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" The Status of the Minor  
in Tannaitic Literature:  
legal, social and ethical aspects."

Submitted by

Paul Liner

Under the supervision of Dr.Alexander Guttman .

February, 1948.

*Recd. 11/78*

Digest of the Rabbinical Thesis-The "Status of the Minor in Tannaitic Literature: Legal, Social and Ethical Aspects."

This thesis is a systematic exposition of the status of the minor as found in Tannaitic literature, with special attention to the Mishnaic and Tosephta sources. The work is divided into six chapters, and contains detailed notes at the end of each respective chapter.

- Chapter I. Introduction-This chapter discusses in short the status of the minor as reflected in Biblical times and upon which all further Mishnaic legislation is based.
- Chapter II. A Definition of the Minor-Here is discussed the age of majority, and the various age levels prior to adolescence, which confer on the male and female minor certain rights with their attainment.
- Chapter III. The Education of the Minor-Deals with the religious training of the minor, and the father's obligation of teaching his son Torah and a trade.
- Chapter IV. The Maintenance of the Minor-Tells of the moral duty of the father to support his children, later replaced by legal enactment, also containing the posthumus provision for female minors in respect to maintenance and marriage dowry.
- Chapter V. The Powers of the Father over the Minor-Discuss the various rights of the father and the limitations of his powers.
- Chapter VI. The Powers of the Minor-Deals with Mi'un institution, and other rights enjoyed by the minor children.

## Preface.

The object of this paper is to give a presentation of the treatment of the minor as reflected in Jewish law and custom in the Tannaitic period. I have <sup>examined the</sup> attempted to ~~show that a definite improvement~~ <sup>sources which seem to indicate that a definite improvement</sup> in the minor's status was the conscious endeavor of the Tannaim. Because of the extensiveness of the subject I have limited myself to a systematic presentation of the data in the Tannaitic period. Special emphasis has been given to the Mishnaic and Tosephta sources. From time to time I have seen fit to select those Boraithas which have some particular import in understanding the problem of the minor and his development. In the preparation of this manuscript, I have been as careful as possible to avoid any ~~Amoraitic~~ development or interpretation of the Mishnaic utterances. At times, where- ever possible, the writer has made an earnest attempt to explain the motivations of the Tannaim in their respective attitudes towards the minor.

In conclusion, may I express my sincere appreciation and heartfelt gratitude to Dr. Alexander Guttmann, for his kind assistance and patience in helping me to pursue this undertaking. Needless to say, it has been his inspiration that has stimulated me to work in this field of research. I am deeply indebted for his unfailing interest and encouragement during the progress of this work and for his many helpful suggestions in the organization of this subject matter.

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## Chapter One

### Introduction

There is very little mention of the minor in Biblical times. Actually one does not find a technical term to denote the minor as a class. Thus, whenever the term  $\text{קטן}$  is to be found, it does not possess the stereotyped meaning of the Mishnah. In the Mishnaic context it usually denotes a legal and religious immaturity that ~~extends until~~ <sup>terminates with</sup> the thirteenth year for the male and the twelfth for the female. The term  $\text{קטן}$  in the Bible is applied very loosely.

$\text{קטן}$  is often used to refer to a relatively young person, whose age is not defined, in contradistinction to a  $\text{גדול}$ , who in this sense is a relatively older person.

It is likewise used to refer to one great in wealth as opposed to one of small means. We often find the expression

$\text{קטן ו גדול}$   $\text{גדול ו קטן}$ , both great and small.<sup>1</sup> At other times  $\text{קטן}$  is used interchangeably with  $\text{צעיר}$  which also refers to young persons. The Bible appears to make very little distinction between  $\text{קטן ו צעיר}$ . For example, we find in reference to the selection of David as king a significant statement:  $\text{והנה הנערים ויאמר דוד אהרן הקטן}$

$\text{והנה הנערים}$   $\text{והנה הנערים}$   $\text{והנה הנערים}$   
'And Samuel said unto Jesse: Are here all thy children? And he said 'There remaineth yet the youngest, and, behold, he keepeth the sheep.'<sup>2</sup>

Similarly we find that Samuel is referred to as

$\text{צעיר}$  just as soon as he assumes his duties to Eli, the High Priest.<sup>3</sup> Undoubtedly, Samuel was still young in years. So it appears that  $\text{קטן ו צעיר}$  and  $\text{צעיר}$  are used almost indiscriminately in Biblical times without referring to any

particular age level. This point is corroborated in the story  
of the birth of Moses. In the same verse one finds both וַיֵּרָא  
וְהָיָה בֶן-שָׁנָה וְהָיָה אִתּוֹ הַלֵּל וְהָיָה אִתּוֹ חֲמִישֵׁי שָׁנָה  
and וַיֵּרָא וְהָיָה בֶן-שָׁנָה וְהָיָה אִתּוֹ הַלֵּל וְהָיָה אִתּוֹ חֲמִישֵׁי שָׁנָה  
"And she opened it, and saw it, even The child, and behold, a  
boy that wept. And she had compassion on him, and said: 'This  
is one of the Hebrews' children.'"<sup>4</sup>

How can we account for this phenomenon, namely the absence of any specific social groups with specific age levels? It would appear that the very simplicity of early Jewish life did not warrant any such divisions. The particular <sup>social</sup> organizational ~~society~~ in Biblical times was not amenable to class divisions. During this period the father was the absolute monarch in the family. The individual within this structure did not have any status and did not emerge as a distinct personality. The family was the social unit and at its apex was the father. As its head, the father was accorded certain absolute powers and had complete control over the actions of his children. Even as we shall show, the children of maturity were subject to his command and their deeds subject to his approval. Thus the question of the amount of individual freedom to be enjoyed by the minor is almost superfluous. In a society where the freedom of a major was considerably curbed, what could the minor expect?

Let us examine now some of the prerogatives of the potestas patris conferred on the head of the family. An examination of the sources discloses that his authority under a patriarchal system was practically supreme and unchallenged, except in a few individual cases. Thus for example the power of the father over the minor and major extended even unto life

and death. Abraham could offer Isaac as a sacrifice.<sup>5</sup> Jephthah was free to fulfill his awful vow.<sup>6</sup> Even in the times of the kings, one finds traces of sacrifices to Molech.<sup>7</sup> The child that struck or cursed his father or mother was to be put to death.<sup>8</sup> The rights of the father over his minor children extended to selling them as slaves, with particular reference to the minor daughter.<sup>9</sup> The verses to be found in Exodus seem to indicate that it was a well known and often practiced custom. 'And if a man sell his daughter'.<sup>10</sup> However, there was already a restriction as <sup>to</sup> the right of the father. For he that bought her had either to marry her himself or give her in marriage to his son with all the rights decreed to a wife. If this did not take place, her father or some other relative had to redeem her, or if her marital duties were neglected she ~~automatically~~ became free and the husband had no right to demand repayment on the purchase.<sup>11</sup> The selling of one's daughter appears to have been done only in the case of severe poverty. 'Yet now our flesh is as the flesh of our brethren, our children as their children; and, lo, we bring into bondage our sons and our daughters to be servants, and some of our daughters are brought into bondage already; neither is it in our power to help it, for other men have our fields and our vineyards.' <sup>12</sup>

A phase of this authority which was universally exercised was the sale of daughters in marriage. Marriage arrangements were likewise arranged for the son by the father. 'Arise



go to Paddan Aram, to the house of Bethuel, thy mother's father, and take thee a wife from thence of the daughters of Laban, thy mother's brother,<sup>13</sup> or ' And Judah took a wife for Er, his first born, and her name was Tamar.<sup>14</sup> At times we find the influence of the mother in this matter.<sup>15</sup> However, it was with regard to the daughter that the father arranged for her marriage. His daughter's labor in the household was evidently most valuable to him. With her marriage she became independent ~~from~~<sup>of</sup> her father and became subordinate to her husband. How valid is the utterance that a man's children constitute his very wealth!<sup>16</sup> Upon her marriage the daughter entered her father-in-law's home. The father was therefore compensated for his loss by the payment of money known as "Mehay". It was a certain sum of money that the father received from the bridegroom for giving his daughter as a wife. The value of the girl depended upon the dignity of the father, and upon her own beauty. Oftentimes the marriage was negotiated without even consulting the daughter.<sup>17</sup> The final word rested with the father. 'And Jacob loved Rachel; and he said: I will serve thee seven years for Rachel thy younger daughter.' And Laban said: It is better that I give her to thee, than that I should give her to another man, abide with me.'<sup>18</sup> The dowry which in our times has come to be the marriage outfit provided by the father was in ancient Israel a price paid by the husband for the bride. 'Ask me never so much dowry and gift, and I will give according as ye shall say unto me; but give me the damsel to wife.'<sup>19</sup>

or 'And Saul said: thus shall ye say to David: The King desireth not any dowry, but a hundred foreskins of the Philistines, to be avenged of the king's enemies.' 20

The personal interest that the father had in marriage affairs is reflected equally in the fact that a man guilty of wrongdoing toward a maiden was considered to have brought a direct pecuniary loss to the father. The felon had to make good his loss, by paying the amount of the dowry, whether he married the girl or not. 21

In the Deuteronomic law there is provision for a son that persists in his rebellious ways and fails to be obedient to his father and mother. The law states <sup>that</sup> he should be brought before the elders of the city and his parents <sup>should</sup> say, 'This our son is stubborn and rebellious, he will not obey our voice; he is a glutton, and a drunkard.' 22 There is no provision in this law for any investigation nor for any defense by the accused child. The parents acted both as accusers and prosecutors; the elders were the judges. 23 If the parents' accusation was accepted by the elders of the city, thereupon, 'all the men of the city shall stone him with stones.' 24

It is significant to note that here an attempt <sup>was made</sup> to check the <sup>absolute</sup> ~~very~~ authority of the father ~~was made~~. The Deuteronomic law made it impossible for the parents to do with the child as they pleased. <sup>their</sup> ~~This~~ act had to be <sup>approved</sup> ~~received~~ by the elders of the city, <sup>sitting</sup> as a court. Thus a higher court, but not the parents, imposed the death penalty. Such an action was a definite limitation of the parental authority.

Commendations of corporal punishment abound in the Bible.

'He that spareth his rod hateth his son, But he that leaveth him chasteneth him betimes.'<sup>25</sup> 'Chasten thy son for there is hope, set not thy heart on his destruction ' <sup>26</sup>  
'Withhold not correction from the child For though thou <sup>27</sup>  
beat him with the rod, he will not die.'

Despite the autocratic powers the fathers possessed and enacted against his sons, there were, no doubt, feelings of affection and love displayed <sup>towards</sup> ~~upon~~ him. Not all fathers were of ~~this~~ <sup>the</sup> austere type we have described until now. The very fact that he is admonished to be severe with his children is an indication of his laxity in carrying out his prerogatives over them. The great paternal feelings of affection are indeed epitomized in the poetic utterance 'Like <sup>a</sup> father hath compassion upon his children, so hath the Lord compassion upon them that fear Him.' <sup>28</sup>

From our discussion up till now, we can readily see that there is no direct conscious treatment of the minor in the Bible. Laws concerning him are <sup>grouped</sup> ~~included~~ together with the general regulations applying to sons and daughters and must be <sup>separated</sup> ~~sifted~~ from them. While the father had such absolute powers over his minor children he was nevertheless obligated to perform certain functions. Great emphasis in Biblical times was placed upon the education of the child. <sup>29</sup>  
The Bible <sup>also</sup> ~~x~~ imposes on the father the solemn duty of circumcision.

And ye shall be circumcised in the flesh of your  
~~'And Abraham circumcised his son Isaac when he was eight~~  
~~days old, as God had commanded him'.~~ <sup>And he that is eight days old shall be circumcised.</sup> <sup>30</sup>  
~~freedom . . . . .~~ In memory of the

first born that were killed in Egypt, the fathers were command-  
 ed to redeem their first born sons. כֹּל בְּעוֹר חֵמָר לְבָנֵי אֶחָד  
 וְאֶת כָּל בְּעוֹר חֵמָר לְבָנֵי אֶחָד וְאֶת כָּל בְּעוֹר חֵמָר לְבָנֵי אֶחָד  
 'And every firstling of an ass thou shalt redeem with a lamb,  
 and if thou wilt not redeem it, then thou shalt break its  
 neck; and all the first born of men among thy sons shalt thou  
 redeem.' 31

Perhaps the only reciprocal obligation on the part of  
 the minor was to honor and revere his parents. 'Honor thy  
 father and thy mother, that thy days may be long upon the  
 land which the Lord thy God giveth thee.' 32

In our attempt to find some possible age of maturity,  
 we must consider the age of twenty. It plays an important  
 role in the Bible. There are a number of significant passag-  
 es to indicate that the age of twenty was a dividing point in  
 the life of the individual. When one attained this age he  
 was admitted to military services. יְהִי לְכָל פְּקוּדֵי בֵּן  
 יִשְׂרָאֵל לְקִיּוֹם אֶבְרָם אֶתְּנֶה לְךָ וְאֶתְּנֶה לְךָ וְאֶתְּנֶה לְךָ  
 בִּשְׁמֵנו

'And all those that were numbered of the children of Israel  
 by their fathers' houses, from twenty years old and upward,  
 all that were able to go forth to war in Israel.' 33 This  
 was likewise the age limit for those who had to pay the  
 half shekel when people were counted. 34

Similarly one finds that certain religious rights were added at this time. Priests and Levites were permitted to assume their respective services.<sup>35</sup> According to another passage the age had been set at 30, 'from thirty years and upward.'<sup>36</sup> In still another passage the age is given at 25.<sup>37</sup>

The twentieth year is significant from a ritual standpoint in relation to one's vows. An important division as to the amount of money to be given is emphasized at this particular age. 'Then thy valuation shall be for the male from twenty years old even unto sixty years old, even thy valuation shall be fifty shekels of silver, after the shekel of the sanctuary.'<sup>38</sup> Individuals from twenty years and above are subject to Divine punishment. The ~~plight~~<sup>penalty</sup> of all that had believed the report of the spies is complete annihilation. Excluded from this lot are the young children. 'Moreover your little ones, that ye said should be a prey, and your children, that this day have no knowledge of good or evil, they shall go in thither, and unto them will I give it, and they shall possess it.'<sup>39</sup> In this category were likewise included all those under twenty years of age.

'Your carcasses shall fall in this wilderness, and all that were numbered of you, according to your whole number, from twenty yearsold and upward, ye that have murmured against me.'<sup>40</sup> In the face of ~~this~~<sup>these</sup> data it would be quite plausible to assume that the age of twenty was the age of majority in Biblical times.

Recapitulating our <sup>observations</sup> ~~findings~~ we may justifiably maintain that there was no technical term for minors in the Bible, that there was no special class known <sup>PNCP</sup> , that the father assumed absolute rights over his children extending even to the adult son, that there is no conscious treatment of the minor in the Bible, that there are a few laws that appertain to him, as education, circumcision, redemption, and finally that the twentieth year was <sup>probably</sup> the age of majority.

Notes to Chapter One

1. Esther 1:5, 20; Jonah 3:5
2. I Samuel 16: 11
3. I Samuel 3: 1
4. Exodus 2:6 the discovery of Moses by the daughter of Pharaoh.
5. Genesis 22
6. Judges 11:29-40
7. Lev.18:21; 20: 2-5; II Kings 23:10; Jeremiah 32:35.
8. Ex. 21:15, 17; Lev.20:9; Prov. 20:20  
If one understands the expression *עֶלֶף* as a fully mature person, it would appear that the minor is excluded from any such punishment. The other alternative would mean that no distinction is drawn between a minor or major. This is the assumption of the writer.
9. Exodus 21: 7-12
10. *ibid*,
11. *ibid*.
12. Nehemiah 5:5. This would seem to indicate that males were also sold.
13. Gen. 28:2, referring to the flight of Jacob from Esau when he is blessed by his father and given this charge.
14. Genesis 38:6
15. Gen. 21:21. The mother of Ishmael selects a wife for him,  
I Kings 2:17 Adonijah pleads for Bath Sheba to intercede for him in behalf of Abishag, the Shunammite.
16. Psalms 127:4
17. Gen. 24:58 appears to be an exception where Rebekkah is asked to give her consent.
18. Gen. 29:18,19. Here seven years seven is a substitute for actual payment of the daughter.  
Numerous other references are to be found.  
Gen.24:50 I Sam. 17:25 Judges 14:2. Joshua 15:16

Notes to Chapter One (cont'd)

19. Genesis 34:12
20. I Sam. 18:25
21. Exodus 22:16    |    Deut. 22:29
22. Deut. 21:20
23. Deut. 21:21
24. ibid.
25. Prov. 13:24
26. Prov. 19:18
27. Prov. 23:13
28. Psalms 103:13
29. This will be dealt with more in detail in the chapter entitled 'The Education of the Minor'.
30. Gen. ~~24:12~~ 17:1,12
31. Ex. 13:13
32. Ex. 20:12
33. Num. 1:45
34. Ex. 30:14    |    Ex. 38:26
35. I Chronicles 23:24-27;    |    |  
According to the report of the Chronicles, the date had been fixed by the time of David.
36. Numbers 4:3, 23.
37. Numbers 8:24
38. Leviticus 27:3
39. Deut. 1:39 - They shall cross over to the promised land.
40. Numbers 14:29



## Chapter Two

### A definition of the Minor

With this in mind, we turn now to the Mishnaic period, where an altogether different picture presents itself. The complexity of Jewish life and the emergence of new institutions necessitated that the minor be recognized as a special class of his own, as an individual, not merely an obscure entity in a family unit. Hence the term <sup>167</sup> and <sup>168</sup> , as used in the Tannaitic sources in general becomes a technical device to denote certain age levels. One under 13 years and one day is termed a minor, devoid of religious and legal authority. A female minor is one under the age of 12 years and one day. This change as we shall soon note did not take place immediately. It was a gradual transition. In the Mishnaic period the minor is slowly emancipated from the absolute control of the father. Definite legislation is the result of a conscious and earnest attempt to protect the lot of the minor. But while his status is somewhat improved as contrasted with the biblical period, one must be careful to note that in some respects he remained in the same status, and at times finds himself in even more dire straits than in the Bible. Law and custom in regard to the minor is not always stable. His status frequently changes. Perhaps one can find an in-



before one reaches the age of twenty.

לפני שיהיה לו שני שערות  
לפני שיהיה לו שני שערות

At the age of twenty heavenly punishment is not enforced.<sup>4</sup>

Even when this age level was superseded by new criteria, namely the age of puberty, vestiges of the former persisted and are to be found in Amoraic times. Thus the statement that no judge under twenty could pronounce sentence of death is attributed to Rabbi Johanan

אין שופט מתחת עשרים  
אין שופט מתחת עשרים

One twenty years old who has not produced symptoms is fit for monetary decisions, but not for capital sentence.<sup>5</sup>

Similarly one cannot dispense with property until the age of twenty.<sup>6</sup> When this transition took place, namely the substitution of twenty year age level, for a period of puberty, is difficult to surmise. But already at the time of Beta Hillel, precursor of the Tannaitic period, we have mention of both age levels.

אין שופט מתחת עשרים  
אין שופט מתחת עשרים  
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אין שופט מתחת עשרים  
אין שופט מתחת עשרים

If a woman twenty years old has not grown two hairs she must bring him proof that she is twenty years old; she is

reckoned sterile and she may not perform halitzah nor may she contract levirate marriage. If a man twenty years old has not grown two hairs he must bring proof that he is twenty years old; he is reckoned a eunuch, and he may neither submit to halitzah nor may he contract levirate marriage. So the School of Hillel.<sup>7</sup>

According to this opinion one receives his status at twenty if signs of puberty have not appeared.<sup>8</sup> Then he becomes stigmatized as a eunuch. That this is the meaning of the Mishnah is further corroborated in a fuller statement of the Josephite:

Statement of the Josephites:

ל' יוסי' בן יהודה אומר שג' שורות אבן עזריאל חנה  
שמואל הבית ה' הכי הא כסדים פנ' שביו  
אחר מין הג' אלע אל הדואה שג' שורות אר"ם  
בהיאר שהיאר מאמר מין הכי הוא סוף איני

R. Jose son of Rabbi Judah states that one twenty years old who has not brought symptoms even though he brought them later, is reckoned a eunuch as regards everything, a woman twenty years old who has brought symptoms, even though she brought them afterwards, is reckoned sterile in regard to everything.<sup>9</sup> There is no doubt in this passage that he is reckoned a eunuch and not that he must prove he is a eunuch, is the interpretation. Prior to this time, one may possibly conjecture that the age of twenty was the sole criterion for majority and that physical symptoms were not yet considered. There is also a view that the first 30 days of the twentieth year count as a whole year, and therefore the laws that are to be applied when one reaches twenty are also to be applied when one comes to the age of 19 year and 30 days.<sup>10</sup>

The term CP was now identified with one who was physically unripe and sexually undeveloped. The criterion



The last stage in the development was when these age limitations were permanently fixed at twelve years and one day and thirteen years and one day respectively. Thus we find passages when the age limit has already been established and the signs of puberty are not even mentioned.

Jadaḥ b.Tema says that one becomes liable for the fulfillment of the commands at thirteen.<sup>15</sup> The Rabbis had already evidently assumed that the signs of puberty were present and saw no need of an examination unless vital issues were at stake. Similarly another passage in Yoma is already based upon the definite age levels of maturity. 'They do not cause children to fast on the Day of Atonement, but they should exercise them therein one year or two before they are of age that they may become versed in the Commandments.'<sup>16</sup>

What were the physical symptoms that indicated puberty. Undoubtedly there were many such symptoms. But in proclaiming one a major, the main criterion was the appearance of two pubic hairs on the body.<sup>17</sup> Other symptoms usually occurred at about this time, with the development of the breasts in the female.<sup>18</sup> Sometimes the upper symptoms began to develop prior to the appearance of the hair; and were not reckoned in determining the age of puberty.<sup>19</sup> One Boraitha teaches that the appearance of such symptoms is usually accelerated by the occupation and environment of the individual and the means.

הנשא רש"ל אומר בט"ל נכרים גמלן מנהג  
 זבוא מנפ שטאליג דמחזאון בט"ל כפרין  
 ציון מנהג זבוא מנפ שטאליג כראים ל אמין  
 בן איצור אומר בט"ל צלרים צ"י ימין אמר  
 זבוא שטאליג באפיקוסון בט"ל צ"י ימין אמר  
 מנהג זבוא מנפ שטאליג כ"י חים ז"ל ק

R. Simeon b. Gamliel stated that daughters of the city- the lower symptom appears before because of the bath, daughters

of small town - upper appears before because they grind in the mills/ R.Simeon b.Eliezer states that wealthy daughters- the right breast appears before as it is rubbed against their corset, the left breast appears first among the im-  
20  
poverished daughters as they draw water upon them.

Thus while both indications are of paramount importance it is generally accepted that the two pubic hairs became the final criterion in determining majority. According to one anonymous Tosephta these two hairs need not necessarily appear in the region we have indicated. They may appear anywhere.

Handwritten notes in Hebrew script:

אם לא נמצאו שני שערות אלו  
במקום הנ"ל אז נמצאו  
במקום אחר או במקום  
אחר או במקום אחר  
אז הם נקראים שערות  
אחרות ונמצאים  
במקום אחר או במקום  
אחר או במקום אחר

These two pubic hairs, even if one is on the head and the other on the foot, or one under the armpit the other on the thigh, or if the two are among the joints of the fin-  
21  
ger, they are both combined.

Rabbi Ishmael was of the opinion that unless these two pubic hairs could be bent to <sup>their</sup> every root, they were to be accepted as premature indications of puberty. R.Eliezer was not as stringent and only required that these hairs be long enough to be grasped by the finger nails, while Rabbi Akiba maintained they must be long enough to be cut off with scissors.  
22



What were the rights that puberty conferred upon the major. The most general statement in this regard is to be found in a Mishnaic source that states 'If a girl has grown two hairs she is subject to all the commands prescribed in the Law, and she may <sup>be subject to</sup> perform halitzah or contract levirate marriage. So too, if a boy has grown two hairs he is subject to all the commands prescribed in the Law...<sup>23</sup>

In addition to the principal age of majority, there are likewise different age levels the attainment of which does not make the individual of full age, but nevertheless marks certain degrees of maturity. When these arrive they confer on the individual certain rights and impose upon him or her duties and obligations not possessed hitherto. The age of three years and one day marks a certain development in the life of the female minor. At this age she attains a certain amount of sexual maturity and becomes subject to all laws appertaining thereto. Thus we find full import of this age in a Mishnaic utterance

כאשר ע' נאמן ויום אחד מקדשה כדא  
נאמן הוא ע' ידק וקדשה וחידין ע' א  
נאמן אלא א"ע ומשנה א' כדא  
נאמן משכ' אלא כעין נאמן אלא  
נאמן כדא כ' ע' אלא משכ' נאמן  
נאמן כדא כ' ע' אלא נאמן כדא  
נאמן כדא כ' ע' אלא נאמן כדא

"A girl 3 years and 1 day may be betrothed by intercourse her deceased childless husband's brother can acquire her by intercourse, and by connexion with her a man can be culpable by virtue of the law of a married woman; and him

that has <sup>connection</sup> ~~connection~~ with <sup>her</sup> (while she is a menstruant) she renders unclean so that he conveys uncleanness to what is beneath him in degree as (he that has a flux conveys uncleanness to what lies above him; if she is married to a priest she may eat of heave offering; if one that is ineligible for marriage with a priest; if any of the forbidden degrees prescribed in the Law had ~~connection~~ with her they are put to death on her account, but she is not culpable. If she is younger than this, it is as one that puts a finger in the eye.<sup>24</sup>

This passage the writer has quoted in toto because it is the most comprehensive in respect to the legalities that ensue from a relationship with one 3 years and one day. Relationships with those that are prohibited bring on the full consequences that usually result if committed by an adult. She can be acquired by intercourse and by the levirate cohabitation. Generally speaking all those particulars that are extant with certain sexual relationships are in full force when minors 3 years and 1 day are involved.

Likewise we find then any minor under 3 years and 1 day, either redeemed, proselytized or freed retain the statutory <sup>Ketubah</sup> ~~Ketubah~~ of 200, and a virginity suit may be lodged against her.<sup>25</sup> However the converse is true once she becomes 3 years and 1 day.<sup>26</sup> Rabbi Judah while recognizing her susceptibility during this period appears to be less realistic and more idealistic in his attitude toward the minor. He maintains, that despite the temptation she

she does not yield to this immoral act. Hence he ruled  
'Even though she be ten years old she remains in her  
purity and her Ketubah is 200 denairs!'<sup>27</sup>

But even as the Rabbis recognized a certain physical  
development in the female minor at 3 years and 1 day,  
so too a certain degree of mental maturity was achieved by  
the male minor at the age of six or seven.<sup>28</sup> At this age  
the minor acquires the right of entering upon transactions  
concerning movable property.

הפסוק נקח נקח ונמכר  
'In matters concerned with movable property a purchase or  
sale effected by children is valid.'<sup>29</sup>

Similarly in respect to a female minor, once she shows  
mental alertness, she is permitted to be divorced.

היא יכולה לומר אף כי היא  
אם היא

A child that is able to keep her bill of divorcement can  
be divorced.'<sup>30</sup>

In defining who is a female minor that is able to keep her  
fit, the Josephite adds that if when given some other ob-  
ject and she returns it after an hour, she is considered  
mentally alert and intelligent enough to be divorced.<sup>31</sup>

At nine years and 1 day, the male minor assumes a  
certain degree of physical maturity. He can perform the  
sexual act of the *levirate* marriage and render his sister-  
in-law ineligible for marriage with his other brothers.<sup>32</sup>

However he is restricted only by one act, whereas they can render her ineligible by any one of four acts.<sup>33</sup> R. Meir however differs with the rabbis and maintains that even at this age he has some power in these three other acts.<sup>34</sup> R. Simeon feels that even at this age the minor does not achieve any degree of maturity, whether it be sexual or mental.<sup>35</sup> Even as the Rabbis recognized that his sexual act has full validity in respect to a levirate bond, so too in respect to *Teyumah* his sexual act has a similar effect. For a child nine years and one day can deprive a woman, the daughter of a priest, from eating *Tesumah*. While he may thus serve to disqualify from eating *Tesumah*, yet he cannot bestow upon her the right of <sup>eating</sup> *Tesumah*.<sup>36</sup> R. Simeon once again rejects this view as illogical since it prohibits in one case and has no legal consequence in the other.<sup>37</sup>

These ages of physical maturity appear to have been well known as they are often not explicitly defined in many Mishnaic statements. One must therefore be extremely cautious to note what distinction is drawn in the Mishnah, as the terms *קטן* and *נער* can readily refer to physical maturity age levels. These are indicated in a Tosephta--

מִי שֶׁהָיָה בֶּן עֶשְׂרִים וְשָׁנִים וְהָיָה לוֹ בֵּית אִשָּׁה  
וְהָיָה לוֹ בֵּית אִשָּׁה וְהָיָה לוֹ בֵּית אִשָּׁה  
וְהָיָה לוֹ בֵּית אִשָּׁה וְהָיָה לוֹ בֵּית אִשָּׁה  
וְהָיָה לוֹ בֵּית אִשָּׁה וְהָיָה לוֹ בֵּית אִשָּׁה

Who is considered a male minor, and who is considered a female minor.- A male minor is one less than 9 years and 1 day; a female minor is one less than 3 years and one day.<sup>38</sup>

With the attainment of the eleventh year and the twelfth for the male minor, a certain amount of mental maturity was recognized by the rabbis. At this particular age certain restrictions were relaxed so that if a minor showed mental alertness in respect to his vows, they became valid. This of course was indicated by an examination where the nature of the vow is discussed to see whether he or she understands its true nature or not. 'A girl eleven years old and one day- her vows must be examined; if she is twelve years old and one day her vows are valid, but they must be examined throughout the twelfth year. A boy twelve years old and one day his vows must be examined; if he is thirteen years and one day, his vows are valid, but they must be examined throughout the thirteenth year. When they are younger than this, even though they say, 'We know in whose name we have vowed it' or 'in whose name we have dedicated it', their vow is no vow and what they dedicate is not dedicated. But when they are older than this, even though they say, 'We know not in whose name we vowed it', or 'in whose name we dedicated it', their vow is a valid one, and what they dedicate is validly dedicated.

39

In this chapter we have noticed many significant details. (1) The age of twenty persisted in early Tannaitic

Times, vestiges of it are even to be found in Amoraic Times.

(2) A new criterion for majority supplanted the 20 years.

(3) Puberty became the test of adulthood. (4) Respective age levels were soon crystallized. 13 years and 1 day for the male, twelve years and 1 day for the female. (5) The age of

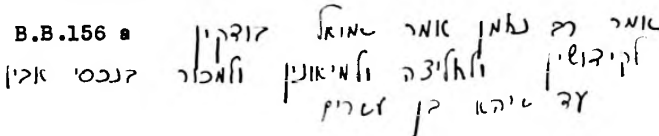
three years and one day conferred certain rights on the

female minor. (6) The age of six and seven was recognized as a period where a certain mental maturity <sup>conferred certain rights</sup> was obtained.

(7) The age of nine years and 1 day was the corresponding physical maturity with the male. Certain rights were conferred then.

(8) The age of 11 and 12 for both female and male alike conferred certain <sup>certain rights</sup> mental maturity in respect to vows.

Notes to Chapter Two

1. Yeb. ~~Josef~~ XIII:4
2. Ber. Rabbah 14:7 The writer assumed that the Rabbi Johanan stated here, is a Tanna.
3. Ber. Rabbah 58:1 An anonymous statement in which high tribute is paid to Sarah who lived to be 127 years old. At the age of 100 she was pure and sinless, as a maiden just entering her twentieth year. Up till that period she is not responsible for sin and its consequences.
4. YeV. Sanhedien XI 30 b, its parallel can be found in YeV.B:K II 64c. Whether this is an authentic statement of the prophet is perhaps open to question. Nevertheless it indicates that this is an attempt to base it on an old tradition that this attitude persisted even beyond Biblical times.
5. Yer. San. IV-22~~8~~ - quoted in the name of R.Johanan, The Palestinian Amora.
6. B.B.156 a 
7. Nid. V-a Beth Shammai maintains that in either case the age is eighteen years, when no pubic hairs appear.
8. Already it appears that the signs of puberty are the first indication of majority. If these do not appear, the old law, namely the age of twenty, becomes the criterion.
9. Nid. ~~Josef~~ VI-2
10. Nid. ~~Josef~~ VI-3 || Nid. 47 b
11. ~~Josef~~ VI:4 | Nid 48 b  
R.Simeon maintains that even during the period, they may be examined, and their testimony accepted, except that the woman who is deemed of age is to apply all stringencies of the law until after it is definitely established she is a major.
12. Nid.V:9
13. Although the writer has <sup>not</sup> made a thorough study of Roman law, it is generally well known and accepted that the Tannaitic distinction based on puberty was the same standard by which the Romans declared one to be a major. There are two age divisions in Roman law, one that precedes puberty and the other that follows puberty.

13.(cont'd) The Mishnaic *ר' יוסי* would correspond to the Roman impuberes, while the *תנא* corresponds to Roman puberes.

14. Nid. Josef XI:2 In the parallel passages Kid.16 b and Nid.46 a, the text is somewhat different. The variant there is

*אין יום אחד שיהיו שני פנים*

One might conjecture that these Boraithas are not corrupt but reflect the trend of the time in which they were written when the age level had already been fixed at thirteen and one day. One Tosephta version is undoubtedly an older source and reflects a period when a whole year was allowed to establish approaching puberty.

15. Aboth 5:21 - Judah b.Tema who lived at the end of the second century.

16. Yoma - 8:4 - *אין*, is another appellation to designate both *אין*, and *אין*.

17. They are referred to as *אין* in Niddah VI:1 euphemistically to designate two pubic hairs that appear on the genital region.

18. ibid These symptoms are referred to as The *אין* upper symptom.

19. ibid - This is the view of Rabbi Meir who maintains that if the *אין* preceded the pubic hairs they are of no consequence. The Rabbis deny this and say it is impossible for the upper symptoms to appear before the lower ones.

20. Niddah 48 b

21. Niddah, Josef VI:7 It appears that this opinion was not accepted by the Redactor of the Mishnah, Rabbi.

22. Nid VI:12

23. Nid.VI:11 - Aside from this general statement, one finds that even if a minor has not produced two hairs, still his *אין* *separation of* *אין* *offering to this* is the opinion of R.Judah. R.Jose maintains that a different criterion is applied to *אין* offering. It is dependent upon the time when his vows are accepted. Ter. *פ"ג*



24. Nid.5:4

25. Keth. I:2 - Captivity in those days was a common occurrence. The Rabbis were constantly afraid that while in captivity she would be violated. However any minor under 3 years and 1 day could not lose her virginity as it was almost a physical impossibility to have mature sexual relationships with her. Even if violated, she still ~~retains~~ <sup>is not</sup> her virginity. A virgin according to Jewish law ~~received~~ <sup>was to receive</sup> 200 denars as her Kethubah ~~when she married~~. Likewise a virginity suit may be lodged ~~by her~~ <sup>against her</sup> when she marries at this age because she has the status of a virgin. *is suspected*

26. Keth. I:4 The Ketubah of a female proselyte, captive or freed after the age of three years is one mina, and no virginity suit may be lodged against her.

27. Keth. Josef III - 45. R. Dosa holds a similar viewpoint to that of R. Judah. He maintains she may even eat Tesumah because she is not suspected of intercourse with her captors. At that age level it is fairly safe to assume that actual intercourse does not take place and she is only fondled. Keth 36 b. R. Judah's viewpoint was not accepted by the Redactor of the Mishnah. It is one that displays a most lenient and tender feeling towards the female minor.

28. This is an Amoraic explanation. However one Boraita teaches that it was at the age of 9 or ten. Gittin 60 a

29. Gittin 5:7 | | Joseph - V-3. In this latter source R. Gamliel maintains that this regulation is to be applied with discretion, only ~~to~~ those who show such knowledge and ability to make transactions are permitted to do so.

30. Gittin Joseph V:2 | | Gittin 64 b

31. Git. Josef VI:3

32. Yeb. 10:6

33. Yeb.96 a- A boy 9 years and 1 day renders his sister-in-law unfit for the brother by one kind of act only, while the brother renders her unfit for him by four acts. He renders her unfit ~~by~~ <sup>for</sup> cohabitation and by no other act, while the

brothers render her unfit for him by cohabitation, Meamar, divorce, or halitzah.

34. *ibid*

35. Yeb. 10:7, Yeb. 10:9

36. Yeb. 7:4

37. Yeb. *Yosef* 9:3

*Handwritten notes in Hebrew:*  
 וְהָיָה כִּי יִשְׁמַע ה' אֶת הַקּוֹל וְיִשְׁמַע אֶת הַקּוֹל וְיִשְׁמַע אֶת הַקּוֹל  
 וְיִשְׁמַע אֶת הַקּוֹל וְיִשְׁמַע אֶת הַקּוֹל וְיִשְׁמַע אֶת הַקּוֹל

38. *Yosef*. Keth I:2

39. Nid. V-6 - A number of incidents are related in the Josephtha Nid.V,15,16,17 where the Rabbis, namely Rabban Gamliel, Rabbi Akiba and others examined the children to ascertain whether they understood the true nature of their vows. Rabban Gamliel maintains that the examination determined whether he has reached the age of maturity or not, whereas R. Jose' says it has only validity in respect to vows. It would be most appropriate here to observe that the sages spoke in a parable about woman. She is like an unripe fig while she is yet a child-but like a ripening fig when she assumes girlhood *אֶת הַקּוֹל*. This we have seen throughout that she becomes older, with each age level she becomes riper and riper until in the last stage adulthood she becomes metaphorically speaking a fully ripe fig. Nid.V:7

# The Education of the Minor

As we have shown, there are few specific laws referring to the minor in the Bible. <sup>One of</sup> The most important of these, by virtue of the fact <sup>that</sup> it is constantly reiterated, is the provision for the education of the minor. The injunction <sup>to</sup> to instruct the minor is emphasized again and again. Thus the Bible commands, 'Thou shalt teach thy children.' <sup>1</sup> More specifically we find 'And thou shalt teach them diligently unto thy children, and shalt talk of them when thou sittest in thy house, and when thou walkest by the way....' <sup>2</sup> It would appear that these Biblical injunctions reflect a period where no formal school system had as yet <sup>been</sup> developed. There were no <sup>such</sup> professional teachers as we find later in Mishnaic times. Consequently there was no need for the maintenance of a school and teachers. Hence this obligation could be fulfilled only by the father. <sup>3</sup> The very phraseology of these commands, with the emphasis on the "you", suggests that this was the case. Thus the early elementary training of the child came from his home environment. It was here that his character was molded and his personality traits formed. Similarly it was in the home, not the schoolhouse, that he became equipped with the various skills to meet the hardships of life. In an agricultural society, under Canaanitic influence, the minor was given adequate training by his parents to prepare for the particular type of occupation he was to follow.

As to the method of education, we are told that the father often took the initiative in a formal manner. 'And thou shalt tell thy son in that day, saying: It is because of that which the Lord did for me when I came forth out of Egypt.' <sup>4</sup> The father is thus commanded to relate to his child the significance of the Passover institution. At other times, and for the most part during special festivals and rituals, the child received his instruction in a less formal manner. <sup>5</sup> The child's interest and fascination were easily aroused at the performance of various rituals and ceremonies. He was prompted to inquire as to their significance and meaning. The father, by answering their questions that were posed, indirectly helped to inculcate the minor with an appreciation and understanding of the religious festivals. 'And it shall be when thy son asketh thee in time to come, saying: What is it? that thou shalt say unto him... By strength of hand the Lord brought us out from Egypt, from the house of bondage;' <sup>6</sup> And it shall come to pass when your children shall say unto you: What mean ye by this service? that ye shall say.... <sup>7</sup>

Similarly we find that the religious education of the minor was not confined exclusively to the home. Little children were commanded to attend the public reading of the Law in the seventh year. "Assemble the people, the men and the women and the little ones, and thy stranger that is within thy gates, that they may hear, and that they may learn, and fear the Lord your God, and observe to do all the words of this law; and that their children who have not known, may

hear and learn to fear the Lord your God, as long as ye live in the land whither ye go over the Jordan to possess it.' 8

Undoubtedly this convocation served a twofold purpose. It helped to instruct the elders; secondly, and perhaps even more important, it initiated the youngsters into the Jewish traditional and ceremonial life. The <sup>B</sup>G, as a special category would designate very young children, about three or four, who could <sup>not</sup> understand what was read before them. Thus their presence would mean an attempt to expose them to the knowledge of <sup>the</sup> Torah and of the religious duties which it prescribes. Interestingly enough, the rabbis, on commenting upon a possible exposition of these words, remark<sup>x</sup> that the men came to learn, the women to hear,<sup>9</sup> and the children to grant reward to those that <sup>brought</sup> them.<sup>10</sup>

Similarly, on other occasions we are told that young children, minors, were to attend the public reading of the Law. 'There was not a word of all that Moses commanded, which Joshua read not before all the assembly of Israel, and the women, and the little ones, and the strangers that walked among them.' 11

We may summarize the period by stating that in Biblical times: (1) the father served as the child's teacher

- (2) there were no professional schools as yet established
- (3) two methods of instruction were <sup>primarily</sup> used, a formal system in which the father took the initiative; an informal system where questions and answers were used

- (4) The religious education of the minor was not so much a means to impart actual knowledge to the child, ~~but~~ to initiate him into religious life: . as

- (5) The minor was present at <sup>public</sup> convocations when the Torah was read aloud, ~~also~~ to induct him into the religious community of Israel.

In Mishnaic times, the early years of the minor's training were entrusted to the care of the father. In this period, the father had strong, well-defined responsibilities toward the minor. One Boraitha teaches

17N111 וְלִבְנֵי אִשְׁתּוֹ וְלִבְנֵי חֵיילָא דְּפִי הָאִשָּׁה וְלִבְנֵי חֵיילָא דְּפִי הָאִשָּׁה וְלִבְנֵי חֵיילָא דְּפִי הָאִשָּׁה

What are the obligations of the father towards the son: He is bound to circumcise him, to redeem him, teach him Torah, to teach him a craft and to marry him off. Some say even to teach him how to swim. R. Judah said "He who does not teach him a craft, teaches him brigandage". <sup>12</sup>

In this passage we see that teaching of Torah and a trade are the twofold educational responsibilities of the father. Likewise, <sup>instruction in</sup> Torah and a trade rank among the basic duties of the father and appear to be given equal status. When did this religious training begin? This was to take place according to one Tannaitic statement as soon as the child was able to speak.

וְכֵן אָמַר רַב הֲלֵי אִשְׁתּוֹ וְלִבְנֵי חֵיילָא דְּפִי הָאִשָּׁה

If he is able to speak, his father must teach him Torah and the reading of the Shema. <sup>13</sup>

Its parallel passage in the Tosephta supplements these duties by including the <sup>teaching of the</sup> Hebrew tongue, and <sup>states</sup> that if the father neglected them better <sup>it would</sup> have been better if ~~would it have been that~~ the child ~~were not~~ born. <sup>14</sup> This last statement is indicative of the rabbinic attitude towards

the early education of the child, namely, that it is to begin while the child is still in the infant stage. Thus the Rabbis did not fail to impress the importance of this duty by many moral precepts. The teaching of the Torah to one's son, they declare, is like receiving it on Mt. Sinai.<sup>15</sup> The one who teaches Torah to his son is as one who teaches it to all his descendants.<sup>16</sup>

This will perhaps explain why in the passage referred to above,<sup>17</sup> we find specific religious duties to be assumed by the father, despite the child's tender age and total ignorance of their time, nature, and design. *אדם הראשון יצאנו*  
*אדם הראשון יצאנו* *אדם הראשון יצאנו* *אדם הראשון יצאנו*  
A man who knows how to shake the Lulab is in duty bound to perform this duty. If he knows how to wrap himself in a cloak, he is bound to perform the commandment to wear Tzitzith; if he is able to take care of Tephilen, (not to go in unclean places), his father may buy Tephilen for him.<sup>18</sup> The extent to which some rabbis applied this early training of the child is well reflected in the action of Shammai concerning the law of the Succah, <sup>which</sup> finds Shammai most strict in this point. An anonymous opinion states that as soon as the child <sup>has been named</sup> is named by the mother, he becomes obligated, <sup>to fulfill the law of Succah</sup> Shammai asserts his opinion when <sup>indicates his practice</sup> at the birth of a male child by his daughter-in-law, he uncovers the ceiling and places shrubbery above the place where the newborn child lay.<sup>19</sup> Shammai's attitude is rather consistent, for we find in another Mishnah a similar point of view. In reference

to the Biblical injunction of a pilgrimage to the sanctuary,<sup>20</sup> all are bound to appear, except a number of persons, among whom is included the minor. The Mishnah in determining the criteria for a minor<sup>21</sup> states 'Who is deemed a child? Any that cannot ride on his father's shoulders and go up from Jerusalem to the Temple Mount.' So the School of Shammai. And the School of Hillel say: Any that cannot hold his father's hand and go up (on his feet) from Jerusalem to the Temple Mount, as it is written, three regalim'.<sup>22</sup> In this Mishnah we see that Shammai maintains a rigorous view. The child is expected to appear as soon as he is able to be carried. Hillel would wait until the child is a little older. Both, however, agree, although disputing the time element, that the child <sup>is to be</sup> trained in this religious duty at an early age. Although exempt by the Law of the Torah <sup>until</sup> ~~ill~~ he reaches majority, nonetheless he is <sup>even</sup> expected to visit the Temple, if only for training purposes.

Similarly we find in respect to the law of Erubin that it was customary for parents to send their Erub, namely food, by means of their young sons and daughters, to endear them to the precept.<sup>23</sup> For training purposes we are likewise told that a man may break bread for his own children.<sup>24</sup> According to the Halachah, this is not usually permitted unless the individual actually partakes of the meal. Special license was granted in order to endear the Mitzvah to the children. In respect to fasting, a father is told to train the children gradually so that one or two years before majority they may fast the entire Day of Atonement.<sup>25</sup>





the significance of a full mitzvah.

The duty of the father to educate his son is not, however, restricted to religious matters. At the outset of this chapter we have defined his task as twofold. It is <sup>also</sup> his obligation to teach the minor a trade, from which the minor can subsist.<sup>29</sup> Rabbi Judah says "He who does not teach him a craft, teaches him brigandage."<sup>30</sup> The implication of this statement is self evident. Unless the child has acquired some honest trade for a means of sustenance, he may eventually resort to criminal methods <sup>and</sup> ~~of~~ theft. Some rabbis include among these practical duties of the father that of teaching him how to swim.<sup>31</sup> Aside from the general remark of Rabbi Meir <sup>that a father should</sup> ~~to~~ teach his son an easy and cleanly craft,<sup>32</sup> there are a number of occupations that are <sup>discouraged</sup> ~~banned and excluded~~. Abba Gorion of Zaiden says in the name of Abba Guria: A man should not teach his son to be an ass driver or a camel driver, or a barber or a sailor, or a herdman or a shopkeeper, for their craft is the craft of robbers.<sup>33</sup> Evidently these particular callings had demoralizing effects on ~~the~~ <sup>these</sup> workers either because of the surroundings in which they were performed, or because of the very nature of the work. Among those occupations that are barred to the minor is any that necessitates constant dealings with women. "A man should not teach his son a trade that is practiced among women."<sup>34</sup> All were not of the opinion that a trade is most desirable.

R.Nehorai rejects the <sup>duty of</sup> teaching a trade to one's son. He would limit the father's obligation to <sup>the mere</sup> ~~merely~~ teaching of Torah. In seeking a possible solution for this rather striking statement, one must evaluate another dictum of R.Nehorai. R.Nehorai says, "I will put aside all the worldly occupations and will teach my son only the Torah, for all other occupations are good for a man only during his youth, but when he becomes old, he is exposed to hunger when unable to perform his duty, while the Torah is not so. She stands with the man when he is young and gives him a good and lasting hope in his old age" 35. This last statement may possibly reflect a time when Torah sufficed as a livelihood and its scholars had a particular professional status.

During the period of the second Temple fathers began to instruct their children in Greek studies. This was an inevitable result from the cultural influence of this environment which was saturated with Greek learning. When war broke out between Aristobulus and Hyscarus, the study of Greek subjects in addition to the Greek language were banned. The particular event that was instrumental in having this edict decreed is related in Sotah.

ל"ב כ"ב מ"א ב"ג ח"מ ו"א ז"ה ז"ה  
 ה"ה ה"ר ק"מ מ"ח ו"א ח"מ ו"א ח"מ  
 ו"א ו"א ה"ה מ"א ח"מ ח"מ ח"מ  
 ח"מ ח"מ ח"מ ח"מ ח"מ ח"מ ח"מ ח"מ



with the Government." 40

That many actually took advantage of this, is recorded in a statement by Rabban Gamliel, that of "thousand youths who were in my father's house; five hundred of them learned Torah and the other five hundred learned Grecian Wisdom, and out of all of them there remain only I here and the son of my father's brother in Asia." 41

Even though the father taught in Biblical times and during the early years of a minor's life, eventually there grew to be a great need for a permanent school system. Oftentimes the fathers were too busy to teach their sons, especially when conditions were somewhat complex and he could <sup>not</sup> afford to relinquish this time, as he did under the patriarchal system. <sup>Therefore</sup> Hence the school system arose as a fulfillment of a definite need of the times, <sup>under the influence of the Greeks.</sup> As early as the year 64 C.E. universal elementary education was instituted in Palestine. Without the actual use of compulsion, the provisions made by Joshua ben Gamala made education practically compulsory for children of the age of six or seven. This fact is gratefully recorded in the Talmud. On commenting upon the Mishnaic statement <sup>42</sup> that one may not protest because of the noise of the children, the Gemara states that these last words refer to minors from the time of the regulation of Joshua ben Gamala <sup>43</sup>



rebelled and went away. Then came Jashua b. Gamla<sup>a</sup> who enacted that schools should be established in all provinces and small towns and that the children be sent to school at the age of six or seven years.<sup>1</sup>

This passage which has been quoted in its entirety has many striking and revealing historical notes. In the days prior to the destruction of the Temple we first find the establishment of schools in Jerusalem. These having proven to be inadequate were now replaced by schools in each district. Even in this improvement there were deficiencies. Education began at too late a period, when the children were 16 or 17. Thus in its final and more perfect development, provisions for beginning instruction at 6 or 7 were made. Attendance was often made compulsory for these young children, whose only channel of education now came through the school system. Thus we find one of significant *Takanot of R. Simeon* was:

יְלֵדֵי חֹמֶת יְרוּשָׁלַם יִלְּכוּ לְבֵית הַסֵּדֶר

Young children shall attend the school.<sup>44</sup>

With the advent of <sup>the</sup> war and chaos that culminated in the destruction of the Temple learning deteriorated greatly. Hence we find the statement "From the day the Temple was destroyed, the sages began to be like school teachers, school teachers like synagogue attendants, synagogue attendants like common people, and the common people became more and more debased, and there was none to ask, none to inquire."<sup>45</sup>

Having thus discussed the <sup>principal</sup> ~~historical~~ factors that influenced the rise of a school system and teachers for the minor, our attention is turned in <sup>the</sup> direction of the teacher of the minor. A few remarks about the teacher of the minor will suffice. Undoubtedly there was some compensation for this type of work. Thus we find a revealing passage in the words-

וְהַיְיטָהּ לְהַלְוֵהוּ וְלִפְדּוֹתָיו וְלִפְדּוֹתָיו וְלִפְדּוֹתָיו  
וְלִפְדּוֹתָיו וְלִפְדּוֹתָיו וְלִפְדּוֹתָיו וְלִפְדּוֹתָיו  
וְלִפְדּוֹתָיו וְלִפְדּוֹתָיו וְלִפְדּוֹתָיו וְלִפְדּוֹתָיו

Our Rabbis taught: If one wants to study the Torah himself, and he also has a son who has to get instructions, (but he has means for only one of them), then he is <sup>to be preferred rather than</sup> ~~is preferable to~~ his son. R. Judah says: 'If his son is a bright and successful student, whose study will be more endurable, than his son should be preferred.' 46 This *Boraita* speaks of a situation where there are not sufficient funds to cover the expenses of instruction for both. For although the rabbis were greatly concerned about the training of the minor, still they did not permit the father to neglect his own studies.

וְהַיְיטָהּ לְהַלְוֵהוּ וְלִפְדּוֹתָיו וְלִפְדּוֹתָיו וְלִפְדּוֹתָיו  
וְלִפְדּוֹתָיו וְלִפְדּוֹתָיו וְלִפְדּוֹתָיו וְלִפְדּוֹתָיו  
וְלִפְדּוֹתָיו וְלִפְדּוֹתָיו וְלִפְדּוֹתָיו וְלִפְדּוֹתָיו

'If a slave, a woman or a minor recited (the *Shema*) to him, he must repeat after them what they say and let it be a curse to him.'





the general rabbinic attitude towards teaching of Torah to women. The study of Torah was not considered a proper vocation for any woman. Likewise the female minor was dissuaded from studying the Law, from having any intensive religious training. For the most part, religious education was restricted to the male minor.<sup>50</sup> There were a few that championed the cause of the female minor and advocated equal rights for both male and female minors ~~also~~. In Mishnah Sotah one finds the classic utterances of Ben Azzai:

אין אדם חייב ללמד את בתו  
אלא אם כן יוכל להשיג לה  
אם לא יוכל להשיג לה  
אין אדם חייב ללמד את בתו  
אלא אם כן יוכל להשיג לה  
אם לא יוכל להשיג לה

Hence Ben Azzai declared, a man is under obligation to teach his daughter Torah, so that if she has to drink<sup>52</sup> she may know that the merit suspends its effect. R.Eliezer says: 'Whoever teaches his daughter Torah teaches her obscenity!'<sup>53</sup>

In contradistinction to Ben Azzai's statement, R.Eliezer is strongly opposed to the teaching of the female minor. He evidently felt that the very temperament of women was not ~~amenable~~ <sup>suitable</sup> to the study of the Torah. Subtlety is not a desirable trait in women. By means of a thorough knowledge of the Law, a woman would be able to circumvent certain legalities and find a loophole for certain immoral activities. The question still remains, however, whether Ben Azzai's statement referred to a limitation of the laws of the adulteress,<sup>54</sup> or were extended to include the scope

of the entire Law. It is more probable to assume the latter alternative. Had he but desired to justify learning in this particular case, he would have probably met with little opposition. R.Eliezer's statement, which is provoked by Ben Azzai's liberal attitude, seems to refer to Torah instruction in general. Certainly this is the direct implication of the very words 'Whoever teaches his daughter Torah teaches her obscenity.' 55

Yet despite this more or less accepted view that one should not teach his daughter Torah, we find a few exceptions, that of Ben Azzai, already mentioned, and an anonymous statement of a Mishnah in Nedarim:

אין אדם מלמד את בתו אלא על המעשה  
אין אדם מלמד את בנו אלא על המעשה

Though he may teach Scriptures to his sons and to his daughters 56.

The reverence that was accorded a teacher sometimes superseded that of one's own father. In a Mishnaic utterance we find

אדם אחד היה לו אב ואביו היה לו רבי  
אביו היה לו רבי רבי אביו היה לו רבי  
אביו היה לו רבי רבי אביו היה לו רבי  
אביו היה לו רבי רבי אביו היה לו רבי  
אביו היה לו רבי רבי אביו היה לו רבי  
אביו היה לו רבי רבי אביו היה לו רבי

If that was the lost property of his father and that of his teacher, his teacher has first place, for his father did but bring him into this world, but his teacher that taught him wisdom brings him into the world to come; <sup>but</sup> if his father was also a sage 57 his father's has first place. If his

father and his teacher each bore a burden, he must relieve his teacher, and afterward relieve his father.....<sup>58</sup>

Thus, at times the minor must display even greater honor to his teacher than to his very own father. This is but one of the many references that reflects the Tannaitic attitude towards the education of the minor ~~to the extent~~ that where normally instinct would dictate greater esteem and honor for the parent, it is the man of learning that holds <sup>the preferable</sup> ~~this unique~~ position.

A general consideration of our findings in the Tannaitic periods shows that the father continued to train the child in his early years, that he taught him a definite trade, that due to complexity of conditions, a teacher soon assumed these duties, that daughters were proscribed from studying the Law, except in certain schools, that certain individuals were barred from teaching the minor, that Scriptures was the course of study in the early years of the minor's life, that the teacher was accorded great honor and esteem ~~by the minor~~, and received remuneration for his instruction.

1. Deut 4:10, 6:7, 20:24; Ex-13:8,14
2. Deut. 6:7      11      Deut. 11:11
3. In some cases, however, the parents delegated the rearing of their children to others. Scriptures contains references to "nursing fathers," and "nursing mothers", male and female nurses. Ruth's child for example was nursed by Naomi. Ruth 4:16. Jonathon's four-year-old son was in charge of a nurse, 2 Samuel 4:4, and Ahab's 70 sons were reared by the great men of Samaria 2 Kings X 1-7:
4. Exodus 13:8 - This duty is mandatory and does not depend on the interest of the child.
5. The mother is frequently mentioned in the Bible as a teacher, but generally in conjunction with, and subordinate to, the father. There is only one passage in which the mother is represented as acting independently in this capacity. The first division of Proverbs is introduced with the title "The words of Lemuel, which his mother taught him. Prov. 31:1
6. Ex. 13:14 This precept deals with the redemption of
- 7.\* the first born. \*Ex. 12:26, 27 The children are to be instructed at Passover time as to the origin of the festival.
8. Deut. 31: 12, 13
9. but not to study it fully. It appears that even at this time women were prohibited from studying Torah.
10. Yer. Hag. I:1, Babli Hag. 3a
11. Joshua 8:35
12. Josef. Kid I:11; Kid. 29a with slight variants: *According to one interpretation 1000 means Honor.*
13. Succah 42a Boraitha
14. Josef Hag. I:2

One notices that the Shema sections take precedence over the study of Torah in accordance with the order of particular duties as enumerated here.

15. Kid. 36 a
16. ibid
17. Josef. Hag I:2
18. Succah 42 a
19. Succah 2:8
20. In fulfillment of the command in Ex.23:14,17;  
Deut. 16:16
21. Ordinarily one who is under 13 years and one day is  
classified as a minor.
22. Hag I:1
23. Josef. Erubin III-11 this is the opinion of Rabbi Meir.  
R. Judah differs on this issue and maintains there is  
no special training value attached thereto.
24. Rosh Hoshonah 29 b
25. Yoma 8:4
26. Succah 42a
27. Aboth 4:20
28. Aboth 5:21 This already presupposes a school system.
29. Every man, regardless of his social position, had to  
teach his son a trade. Here, as in many instances, it  
seems probable that the Mishnah formulates a law that  
had been common practice ~~xxxx~~ for centuries, as seen  
in Biblical times.
30. Kid. 29 a 11 Josef. Kid 1:11
31. ibid. *Others interpret the words* *יגדף, to teach him*  
*וידבר, to now*
32. Kid 4:14
33. ibid.
34. ibid.
35. Kid. 82 b Boraitha
36. The allusion is to the struggle between the two sons  
of Alexander Jannaeus. Hyrcanus had the assistance  
of the Romans who besieged Jerusalem.
37. He was in Jerusalem and he spoke to the besiegers.

38.

37 (cont'd) Evidently he spoke in Greek because the people in the city did not understand it.

38. Sotah 49a b | | B.K. 83 a. In this latter reference, namely B.K.83 a the roles are reversed. Hyscaphus was within and Aristobulus from without.

39. Sotah 49 b

40. Sotah 49 b | | Josef XV:8- In this latter reference the text is somewhat different *היה לו שם יוסי*. This would seem to indicate that both Greek studies and Greek language were taught.

41. B.K.83 a

42. B.B. 2:3

43. A High Priest in the decade before the destruction of the Temple, who was well versed in Greek culture and probably influenced to establish schools as under the Greek system.

44. Yer.Keth. 8:32 c

45. Kid. 29 b

46. Sucoah 3:10  
referring to the Hallel

47. Ned. 37 a-The teacher was not paid for actual instruction. Two views are advanced to account for teachers accepting pay. Rav states that the fee is for guarding the little children. R.Johanan maintains that the fee is for the teaching of accentuation.

48. Ned. 4:3

49. Kid. 4:13 Its parallel in Yer. Kid.66 c adds the following:

*הוה רבי אבהו אומר כל מי שיש לו אשה וילדים  
אין לו זמן ללמוד תורה*

We have learnt: R.Eléizer says even one who has a wife and children who are not with him in that place may not teach little children.

50. Kid. 29 b

51. A disciple and friend of Rabbi Akába famous for his unusual diligence and after his death it was said that all diligence has departed (Sotah 49 c). His great love for Torah may have influenced him to utter such a statement, namely that a knowledge of the Law be restricted to no one.

52. It appears that this was an attempt to account for the inefficiency of the water of bitterness designed to search out sin. If left unscathed by the ordeal, the woman was prompted to indulge in further immoral practices. By realizing however that merit has suspended the immediate effects, she would hesitate and be in constant dread of the fate hanging over her. Hence this appears to have been a psychological device.

53. Sotah 3:4

54. that were to be taught to the female minor.

55. Sotah 3:4

56. Nedasim 4:3

Even working on the assumption that in some schools daughters were instructed to be taught, it is fairly safe to assume that she received a training in Scriptures only. Implicit in this statement is the assumption that Oral Law and the higher branches of study were limited to the male. In spite of this proscription against the advanced studies for the female minor, there were learned women as wife of Rabbi Meis (Pes. 62b)

57. Variant, 'Equal (in wisdom) to his teacher'.

58. Baba Metzia 2:11, also included in this passage is captivity where a similar distinction is drawn, if father has equal status in knowledge he is to be redeemed prior to the teacher.



The Maintenance of the Minor

Biblical law does not obligate the parents to feed their children. The desire to do so comes as a natural instinct on the part of the parents. Hence there was no need for any legislation to prescribe this as one of the official duties of the parents. The bond of love and affection that existed between parents and children made this a moral duty.

Such an attitude undoubtedly continued in post-Biblical times and even into the Mishnaic period. The deep love that the father possessed for his young offspring is well reflected in one Tannaitic statement. 'If a man stole aught and gave it to his children to eat or if he left it to them (after his death) they are exempt from making restitution.'<sup>1</sup> The Josephtha statement is somewhat more explicit and actually states it was intended for the minor children.

..... פוטר הילדיו ונתן לילדיו  
הוא חייב להם

'He who steals and feeds his young children'.<sup>2</sup> One can readily see that there was no urgent need of legally sanctioning this duty, when the father was so concerned about the welfare of his children that he would resort to theft. But when conditions changed and times became trying people were so impoverished that they took advantage of the lack of a legal restraint. After the Hadrianic persecutions, many were left destitute and helpless. Palestine had been heavily taxed and

exploited during the last days of its independent existence. The Roman officials oppressed and persecuted the population to the limit of their ability. The country then sank into deep poverty. Many therefore actually neglected the maintenance of their own children. All this is perhaps reflected in the days of R. Eleazar b. Azariah when it appears that the question of maintenance came before the rabbinical head in Jabneh. R. Eleazar affirmed the traditional viewpoint

האב איז חייב  
לפרנס את  
בניו ואת  
בתיו. אמר  
ר' אלעזר  
בן אריה  
בבבלי

'The father is not liable for his daughter's maintenance'.

R. Eleazar b. Azariah thus expounded it before the Sages in the vineyard at Jabneh...<sup>3</sup> But conditions had so deteriorated by the time of the synod at Usha<sup>4</sup> that it became necessary to establish a new legal precedent for the support of children. It was decided that every father must provide for his son and daughter. 'At Usha it was ordained that a man must maintain his sons and daughters while they are young.'<sup>5</sup> Because of the persecutions of the government many men were forced to flee their homes. This regulation, -the responsibility of the father toward his children, was a hint that one may not leave his family, and if one is forced to save his life by flight, he must first provide for his children. Yet despite the fact that it was now given the force of law, it would appear that many still considered it as a moral trust and were negligent in carrying it out. This persisted even until Amoraic times as is evidenced by the remonstrating remark of R. Judah<sup>6</sup> 'A monster

gives birth to children and then he throws them at the community.<sup>7</sup> However it appears that it was only R. Johanan b. Beroka who championed this provision for the female minor as a legal obligation

אמר דריוקא בן חייא  
היה אבא דהנה

R.Johanan b.Beroka stated - It is a legal obligation to support one's daughters.<sup>8</sup>

According to the opinion of R.Meir it is more important to feed the sons than the daughters

מביה לטון אבא דהנה ק"ו דהני דהני  
במורה דהנה דהנה דהנה

It is a moral duty to feed one's daughters, and much more so one's sons, since the latter are engaged in the study of the Torah; so R.Meir.<sup>9</sup>

R.Judah's position is more favorably disposed towards the female minor. As in previous statements, he is very concerned about her welfare. Thus the following statement is ascribed to him-

וכי יהודה אמר מביה לטון אבא דהנה  
ק"ו דהנה מביה לטון אבא דהנה

R.Judah ruled: It is a moral duty, to feed one's sons, and much more so one's daughters, in order to prevent their degradation.<sup>10</sup>

So that with the exception of a few individual opinions, there appears to have been no legal obligation on the part of the father to support his children.

כִּי כֹחַ הַבֶּחֳרָה לַאֲבִיבָה חֵזֶק דְּמִשְׁכָּלָהּ וְדִמְיוֹנָהּ  
 ..... נִחַ אֵין כֵּן קוֹדֶם obligation

The power of the husband exceeds that of the father for the former is obligated to provide for <sup>his wife's</sup> support, her redemption.....which does not obtain under the care of the father.<sup>11</sup> This brings us to a short discussion of the attitude of the father towards son and daughter. It is well known that there was a greater desire to have male progeny.

בְּצוּרָה לְאִשְׁתּוֹ הָיָה לוֹ חֶבְלָה שְׂמֹאל: כִּי צָר הָיָה  
 אֲחֵר מְחֻלָּה וְאִתּוֹ יָהִי בֶן אֶלְפָּה אִשְׁתּוֹ זָכָר  
 הָיָה לוֹ חֶבְלָה: שְׂמֹאל

If a man cries out (to God) over what is past, his prayer is vain. Thus if his wife was with child and he said, 'May it be thy will that my wife shall bear a male, this prayer is vain.'<sup>12</sup>

אִי אֶפְשֶׁר לְחַלּוֹם בְּלֹא זָכָרִים וְכֵלָא נִקְדִּיחַ  
 אֶת נִי שְׂבִיב זָכָרִים וְאִי לוֹ אִי שְׂבִיב  
 נִקְדִּיחַ.

'The world cannot exist without males and without females, happy is he whose children are males, and woe to him whose children are females.'<sup>13</sup>

Rabbi Meir's attitude toward the female sex we have already mentioned.<sup>14</sup> This apathetic attitude towards the female sex was not necessarily in prejudice against her. It was rather because of the great anxiety she caused the father, and her susceptibility to mischief <sup>felicitly</sup> ~~just~~ made her more of a liability than an asset to the father.<sup>15</sup>

As one has probably noticed there is no particular duty that the mother has towards the child. All the obligations of support are to be fulfilled by the father. Even the suckling of the infant indirectly is the responsibility of the father. One of the duties a woman assumed upon marriage is to suckle her offspring. These are works which the wife must perform for her husband: grinding flour and baking bread and washing clothes and cooking food and giving suck to her child....<sup>16</sup> However the woman is relieved from this duty once matrimonial relationships have ceased to exist.

She is no longer required to nurse her child. Similarly we find

הרי זה גיטין על מנת שיהיה אף כן  
כמה היא מניקה את אלהי רבי יהודה  
אמר אמונה עד שנה ...

(If he said) 'to, here is thy bill of divorce on condition that thou suckle my son, how long must she suckle him.' Two years. R. Judah says Eighteen months.<sup>17</sup> Beth Shammai did not even recognize this as a duty towards her husband.

נכדי מלחניק אף כנה ק"ל אומרים אומרים  
אף דביק וד"ה אומר כופה אמר מלחניק

'If she pledged to abstain from nursing her child she may do so. Beth Hillel says she is coerced to nurse...'<sup>18</sup> Even when she is divorced, if a crisis arises where the infant's life is endangered, all agree that she must nurse the child. This is done not out of maternal obligation but as a humanitarian gesture and the husband must pay for this.

If her child was so accustomed to her, she is <sup>obliged</sup> ~~coerced~~ to nurse him and receive remuneration as a wet nurse because of danger to human life.<sup>19</sup>

While we have seen that there is <sup>some doubt if a</sup> ~~no~~ compulsion for the maintenance of young children during the father's lifetime, <sup>there</sup> there is a definite provision after his death. Especially is this true for the female minor. For according to the old Biblical law, the law of succession does not apply to the female sex.<sup>20</sup> Sons are therefore, heirs of the first order. Later Biblical legislation seems to have made some provision for the female minor so that they became heirs of the second order succeeding the father if no sons remain. The precedent for this law is the decision which Moses rendered in the case of the daughters of Zelophchad, which was a step toward the emancipation of women.<sup>21</sup> Thus already in a Mishnaic source we find 'This is the order of inheritance: 'If a man die and have no son, then ye shall cause his inheritance to pass unto his daughter.'<sup>22</sup> The son precedes the daughter, and all the son's offspring precede the daughter; the daughter precedes the brothers (of the deceased)...<sup>23</sup> There was no difficulty when she was the sole possessor of the estate. But when males were the successors, the female minors were completely dependent upon the mercy of the brothers. Evidently the brothers took advantage of such situations and neglected the welfare of their sisters. Thus it became a very serious problem. A solution was found in the formulation of an agreement between husband and wife that in case he dies the female orphans should be maintained out of his estate. This clause was designated as

ketubat benan nukban (כֵּתוּבַת בִּנְיָן נֻקְבָּן) , which specified 'female children which thou shalt beget by me shall dwell in my house and receive maintenance from my goods until they marry husbands.'<sup>24</sup> One notes from this passage that they are to be provided for until marriage, whereupon this duty ceases. When the daughter married she was provided for by the husband.<sup>25</sup> Likewise there is no mention of the age of majority. However one of the Boraithas, of an anonymous nature, indicates that the age of majority was also considered as a terminus for such a obligation. Thus we find that Levi, an Amora, quotes a Boraitha לֵוִי נִתְּנָה עַד שֶׁיִּשְׁתַּחֲוֶה 'Levi taught until majority'.<sup>26</sup> According to the viewpoint reflected in this Boraitha there is a definite limitation to the protection of the female minor. It is interesting to note that Rabbi, the redactor of the Mishnah, did not accept this restrictive Boraitha and is more lenient in his consideration for the female minor.<sup>27</sup>

From a careful scrutiny of this Ketubah clause it appears that these obligations terminated with the orphan's actual marriage.<sup>28</sup> This is corroborated in a discussion where a distinction is made between the terms (נִשְׁתַּחֲוֶה) and (נִשְׁתַּחֲוֶה).<sup>29</sup> The former term refers to the nuptials, while the latter designates betrothal. Hence one may reasonably assume that the heirs are freed of these obligations at the moment of her nuptials. This provision must not necessarily be written down, for it is binding on the father, not by the contract in which it is entered, but because of its being a court enactment which is tacitly accepted at the time of marriage.<sup>30</sup>

~~ed at the time of marriage.~~<sup>30</sup> Likewise the very fact that the Mishnah does not speak of it as an innovation, but as an old tradition, seems to indicate that it was a very early regulation.<sup>31</sup>

The halachah also states that if the parents enter into marriage with the understanding that the father does not take upon himself this obligation, the daughter does not receive this right.<sup>32</sup> However the daughter cannot be deprived of her right of support by a will in which the father objects to the use of his property for that purpose. (If a man said that his daughters must not be maintained out of his estate he is not to be obeyed.)<sup>33</sup> If the estate left by the father has only enough for the support of the female orphans, then the whole property should be given away to the females. 'Admon laid down seven rulings: If a man dies and leaves sons and daughters, if the estate is large, the sons inherit it and the daughters are maintained, and if the estate is small, the daughters are maintained from it, and the sons can go begging. Admon said, 'Am I to be the loser because I am a male.' R. Gamliel said: Admon's view has my approval.'<sup>34</sup> This already appears to be the climax of this reform. In this particular instance the females become the heirs, and the sons are completely disinherited. It may well be that Admon's protest was occasioned by the complete contradiction of the biblical law which does not permit females to succeed before the males.



The law of Benan Nukéban is likewise only to be applied when the property consists of real estate. However, there is also one opinion that maintains that even <sup>in the case of moveable.</sup> ~~when moveable~~ property is ~~present~~, the law is effective. 'For it was taught: Both landed property and moveable property may be seized for the maintenance of a wife or daughter,' ~~So~~ Rabbi. R. Sim-<sup>35</sup> eon b. Eleazer strictly forbids such a transaction. Moveable assets of the deceased in the possession of his sons are regarded <sup>as far as his daughters are concerned,</sup> ~~as~~ non-existent.<sup>36</sup>

Likewise if there are both minors and adult females, we do not set apart an amount for the support of the minors, and then divide the rest equally among the daughters. But the younger are given equal shares with the elder even if the latter had taken earlier possession of their father's estate. 'If he left elder daughters and younger daughters, the elder daughters may not care for themselves at the cost of the younger daughters, nor may the younger daughters claim maintenance at the cost of the elder, but they all share alike.'<sup>37</sup>

The Rabbis also granted the female minors a marriage portion at their marriage. This was termed *מנהג*, but it was not a part of the *בן נקין* clause. It represents an obligation on the part of the father to give his daughter a dowry. The amount of *מנהג* was originally estimated by the dowry which the married daughters received from their father. But Rabbi standardized it at ten percent of the total



The halachah is in agreement with Rabbi. Similarly the father has the right to cancel her marriage outfit, since there is no contract to this effect in the Kethubah.<sup>41</sup>

In this chapter we find that maintenance was not originally a legal obligation, that at Usha it was enacted legally, that the daughters have a prior claim over the sons to maintenance from the deceased father's estate, that a marriage outfit was provided also for female orphan.

## Notes to Chapter Four

1. B.K.10:1
2. Josef B.K.X:21
3. Ket. 4:6 - R.Eleazar b.Azariah- Tanna of the third generation who lived during the end of the 1st century and the beginning of the 2nd century C.E.
4. Usha - city in Galilee, it is particularly notable as the meeting place of a synod consisting of seven rabbis, who met there about 140 to reorganize the Jewish communities and to pass laws about Jewish life after Antoninus Pius had put an end to the repressive measures. *Cant. Rabbah 2:5; Ket. 49b, 50a.*
5. Ket. 49 b. R.Elai stated in the name of Resh Lakish who had it from R.Judah b. Hanina.
6. Rab Judah bar Bëscheschel generally called simply R.Judah, was a disciple of Rab and Samuel, belonged to the second generation of Amora'im 257 - 320 C.E.
7. Ket. 49 b
8. Josef. Ket. IV:8 || Yer. IV:8  
However the Boraitha version in Ket. 49 a has an entirely different reading

י"ח חט"ס ק' דניקא אומר מצוה לזון אב  
הבנות האחרות איהן אביהן אכלו כה"א אביהן  
אלו נאמן אמן נכונן

According to this text, the obligation obtains only after the demise of the father, but not while he is alive. The writer suggests that these words . . . . . איהן אביהן are a supplement to the original words which are to be found in the Josephta and Yerushalmi. R.Johanan was a Tanna of the third generation 120-139 who lived during this period of extreme poverty and undoubtedly was motivated to alleviate the plight of the female minor. Equally so, it would be most unlikely that Johanan would have repeated a law, namely the provision for the minor daughter after death, since it was already mentioned as a law well established.

Notes to Chapter Four (Cont'd)

9. Ket. 49 a The last words *וְיִשְׁכַּח* appear to be a Talmudic comment. One might conjecture that the reason adduced for giving the sons precedence in Ket. 49a is an attempt at rationalizing the true attitude of R. Meir toward the female sex. The Josephta appears to have preserved the older and more authentic dictum.

Rabbi Meir was a fond admirer of Greek and Roman culture. It may be supposed that he instituted the three benedictions, not being born a Gentile, not being born a woman, and for not being born a boor, under the influence of the Greek philosopher Socrates, who recited *three similar benedictions to his idols*. Rabbi Meir's attitude toward the female sex is reflected even more strongly in his explanation of the verse *Gen. 24:1: "He called her name Rachel"* *He called her name Rachel* *that was the name of his daughter*. B.B. 16 b. This perhaps will account for his minimizing the status of the female in contrast to that of the male in Ket. 49 a.

10. Ket. 49 a Here likewise the words *וְיִשְׁכַּח* appear to be a Talmudic comment on this teaching. The Yerushalmi IV-8 deduces a different reason, namely that deprivation may lead them to immoral activity. This leads the writer to assume that the reason stated in the Boraitha (49 a) is not original with R. Judah. R. Judah's attitude toward the minor is most favorable. Perhaps, because of his own personal impoverishment he was able to understand the humiliating effects of poverty. We are told that he was extremely poor. San. 20 a. Rabbi Judah was a strong opponent of R. Meir and refused to allow the students of the latter, after his death (R. Meir) to enter his school. Kid. 52 b.

11. Josef. Ket. 4:2

12. Ber. 9:3

13. Kid. 82 b The author of this statement is Rabbi. Similar passages that emphasize the liability of the daughter are to be found in Pes. 65 a, B.B. 16 b, San. 100 b, etc.

14. See note 9

15. San. 100 a

Notes to Chapter Four (cont'd)

16. Keth. 5:5
17. Gittin 7:6
18. Tosef. Ket. V:5
19. Ibid.
20. Tribal ownership is an early Biblical conception whereby one's heirs take his place in that particular tribe upon death. Daughters are not reckoned as tribal personalities. Hence they cannot inherit from their father. Thus the complaint as voiced by heads of the family of Gilead -- Numbers 36:3 was a valid one as they protested against inheritance by the daughters of Zelophchad, namely, that a daughter should cause the transfer of property from one tribe to another by virtue of the fact that she is succeeded by husband.
21. Numbers 27:1 ff
22. Numbers 27:8 -- Provision had already been made for daughters to succeed as established on the precedent of the daughters of Zelophchad.
23. B.B.VIII:3
24. Ket. 4:11
25. Tosephta Ket.4:2
26. Ket. 53b -- According to one interpretation the Tanna R. Elazar maintains that the orphan girl loses her privileges at majority. Ibid.
27. The status of the minor was subject to change. Legislation was not always designed to better his lot. Rabbi refused to accept this Boraitha.
28. The expressions *אין אדם* or *אין אדם* indicate nuptials.
29. Yeb. 43b -- *אין אדם* *אין אדם* *אין אדם*  
In the Amoraitic development there is an attempt to limit this right to the time of *אין אדם* Ket. 53b.
30. Ket. 4:11
31. Ibid.
32. Ibid.
33. Ket. 68b -- Even a dying man whose verbal instructions have the validity of a legal contract cannot annul the undertaking to maintain his daughters,

Notes to Chapter Four (cont'd)

a condition which he has entered in the ketubah.

34. Ket. 13:3 | | B.B. 9:11

35 Ket. 68 b | | Ket. 51 a

36. ibid

37. B.B.8:8

38. Ket. ~~7~~osef. VI:3

39. Ket. 68 a, a tenth of the estate

40. Ket. 68 b

41. ibid. It is interesting to note that the law of the recalcitrant son does not apply to the minor children. Likewise, the minor sons are exempt from the death punishment if they curse or strike their parents according to Mishnaic legislation.

Perhaps, the most comprehensive statement of the father's rights over the minor is to be found in the Mishnaic utterance 'A father has authority over his daughter<sup>1</sup> in respect of her betrothal (whether it was effected) by money,<sup>2</sup> deed,<sup>3</sup> or intercourse;<sup>4</sup> he is entitled to anything she finds and to her handiwork; (he has the right) of annulling her vows<sup>5</sup>; and he receives her bill of divorce<sup>6</sup>; but he has not the use of her property during her lifetime....<sup>7</sup> In all these rights the woman has no share whatsoever.

האיש זכאי בכל קנינויה דבר כסף ודבר  
וקנינה, זכאי דמיאיה ודמיאיה ויקיה  
וקרסר נזירה מה שאין בן האשה.

'The man has right to betrothal of his daughter in respect to money, deed, or intercourse; he has claim to her findings and earnings, annulling her vows- These things do not apply to the woman.'<sup>8</sup> This list of rights of the father may be supplemented by a few others that are enumerated in a passage in Sotah. '...He may impose the Nazirite vow on his son, but she may not impose the Nazirite vow on her son;...a man may sell his daughter, but a woman may not sell her daughter,.....<sup>9</sup>

The first power that we have mentioned is his exclusive right of giving his minor daughter in marriage.<sup>10</sup> The father has the authority to betroth his daughter even without her consent. This often occurred and he negotiated at times with the agents of the husband-to-be. The very phraseology of the Mishnah seems to corroborate this observation. 'If the father delivered her to the agents of the husband....<sup>11</sup> Not only has



has he the power of giving his daughter in marriage without her consent, but he is, as it were, the real party with whom the marriage is contracted. Actually the father is not acting as an agent of the minor daughter. The minor has no authority to appoint an agent. ..'Since a minor may not appoint an agent'..<sup>12</sup> Likewise the minor has no power to contract a marriage. The common expression which deprives the minor of this authority, namely to acquire possession<sup>13</sup> is 'for their hand (the minor's) is like his hand (the father's)',<sup>14</sup> While in this status, they are unable to make any legal transaction. This phase<sup>15</sup> seems to epitomize the true position of the minor, as one devoid of any legal independence, completely subject to the control of the father. Thus for example, to illustrate this last point, we find that neither the minor son nor the minor daughter can become the agent of their father to acquire an alley for its residents.<sup>16</sup> Such an act would require a certain degree of legal independence on the part of the agent. For by it, he <sup>make</sup> confers common possession of the alley to all its inhabitants and permits them to carry things from one residence to another.

It is the same principle that is involved in marriage negotiations. So that it becomes quite understandable why the father assumes this prerogative prior to the minor's majority.

It would appear that many fathers took advantage of this right and gave their minor daughters in marriage at a very early age. This was quite prevalent especially during the Tannaitic period. At last it aroused the indignation of Rab who protested vehemently against such an act. 'For R. Judah said in Rab's name \_ others state, R. Eleazar (said) One may not betroth his daughter while she is a minor, (but must wait) until she grows up and says, 'I want So-and-so'.<sup>17</sup> When one ponders the reason for the marriage of daughters at such a young age, he is often at a loss to explain this phenomenon. Perhaps it was a selfish and ulterior motivation that prompted the father to do so. But at times, it was done out of consideration for the minor daughter as is evidenced in the following remark. 'That there is now prevalent among us the custom of giving the minor daughter in marriage, is due to the fact that the exile is becoming more and more pressing on us, so that although a man may, while the daughter is a minor, afford to give a dowry, he may not be able to give it later when the daughter is grown up and she may thus remain unmarried for ever.'<sup>18</sup> Another reason for the opposition to such early marriages can be seen from the following Tosephta statement. 'A man may not marry a barren woman, an elder woman, sterile woman, and a minor who is unable to bear children. Any marriage that could<sup>19</sup> not result in children was considered an act of prostitution.

As for the father's duty of marrying off his son, for the most part it is to be assumed that he did actually arrange for it.<sup>20</sup> But this was not his exclusive right. Sometimes the minor betrothed himself on his own. 'So too, if a minor betrothed a woman and sent her presents after he came of age, the betrothal is not valid.'<sup>21</sup> One sees from this statement that it is because of his legal immaturity that he cannot effect  $\text{קידושין}$ , so that even if he supplements the original amount with a prescribed sum of money it is of no effect. But according to one anonymous opinion if it <sup>is</sup> accompanied by the sexual act, the Kiddushim has full validity. Thus it would appear that the minor could act independently of his father in marriage affairs, although his act had no <sup>legal</sup> validity. Another indication that this occasionally occurred is implicit in the words of Tosephta statement  $\text{אין קידושין אלא בבעל}$  'a minor for whom the father arranged Kiddushim.'<sup>22</sup>

The father likewise has the right to claim the finding of the minor. This applies equally to both male and female alike. 'What is found by a man's son or daughter that are minors...belong to him.'<sup>23</sup> Although the Mishnah in this case does not mention the principle 'their hand is like his hand' this appears to be the assumption of the statement. For they have no independent power of acquisition and everything they have belongs to the father.

It is interesting to note that the Amoraic explanation of this law in the Mishnah is in reality a rationalization. The old Jewish law conceived of the children as chattel of the father. Hence there would be no need of explaining this phenomenon 'in order to avert ill feeling.'<sup>24</sup> According to the Mishnaic conception of the minor, no justification of the rights of the father is ~~to be applied~~ <sup>necessary</sup>. The earnings of the minor daughter belong to the father,<sup>25</sup> and likewise, if we apply the same principle, it is superfluous to justify this law. Little mention is made of the minor son in respect to his earnings. It is to be assumed that such incomes would belong to the father.

The Bible gave the father the exclusive right of ~~annulling~~ <sup>declaring and</sup> the vows of his daughter. Already, Mishnaic law seems to modify this right declaring that 'If a girl is betrothed, her father and her husband together revoke the vows.' If the father revoked a vow but not the husband, or if the husband revoked it but not the father, the vow is not revoked..<sup>26</sup> Although this may appear to be a reduction of the parental power, nevertheless, the father's power in annulling the vows of the betrothed daughter is greater than the power of the bridegroom. Thus we are taught 'If the father dies the (sole) right does not fall to the (betrothed) husband, but if the husband died the (sole) right falls to the father. Herein the power of the father surpasses that of the husband.'<sup>27</sup> Therefore the father can annul all the vows which the daughter took before the bridegroom's death.

This does not apply however to the bridegroom after the father's death.

The father similarly receives the bill of divorcement when she is only betrothed, since the betrothal does not remove her from the power of the father. 'She continues within the control of the father until she enters into the control of the husband at marriage.'<sup>28</sup> However according to R. Judah the father has this right until the age of majority (*logimth*) so that if she had accepted it prior to this time it is invalid.<sup>29</sup> As in marriage arrangements, the father does not act under the status of the agent of his minor daughter. He is really the second party to whom the bill of divorce is given.

There is no definite statement in the Mishnah that states compensation for injuries suffered by minor children belongs to the father. Our only source that touches this point is the Tosephta. But the text is so corrupt that it is extremely difficult to obtain a clear picture. The following points seem however to be rather quite definite, that the father is liable for injuring his grown up children,<sup>30</sup> so that any injury he inflicts on his minor children, he is exempt from payment.<sup>31</sup> Injuries sustained by minor children from others, logically would go to the father, applying the principle 'their hand is like his hand'.<sup>32</sup>

While the father appears to have complete control over the acquired property or compensation of the minor, it is otherwise with respect to inherited property. When the minor children

come into possession of property from their mother's side the father has no right to it. Nor do the gains obtained from such property belong to the father. 'But he has no *usufruct* during her lifetime.'<sup>33</sup>

Already in Mishnaic times the rights of the father were modified. He could not be believed in respect to cases of captivity or once his daughter had reached girlhood (*hinnah*). Thus we find-(if he said) 'She was taken captive and I ransomed her,' whether she was yet a minor or whether she was of age, he may not be believed, or if he said-'I gave her in betrothal and accepted her bill of divorce while she was yet a minor, and she is now of age,' he may not be believed.<sup>34</sup>

The father has the right to sell his daughter as a slave when still in her minority status. Once however she reaches (*hinnah*), she is not subject to sale.<sup>35</sup> Rabbi Meir mentions that the right of sale applies to a minor from the age of one day until the period of puberty. During this time no fine is incurred by her seducer or violator.<sup>36</sup> However the majority opinion would restrict sale of minors from three years and 1 day until adolescence, but would hold her sexual offender responsible for such an act and impose a fine upon him.<sup>37</sup>

Protection for the female minor was afforded when she was liberated after the death of her master. She was not to serve neither his son nor daughter even though her period <sup>of penitence</sup> was not completed.<sup>38</sup> Likewise she cannot be sold and then resold.<sup>39</sup>

Even when sold into slavery it was often with the intention that she be designated by her master. Thus if he <sup>the father,</sup> stipulated that her master could not designate her, the condition is not binding, and if he desire<sup>d</sup> to designate her, he may do so.<sup>40</sup> Thus we can see from these Borsithas that the Rabbis attempted to restrict the father's right of selling his daughter where it would result in her degradation or humiliation. Thus one Boraitha teaches that he may not sell her to relations.<sup>41</sup> We are also told that if a man sells himself and his children to a heathen, he is not to be redeemed, but his children are to be redeemed after his death.<sup>42</sup>

Protection of the minor from possible delinquent consequences were avoided by Mishnaic legislation. That a man may not sleep with his daughter or a mother with her son once they have become majors.<sup>43</sup> Once they reach their respective ages of puberty, they are to sleep alone.<sup>44</sup>

The rights of the father extended until she reached majority, or when she was married, or at the death of her father. Thus when she brings signs of puberty she attained a certain amount of majority. This period was known as

*Minors* .Certain rights were gained. She could no longer be sold as slave.<sup>45</sup> She could receive her bill of divorce.<sup>46</sup>

However in other respects the father still possessed his full rights until the true age of majority, twelve years, six months and one day. She was now known as an ( *Adar* ) adult.

With marriage,<sup>47</sup> as we have already seen, the father loses some of his rights. He must annul vows together with the husband. Nevertheless he still continues to exercise his rights over her until the actual nuptials. He still receives her bill of divorce and retains her Ketubah. But with the death of the father she becomes emancipated from his control.<sup>48</sup> These rights are not transferred to her brothers.

Our observations in this chapter lead us to state that the father had definite rights over his minor daughter.

- 1.(a) betrothal, (b) findings, (c) handiwork, (d) annulling vows, (e) receiving Get, (f) imposing Nazirite vows, (g) selling his daughter into servitude.
- 2.The mother had none of these powers.
- 3.These powers were somewhat diminished with the age of puberty, and betrothal.
- 4.The minor became entirely independent from her father through (a) adolescence (bogeruth), (b) marriage, (c) death of her father.



1. While she is under the age of twelve and a half years and one day, namely during the periods of *חנּוּך* , and *חנּוּך* . The intermediate stage before full majority or adolescence *חנּוּך* is known as *חנּוּך* which extends from twelve years and one day until twelve years, six months and one day.
2. The money belongs to the father.
3. The receipt of the deed by him effects his daughter's betrothal.
4. It is within his rights to allow such an act to have the validity of a kinyan ( *קנין* ).
5. This is a Biblical right conferred on the father. Numbers 30:4 ff.
6. If she was divorced during her betrothal before attaining her adolescence.
7. Ket. 4:4 - property that came into her possession from her mother's side.
8. Toseff Sotah II:7
9. Sotah 3:8
10. Ket. 4:4; Kid.2:1
11. Ket.4:5 The words 'delivered her' definitely imply that she was considered as chattel of the father.
12. Gittin 6:3 The context here is in respect to a bill of divorcement. This applies equally so to marriage.
13. Kiddushin is regarded as a legal transaction, a kinyan.
14. Erubin 7:6
15. *כִּי יִבְרַח* *כִּי יִבְרַח* *כִּי יִבְרַח* *ibid*
16. to form for purposes of the Sabbath, a single domain of the street and courtyards opening into it. *ibid*.
17. Kid 81 b-According to this one tradition, protests over child marriages had begun even in the days of the Tanna, R. Eleazar-who lived during the fourth generation of the Tannaim. 139-165.

## Notes to Chapter Five (cont'd)

18. Kid. 41 a Tosafot. This is already an observation in the 13th century and actually goes beyond the scope of this paper. It is cited to show that perhaps even in Mishnaic times such considerations, occasionally may have been the motivation, especially in periods of persecutions and instability.
19. Yeb. Jos. 8:4 The text is somewhat corrupt.  
 קטנה ואינה ראויה לזנות probably to be amended to.  
 קטנה ואינה ראויה לזנות
20. Kid. 29 a
21. Kid. 2:6
22. Ket 9:9 | Ket-Tos. 9:7 The full statement is  
 קטן שהיה אדון כהן, אף על פי שהוא  
 although when he became of the age who was no longer a virgin; nevertheless her Ketubah is still 200 zuz.
23. B.N. 1:5
24. Ket. 47 a
25. Ket. 4:4
26. Ned X:1 This law is stated with respect to a זונה, but applies likewise to the קטנה. The Talmud attempts to find a basis for this law (namely) joint participation of father and bridegroom in the Biblical verses of Numbers Chapter 30. The interpretation appears to be quite inadequate and we may assume that in Biblical times it was the sole right of the father until actual time of nuptials.
27. Ned. 10:2
28. Ket. 4:5
29. Gittin 6:2-According to the majority opinion, זמן permits both the girl and her father to accept the bill of divorce- all would probably agree that in the זמן stage only the father exercises this right as she has not attained a sufficient mental maturity. Exceptions were sometimes made when the קטנה displayed mental maturity at an earlier age. Gittin 64 b.
30. Tosef B.K. 9:8-
31. ibid-This statement is then contradicted by  
 האומר בזה קטנה נקדה לה נשאת הרי  
 זה פסוק

## Notes to Chapter Five (cont'd)

32/ The Tosephta version in Tosef. B.K.9:9 has just the opposite.

בבב דב אחרים נזקק נזקק ונזקק  
נזקק ונזקק : נזקק נזקק נזקק

33. Ket. 4:4

34. Kid. 3:8 If his testimony were accepted in the case of captivity, her Ketubah would be reduced to 100. This is a definite protective measure for the minor which assumes her a full Ketubah, 200 zuz. Similarly a woman taken captive above the age of 3 years and 1 day may not marry a priest. Lev.21:7 The reluctance to accept his testimony makes it possible for such a union to take place.

35. Keth 3:8

36. Ket. 40-b ! ! Tosef. Ket.III:8 Rabbi Meir, in his low esteem for the female minor says that even from the day she is born she may be sold. Likewise, since at this period, namely minority, she has no distinct individuality, if violated or seduced she does not incur on the offender any fine. Deut 22:29, Ex. 22:16

37. ibid. The Rabbis assume a more favorable disposition toward the female minor.

38. Kid. 17 b

39. Kid 18 a. This is the opinion of R.Simeon. However the rabbis maintain that he can sell his daughter for servitude after servitude. However, even the Rabbis admit that not for servitude after marriage.

40. Kid. 19 b R.Meir maintains it is binding. This would once again corroborate the writer's supposition that there is to be no consideration for the minor even in her period of servitude.

41. Kid. 18 b- Relatives cannot designate her on account of consanguinity. The law of designation is carried out in the following manner. He, her master declares to her in the presence of two people, 'Behold, thou art designated unto me, or 'Behold thou art betrothed unto me'.... etc. He must then treat her as a wife, not a bondmaid. Kid. 19 b

42. Gittin 4:9

43. Kid. 4:12

44. *ibid.*

45. Kid. 14 b

46. Git. 64 b

47. *Betrothal*

48. Kid. 16 b

## Chapter Six

### The Powers of the Minor

While the father possessed definite rights over his minor children, the Rabbis were eager to protect their status by giving them a number of rights. Perhaps one of the most protective measures for the female minor was the provision for others to arrange her marriage. According to Biblical law, the father possessed this sole right. But after his death it became a real problem. One must understand that the orphan minor was always in great peril of sexual violation. Especially during this period of immaturity, she was most susceptible to immoral behavior. Therefore the Rabbi permitted the mother and brothers to give the minor daughter in marriage. In this manner they secured the protection of a husband. 'If an orphan was given in marriage by her mother or her brothers....' One must not gain the impression that this was an innovation on the part of the Rabbis. As in many other matters of legislation, it was merely the sanctioning of <sup>a</sup> custom that had been in practice, even prior to the Tannaitic period. Yet the right of the mother and brothers differed somewhat from that of the father. While the latter is Biblically sanctioned, the former has no such basis. So that even in their details, they differ radically. The father assumes the marriage of his daughter as a power invested in him by the Torah. Hence he does not need her consent.

The mother and brothers exercise this power as a protective measure for the minor daughter. Since it is designated for her benefit, and not theirs, they must obtain her consent beforehand. 'Any whose mother or brothers have with her consent given her in marriage.' <sup>2</sup>

While the legal sanction of this old custom may have been for the minor's protection, it nevertheless possessed certain inadequacies. Female minors, at such an age, were often unable to select intelligently their prospective husbands. They soon became conscious of their wrong selection and regretted this act. In recognition of this pathetic situation, the Rabbis were prompt to sanction an institution known as ~~Makn~~ <sup>1</sup> Mi'un. <sup>3</sup> This measure by the Rabbis is indeed the result of high consideration and concern for the welfare of the minor. Theoretically speaking, its spirit is opposed to the Biblical law. For, in accordance with the latter, the female minor never assumes such a role, let alone it being necessary for her to give her consent. And yet the Mi'un, as far as the female minor is involved, has the same effect as the bill of divorce. It severs the relationship with her husband.

The act of Mi'un requires some understanding on the part of the minor. 'Any child who is unable to take care of her token of betrothal, <sup>4</sup> need not make any declaration of refusal.' <sup>5</sup>

According to R.Eliezer the marriage of the female minor has no consequence. It is only binding to the extent that it requires Mi'un for its invalidation. 'It was taught, R.Eliezer stated: There is no validity whatsoever in the act of a minor, and her husband is entitled neither to anything she may find,<sup>6</sup> nor to the work of her hands, (and he may not defile himself for her);<sup>7</sup> nor may he annul her vows; he is not her heir.' This is the general rule. She is in no respect regarded as his wife, except that it is necessary for her to make a declaration of refusal.<sup>8</sup> R.Joshua maintains the opposite point of view. According to him she is regarded as his wife in every respect, except that she may leave him by an act of Mi'un.<sup>9</sup> Once the minor has exercised this right of refusal, she relinquishes her right to the Ketubah or any profits gained through the use of her property by her husband.<sup>10</sup> Thus we can readily see that, <sup>Miluked</sup> the power of invalidating her marriage.

Nor was any formal declaration on her part necessary. If she in any manner showed her disapproval of the marriage contracted for her, her relationships with the husband are severed. Thus 'If a minor who did not make a declaration of refusal betrothed herself (to another man), her betrothal, it was stated in the name of R.Judah b.Bathyra, is regarded as her declaration of refusal.<sup>11</sup> Likewise it was not necessary for her to repudiate the marriage in any particular place. Even if she uttered it while she was preparing for her marriage or while she was buying goods in a shop it is considered an act of Mi'un.<sup>12</sup>

Originally it was the custom to make out a so-called "Get Mi'Un", in which the minor declared, 'I do not like him; he does not please me; I do not wish to remain with him as his wife.'<sup>13</sup> But fear arose lest it be confused for a regular bill of divorce. The Rabbis therefore introduced the following formula: 'On the Nth day, So-and-so the daughter of So-and-so made a declaration of refusal in our presence.'<sup>14</sup>

However, the power of Mi'un declaration is limited by the school of Shammai. Thus we are told that Beth Shammai ruled: Only those <sup>15</sup> who are betrothed may exercise the right of refusal, ~~...any~~ only <sup>against</sup> against a husband but not <sup>a</sup> levir (a ~~decla-~~ <sup>declaration may be made</sup>).<sup>16</sup> The school of Shammai also maintains that the procedure of Mi'un must take place in the presence of the husband and the court. It can only be exercised once.<sup>17</sup>

In contradistinction to the rigorisms imposed by Beth Shammai, the Hillelites are more liberal towards the exercise of Mi'un. Mi'un can annul a marriage as in the case of betrothal. This right may be exercised either against the husband or the Yabam. It may be exercised more than once. It does not require the presence either of the court or the husband.<sup>18</sup>

Yet the Rabbis permit the minor to do certain things, where no financial loss is involved, or legal capacity required. This is perhaps best illustrated in the principle <sup>אדם יכול למכור עצמו</sup> . He has (the capacity of) physical action, but not of intention.<sup>19</sup> This principle is reflected in the prohibition that a minor may not set aside



~~Terumah~~ <sup>Terumah</sup> 20 Such an act requires mental maturity.

We are likewise told that it is morally wrong to take away an article that is found by the minor. 'These things they have enjoined in the interests of peace....The law of theft applies in part to what is found by...a minor - in the interests of peace.' <sup>21</sup> One can readily understand why the minor cannot recover his loss by process of lawsuit, since he has not legally acquired it. However R. Jose, nevertheless maintains it is full theft. <sup>22</sup>

The minor may perform certain acts that require only a physical capacity. Thus we learn that if a person of full age, saw that the minor slaughtered according to the prescribed rules, all may eat of his slaughtering. <sup>23</sup>

A minor may also prepare the bill of divorce as is evidenced by the following passage 'All are qualified to write a bill of divorce, even a deaf-mute, an imbecile, or a minor.' <sup>24</sup>

Ordinarily the testimony of a minor is not accepted before he reaches his thirteenth year and one day, and before he has presented symptoms. However, the testimony of a person of full age is accepted when it has reference to things that he saw when he was a minor. This applies only to cases where no financial loss or pentateuchal principle is involved. Thus we find that one who is of age may testify as to father's handwriting, or his teacher's handwriting. <sup>25</sup> Or when no real testimony is required but mere information about a certain matter, such a testimony is accepted. 'I remember that that woman went out <sup>26</sup> with a Hinnams and uncovered head.' <sup>27</sup>

But where money matters are the issue, his testimony is not accepted. 'But a man is not believed when he says: So-and-so had a way in this place.' <sup>28</sup>

Likewise in respect to the reading of the Megillah, Rabbi Judah maintains that the minor has this right. 'All are eligible to read the Scroll excepting one that is deaf or an imbecile or a minor. R. Judah declares a minor eligible.' <sup>29</sup>

R. Judah brings proof to his statement by declaring that he read the Megillah when he was a minor, in the presence of R. Tarfon and others. They did not object to this act. <sup>30</sup> The minor can also act as the reader of the Hallel, if the persons repeat in turn what he recites. <sup>31</sup>

In concluding this section, it is also necessary to mention that the minor is not held responsible for his crimes. This is <sup>explicitly</sup> ~~a peculiarity that exists as the Mishnah states~~ <sup>in the Mishnah:</sup> 'It is an ill thing to knock against a deaf-mute, an imbecile, or a minor: he that wounds them is culpable, but if they wound others they are not culpable.' <sup>32</sup>

In this final chapter we have seen that the Miun institution was a definite protective right of the female minor, that minors possessed some rights as testimony under certain conditions, and right of public reading.

Notes to Chapter Six

1. Ket. 6:6
2. Yeb. 13:2
3. If a girl that was a minor was given after her father's death in marriage by her mother or brothers, she may ~~repeal~~ the contract before two witnesses and be set free without the need of a bill of divorce.
4. The money or object whereby the kinyan of betrothal is effected. This is the viewpoint of Hanina b. Antigonus.
5. Yeb. XIII:2
6. To which a lawful husband is entitled.
7. If he is a priest. Only a lawful husband may, Lev.21:2
8. Yeb. 108 a - 1 f she wishes to marry another man.
9. ibid.
10. Ket. 11:6
11. Yeb. 108 a
12. Yeb. Jos. 13:1
13. Yeb 107 *l*
14. Yeb. 108 a
15. Young girls who are minors and whose fathers are dead.
16. Yeb. 13:1
17. ibid.
18. ibid.
19. Makshinn VI:1
20. Ter. 2:1
21. Gittin V:8
22. ibid.
23. Hul. I:1
24. Gittin 2:5 - This applies only when a major stands over him while he writes it.

# Notes to Chapter Six (cont'd)

25. Gittin 2:10 And the signature which was appended when he was still a minor is confirmed in court on the strength of this testimony made in his majority.
26. To the marriage ceremony.
27. Ibid.
28. Ibid. The path is a matter of monetary interest.
29. Meg. 2:4
30. Tosef. Meg. 2:8 - the duty of reading the Megillah is only a rabbinical obligation.
31. Succah 3:10
32. B.M.8:4.

This work has been prepared mostly from original sources in the Mishna, Tosephta, and Boraithas. From time to time the writer has consulted secondary literature appertaining to this topic as Löw's Lebensalter and Lebendiger's articles in the Jewish Quarterly Review, Volumes six and seven. The chapter of the guardian and the minor has not been considered as it is a dissertation in itself and does not bear directly upon our subject.