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A CASE OF MARITAL CALAMITY
IN THE MIDDLE AGES.

The Legal Involvement Surrounding the Return of a
Wife Taken Captive by Gentiles in the XVth Century
as Reflected in the Life and Writings of
Israel Isserlein

by
Sanford T. Marcus

Thesis submitted in partial fulfillment
of the requirements for the degree of
Master of Arts in Hebrew Letters and
Ordination

Hebrew Union College-Jewish Institute of Religion

1969

Referee, Professor Alexander Guttman

Among the numerous causes of marital disruption in the Middle Ages, the captivity of married women was one of the most vexing. This is true both from the standpoint that valid marriages were suddenly shattered, and from the point of view that when the wives did return to the Jewish community they were often forbidden to return to their husbands.

The primary concern of Jewish tradition had been the ultimate sanctity in which the sexual union is held. Moral laxity is not tolerated.

The question of whether a wife, who is held prisoner by non-Jews, is permitted to return to her husband, ultimately reverts back to whether she had been violated while in captivity.

Rabbi Isserlein was confronted with a situation where, if the stringent interpretation of the Law were applied, numerous Jewish marriages complicated by such circumstances would have been irreparably(annulled). He is inclined to maintain solid Jewish marriages intact, and yet is committed to the traditional condemnation of sexual relations that are without the confines of marriage. His task is, therefore, to determine to what limit a woman can be regarded as a passive instrument of her captors; or conversely, to what degree she has actively

striven to prevent intercourse. If she has exerted maximum effort she is granted permission to return. If, however, she demonstrates any proclivity for promiscuity, she is prevented from reuniting with her husband.

Isserlein's interpretation of tradition is significant during this period because he maintains a well-balanced, equitable attitude which is sympathetic toward the restoration of disrupted marriages, while at the same time partial to the spirit of Jewish Law. His evaluation of the case is knowledgeable, cogent, and compassionate. This responsum represents a significant step forward in the solution of marriage dilemmas brought about by the hostile European environment of the Middle Ages.

TABLE OF CONTENTS

	Page
Chapter I. Introduction.....	1
Chapter II. Relevant Halachic Sources.....	11
Chapter III. Rabbi Isserlein's Interpretation.....	27
Chapter IV. Influences of Isserlein's Life and Times...	33
Appendix A. <u>כ"ז, י"ב ו"ח</u>	38
Appendix B. Translation of Terumath ha-Deshen, 241.....	42
Footnotes	57
Bibliography	62

CHAPTER I

The Black Death of 1348 marked the onset of a period of degeneration in Ashkenazic communities. The plague took a high toll among Europe's population and an even higher one among the Jews, who suffered less from death caused by disease than they did from the havoc wrought by the superstitious mobs. The masses, submerged in an irrational frenzy, wreaked their vengeance upon the Jews. They accused them of poisoning the well water and deliberately planning to murder Christians.

Subsequent to a period of crisis it was not uncommon for the Jewish community to come under the close scrutiny of the authorities. They again found themselves in their traditional role as a poultice, absorbing the troublesome problems of gentile communities. The rabbis of the period instituted observances to mitigate the wave of hostility against their people. Maharil explicitly admonished his coreligionists that they should not wear fine clothes while on a journey. Rather, he exhorted them to dress extremely modestly, even to wear torn, ragged clothing so as not to provoke envy and possible attack. He furthermore warned against sleeping alone at night, or traveling at night without a candle to light the way.¹

In the aura of confusion and mutual mistrust, rabbis emerged with great influence in internal as well as external Jewish affairs. Even outside of the Jewish communities they were considered most reliable and trustworthy representatives of Jews by the gentiles. The power wielded by way of the herem made the rabbi a natural candidate for government officialship. That the government recognized the rabbi's singular rôle as power figure is clear from the increasing mention of rabbis who had been appointed to government posts. In 1372 in Cologne, the rabbi was recognized by the government as the "Magistratus" of the Jews.² Rabbi Jacob Weil was sent to Basel in 1433 to represent the Jewish Community of Augsburg at a tax conclave; and in 1456 Frederick III banned the rabbi and the community of Regensburg for not forwarding the crown tax to him.

While the rabbi was looked to for guidance and leadership within the Jewish community, in daily affairs there was the usual contact between Jews and their gentile neighbors. As early as the fifteenth century there was not yet in force, a ghetto isolation. Rather, the Jews lived in towns where they associated with all segments of society; government, nobility and peasants.³

Legal rights of the Jews depended greatly on the degree of favor or disfavor in which they were held at that particular period. Though there was recourse to

the civic courts Jews seldom used them unless a gentile litigant was involved.

To dissuade officials from taking a Jew into custody during a journey a document guaranteeing safe passage was issued to certain travelers by their noblemen. There was, nevertheless, no completely effective guarantee of safety in any domain through which they might pass. From some of the cases regarding agunoth which came before Rabbi Isserlein and his contemporaries, it is apparent that Jewish peddlers or travelers were killed by villagers whose villages they traversed.⁴

Once captured by gentiles and held in captivity Jews seem to have acquired somewhat of an ambivalent status. From the perspective of the Church there was disagreement as to what attempts should be made to convert them; and once converted, as to their new status as Christians. There were several reasons why Jews were captured: to acquire ransom money, to hold as hostages for some reason, to forcibly convert to Christianity, or merely to satisfy the lust. Discrepancies existed regarding to what extent they should be enticed. Following baptism, for example, what penalty should there be for reversion to Judaism? According to the Schwaben-spiegel, the penalty for heresy levelled on any Christian was death at the stake. This also applied in theory to the baptized Jew, for in 1267 the Pope explicitly equated relapse into Judaism with heresy.⁵ It is, never-

theless, evident from the responsa literature of the fifteenth century that apostates did return to Judaism without incurring the punishment of death.

From the Jewish perspective the equivocality surrounding the returnee revolved around his privileges in the Jewish community. The Talmud raises doubts as to whether the apostate, having returned to Judaism, could be considered fully rehabilitated. Halahically, the question concerned primarily those of priestly origin.⁶ According to b. Talmud Menahoth 109a, the kohen who participated in idol worship should be excluded forever from taking part in any sacred function. This view was also upheld by one of the early Ashkenazic authorities, Rabbi Eliezer ha-Gadol. He decided that a priest who apostasized and then returned to Judaism should not be allowed to repeat the priestly benediction.⁷ Rabbenu Gershom decided against this, however, on moral grounds, and his decision took precedence. He extended the efficacy of the teshuvah to embrace those of priestly descent as well, and assured every apostate full rehabilitation. Were there to be less than one hundred per cent rehabilitation, any restriction imposed on reverts might deter apostates from returning to the fold. Rabbenu Gershom's decision was reinforced by Rashi and many other halahic authorities.⁸

There were problems, however, in regard to the captive wife who returned to Judaism. This case is com-

plicated by suspected unchaste behavior, for such laxity is not merely conceived as infidelity toward the husband, but a violation of a divine order, a crime which cannot be condoned by the husband.⁹

From the writings of early biblical times a great sense of defilement is encountered in association with an improper sexual act. This is explicitly noted in Biblical passages where a married woman had had sexual relations with another man. Even if by force, she was regarded as no longer fit to live with her husband.¹⁰ The rabbis are in accord with the ancient Scripture in that they regard an adulterous wife as "defiled" and no longer fit to cohabit with her husband.¹¹ With respect to a priestly marriage this tradition was accepted in toto. Even involuntary sexual defilement renders a priestly wife unfit to remain with her husband, but with regard to Israelites, the sages modified the Biblical law to permit the wife's return if the illicit relations were involuntary on her part.¹² When no proof or witnesses are available to ascertain whether defilement occurred with or without the woman's free consent, the law is enforced even where there is only a reasonable certainty.¹³

In the she'elah posed to Rabbi Isserlein a number of travelers were seized by the authorities of a town along their itinerary:

Groups of men and women and many persons went from city to city for the celebration of a wedding. They passed through a city (ruled by) a wicked ruler with all wicked officers; and these brought false charges against them that required the penalty of death and execution, so they seized all of them, and the inhabitants (of the city) distributed them all over the city in their (the inhabitants') houses, every man and every woman separately. They chastized them in terrible prisons and with all possible tortures. They also enticed them continually--everyone, in order to change their religion, in which case they and their money would be released. For a long time men and their wives remained under arrest. It happened that when the suffering lasted for a long time, some of the women and men converted, some women with their husbands and some without their husbands; and some of them escaped from the prison while yet Jewish. Also, those who converted all returned to Judaism; but some of them fled belatedly and there were among them women who had once before converted and returned to Judaism. The matter was reported (by informers) and these gentiles who had taken them prisoner recognized them (these Jews) and they made a serious false charge against those women for that reason. Most of the group, men and women, withstood the temptation (i.e. to convert) and were slain for Kiddush ha-Shem.¹⁴

The situation depicted here is complicated by some unique factors for which Isserlein must account. Halahic literature had, prior to this time, dealt with ravaged women.¹⁵ The distinction between the priestly wife and wives of lay Israelites had been succinctly described by Maimonides.¹⁶ Furthermore, Rabbi Meir of Rothenberg had written a teshuvah concerning forced conversion of women captives, who were later permitted to return to their husbands.¹⁷ The situation presented

to Isserlein has aspects that are not clarified by his predecessors. Firstly, the women were separated in their captivity, from each other, as well as wife from husband. Secondly, they were tortured severely. Thirdly, some women converted along with their husbands while others converted without their husbands. Others escaped without converting. Fourthly, for some of the women this was the second arrest, since they were identified as former converts who had returned to Judaism. These were charged severely. Fifthly, most of the group withstood torture to convert.

The author of the she'elah wants to know how the law should be interpreted. May the women return to their husbands after living through this ordeal? What is involved if some are priestly? Is it permissible to return to their husbands if some women never submitted to conversion? Are those who converted and later reverted to their ancestral faith permitted to rejoin their husbands?

The law of defilement appears to be quite severe upon Jewish families, particularly under the hazardous conditions under which they lived. The fifteenth century was replete with pogroms. The Hussite wars, in which the Jews were battered from both sides, raged on. Jewish communities experienced plunder, seizures, forcible conversions, rape and murder. Nowhere were the rights of Jews respected for certainty. The note written by a

duke or baron guaranteeing their safe passage would only incite the town magister to concoct false charges and imprison them. In all such instances of confinement the law assumed that the women were violated, and facts seemed to justify that assumption, unless they could prove the contrary.¹⁸ The question was only: had the woman consented to have sexual relations, or had she been compelled. If she submitted willingly she was prohibited from returning to her husband.

The case of apostasy introduces an additional difficulty. Conversion in fifteenth century Austria has been attributed to several possible motives. In few instances did it result from a change of heart. One anonymous Austrian contemporary of Isserlein states that in his day one could not find converts from religious conviction, but only those who converted for personal gain.¹⁹ Generally, rabbis designated such an apostate as a mumar or meshummad, a sinning Jew. Such a person neither lost his Jewish identity nor became free from the obligations incumbent upon a Jew in the eyes of the Jewish community.

In times of persecution whole groups were sometimes baptized either forcibly,²⁰ or with consent under threat of force.²¹ The rabbis apply to these forced converts the term, anusim, for these had special pity in the eyes of the Jewish community. It was considered especially meritorious to assist them in their attempt

to escape from Christianity. Mahzor Vitry includes the anusim in prayers for the welfare of the Jewish community.²²

The woman who converted willingly came under great scrutiny upon her return to Judaism. In such a case it had to be ascertained under what conditions the woman apostasized and whether or not her particular situation enhanced the likelihood that she had had illicit sexual relations while in captivity. There is an additional complication in that it is not clearly defined as to whether her actions are as a Jewess or a gentile. Furthermore, the degree of chastity is considered to be related to the amount of time that elapses between her conversion and when she returned to Judaism.

From the halahah, when it was established that a woman had willingly accepted baptism, the husband was free to marry a second wife. The elders of the community had the responsibility of ascertaining that it was a case of voluntary abandonment and not involuntary captivity, and that the wife was not secretly loyal to her family.²³

The question at point in the she'elah is whether the wife under any or all of the above conditions could return to her husband and resume a normal marital relationship. There are many gray areas where the numerous cases of enforced baptism make great care necessary in deciding if she converted by force or free will. The

task, therefore, in this responsum is to establish what the law is regarding the demarcation between voluntary and involuntary submission to sexual relations, or what circumstances would prove the one or the other. The she'elah is complicated and each segment is scrutinized carefully in arriving at a decision.

CHAPTER II

The situation which Rabbi Isserlein confronts in his responsum is certainly not without historic precedent. In fact, it recapitulates in part, situations that have been already decided, as recorded in prior Jewish experience. Authoritative principles from the Babylonian Talmud reveal the genre of assaults traditionally made against the Jewish community, and their concomitants. Isserlein begins the responsum by citing Chapter II of Mishna Kethuboth: "A woman imprisoned by heathens for the sake of money is permitted to her husband, whereas if for the purpose of (taking her) life, she is forbidden to her husband."

From what the Gemara has to say, it is evident that the Tannaim do not regard the power of the Jews over the gentiles. The Amoraim proceed to limit the Mishna's conditions for return to cases where the Jews are in a strong bargaining position with gentiles (and thus the gentiles are unwilling to force the woman, lest they forfeit their money claim.) An objection is raised on the grounds that witnesses must be present to insure that the woman held for a pledge was not raped. Subsequently, it is affirmed that she may not testify in her

own behalf, but must have a trustworthy witness. What criteria must a witness comply with to be believed? If he testifies that the woman was pledged, may the same witness be believed if he also testifies that she was not raped? Accordingly the sages arrived at the principle: If you cannot believe the witnesses on both counts don't believe them on either.²⁴ In any case, the Talmud concludes that witnesses are the sine qua non, without which a woman cannot return to her husband.

As in the early centuries, the Middle Ages was rampant with incarceration, rape, forced conversion and martyrdom. One need only consult Kisch's, The Jews in Medieval Germany, for a generous sampling. Legislation enacted by the Church in regard to Jewish conversions reflects its attitude toward Judaism. The Schwabenspiegel warns that if a baptized Jew "denies the Christian faith and will not cease therefrom, he shall be burned as a heretic."²⁵ In 1267 relapse into Judaism was explicitly equated with heresy by Pope Clement IV;²⁵ while at the Church Council of Basel in 1439 it was decreed that churches make a special effort to care for the economic needs of converts. Life was difficult as a Jew, but even harder as a forced convert.

False accusations against the Jews were common place. Seized on occasion, they were enticed to convert or tortured and murdered, as in the following account:

The Jews were alleged to steal the host or to acquire it by purchase or bribery, or break it or seethe it, and to stick needles into it or transfix it, whereupon it began to bleed. Even when such an accusation was supported only by the testimony of a thief, a disreputable woman, a recent convert, or someone having a grudge against the accused Jews, the alleged perpetrators were put on trial, and on evidence that was often preposterous, or after a confession exacted by torture, were condemned and burned, sometimes with all the other Jews of the place...²⁷

In Kitzingen, in 1243, a number of Jewish men and women were tortured and subsequently executed. The same year witnessed similar incidents in Ortenburg, Belitz and in Meiningen. In 1244 the Jews of Pforzheim were attacked.

During the Frankfurt Massacre an account has survived where a Jewish girl, betrothed to a Würzburg Jew, had changed her religion. It was a case of baptism through necessity. She later returned to Judaism only to find that the betrothal had been broken and her husband had, in the meantime, married. The German rabbis decided that the husband was in duty bound to divorce his wife and marry the girl whose claim on him had not been invalidated by her enforced baptism.²⁷ Hayyim Or Zarua ruled that baptism disqualifies a woman for marrying a Jew.²⁸

Another incident antecedent to the one in the responsum is related by Rabbi Meir of Rothenburg.²⁹ A group of men and women from Rockenhausen were seized and imprisoned. During their imprisonment the victims

were coerced and, though against their will, they were forcibly converted. After escaping from their captors the women sought to return to their husbands.

It is of interest to note that primarily two factors caused Rabbi Meir to decide in their favor. The first is that according to the captives, they never actually embraced Christianity; rather they remained a passive audience before the priests' recitation. Secondly, since they were held captive together, there was ample testimony as to which women were not raped by their captors. Rabbi Meir ruled that the women never committed a sin.

In resolving the question at hand, Rabbi Isserlein initially outlines the halahah and major decisions of the sages and "gaonim" as they relate to the case in point. Subsequent to this, he examines the details and decisions surrounding the Decree on Austria of 1420-1421; and independently he derives principles from it which became useful tools in developing his singular approach to the she'elah.

The Tosaphoth permits chaste women to return to their husbands. The problem, however, becomes one of determining who is chaste and who is not, and of estimating to what degree chastity can be logically ascertained. The Tosaphoth is severe in that it assumes a priori that every woman is unchaste.

Sefer Mitzvoth Katan probes the intention of the woman seized for wanton murder. It finds implicit in the text that she broke a civil law of the land, eg. by theft, and thereby she incurs the death penalty.³⁰ On the other hand, there are women who are captured to be killed merely by reason of their being Jewish. These are considered to have a high degree of resistance to adultery, since they are innocent and will stand firm. The former will not, because they have fallen into the hands of crime and can only sink deeper into trouble. The Note on Sefer Mitzvoth Katan is lenient for it does not rely solely on witnesses to prove a woman's innocence. Relying on a theory of human nature and a confidence in the inner strength of a woman, it regards her determination to face death as a martyr before submitting.

Or Zarua, in a responsum, holds with the Tosaphists, that if any woman is captured for reason of taking her life, she is assumed to have consented to sexual intercourse. He attributes this stringent view to her unstable state of mind. Two possible motivations are suggested as operating here. The first is simply to free herself at all costs. The second is that she may consider her paramour to be a "ben netzer,"³¹ that is, a successful and notorious brigand whom she is confident will carry her away with him to live. Most cases of voluntary baptism of this motivation were results of illicit relations with Christian knights and nobles.³²

This would, therefore, present a different situation if she escapes and returns to Judaism, for the escape does not prove that she had previously refused to submit. It can only be stated with accuracy that she did run away somehow. Or Zarua, in light of his provocative speculation, only permits her to return to her husband if there were unequivocal testimony in her favor. He remains skeptical of anything that may have otherwise transpired in captivity.

An anonymous sage comments that a woman who is captured during a pogrom, not for any offense, but for the sake of conversion, should be considered untouched because of gentile law, which imposes the death penalty on one who violates a potential convert.³³ The crucial element here is that the conditions were that of a pogrom.

A subsequent development of this decision is that even the wife of a kohen is permitted to return to her husband if the conditions were: (1) during a pogrom, and (2) that she returned to her husband immediately upon fleeing. The thought is that in the midst of a pogrom, her husband did not have a chance to lodge an accusation of adultery against her, which is prescribed by law as a pre-condition for divorcing a wife who secludes herself with another man.³⁴ If she returned immediately her honor is buttressed. This enables the law to extend to a priest's wife who had been merely a victim of circum-

stances, but who had remained virtuous insofar as it was legally possible to ensure.

An even greater leniency is stated by Rabbenu Simha: Whenever a woman even has confidence that she will be ransomed she is permitted to return. This trust bolsters her moral fiber and ensures that she remain virtuous.

A note on Maimonides' Isurei Biah,³⁵ by Samson b. Rabbi Avraham, investigates the case of a woman who apostasizes and then reverts. The nature of her chastity during the period of apostasy is the key question. First under consideration is the case of a woman who converted with her husband, and then later they both returned to Judaism. Tentatively, it holds that since she had declared herself free from the restrictions of Jewish Law, she is regarded as having transgressed them; thus, she may not be considered as having behaved according to Jewish Law. Three things are forbidden on pain of martyrdom: idolatry, adultery and murder.³⁶ If she rejects the tenets of Torah the possibility is opened that she has engaged in even these. Even from a liberal viewpoint, citing a case in the Hasmonean court, a gentile girl is impure by the laws of Niddah; hence, she is regarded as a harlot. Accordingly, this wife who underwent baptism is likened to any gentile woman and may not be taken back.

Rabbi Samson goes on to refute his first statement by introducing Rabbi Dimi's opinion, that the wife of a gentile is not to be regarded as a harlot. He contends that though she does not live according to Jewish Law, she is, nevertheless, guarded by her gentile husband (i.e. her Jewish husband who had become a gentile by his apostasy.)

The two contrasting opinions are then judiciously laid aside almost as irrelevant, as the dominant view toward repentent sinners is adopted.³⁷ Violations of Jewish Law perpetrated while in her gentile status are nullified when a woman reverts, for repentent sinners are to be regarded as not having transgressed the Torah after they returned to the Jewish fold, just as pertains to a proselyte. The added stipulation is that the revert may return to her husband only if she converted with him. If she converted by herself, alone, she is forbidden to reunite because the situation is compared to that of a wife who is warned of her suspected adultery and who thereafter secludes herself with another man under suspicious circumstances.³⁸

Thus has Isserlein presented the sages and "gaonim" on the subject of the captive wife. They shed light on certain aspects of the problem in the responsum. In summary, they take into consideration the following factors that are involved in granting her permission to return to her husband:

- (1) The likelihood of rape
- (2) Required witnesses to assert a woman's chastity
- (3) The degree to which she violates Jewish Law

while in her gentile status

- (4) Apostasy with and without the husband
- (5) Immediate return when she has an opportunity to flee

- (6) Whether she is a priestly or an Israelite wife

- (7) Whether she has been captured for a crime requiring the death penalty; or for the purpose of collecting ransom, serving as a hostage, or for conversion to Christianity.

- (8) Conditions under which she was captured--pogrom

- (9) That she was guarded by her gentile husband.

There are a number of factors involved in the she'elah that the sages did not touch upon. The sages did not regard the case of separate and isolated confinement, nor had they concerned themselves with whether the woman converted forcibly or willingly. In addition, they made no distinction between consent to intercourse and rape. Left out also is the consideration that loyalty to the Torah implied duty to become a martyr rather than submit to breaking the Law. Heretofore, a woman's overpowering loyalty to her faith was not regarded. Finally, there is debate over whether or not Sotah 2b applies to her, for since she was seized unexpectedly,

the obligatory warning to a wife suspected of adultery was not lodged, and the possibility exists that her husband cannot put her away.

The infamous decree on Austria of 1420-1421 occurred during R. Isserlein's lifetime. Though Wiener-Neustadt where he lived was not affected, the incidents were, nevertheless, quite well-known to all Jews of Austria in his day. The Wiener-geserah involved circumstances similar to those described in the she'elah; thus Isserlein gives careful consideration to the case; while yet asserting his own individual viewpoint.

A number of women were seized and held in isolated captivity for a long time. The gentiles enticed them to convert. Some did so with their husbands, some without their husbands, and some before their husbands. Some apostates fled immediately and returned to Judaism at their earliest opportunity. Others remained after apostasizing for a season or more; while still others fled without apostasizing.

Much to the chagrin of Rabbi Isserlein, it was common knowledge that the great rabbis of the generation passed a "wholesale Heter, permitting all wives to be reunited with their husbands.³⁹ This was applied indiscriminately...to priestly wife as well as to Israelite wife, despite the possibility of infidelity during the enforced separation. Rabbi Isserlein takes exception to this view. He regards the term, "great rabbis," with

skepticism. The masses believe that the great rabbis taught this decision, but he believes it to be a rumor for two reasons. First, it is impossible that the truly important rabbis should permit wives of priests at least, to return to their husbands. Secondly, they made no distinction between the wives who procrastinated and those who did not. In R. Isserlein's estimation this phenomenon can be accounted for in that some rabbis did permit even priestly wives to return. He explains how the common misconception spread when some of the teachers supported the return of the priestly wives to their kohen husbands. The matter of the permission became generally known as originating from a distinguished rabbi. The teachers, while making no distinction between lesser and more important rabbis, and while being makilim themselves, arrived at a lenient decision. Isserlein implies in all this that such a decision, regardless of who formulated it, is a mistake; particularly since priestly wives were reunited with their husbands.

He further surmises how the decision to permit every single woman to return, even those kept in separate captivity, came to be. The sole argument amounts to be that they fled from prison specifically to go back to their Jewish husbands. Isserlein conjectures that the rabbis decided on the basis of the note to Sefer Mitzvoth Katan.⁴⁰ This case would be an excellent example of

arrest for martyrdom, and accordingly merit her return (in all cases, even if she were priestly.) Sefer Mitzvoth Katan is not accepted by Rabbi Isserlein as there are further considerations.

This is doubted from the standpoint that her defilement has not been disproven. There is no proof of chastity. Assuming that the woman is chaste, the Tosaphists seem to infer that a woman in the above circumstance is permitted. Isserlein would accept this if she were chaste. He follows their line of logic, but interprets the same state of affairs differently. Sefer Mitzvoth Katan's teaching is too simple, in that it assumes all the women are chaste simply because they fit into the category of being martyred for the sake of their Jewishness. He agrees with Tosaphoth that if some are indeed chaste they may return; then he expands the thought, constructing a solid case for her return on the basis of confirmed chastity. By virtue of her Jewishness, her acceptance of the yoke of Torah, she is required to surrender her life for martyrdom before breaking the Law. He logically demonstrates that an observant Jewish woman, by virtue of her observance, must submit to death and refrain from transgressing the Law. The woman is alive. Therefore, it is logical that she did not transgress the Law and submit to sexual intercourse.

The logic of this argument is accepted, but not the conclusion. Isserlein cites the first chapter of

Niddah where it states that, "the one who observes the words of the sages is not called chaste, how much the less they who observe the words of the Torah." "Words" is the crucial factor. Merely because a woman is observant without pressure, she is not assumed to be chaste when under pressure. Isserlein concludes that the acid test of one's chasteness, the only one by which we know beyond doubt that she is chaste, is if she forfeits her life for Kiddush ha-Shem. So, the only case where a woman is permitted to return, even to the priesthood, for him, is where she attempts to take her own life. It is assumed that every woman is informed that under compulsion she may not willingly take part in intercourse, but she is permitted to submit to rape. The distinct dichotomy between the two is made.

Next Isserlein demonstrates that in Sefer Mitzvoth Katan it is implied that a woman can only return to an Israelite husband. Thus, Isserlein has refuted those who improperly cite Sefer Mitzvoth Katan, also the Tosaphists who say a woman captive may be returned to her priestly husband.

Another opinion, posed by Rabbi Meshullam and Rabbi David, favors return of a priestly wife. They surmise that she is permitted to a kohen because she was seized for conversion. Since the gentiles' law is to put to death anyone who violated the virgin,⁴² it may be

assumed that they did not touch her. Isserlein refutes this on the ground that the women in our case were not virgins. They were either married or had at one time been married. Furthermore, he points out that the above would apply only after she converted; for example, it is not likely that a gentile would be put to death for raping a courageous woman, who withstood all temptations and torture to convert. It is quite possible that the gentiles would condone such rape and would not punish the man at all.

Rabbi Isserlein injects a second argument of Rabbi Meshullam and Rabbi David, to sustain the rabbis' lenient decision in favor of universal return for all women taken captive in the decree on Austria. It is to the effect that she was not warned first, according to law, before she was dragged off to prison in isolation.⁴³ The most this implies according to Isserlein is that she is not to be suspected of consenting. We still, however, must suspect that she was raped; and there is foundation for this in the testimony of other women that were kidnapped.

In reviewing the Decree on Austria, Isserlein cannot find any basis in tradition to account for the lenient decision of the rabbis. He is skeptical as to the authenticity of its existence. In any case, he excludes its extension to priestly wives and to wives who converted and then returned, even without delay. Finally,

he accuses any rabbis who did in truth arrive at such decision as exhibiting a lenient bias, manipulating whatever precedents there may have been to suit their decision.

From the subject matter of the Decree on Austria Rabbi Isserlein draws certain conclusions that go beyond the sages and his contemporaries:

(1) If the woman converts, the situation takes on an added complication. Generally speaking, the apostate may not return to her husband; even if she returns immediately, even if she converted in order to return to her husband. As shall be later demonstrated, there are conditions which shed a different light on the matter. It is implied, however, that the woman who rejects conversion, other conditions being favorable, may return to her Israelite husband.

(2) If the woman is priestly, no matter what the situation is, even under the most lenient conditions, it will be extremely difficult, if at all possible, to permit her to return. Isserlein at least potentially keeps the door open to a priestly wife at this point. A further implication that may be drawn is that if the wife didn't convert she may be permitted to return to an Israelite, other conditions remaining favorable.

(3) Isserlein manifests his decidedly lenient attitude toward the repentant apostate, as not having transgressed the entire Torah. No sin must be assumed without

proof. A woman is forbidden to return to her Israelite husband if she has consented freely to intercourse, but toward this serious charge there is no proof.

(4) Isserlein related willful conversion to freeing oneself from the yoke of Torah. The wife is forbidden to return to her husband where she converted willingly and made herself unrestricted by Jewish Law. This holds true in the responsum as well, where she converted in isolation, without witnesses. Were witnesses present they could testify as to whether the conversion was enacted with or without her consent. This case of isolated conversion cannot be known; therefore, she cannot be regarded as having consented.

(5) The fact remains from what has been stated, whether she consented or not, if her husband did not guard her (and there were no witnesses while she was held in isolation) one must assume that she was violated. However, she fled immediately when the opportunity arose. Therefore, the case is not to be regarded as if witnesses had been present to testify against her.

Though the Decree on Austria has evoked new considerations, it yet remains unclear as to whether the defiled woman is permitted to return to her Israelite husband for any reason.

CHAPTER III

The precedents, carefully analyzed, form the bases from which Rabbi Isserlein synthesizes his decision. Rabbi Samson's Note on Maimonides is the most thoroughgoing treatment of the problem thus far. There are women mentioned in the she'elah, nevertheless, who were held captive in isolation and who converted apart from their husbands. Isserlein draws certain conclusions from the Note:

(1) It is not possible to permit a wife to return to her husband based on the Note on Maimonides,⁴⁴ because in this case she converted alone. On the other hand, one cannot prohibit her return either, for the note states that no repentance was necessary for the one who consents to convert, since this did prevent the captors from murdering her. Indeed, they freed her; thus she was enabled to escape by virtue of her conversion.

(2) It is not possible to permit a woman to return on the basis of the Note on Maimonides, because it does not consider the woman who was arrested in full consciousness of doing wrong. Here she willfully consented, even though it was only to be released.

(3) It is possible to forbid her to return, based on Sefer Mitzvoth Katan.⁴⁵

Isserlein is at this point moved by two very basic considerations: conversion and nature of impalement. Baptism is the focal point, but not the key issue here, for Isserlein draws the implication that if she did not convert, certainly she did not consent to intercourse. A woman has the willpower to resist not just one, but both. Those who did convert, from the very outset had weak character and were prone to consent to intercourse to save their lives. Moreover, there are extenuating circumstances and they should not be prohibited simply by virtue of their conversion.

A novel dimension is introduced at this point. When a woman converts and then flees, she makes herself repulsive to her captors. She is afterward subject to their wrath if caught, while at the same time she imposes upon herself the Jewish way of life and a loyalty to the Jewish people as her only alternative.

If the woman is incarcerated to be held as a pledge she is permitted to return to her husband. Here Isserlein is in accord with the sages in that he agrees that as long as the impalement is unlawful, she is not forbidden to return. They do not think she consented to intercourse in this instance; only if she were imprisoned unlawfully.

All of these women were arrested unlawfully, even the ones who were identified as reverts, for their original arrest was unlawful. None of the women, whether

it is their first or second arrest, will consent to intercourse out of a fear of reprisal, because they trust that whatever happens to the others will happen to them. They know this because they either were reverts or knew other reverts who had gone through a similar temptation. There are again, extenuating circumstances; nevertheless, a woman must not be prohibited from returning to her husband merely because she converted.

What then are the underlying principles by which a woman may return? It seems that Rabbi Isserlein is all too thorough in presenting both sides to the minutest detail. The key to Isserlein's tendency lies in the statement that she did not disobey all of the precepts of the Torah, but only the ones she was forced to transgress. If she is regarded as a passive instrument of her captors at all times, and if the primary consideration is whether she acts of her own mind or submits, a very lenient interpretation is possible, and even seems to evolve as the precedents are interpreted.

Isserlein's decision follows the tendency of the "gaonim." Though he is lenient, he is not divorced from tradition or loosely lenient, as he describes the rabbis who permit all wives to return. Persuasive in several respects, he remains prohibitive in others; but, the utmost bending is done to allow the reunion of the captive wife with her husband.

Those wives who fled immediately are permitted to return even if: (a) They converted separately without their husbands. (The "gaonim" are in agreement with this.) (b) They converted with their husbands, regardless whether or not they did so with full knowledge of doing wrong. How much the more, if they did it under force, because her husband watched her. (c) Their husbands preceded them in converting.

Isserlein generally does not permit those women to return who tarried and did not return to the Jewish community immediately after gaining their freedom, even if they could have escaped without their husbands. Such women are regarded as intentionally acting wrong without remorse. According to Isserlein, no great authority permits her return in such a case. It is here that he manifests his compassionate nature most vividly, and reveals a new insight. R. Isserlein remains open to any reasonable explanation for her failure to return immediately. Since she was under close surveillance by the gentiles, it is suggested that her escape might involve a high degree of risk. Furthermore, allowances must be made for the difference in level of intelligence and manipulative skills. While one woman can employ tricks to free herself, another is not so talented. This leniency is not to be applied to all women, but is to be judiciously employed.

To summarize Isserlein's approach to a very involved, complex situation, it is obvious that each case is to be judged individually. No one general decision applies to all of the women as in the decree on Austria. R. Isserlein is prone to be individual-directed.

Unlike Or Zarua, who is primarily concerned with correct interpretation of the Law, Isserlein is primarily concerned with human beings. This is evidenced in his preoccupation with human situations, beyond that of other rabbis. Rather than finding stipulations in the halaha to forbid their return, his entire approach is oriented toward discovering leniencies to permit them to return. In this respect he is like Rabbi Meir.

Isserlein's insight into the problem is very deep. He is not overcome with legal principles, yet strictly he adheres to tradition in every sense. Certainly, he probes the situation with as much scrutiny as he does the Law to reveal situations that were either overlooked in the past (he therefore, interprets the same law in a different way) or were not available to former halahists. He had a keen, penetrating legal mind and was not swayed by human emotion to the extent of neglecting the Law. Isserlein decided against any woman who willingly consented to intercourse; the most impressive indication of such behavior was her delay in returning to the Jewish community. Though he was exacting with the woman who tarried, he was not as dogmatic

as many of his predecessors who were more inclined to interpret the Law to this point and not beyond.

An innovative thinker, Rabbi Isserlein helped to reconcile the penitent convert with the Jewish community by bringing to their attention the fact that the woman who reverts immediately not only manifests her loyalty to Judaism, but increases her personal risk at the hands of the gentile authorities as well. There is, thus, a double reason for receiving her back with full privileges of reuniting with her husband. Finally, he allayed the fears of those who were concerned whether the wife converted separately, before or after her husband.

CHAPTER IV

This responsum can only be fully understood if viewed within the context of the author's life and times.

Christian Europe during the fifteenth century was, at best, ambivalent toward the Jews. Antisemitism was not primarily economic, but ecclesiastical. Physical harm was not a widespread concomitant until the Wiener-geserah. A papal Bull issued by Calixtus II in the twelfth century is the archetype of all subsequent bulls concerning the Jews. Promulgated at the insistence of the Jews, it offered protection.

We decree that no Christian shall use violence to force them to be baptized as long as they are unwilling and refuse... Moreover, without judgement of the authority of the land, no Christian shall presume to wound their persons, or kill (them) or rob them of their money... 46

When Duke Frederick had reconquered Vienna, he issued his own charter in 1244 to the Jews of his entire duchy. The charter served as a model for the Jewries of eastern Europe. Jewish refugees of the Crusades and subsequent massacres in Germany since 1348 had sought refuge in Austria under its protection, which included a scale of punishments to be meted out for acts of violence against a Jew. Murder was punished with death and

confiscation; serious wounding with a fine of twelve gold marks payable to the duke, and twelve silver marks, together with the cost of curing the victim.⁴⁷ Of significance for this responsum is the clause whereby if a Christian raised his hand against a Jewess he lost his hand.⁴⁸

With the increasing influx of Jews, by the fourteenth century Austrian Jewry outnumbered the Jews in all other communities.⁴⁹ In 1377 the Duke of Austria actually invited Jews from foreign countries to settle in his territory, and from that time the Austrian dukes covetously guarded their authority over the Jews who became engaged even in agriculture, and even possessed fields and vineyards.⁵⁰ Krems, Vienna and Wiener-Neustadt became the centers of Jewish learning as Mainz, Worms and Speyer had been before the crusades. The center of learning had shifted with the Jewish population from the Rhineland to Austria.

Isserlein, of Wiener-Neustadt, described the inner life of an Austrian Ghetto. Jews, though not bodily molested, did suffer from the burden of heavy taxation. The amount of money extorted was so great that some were deprived of half their possessions.

On the interpersonal level Christians and Jews were friendly. Jewish women were often employed as washer women in Christian homes.⁵¹ They knew the customs and manners of the gentiles and had the opportunity of

becomming quite close friends. It is therefore feasible that some Jewish women admired gentile living. In a few cases, as has been already mentioned, they underwent baptism and left the Jewish fold. In other cases it is possible that relationships may have been established, wherein after the cataclysmic pogrom of 1420 little pressure was required to entice a woman to leave the Jewish fold; particularly so, if her mode of living was unsatisfactory.

This is the context of Jewish life that underlay Isserlein's investigation of the she'elah. In 1421 the Decree on Vienna brought banishment upon all Jews of Vienna.⁵² Transient merchants and physicians were allowed to remain in neighboring non-Austrian territory, as well as upon some land belonging to Austrian princes. Rabbi Isserlein was, however, given particular sanction by the Duke.⁵² A safe conduct through all his lands was made available to him, in view of the fact that he was declared innocent of the crimes with which the Jewish community had been charged in 1421.

Throughout his responsum Rabbi Isserlein alludes to the events of the Wiener-geserah with a feeling of mourning and sorrow. It had left an indelible impression on him, undoubtedly imbuing him with great compassion for the imprisoned Viennese Jews who were under constant pressure to abandon their religion. He could identify as a contemporary, with the families that were disrupted.

He was compassionate though not indiscriminately permissive when the captives returned, for he himself was not personally involved. Since he was in an objective position he was the ideal one to decide this matter.

To compare Isserlein with the sages, it may be said that his views went counter to those who counsel a strict legal interpretation. His decisions were arrived at independently.⁵³ Rabbenu Gershom's Takkanah which forbids reviling the penitent convert, had considerable influence on his decision.⁵⁴ Few Spanish scholars are cited by Isserlein, perhaps because their responsa were not widely distributed in Ashkenazic lands.⁵⁵

Or Zarua was very influential in Isserlein's decision, though in a negative way. Having preceded Isserlein by over a century and a half he had seen in his lifetime the institution in France of the law compelling Jews to wear the yellow badge. As a contemporary of the massacres of the Jews in Frankfurt-am-Main (1241) he is involved in a situation similar to Isserlein's. His importance lies particularly in his controversy with several rabbis concerning the legal status of a betrothed girl who had been forced to adopt Christianity and had afterward returned to Judaism. Or Zarua's predilection for correct observance led him to counsel the more difficult rather than the easier practise.

This teshuvah reflects a kindness, genuine understanding of human nature and leniency. Isserlein

denounced mortification of a repentent convert on humane grounds, because "the repentent apostate had not only foresworn all the opportunities available to him as a Christian, he might well fear retaliation from the Christians, and fear itself, bringing on grief and anxiety, was a sufficiently severe penance, he concluded."⁵⁶

Though there is a decidedly humanitarian aspect to the decision, it likewise favors the welfare of Israel by denying the wanton wife her marital rights, and by permitting apostates who would return to the faith to be accepted back as fully privileged Jews. The Jewish population might otherwise have significantly diminished in the Middle Ages had this course not been followed.

APPENDIX A

תנ"ך העברית

כ"א

Warsaw Edition, 1882

[illegible]

[illegible]

[illegible]

APPENDIX B

Translation of

Terumath ha-Deshen, 241

Warsaw Edition, 1882

7/16e: Groups of men and women and many persons went from city to city for the celebration of a wedding. They passed through a city (ruled by) a wicked ruler with all wicked officers; and these brought false charges against them that required the penalty of death and execution, so they seized all of them, and the inhabitants (of the city) distributed them all over the city in their (the inhabitants') houses, every man and every woman separately. They chastized them in terrible prisons and with all possible tortures. They also, enticed them continually--everyone, in order to change their religion, in which case they and their money would be released. For a long time men and their wives remained under arrest. It happened that when the suffering lasted for a long time, some of the women and men converted, some women with their husbands and some without their husbands, and some of them escaped from the prison while yet Jewish. Also, those who converted all returned to Judaism; but some of them fled belatedly and there were among them women who had once before converted and returned to Judaism. The matter was reported (by informers) and these gentiles who had taken them prisoner recognized them (these Jews) and they made a serious false charge

against those women for that reason. Most of the group, men and women, withstood the temptation (i.e. to convert) and were slain for Kiddush ha-Shem. What is the law regarding the women with respect to their husbands--i.e. some of whom escaped while remaining Jewish, or who converted and then returned to Judaism?

דאלין: It seems that a thorough scrutiny is necessary in these matters, because the matter has many aspects, as I shall explain. We learn in Chapter II of Mishna Kethuboth, if a woman was captured by gentiles for a monetary matter she is permitted to go back to her husband; but, the one captured to be subjected to capital punishment is forbidden to return to her husband.

The Tosaphists explain *ibid.*, and similarly Asheri and Mordecai, *ibid.*, that that fact that she is prohibited if she is captured in order to be killed, means that even to her Israelite husband she is prohibited; for we suspect that she perhaps consented to sexual intercourse in order to find favor, so that he would not kill her. Tosaphoth, however, raises the question: If so, (i.e. if we suspect that she submitted) their chaste women should be permitted to return to their husbands, for they submit to martyrdom as we say at the beginning of the chapter. But, it seems that here we suspect every woman, that perhaps she is not chaste. End of quote.

In the Sefer Mitzvoth Katan it is likewise written: "If a woman is captured for the sake of endangering her life, she is forbidden to return even to her husband who is an Israelite. It is written there in the note that this appears to be correct only if she was arrested for a capital offense such as theft; but if she was, for example, imprisoned for a capital matter (because she was Jewish) she is allowed to return to her Israelite husband, for surely she did not consent to sexual intercourse. End quote.

In the responsum of Or Zarua it is written: "A girl who was raped during the pogrom on Frankfurt, she being betrothed, my father replied that she is forbidden because if a woman is captured because they want to take her life, then she is forbidden to return to her husband, for the sages estimated the state of mind of the woman. She surely consented to sexual intercourse. She even would request it with her own mouth (i.e. to save herself.) Further, one can say: "Since they cannot redeem her for a month, you have to suspect that she consented to one of them, for she thinks that he will marry her like a Ben Netzer (Kethuboth 51b.) We don't say her end should prove her beginning, (i.e. that if she escapes it has proven that at the beginning she did not submit,) that her heart was, at the beginning (as long as she was in captivity,) directed toward God. For this matter regarding the Ben Netzer we don't say this (that

they were pious) even though that at the end they ran away somehow. Therefore, it is only possible to permit her return to her husband unless there was unequivocal testimony." End quote.

One of the sages copied from a responsum and this is the text: "A maiden who is betrothed, who was raped during a pogrom, and the bridegroom married another wife, Rabbenu Peretz has written: 'I know that one of the gentiles of the city wanted to marry her, and she said, "I am betrothed to a Jew," and she tried many times to flee, but she could not until this time, it appears that this rule, that a woman who was captured submits, is only the case for one who is captured lawfully. The one, however, that is not captured lawfully is permitted to her husband like those women of thieves (captured by thieves.) But this woman, since they captured her in order to convert her, they do not touch her, for it is their law to kill the one who violates the maiden.'"

Similarly, Rabbi Meshullam agrees, and Rabbi David, that a woman who converted during a pogrom is even permitted to return to a kohen husband. If when she found an opportunity to flee she fled immediately, she is permitted to return to her husband, and she does not lose her kethubah, because a woman transgressing Mosaic Law needs to be warned first.

Rabbenu Simcha writes: "Whenever she thinks that she would be returned through ransom she is permitted

to return to her husband." End quote.

In a Note in Maimonides' *Isurei Biah*, Chapter 18, it is written: "I was wondering regarding an Israelite who apostasized with his wife, and they later returned to Judaism. How is he permitted to remain married to her, since she made herself free to transgress all the mitzvot that are in the Torah? Surely, she is a harlot! This passage in פ' ארלו ד' י"א escaped your memory, for when Rabbin came (Pesachim 25a)...he said in R. Johanan's name: We may save ourselves with all forbidden things except idolatry, incest (adultery) and murder. He said: In the Hasmonean court they decreed against the one who came upon a non-Jewish woman because a non-Jewish slave girl is impure by the laws of the Niddah; a Gentile girl is considered to be a harlot. The other discussant, namely Rav Dimi, who does not consider her a harlot, thinks the gentiles do not allow their wives to be free for all. Consequently, Rav Dimi, who does not consider the wife of a gentile a harlot, holds that the male gentile guards his wife. Even Rabbin speaks only from the force of the Hasmonean decree. Since they are repentant sinners, the general assumption is that they have not transgressed the Torah since they returned. A woman is only forbidden to her husband by reason of the warning given to a wife suspected of adultery, and afterward she secluded herself with a man under suspicious circumstances. Even though she converted without her husband, I admit

to you that she is forbidden to return to him because in this case the situation certainly is as if there had been witnesses (to her sins.) If, moreover, they converted together, then they are permitted to remain married." Sincerely, Samson ben Rabbi Avraham...end quote.

Behold, I have written whatever I found among the decisions of the "gaonim" and among the responsa of the early sages related to this case. Furthermore, we know of a publicly known incident of arrest because of our numerous sins, namely by the decree in Austria, which occurred between the tenth of Sivan, 1420 and the ninth of Nissan, 1421. Women were found who were held in captivity individually for a long time, for the gentiles divided them in homes here and there, and they separated them so that it would be easy to entice them to convert and to turn away from the Jewish way. Some of them, because of our numerous sins, turned from Judaism with their husbands; some of them without their husbands at all, and some even before their husbands for about a month before, more or less. Some of them returned immediately to Judaism when they found a chance to flee. Some remained without their husbands for about a season or more; and there were some who fled without apostasizing.

This incident came before all the great rabbis of that generation, and all of them were permitted (to return to their husbands.) It seems plausible to me

the fact that all of them were permitted and (that these rabbis) made no distinction between those who delayed their return and those who did not delay their return. It was not on the basis of the decision of the important men among the rabbis, as to wives of the kohanim who converted. We know for certain that the important ones of the rabbis did not permit them (to return to their husbands.) Even so, some of the rabbis permitted them, and it is possible also that some of the teachers supported the permission when the matter of the Heter became known in a general manner as originating from a distinguished rabbi. They did not disagree in the matter, and they added to them thoughts of their own to arrive at a lenient decision. Now we shall explain what the rabbis saw, to permit each and every woman to return to her husband, with respect to those who were in separate captivity. They went out pure by virtue of their having fled from the prison to go to their Jewish husbands. Certainly, it is permissible (to return to them) as it was stated in the Sefer Mitzvoh Katan above, that you don't find a better incident of being arrested for martyrdom, because in this case they enticed them day and night. Many times they would chastize them with tortures in order to turn them away from Judaism.

It seems that from the Tosaphoth, likewise, we can infer that she be permitted to return to her husband in a case like this, because they ask a question: that

chaste ones should be permitted (to return to their husbands.) Tosafoth answers (you do not permit them) because we did not know which were chaste, as we had it above. This implies: if we know which were chaste, they are permitted to return to their husbands. Here there is conclusive proof that she was chaste because she surrendered her life for Kiddush ha-Shem and withstood temptation; although she was obligated (to undergo martyrdom anyway) because the Torah commands here that one must submit to death but must not transgress. The conclusion in the first chapter of Niddah is, the one who observes the words of the sages is not called a "זונה", but how much the less so they who observe the words of the Torah. The answer is: a person who observes things without pressure, in a case like this (i.e. in Niddah) is not called a chaste one, but the one who withstands temptation and forfeits her life for Kiddush ha-Shem, is called "עירומה", and how much the more so, "chaste." Because of this it is apparent that she is permitted to return, even to the priesthood. Thus, you don't have to suspect that perhaps she was raped, because a chaste woman gives up her life so that they would not rape her, as is apparent in this case where it says, you should explain to the women that under compulsion she is permitted to submit to rape.

In Sefer Mitzvoth Katan quoted above, however, the implied meaning is that she was only permitted to return

to her Israelite husband, for it is written explicitly, if she is captured for Kiddush ha-Shem, she is allowed to return to her Israelite husband. This implies, if her husband is a kohen, she is not (permitted to reunite.) It would be a forced explanation to say that the Sefer Mitzvoth Katan differs with the words of the Tosaphists. From what was stated above, that the sages, Rabbi Meshullam and Rabbi David, agreed that she is permitted even to a kohen, because since they seized her to convert her, they did not touch her, for their law is to put to death anyone who violates the virgin, etc. There is no reason to permit the woman seized for Kiddush ha-Shem to return to a kohen; for there, in that case, the reason is as it explains: because their law is to slay the one who rapes the virgin. However, the one who had had intercourse (i.e. had been married at one time or is now married) and the wife, we do not say that their law is to put him to death. Furthermore, only after she converted and entered their religion, only then can you say that their law requires that her rapist be killed. The one, however, who rapes one of those who withstands temptation (of conversion) to their faith, it is possible that it is alright with them that they be raped and would not punish him at all.

As to the other reason, written by Rabbi Meshullam and Rabbi David, namely, that because she was taken in violation of the law, we do not forbid her. That reason,

likewise, is not valid except with respect to her Israelite husband as it is apparent by their wording, as they wrote that she was taken captive and was used as a pledge, and might have consented to intercourse, etc.

The implied meaning is that we only do not suspect that she consented, but regarding the rape we may say that we do suspect her (i.e. that she was raped.)

Thus is the implied meaning of the proof that they (the rabbis) bring from the women that kidnappers took. These (rabbis) speak only regarding the wife of an Israelite, as it is apparent in Sefer Mitzvoth Katan... and all the more so, if she converted and then returned, even immediately without delaying. That authority who permitted (her to return to her Jewish husband,) regarding him it is possible that he made a distinction and turned the matter to permit her for that reason that I explained (i.e. suggested.) It doesn't at all seem proper, however, to permit her if she converted, even if she returned immediately when she had an opportunity to flee. However, if she withstood temptation and did not convert at all, much thought is necessary to permit her to return to a kohen.

Those Jewish women who returned immediately, which those great rabbis permitted, their permission is explained as above in the responsum of Asheri. Furthermore, in a Note on Maimonides, mentioned above, it is written, since they are repentent sinners, therefore,

it may be generally assumed that they did not transgress the entire Torah because they returned to Judaism, and also: a woman is only forbidden to return to her husband by reason of the warning given to a suspected wife in the presence of two witnesses (Sotah 2b) and then the woman's retirement with a man under suspicious circumstances.

Even though there the conclusion was made that where she converted alone, she is forbidden to her husband, because it is as if there are witnesses. Still, it is possible to say that this refers only to the case where she converted willingly, and she made herself unrestricted to commit all the sins (mentioned) in the Torah. If her husband did not guard her, surely she committed harlotry.

The woman, however, who was raped by the threat of murder, and when she had a chance to flee, escaped, surely, in a case like this it is not as if witnesses had been present. If you say that there is no proof to permit her in our case, not from the responsum of Asheri and not from the Note in Maimonides, in our case it is worse because there (i.e. this) is a case of a woman who was put in captivity in isolation, and also she converted afterward. On the other hand, it is possible to say that that case which Asheri speaks of is, namely, that she was not imprisoned already in isolation; and

for the reason of her being put in captivity in order to kill her, you cannot forbid her to return to her husband. However, the case in the Note on Maimonides, surely it doesn't speak at all concerning a woman who was arrested because she converted in full consciousness of doing wrong. This being so, in our case, granted that she should not be prohibited from the time she converted onward, as she did not have to please them in order to find favor, so they would not kill her; for indeed, they left her go free because of her conversion. It is, however, possible to forbid (her return) since (she was taken captive) for the purpose of being executed while separated for a long time because... what the Sefer Mitzvoth Katan wrote...that (if she were taken) for the sake of being executed, she is permitted to return to her husband...may be explained by saying: If she withstood temptation, we say that certainly she did not consent to sexual intercourse, but this woman who did not withstand temptation, and converted from anxiety over whether they would kill her or chastise her, we may say that from the beginning she was likewise willing in order to find favor so that they would not kill her. All the more so that one must distinguish thus on the basis of our inference above from Tosaphoth to Chapter 2 of Kethuboth. In any case, it appears that she should be permitted to her husband from that which Alfasi wrote above, that if she was arrested and kept as a pledge the sages did not

forbid her to return to her husband and they were not afraid that she consented (to sexual intercourse;) only if she was lawfully imprisoned; but if she were imprisoned unlawfully, she was permitted like those women whom bandits kidnapped. In our case, certainly the arrest was unlawful because they only came upon those women on the basis of a false accusation, and because of wickedness they arrested them. Even a few of the women who converted already and returned, and the gentiles were informed about it, are not considered to be arrested lawfully because in the beginning they did not take them lawfully; for indeed, they seized also other women who were not such (i.e. who did not convert and then revert.) Therefore, they would not consent to sexual intercourse, for they trust that whatever happens to the other women will happen also to them. Therefore, one must not prohibit her because she was arrested, neither because she converted, because she converted by force, and when she had a chance she fled. We say, therefore, in general, (i.e. unless we know the opposite) she did not transgress anything--only that which she was forced to do. Therefore, even though Or Zarua above prohibited her it seems that regarding the captive woman, we must rely on the "gaonim" who are lenient, for in many places in the Talmud they say regarding a captive woman, they were lenient. Now the rabbis (of the Talmud) are very lenient

with respect to her as we say, if there is one hiding place this saves all the priestly women.

Asheri concludes that the sages were lenient in this matter. It may be said that that woman likewise, since when compelled she converted and then she fled immediately, it is applicable to say she makes herself repulsive.

Lo, we find it possible to permit those who fled immediately afterward, when they found an opportunity to escape, even if they converted separately without their husbands, and those who converted with their husbands, or if their husbands preceded them (in converting,) and they did not tarry after their husbands, then we find that their permission together with them (both husband and wife) is clearly expressed in the responsum of Rabbi Solomon ben Adret above, even if they converted in full consciousness of doing wrong; how much the more so if they did it under force because her husband watches her.

We do not find any "gaon" who clearly disagrees with this view. Those, however, who tarried for weeks and months, even after they had a chance to escape and were also without their husbands, I do not know regarding those women a good reason to permit them to their husbands, since they had an opportunity to flee, but did not depart from their defilement for their cleanliness (i.e. didn't return to Judaism.) Such a woman is like

one who acts wrong intentionally, and we do not find a great authority who permits her in a case like this.

Surely I know that there were among those women those who tarried longer than the days of a season after many people fled who were under similar conditions and apparently they had a chance to flee, and even their husbands were not with them and it seemed that they tarried there because of money (i.e. waiting for the ransom.) They were permitted on the basis of the authority of a sage. It is possible that those women offer reasonable explanations for their actions, for they did not have a chance to flee because the gentiles who were in their neighborhood, who were watching them more than the gentiles would watch other women. The truth is thus, that one woman is very smart and extremely alert in seeking tricks to free herself more so than another woman, but it didn't seem to be right to be so lenient at all. From the precedent of the women of Austria, how could someone make a decision regarding these women and how did their law case end (the way it ended) and how did I explain the matter with reasons and proofs? Why (literally, how) I stuck to the conclusion will become clear from the scrutiny of our responsum to the one who understands.

FOOTNOTES

1. Sidney Steiman, Custom and Survival, New York, Bloch Publishing Company, 1963, p. 13, quoting Sefer Maharil Liqqutim (85a)
2. Ibid., pp. 25-26
3. Shlomo Eidelberg, Jewish Life in Austria in the XVth Century, Philadelphia, The Dropsie College, 1962, p. 31
4. Ibid., p. 33
5. Guido Kisch, The Jews in Medieval Germany, Chicago, University of Chicago Press, 1949, p. 203
6. Jacob Katz, Exclusiveness and Tolerance, London, Oxford University Press, 1961, pp. 68-69
7. Ibid., p. 69
8. Ibid., pp. 68-69
9. M. Mielzinner, The Jewish Law of Marriage and Divorce in Ancient and Modern Times, Cincinnati, The Bloch Publishing and Printing Company, 1884, pp. 26-27
10. Genesis 49:4; II Samuel 20:3, 11:11
11. Sifre, Deuteronomy, 270, p. 122b
12. Mishna Kethuboth 4,8
13. Louis Epstein, Sex Laws and Customs in Judaism, New York, Bloch Publishing Company, 1948, p. 214

14. c.f. Appendix, pp. 42-43
15. b. Talmud Kethuboth 26b-27a. This section concludes that if proper witnesses testify to her chastity she is permitted to return to her husband.
16. M. Maimonides, אורח חיים, א'ק"א' י"ד', 18:6 and 18:30, as translated in L.I. Rabinowitz and P. Grossman's, The Code of Maimonides, New Haven, Yale University Press, 1965, Book 5: "any woman who has intercourse with a man who renders her a harlot, whether by rape or by consent, whether willfully or by error, whether naturally or unnaturally, once he has initiated with her, she is invalidated for the priesthood, because she has become a harlot... consequently, if a married woman has intercourse with another man, whether by rape or by consent, she is invalidated for the priesthood."
17. c.f. pp. 13-14
18. L. Epstein, op. cit., p. 214
19. Eidelberg, op. cit., p. 27, footnote 60
20. c.f. pp. 13-14
21. The best known case of this is during the first Crusade; c.f. J. Parkes, The Jew in the Medieval Community, London, Soncino Press, 1938, pp. 65-78.
22. Mahzor Vitry, p. 179
23. L. Epstein, op. cit., p. 214
24. b. Talmud Kethuboth 27a

25. G. Kisch, op. cit., p. 203, quoting the Schwabenspiegel, in article L262; G214,8
26. The Jewish Encyclopedia, New York, Funk and Wagnalls Company, 1902, Vol. VI, p. 482
27. Max L. Margolis and Alexander Marx, A History of the Jewish People, New York, 1927, p. 380
28. Hayyim Or Zarua, 221; The Jewish Library, edited by Leo Jung, New York, The Jewish Library Publishing Company, 1934, article: "The Jewish Woman in the Responsa," by Ari Wohlgemuth, p. 151, footnote 63
29. Irving Agus, Rabbi Meir of Rothenburg, Philadelphia, Dropsie College, 1947, p. 280, Responsum 241
30. b. Kethuboth 27a interprets the meaning of "imprisoned for the purpose of taking her life," as stated in the Mishna, as "to pay the penalty for a crime." The Talmud therefore permits a woman's return to her husband if she was charged accordingly.
31. b. Talmud Kethuboth 51b
32. Louis Finkelstein, Jewish Self-Government in the Middle Ages, New York, Philipp Feldheim, Inc., 1964, p. 26
33. c.f. J. Parkes, op. cit., p. 182
34. b. Talmud Sotah 2b
35. c.f. Appendix, p. 46
36. b. Sanhedrin 74 a,b; Avodah Zarah 27b

37. L. Finkelstein, op. cit., p. 30. Rabbenu Gershom's Takkanoth were well established by Isserlein's time. The Takkanah forbidding the reviling of a repentant convert because of his former sins has bearing on this responsum. Though there is a humanitarian aspect of this, it favors the welfare of Israel, for otherwise apostates might not revert.
38. Sotah 2b
39. I. Epstein, "The Jewish Woman in the Responsa," found in The Jewish Library, edited by Leo Jung, New York Jewish Library Publishing Company, 1934, p. 140: "They had access to the power of 'annulment of marriage' vested in the rabbinical authority: then pronounced the women to have been 'unmarried' at that time, so that whatever might have occurred while away from home did not legally concern their husbands." c.f. also, I. Epstein, Judaism of Tradition, London, Edward Goldstone Ltd. 1931, p. 212, Cited is Moses Isserles' mention of the above in Darkei Moshe, Tur Eben ha-Ezer, VII.
40. c.f. Appendix, p. 44: "if she was, for example, imprisoned for a capital matter (because she was Jewish) she is allowed to return to her Israelite husband, for surely she did not consent to sexual intercourse."
41. These names have not been ascribed with certainty to any known sages.

42. c.f. p. 13, footnote 2
43. Sotah 2b
44. c.f. Appendix, pp. 46-47
45. c.f. Appendix, p. 44
46. Solomon Grayzel, The Church and the Jews in the XIIIth Century, Philadelphia, Dropsie College, 1933, p. 93
47. Parkes, op. cit., p. 182
48. c.f. footnote #1
49. M. Grunwald, History of Jews in Vienna, Philadelphia, Jewish Publication Society, 1936, p. 51
50. Ibid., pp. 70-71
51. Ibid.
52. Ibid., p. 75
53. S. Eidelberg, op. cit., p. 56
54. L. Finkelstein, op. cit., p. 31. Protected were not merely "those who converted by physical force, but also such as had been led to forsake their people and their religion because of other circumstances."
55. S. Eidelberg, op. cit., p. 55
56. Ibid., p. 57, footnote 109

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