that Mishnah is accompanied with Gemara. He comments on almost the whole Talmud.



26. Bet Yosef, op. cit., page 37, footnote 12.
27. The Ramban is Rabbi Moses ben Nahman or Nahmanides. He was a Spanish Talmudist, exegete and physician born in 1194 and died in Palestine around 1270. He was a precocious student who wrote his first work, Milhamot Adonai when he was just sixteen. This volume was a defence of Alfasi's Talmudic decisions. The Ramban tends toward conservative decisions and shows a great respect for the earlier authorities. His well known works include: Torat ha-Adam, dealing with mourning rites and burial customs; Iggeret ha-Kodesh, dealing with holiness and significance of marriage; a commentary on the Pentateuch, which shows a strong belief in miracles and reflects Nahmanides' beliefs in creation ex nihilo, the omniscience of God, and Divine providence; glosses on the whole Talmud; and various halakic works or compilations. His style reflects that of the French Tosafists.
28. i.e. in spite of everything that has happened.
29. i.e. the preferable thing to do in this case.
30. This has reference to the herem of Rabbenu Gershom requiring the wife's consent to the divorce, this being an exceptional case.
31. Meir of Rothenburg, op. cit., page 34, footnote 1.
32. Mordecai, op. cit., page 39, footnote 32.
33. A tractate of the Talmud.

34. Solomon ben Adret, op. cit., page 43, footnote 12.
35. Gentiles, op. cit. The case here is the same as that cited on page 33, footnote 40.
36. Maimonides, op. cit., page 38, footnote 18.
37. Gentiles, op. cit. The case here is the same as that cited on page 33, footnote 40.
38. Terumat ha-Deshen, op. cit., page 36, footnote 11.
39. The reference is to women.
40. i.e. the basic amount of two hundred zuz for a virgin and one hundred zuz for a non-virgin.
41. i.e. additional sums above the basic two hundred or one hundred zuz.
42. 672 143 '03 , op. cit., page 39, footnote 30.
43. 2184 '03 , op. cit., page 38, footnote 29.
44. i.e. he does not have to compensate her for it.
45. Licentiousness with regards to a married woman usually means adultery and so it is taken to mean in this and other chapters.
46. i.e. to her husband before marriage.
47. Yebamot, chapter ten: The case cited gives the example of a woman's husband going to a distant country. Some one returns from that country and says that he (the husband) has died. As a result of this information, the wife remarries. Sometime later the first husband returns. Both husbands must then divorce her.
48. i.e. she wanted to marry someone else.
49. There are no indications that this is true.

50. i.e. she is in fact licentious or adulterous.
51. Piske, "Decisions" by Isserlein, op. cit., page 36, footnote 11.
52. Isserlein, op. cit., page 36, footnote 11.
53. i.e. before their marriage.
54. Mordecai, op. cit., page 39, footnote 32.
55. Tractate of the Talmud.
56. i.e. he agrees with her statement.
57. i.e. that she committed adultery with him.
58. i.e. we believe only half of what he said. In this case we believe only that she did commit adultery but not that she did it with him. There are two principles involved here: 1. A man cannot incriminate himself. 2. A man is his own nearest relative and a relative is disqualified from giving testimony. Therefore, he is only a "half" witness.
59. Solomon ben Adret, op. cit., page 43, footnote 12.
60. i.e. committed adultery.
61. i.e. who is free of suspicion and therefore constitutes a legitimate witness.
62. Piske, op. cit., page 47, footnote 51; page 36, footnote 11.
63. Isserlein, op. cit., page 36, footnote 11.
64. i.e. her original confession was false.
65. i.e. her confession of adultery.
66. Joseph Kolon was an Italian Talmudist born around

1420 and died at Padua in 1480. He wrote a commentary on the Pentateuch; novellae on the Talmud and on the legal codex of Moses of Coucy; responsa in which he attempted to both decide the case at hand and to establish general principles for similar cases in the future.

67. i.e. of her activity.
68. Meir of Paduah died in 1583. He was a scribe and printer in Mantua. He wrote a treatise on the Taggin and was a Bible teacher. In 1556 he started a printing business in which he printed the first editions of the Zohar, Mishnah, Shulhan Aruk, Dei Rossi's Me'or Enayim, Mishneh Torah, and Talmudic treatises.
69. i.e. they tell him that they witnessed her committing a licentious act, namely, adultery.
70. i.e. he believes them.
71. This is the strictest form of an oath. The holy object is usually a Torah. The Christian courts of the Middle Ages especially made Jews take this type of oath.
72. i.e. if she has to swear on another matter he asks her on the same oath to swear that she did not commit adultery. She, therefore, has not made a separate oath concerning the adultery.
73. Mordecai, op. cit., page 39, footnote 32.

74. Tractate of the Talmud.
75. i.e. the witness must be someone whom you trust and rely on in the first place before this testimony arises.
76. i.e. without his testimony.
77. i.e. even without this testimony the husband had prior suspicions about his wife's conduct.
78. Joseph Kolon, op. cit., page 47, footnote 66.
79. i.e. with the individual against whom her husband warned her.
80. i.e. long enough to be suspected of having committed adultery with this individual.
81. i.e. her husband is forbidden to be alone with his wife lest they have intercourse which is now forbidden to him.
82. i.e. to throw her out of the house if necessary.
83. This is described in Numbers 5:11-31.
84. Jacob ben Judah Weil was a German Rabbi and Talmudist of whom very little is known other than that he was supposed to have died before 1456. He wrote responsa published under the name of She'elot u-Teshubot.
85. i.e. to her husband.
86. i.e. her husband.
87. i.e. that she committed adultery.

FOOTNOTES TO CHAPTER ONE HUNDRED SEVENTEEN

1. i.e. a regular menstrual period.
2. i.e. a woman who has been widowed three times.
3. and she finds herself clean. This means she finds no traces of blood in her vagina.
4. i.e. after intercourse.
5. i.e. blood is found after intercourse on the rag or cloth with which she cleans herself.
6. i.e. after three consecutive times after intercourse blood is found.
7. A phrase quoted from the Mishnah.
8. i.e. his wife whom he is obliged to divorce.
9. So that they would not have intercourse.
10. Bet Yosef, op. cit., page 37, footnote 12.
11. Meir of Rothenburg, op. cit., page 34, footnote 1.
12. Solomon ben Adret, op. cit., page 43, footnote 12.
13. i.e. with a chaperone.
14. i.e. that she is not fit for a man by virtue of the finding of blood.
15. and found normal.
16. i.e. she had made vows previous to their marriage.
17. i.e. to consummate the marriage.
18. i.e. her.
19. i.e. we presume.
20. i.e. about her blemishes.
21. i.e. he was willing to marry her as she was, with

the blemishes.

22. but not at others so that sometimes she is and sometimes she is not.
23. Bet Yosef, op. cit., page 37, footnote 12.
24. Solomon ben Adret, op. cit., page 43, footnote 12.
25. Bet Yosef, op. cit., page 37, footnote 12.
26. i.e., against his wife.
27. Bet Yosef, op. cit., page 37, footnote 12.
28. i.e. with her face covered.
29. i.e. they wear towels or some such covering so that no one else can see her body.
30. Tur, op. cit., page 35, footnote 6.
31. Geonim is the plural of the title Gaon given to the heads of the Babylonian academies of Sura and Pumbedita. The period of the Geonim is considered to have started at about the end of the sixth century. The Geonim officiated as directors of the academies and proceeded with the task of interpreting the newly completed Talmud. They also officiated as a supreme judicial court which would meet for two months each year and patterned itself after the Sanhedrin ha-Gedolah of the Talmud. They wrote responsa and occasionally issued new decrees through these responsa. The Gaon of Sura outranked the Gaon of Pumbedita.
32. i.e. her father.
33. i.e. the marriage is consummated and they are living

together.

34. i.e. an erroneous marriage.
35. i.e. the husband's bad luck. He is stuck with the situation.
36. i.e. that the blemishes developed after the betrothal.
37. i.e. to the contrary.
38. Ha-Maggid Mishne was written by Yomtob Vidal, a Spanish scholar of the second half of the fourteenth century. Ha-Maggid Mishne was a commentary on Maimonides' Yad. This was his most important work and is now published together with the Yad.
39. Solomon ben Adret, op. cit., page 43, footnote 12.
40. Halakic commentator.
41. i.e. the blemishes.
42. i.e. the husband.
43. i.e. the time of the claim.
44. i.e. the blemish.
45. Joseph Kolon, op. cit., page 47, footnote 66.
46. Get. This is the written bill of divorce. It can only be prepared at the request of the husband and must be newly drawn up for the parties concerned. Thus, a form Get with blank spaces for names is considered invalid. It must contain the date, the place, names of the parties concerned, signatures of the witnesses, and the phrases which express separation. The Get must be delivered to the woman by her husband or his agent. She should comprehend



the contents of the Get. The Get may be delivered or accepted by proxy but the following conditions apply: a messenger appointed by the husband to take the Get to his wife may do so but the divorce does not go into effect until after it reaches her; a messenger may be appointed by the wife to receive the Get but the divorce must go into effect as soon as the messenger receives it; a messenger may be appointed by the wife to bring the Get to her but the divorce does not go into effect until after the Get is delivered to the wife by the messenger.

47. Which prohibits divorce against a woman's will.
48. Exodus 21:10 as found in the Jewish Publication Society's The Holy Scriptures According to the Masoretic Text.
49. Asher ben Yehiel, op. cit., page 43, footnote 16.
50. Joseph Kolon, op. cit., page 47, footnote 66.

SUMMARY

The preparation of this thesis has been a tremendous learning experience for the author. As with many studies in the field of Jewish law, one cannot help but feel that one has only scratched the surface of knowledge and understanding.

The question of divorce is a complex one for the rabbis. They present many and varied grounds for which divorce may be obtained and yet at the same time they seem to restrict those very grounds for which they would allow the divorce. This is all the more complicated by the fact that we are dealing here not with those grounds for which there may be a divorce, but rather with those grounds for which divorce is mandatory.

The problem is compounded by the fact that according to halakah only the husband may grant the divorce. Thus, the rabbis have derived grounds for which a man may, at his discretion, divorce his wife and those for which a man may be compelled by a Bet Din to divorce his wife. In general the former grounds represent the husband's interests while the latter represent those of the wife.

If, for example, a man cannot provide, in accordance with his obligations under the Ketubah, for his wife's maintenance even as much as the poorest Jew can do, then he is compelled to divorce her even if he wants to remain with her. Thus, the wife's interests are again considered.

The most serious cases revolve around the swearing of religious oaths. The codes reflect the position that any oath of a wife which is made dependent on her personal relationship with her husband (e.g. things like personal hygiene and intercourse) may be declared void and constitutes grounds for divorce. On the other hand, vows of this nature are valid for the husband but only if the duration of the oath is for a specified period of time. If it extends beyond that specified time then he is compelled to divorce her which again protects her interests.

One finds that the rabbis were conscious of the ties and stresses that people had to their home environments even after marriage. For that reason a man could not force his wife to move great distances away from home. To do so was to have the Bet Din force him to divorce his wife.

Of critical importance was the matter of intercourse. A husband may not withhold intercourse from his wife for longer than a specified time. To do so is again to be compelled to grant a divorce. Likewise a wife cannot bully her husband or trick him into intercourse with her lest a divorce be forced upon her.

We find some cases in which divorce is more severe than in others. Under some conditions a wife loses all monetary compensation of her Ketubah. Generally in matters of premeditated deceit and adultery this is the case.

Finally, grounds for divorce also center around a woman's menstrual period. As the laws concerning menstruation are quite strict, a woman may be divorced if she deceives her husband into having intercourse with her during her period or if she does not have a regular period lest they inadvertently have intercourse and later discover menstrual blood.

The flavour of the codes would seem to indicate that the rabbis did not like or even want to see marriages dissolve but that, at the same time, they were realists. They knew that not all marriages were "made in heaven." At the same time, however, they did not wish to make divorce so easily obtainable that men could divorce their wives on any whim, which seems to have been the case in earlier times.

Historically, it seems that both the development of the Ketubah and the decree of Rabbenu Gershom (which forbade divorce against the will of the wife) were enacted to offset this earlier trend. Many of the laws concerning mandatory divorce would also seem to have developed as deterrents to divorce because they are so specific.

Generally, it would seem fair to say that the rabbis had each partner's physical and mental well-being in mind when they arrived at their decisions. The process followed for divorce and the grounds provided for mandatory divorce go to great lengths to protect and provide for both parties.

Thus, while on the surface much of the material presented here seems stringent and unbending, it was in reality designed with the best interests of all in mind.

The author is grateful to Dr. Alexander Guttmann for giving of his knowledge, guidance, time and patience in the preparation and writing of this thesis. Without his help such an undertaking would have been impossible. The author has gained much insight into the question of mandatory Jewish divorce laws but he has also learned that this thesis represents merely the beginning of a life long study.

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