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THESIS REPORT

HUSBANDS' AND WIVES' OBLIGATIONS IN MARRIAGE: COMPARING MAINMONIDES AND MARRIAGE CONTRACTS

AMY MEMIS

Ms. Memis's thesis is a study which compares the "learned" tradition with the "lived" one. In the thesis Maimonides' Mishneh Torah represents the "learned" tradition. Actual ketubot and their stipulations testify to the "lived" marital agreements between Jewish spouses. Ms. Memis's work shows how the "learned" tradition and the "lived" one overlap, and more importantly, diverge from one another.

In order to establish a framework for the study, Ms. Memis presents Maimonides' list of husbands' and wives' obligations as they appear in Hilkot 'Ishut. She then provides a synopsis of the Hilkot 'Ishut chapters which dealt with the history of the ketubah's development, a description of the classical stipulations which appear in most ketubot, and a brief account of the ketubot she studied and their provenances. She notes here the tendency toward a uniform ketubah formulation among Ashkenazic Jews and the more varied formulas of Sephardi ketubot which remained negotiated contracts.

Monogamy vs. polygamy, divorce stipulations in the ketubah, ketubah clauses dealing with arrangements upon the death of husband or wife, and formal mention of the wife's obligations in some ketubot became the foci of Ms. Memis's thesis.

Among Ms. Memis's important findings are these: 1) Despite Maimonides' acceptance of polygamy and his descriptive use of it in clarifying marriage laws, many Sephardi ketubot and even some late Ashkenazi ones, have clauses which provide for the wife's divorce if the man marries another woman. Thus, monogamy became almost a universal norm for Jewry. 2) While Maimonides and the Talmudic tradition usually indicate unseemly or irrational behavior and infertility on either spouse's part as reasons for granting or forcing a divorce, the "lived" tradition added a few. Divorce conditions made their way into the ketubah to prevent a woman from becoming and 'agunah or subject to yibbum. There was even an early Palestinian ketubah tradition stipulating a divorce in the case of irreconcilable marital strife. These precedents influenced the Conservative movement's ketubah "amendment." 3) Maimonides' Code has many details governing the obligation to pay the ketubah's sum upon the husband's death. It also requires the husband to bury his wife. No provisions were made for the ketubah's "additional sums" (tosefet) to be inherited by anyone but the wife. Generally, no mention of obligations obtaining upon the death of a spouse made their way into the ketubah. Nevertheless, a number of Spanish ketubot clearly define the husband's obligation to bury his wife properly. Italian ketubot stipulate a division of the tosefet between the wife and children born of the marriage. These stipulations appear because of historical and social conditions which emerged in Spain and Italy. 4) Some ketubot added stipulations onto the wife's obligations to her husband. Those obligations were, for the "learned"

tradition, purely financial. In the "lived" tradition, however, there are additional promises to "fulfill her marital obligations", to "serve him in purity and cleanliness", "to honor him", or "to be under his rule". While these promises are consonant with the "learned" tradition, they spell out the wife's obligations in greater detail than usual.

Ms. Memis concludes that living realities impacted on the "learned" tradition in several ways. In many cases real social conditions caused a "fine tuning" of traditional halakhah. "Fine tuning" meant that stipulations were consonant with halakhah but dealt with specific conditions and cases subsumed under the halakhah's more general principles. In other cases, especially polygamy, the "living" ketubah traditions forbade behaviors permitted by halakhah in order to conform to regnant societal models. In short, traditional halakhah provided rubrics for structuring marriages and, thereby, informed the Jewish community's life. On the other hand, life also informed halakhah, reshaping it and changing it to serve the needs of the Jewish people.

Ms. Memis thesis shows her fine organizational ability. She created an excellent "grid" out of Mishneh Torah and ketubot which allowed her to compare and contrast easily. The thesis is detailed and well documented and shows Ms. Memis's control over a wide variety of sources. It also contributes to our understanding of the intersection between Jewish law and life and gives us some sense of what happens when those forces intersect. Correctly, Ms. Memis notes that her conclusions only apply to marriage law.

Respectfully Submitted,

Dr. Michael Chernick

HUSBANDS' AND WIVES' OBLIGATIONS IN MARRIAGE:
COMPARING MAIMONIDES AND MARRIAGE CONTRACTS

AMY LINDA MEMIS

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Requirements for Ordination

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Referee: Professor Michael Chernick

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ACKNOWLEDGMENTS

In choosing a topic for my thesis I went through a great deal of thought. While I wanted to explore a topic that would hold my interest, I also searched for a study in which my family and others would be able to read. It was also important for me to find an advisor who could guide me, study with me and provide helpful feedback. In choosing "Husbands' and Wives' Obligations in Marriage: Comparing Maimonides and Marriage Contracts," I was able to achieve all of the above.

My advisor, Dr. Michael Chernick, guided me through this project. His help in directing me to the right sources enabled me to begin this project with focused direction. In solving the puzzles of deciphering the script in several Sephardic ketubot and translating some difficult Aramaic, his insight was invaluable. His advising inspired me to continue and finish this study with enthusiasm.

Without my editor and friend, Moira Schneider, I could not have completed this project. Her uplifting demeanor helped me daily, and her insightful comments enabled me to produce the final product of which I can be proud.

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Amy L. Memis

INTRODUCTION

Since the time of Adam and Eve, men and women have been living together as partners, as husband and wife. In marriage, as in any relationship, each partner has responsibilities and obligations to uphold. In Judaism, however, the relationship of marriage has not always been a fifty-fifty partnership. The Hebrew word for marriage is kiddushin, implying a sanctification of the union of man and woman. Traditionally, this union of kiddushin also carries with it the implication of kinyan, acquisition. The covenant of marriage between husband and wife traditionally involves the man acquiring the woman as wife. In doing so the woman leaves her father's home and is brought into her husband's domain, under his care; and thus the man can fulfill the commandment to be fruitful and multiply.¹ As the laws of Jewish life were written down throughout time, so too were the obligations of husbands to their wives and wives to their husbands.

Also as part of the kinyan aspect of marriage, the ketubah, the marriage contract, evolved. The ketubah was created to secure the Jewish woman as she moved from her father's to her husband's domain. According to Moses Gaster, "the real object . . . of the ketubah was to provide as strong a protection of the woman who was about to be married as the

¹Genesis 1:28

civil law could secure."² In this regard then, the husband could not treat his wife as if she were a "handmaid" or a "purchased slave."³ There have been many different variations of ketubot over time, yet in all of them, there are statements of obligations the husband has toward his wife. In a fewer number of ketubot, depending on geography and era, the wife's obligations to her husband are also included.

This paper will address husbands' and wives' obligations to one another as codified by Moses Maimonides (1135-1204). In Hilchot Ishut of Sefer Nashim in his Mishneh Torah Maimonides dedicated chapters twelve through seventeen solely to the obligations of women and men in marriage. The Mishneh Torah, written over a period of ten years and appearing in 1180, was attacked by those who feared it might replace the Talmud. Nevertheless it was "quickly accepted as an authoritative code by most Jewish communities in Europe, Africa and the Near East."⁴ Using the Mishneh Torah as a basis, this paper will also examine ketubot from Maimonides' time forth and see how the marriage contracts reflect these codified obligations of husbands and wives.

²Moses Gaster, The Ketubah, second augmented ed., (New York: Sefer Hermon Press, Inc., 1974), p. 13.

³Gaster, p. 13.

⁴David Bridger, ed. "Maimonides, Moses," The New Jewish Encyclopedia, (New York: Behrman House, Inc., 1976), p. 302.

MARITAL OBLIGATIONS IN MAIMONIDES' MISHNEH TORAH

Husbands' and wives' obligations in marriage can be found in six chapters of Maimonides' Hilchot Ishut in Sefer Nashim of his Mishneh Torah. In chapters twelve through seventeen Maimonides lists and elaborates on the obligations of the husband and wife in marriage.⁵ This section will introduce these obligations as Maimonides lists them in the opening chapter. In addition, it will give a general overview as to the contents of the six chapters. Rules, regulations and obligations listed in the Mishneh Torah are considered halakhah.⁶ Jews who lived (and live today) according to laws of the Mishneh Torah are expected to have followed these ordinances, although one can never be sure simply by reading the halakhah that that was the case.

Chapter twelve first lists that a husband has ten obligations to his wife, and he in turn is entitled to four things from her. Since these four things do not require an active role by the wife, in this paper they will be referred to as either the wife's obligations or the husband's entitlements. Paragraphs 12:2 and 12:3 spell out these fourteen obligations:

And of the ten--three are from the Torah. And they

⁵As the chapters are summarized, it is interesting to note that Maimonides elaborates almost exclusively the husband's obligations.

⁶Jewish law.

are: (1) her food, (2) her clothing and (3) her conjugal rights.⁷ Her food, this is her maintenance. Her clothing, according to its plain meaning. Her conjugal rights, sexual intercourse with her as is the universal custom. The other seven are Rabbinical enactments, and all of them are conditions laid down by the court. The first of them is the statutory ketubah amount. The rest are called "conditions of the ketubah, and these are: (4) to take care of her if she is sick, (5) to ransom her if she is captured, (6) to bury her if she dies, (7) to provide for her maintenance from his estate, (8) to let her remain in his house after his death the whole duration of her widowhood, (9) and her daughters from him are to receive their maintenance from his estate after he dies until they become engaged and (10) her sons from him shall inherit her ketubah, in addition to their portion of the inheritance that is shared with their half brothers. (12:2)

And of the four that he is entitled to, all of them are Rabbinic enactments. And these are what he is entitled to: (1) her earnings are to be his, (2) what she finds is to be his, (3) he will profit from all the fruits of her estate in her lifetime, and (4) if she dies in his lifetime, he will inherit what is her's, and he is the first heir of the inheritance. (12:3)

The rest of chapter twelve elaborates on two areas. The first area is covered in paragraphs four through nine. There Maimonides explains the circumstances under which the obligations are maintained, and which ones can and cannot be revoked. The second area focuses on the husband's first obligation, the allocation of the wife's maintenance, or food. He discusses this in paragraphs ten to twenty-four. Chapter twelve serves as the introduction of husbands' and wives' obligations as well as the outline of the husband's obligations in providing for his wife's maintenance.

⁷Exodus 21:10.

The first part of chapter thirteen (paragraphs one through seven) concentrates on the husband's second obligation, providing clothing for his wife. In addition to clothing, he must also give her household items, a dwelling space and accessories with which she can adorn herself. The next part of chapter thirteen (paragraphs eight through thirteen) addresses ways the husband can and cannot restrict his wife's behavior. In some cases he may have her vow that she will refrain from a certain activity for a period of time (i.e., going to the bathhouse, wearing shoes, borrowing or loaning, dressing modestly, attending a wedding feast, etc.). If he wishes to extend this vow past a certain period of time, then he is to divorce her. The last section of chapter thirteen (paragraphs fourteen through twenty) focuses on the people with whom the husband and wife interact in connection to where they live. In some cases the husband has the right to demand that the wife move around with him, in other cases she does not have to move with him, and so he must divorce her. Chapter thirteen covers the husband's obligation to provide his wife with clothing, accessories, household items and a dwelling in which his wife will interact with proper people of the society.

The majority of chapter fourteen addresses the husband's third obligation, fulfilling his wife's conjugal rights.

Paragraphs one through sixteen focus on three elements of the wife's conjugal rights: (1) the wife's conjugal schedule, depending on the work and strength of the husband as well as the number of other wives he has, (2) situations when the wife is described as "rebellious" because she refuses to engage in intercourse with her husband and the consequences and (3) one case in which the husband is described as "rebellious." The rest of chapter fourteen discusses the husband's fourth, fifth and sixth obligations. One paragraph (seventeen) notes the husband's obligation to take care of his wife should she become ill. Five paragraphs (eighteen through twenty-two) discuss the situations in which the husband must ransom his wife should she be taken captive. The last two paragraphs (twenty-three and twenty-four) relate how the husband is responsible for burying his wife should she die. Chapter fourteen encompasses the husband's responsibilities regarding conjugal rights, the "rebellious" wife, and the husband's obligations regarding his wife's health, captivity and burial.

Chapter fifteen continues the discussion of the husband's obligations in sexual relations with his wife on a different level. The concern in this chapter is fulfilling the commandment of being fruitful and multiplying. The basic premise outlined in this chapter is that if a husband and

wife have not had children after ten years of marriage, this is reason for divorce. The majority of chapter fifteen (paragraphs one through sixteen) focuses on whether it is the husband's or the wife's deficiency. It also discusses how the ten years are counted, depending on miscarriages, husband's time away from home, etc. The last four paragraphs (seventeen through twenty) diverge from this theme. Paragraphs seventeen and eighteen describe appropriate behavior the husband and wife should follow with regards to the matter of sexual intercourse. Paragraphs nineteen and twenty remind each partner of their obligations to honor and love the other. Chapter fifteen overall comprises the details of husbands' and wives' obligations in fulfilling the mitzvah of having children as well as appropriate sexual behavior toward one another.

The contents of both chapters sixteen and seventeen are very similar. The thirty-one paragraphs of chapter sixteen and the nineteen paragraphs of chapter seventeen address the minutiae of a wife collecting her ketubah payment after her husband dies or divorces her. Within these chapters a variety of details are discussed: if she collects with an oath or not, if she may collect movables or immovables, what her heirs will get, how she collects if it is not customary to write a ketubah document, how much she collects from the principle and supplementary amounts, how to divide the

ketubah (or ketubot) payment among several wives, how she will collect if the husband owes a debt, how the wife may seize or sell property, and more. Within these two chapters Maimonides indirectly addresses the husband's last three obligations to provide for his widow and female and male heirs. Chapters sixteen and seventeen constitute the regulations of the widow and/or the divorced wife collecting her ketubah payment.

The information in these six chapters of Maimonides' Hilchot Ishut will be considered as halakhah for this study. It is for this reason that the other half of this paper looks at ketubot, marriage contracts. The obligations Maimonides has listed here will be used as a basis for comparing what husbands and wives have actually practiced according to what they have incorporated in their marriage contracts, for these are the real conditions by which they lived.

KETUBOT

If the obligations Maimonides outlines are considered to be law, then the ketubot contracts are seen as the descriptions of the lifestyle husbands and wives agreed to live, according to Jewish law. The ketubah was formulated in the Talmudic era. According to Talmudic Sages, the main purpose for the introduction of the ketubah was to protect the married woman in the event of divorce or widowhood.⁸

Another purpose of the ketubah addresses what the married woman can expect from her husband during marriage. This section of the paper will describe the structure of the ketubah document, focusing on the parts which illustrate the husband's obligations to his wife, and where applicable, the wife's obligations to her husband.

The ketubot researched for this study were chosen from after Maimonides' time up to the present⁹ in order to draw a fair comparison between lifestyle and the halakhah. Any ketubot chosen prior to Maimonides' Mishneh Torah would not reflect a knowledge of his laws and would therefore be invalid for comparison. All ketubot researched can also be classified as "legal" or "traditional" ketubot in which two witnesses verify the contents of the document. In these ketubot, the

⁸BT Ketubot 11a.

⁹In researching the ketubot for this paper most of the existing texts were found to be from the period of the seventeenth century on.

wife is acquired by the husband, which is often considered "sexist" by modern standards. Modern egalitarian marriage documents, however, were not considered for comparison in this paper, because they are not legally binding. These non-binding marriage documents, for the most part, do not follow a basic structure found in traditional ketubot and would not contain the obligations reflective of the halakhah.

In total over sixty ketubot were researched and translated,¹⁰ from a variety of geographical locations, including Sephardic and Ashkenazic communities in Europe as well as parts of Asia, North Africa and the Americas. By the Middle Ages a basically uniform ketubah formula was the practice in both Sephardic and Ashkenazic circles. While different communities created different styles with the texts of their ketubot, a uniform skeletal structure appeared. This formula is thought to have come from a standard fixed by Babylonian geonim between the sixth and eleventh centuries.

¹⁰Several of the ketubot researched were found in books which in some cases contained partial or full translations of some documents, and in other cases only contained partial descriptions of the documents. In some instances photographs of the actual document were printed in the book, as well as parts of it given in translation. For ketubot which used a fancy or minuscule script (which made translating difficult), or ketubot that did not appear in the original Aramaic, translations provided by the collection's author were used when available.

The texts of ketubot researched for this paper all follow the traditional style, and thus share that similar skeletal structure. A basic ketubah text can thus be broken down into twelve sections, as outlined here:

A. Introduction

1. Date of the wedding - day, month, year and era according to which it is reckoned
2. Name of the town
3. Names of the groom and bride.

B. The Groom's Declaration and Obligations in Marriage

4. Standard declaration of the groom, "Be consecrated unto me as a wife according to the Law of Moses and Israel."
5. The basic marital obligations of the husband to provide his wife with food, shelter, clothing and to cohabit with her.
6. The groom's obligation to pay the principle ketubah amount.

C. The Bride's Acceptance

7. The bride's acceptance statement, "and . . . this virgin [widow] consented and became his wife."

D. The Bride's Dowry and the Groom's Acceptance of It

8. The dowry amount which the bride brought from her father's house, plus the tosefet (supplemental amount the husband supplies) in case of divorce or death of her husband.
9. The groom's obligation (and his heirs' obligation) to pay the sum total mentioned above.

E. The Witnesses' Testament and Closure

10. The witnesses statement attesting to the legality of the deed by performing a symbolic act of acquisition
11. Final statement "and everything is valid and confirmed."
12. Witnesses' signatures.

When exploring the ketubot researched, most attention will be paid to categories B and C in which obligations during marriage are discussed. Category D encompasses obligations, but most often these are the ones which come into play if

the husband dies or divorces his wife.

Section B, The Groom's Declaration and Obligations in Marriage, most often is comprised of familiar standard formulae. The declaration of the groom for example, "Be consecrated unto me as a wife according to the Law of Moses and Israel," is fairly uniform in all ketubot. The basic marital obligations are also fairly standard, although they tend to vary from community to community. In its simplest form, this statement includes the following declaration by the groom, "I will serve, honor, maintain and provide for you as is the custom of Jewish husbands who serve, honor, maintain¹¹ and provide for their wives in truth." This statement includes the basic four promises found in most ketubot. Other ketubot are known to add one or more obligations such as "clothe," "sustain" and "support" to the basic statement. Following the formula of the groom bringing the dowry price, is another phrase which reemphasizes the husband's marital obligations, "and I will give you food, clothe you, and give you your supplies and engage in sexual relations with you as is the universal custom."¹² While it is rare, section C, in a few instances, includes a reciprocal statement outlining the obligations

¹¹Nourish, or providing with food.

¹²The last phrase, "engage in sexual relations" often appears as the euphemism, "live as husband and wife."

from the bride's perspective.

Another facet to the ketubah structure not included in the above outline is the inclusion of tenaim, conditions in marriage. These special conditions appeared only in Sephardic ketubot, and not in Ashkenazic ketubot.

Ashkenazic ketubot were standardized, following a rigid structure. The Sephardic ketubot, on the other hand, were flexible, reflecting customs of the community. The concept of tenaim existed for the Ashkenazic community, but these stipulations were drawn up in separate deeds. In addition, rabbis such as Rabbi Gershom of Mainz introduced takanot¹³ which the Ashkenazim adopted as law. Takanot of Rabbi Gershom eliminated polygamy and prevented divorcing a woman against her will. The Sephardic community, however, did not accept these takanot as binding regulations, so they added these stipulations into their ketubot via the tenaim.

When the tenaim were included in the Sephardic marriage documents, they were incorporated in two different manners. In most cases the tenaim were drawn up separately and occupied a column to the left of the ketubah text. In other instances, the tenaim were worked into the actual text of the ketubah. In this case, the conditions would fall into the structure of the ketubah text in part D, most likely

¹³Enactments, rules.

prior to the groom's accepting his (and his heirs') obligation to pay the total amount mentioned in the ketubah. A typical example of tenaim, taken from a ketubah of Livorno, Italy, is shown here:

1. The bridegroom undertakes not to wed a second wife during the bride's lifetime unless he divorces her legally, returning to her the total amount of her dowry plus the tosefet as specified in the contract.
2. Should the bride die within the lifetime of the bridegroom without leaving a child, he shall return to the heirs of the bride half the dowry. However, if she leaves a child, the bridegroom is entitled to her dowry in accordance with Written Law.
3. Should the bridegroom die within the lifetime of the bride without a child, she shall collect her entire dowry plus the tosefet. If, on the other hand, there is a child, that child (or the trustee) has the choice of either returning to her the above amount or dividing it equally between them.
4. The bridegroom undertakes not to exert any pressure on the bride to renounce her rights to the dowry, either by way of gift or by dealing with it; and if she does, any such transaction is null and invalid for all legal purposes.
5. Should the bridegroom contract a serious illness, he must have a legal bill of divorce prepared for her in advance (so that she will not need a yibbum should he die).¹⁴

These five tenaim are typical of Sephardic ketubot written from the sixteen to nineteenth centuries. This study will consider tenaim as well as other obligations written in the ketubah text as material reflecting the lifestyle of husbands and wives. With this information as the practical and the obligations of Maimonides as law, the paper now

¹⁴Shalom Sabar, Ketubbah, (New York and Philadelphia: The Jewish Publication Society, 1990), p. 108.

turns to areas of comparison.

INTRODUCTION TO THE DIVISION OF ISSUES

This next section comprises the bulk of our study. It will address four areas in which marital obligations are compared in Maimonides' Hilchot Ishut and various ketubot. The areas are not obligations themselves such as providing food, clothing, and the like. Rather they are topics which both Maimonides and ketubot have addressed in relationship to husbands' and wives' obligations in marriage. The four areas will discuss the following: (1) monogamy and polygamy, (2) responsibilities regarding divorce, (3) responsibilities related to death and (4) specifically, the wife's role in marriage. Within these areas specific marital obligations will surface.

In the first area, monogamy is an issue which arises only in ketubot, while Maimonides includes in his regulations statements that support polygamy. In the second area, regarding matters of divorce, Maimonides takes a different, more harsh approach to divorce than do the authors of ketubot. In the third area, regarding responsibilities related to death, Maimonides and ketubot both address the issues of burial and inheritance. In the fourth area, women's obligations to their husbands are seldom found in Maimonides regulations and are even less popular in ketubot. Following the discussion of these four areas a conclusion will consider the overall comparison between Maimonides and ketubot.

MONOGAMY VS. POLYGAMY

First, this study discusses the issue of monogamy and polygamy. The topic relates to obligations of the husband in marriage in that the husband can provide food, clothing, etc. for more than one wife. In another manner there is the issue of the societal norm; is it permissible for a husband to have more than one wife? The paper discusses this issue because of the strikingly different approaches that are found in Maimonides Hilchot Ishut and ketubot.

A clause of monogamy in the ketubah, that the husband should only take one wife at a time, is not consistent with Maimonides' Mishneh Torah. While chapters twelve, thirteen and sixteen of Hilchot Ishut in Sefer Nashim, are written in a manner addressing only one husband's obligations to his one wife, this is not the case in chapters fourteen, fifteen and seventeen.

In chapter fourteen there is the first mention that a man may have multiple wives. In 14:3 it reads:

A man may marry many women, even 100, whether it is at one time or one after the other. And his wife is not able to restrict him, as long as he is able to provide food, clothing and conjugal rights entitled to each one. But he cannot coerce them to live in one yard, but rather let each one live by herself.

The husband is not restricted to one wife as long as he is capable of fulfilling his three basic obligations to each wife.

The next paragraph of chapter fourteen focuses on the husband's obligation of conjugal rights to multiple wives. Since a man's obligation to give his wife her conjugal time was also dependent on his strength and occupation,¹⁵ 14:4 calculates the conjugal schedule for a man depending on his occupation in conjunction with the number of wives:

What are their conjugal rights? According to their number. How is that? A laborer that had two wives -- one is entitled to her conjugal rights once a week and the other is entitled to her conjugal rights once [in that same] week. If he had four wives the conjugal schedule for each one would be once every two weeks. So if a sailor had four wives the conjugal schedule would be for each one once every two years! Accordingly, the Sages ordained that a man not marry more than four wives even if he has a lot of money, in order that each wife's schedule will be once a month.

It is interesting to note the contrast between paragraphs three and four in chapter fourteen. On the one hand Maimonides allows for a man to marry as many as 100 wives if he can provide each with her food, clothing and conjugal rights. On the other hand, Maimonides focuses specifically on the husband's obligation to give his wives their proper

¹⁵In Hilchot Ishut 14:1 it reads, "Her conjugal rights mentioned in the Torah are obligatory for each man according to his strength and his occupation. How so? Healthy, gentle, and delicate men who do not have work which drains their energy, but they eat, drink and sit idly in their houses -- their conjugal schedule is every night. Workers, for example, tailors, weavers, builders and the like -- if their work is in the same city, then their conjugal schedule is twice a week. If their work was in another city, then their conjugal schedule is once a week. Donkey drivers, once a week; camel drivers, once every thirty days; and sailors once every six months. Scholars, once a week, because studying Torah weakens their strength. And it is customary for the scholars to engage in intercourse each Friday night."

conjugal schedule, and therefore limits the number of wives to four.

Chapter fifteen of Hilchot Ishut also makes reference to an allowance for a man to marry more than one woman. In the special circumstance where he has married a woman with whom he has not had a child after a certain period of time he has the option to marry another woman without divorcing the first. In 15:7 a man is instructed not to marry a woman who is elderly, barren or incapable of giving birth unless he has already fulfilled the commandment of being fruitful and multiplying. If, however, he finds out after the fact that he has married a woman who is unable to give birth, 15:7 offers him two options:

If he married a woman that was with him for ten years and she did not give birth, behold he may divorce her and pay her ketubah,¹⁶ or he may marry a[nother] woman who is fit for giving birth.

The use of the word "or" allows the husband to keep his first wife, who is unable to give birth, and at the same time marry a second wife.

Maimonides assumption that a man may marry many wives is further supported in chapter seventeen of Hilchot Ishut.

The first three paragraphs of this chapter address the issue

¹⁶Ketubah in this sense is not the marriage contract itself, but rather the amount of money due to her, mentioned in the ketubah document, should he die or divorce her.

of what to do when a man who had many wives dies or divorces them. How does the inheritance get distributed, and which wife receives priority? In 17:1 the first wife gets priority and the rest receive the leftover. The matter of equally dividing the inheritance to all the wives is addressed in 17:2 and 17:3. In 17:8 and 17:12 the issues focus around the distribution of ketubah payment and property to multiple wives in the case where the husband divorces them. The eighth paragraph, in fact, involves an intricate calculation as to how much each of four wives receives when their husband only has so much money and they each have different ketubah payment prices. The concluding sentence to this calculation in 17:8 states, "and this is always the custom of division even if there are 100 wives."

Examining these passages from Hilchot Ishut chapters fourteen, fifteen and seventeen, it is clear that in Maimonides' view, polygamy was an accepted way in marriage. Monogamy, on the other hand, was not considered an obligation or stipulation the husband owed to his wife. Rather, if the husband had more than one wife, his obligation was to see that each of them received her due food, clothing and conjugal rights, and her proper ketubah payment or inheritance in the case of divorce or his death.

The monogamy clauses in the ketubot researched clearly state that the husband must not take on a second wife in his wife's lifetime, unless he fully and legally divorces his present bride and pays her the amount due to her in the ketubah. Often this clause is found in the ketubah text among the list of standard Sephardic stipulations. These stipulations originally were part of the tenaim. In some ketubot a separate column contained these tenaim, including the monogamy clause. When the separate column for tenaim was eliminated on the ketubah document, the stipulations worked their way into the text of the ketubah contract.

Several of the ketubot researched contain separate columns for the tenaim and the ketubah text. Most of these were found to be of the Sephardic tradition. In these cases, the text of the tenaim, if not also the ketubah text itself, was written in a fancy Sephardic script and the text size was significantly smaller than the decoration surrounding it. For this reason, information as to the contents of the tenaim, specifically a clause addressing monogamy, has been extracted from the secondary sources.

Those ketubot researched which contained a separate column of stipulations, or tenaim, include the stipulation for the husband not to marry another woman in his wife's lifetime unless he divorces her. In a Sephardic ketubah of

Bucharest, Rumania (1854), "the first stipulation forbids the bridegroom to take a second wife unless he legally and fully divorces the present bride."¹⁷ Also Sephardic, two Yugoslavian ketubot from Fiume (Rijeka) 1844 and Ragusa (Dubrovnik) 1762 list separate columns of conditions. In Ragusa, the first stipulation states, "the groom shall not marry another woman unless he divorces the bride, paying her his total obligation."¹⁸

If, in fact, there is a standard Sephardic formula of tenaim in which the first clause addresses the husband's obligation to monogamy, then other Sephardic ketubot, which are laid out in two columns with the tenaim on the left side and the ketubah text on the right, would presumably contain a stipulation of a monogamous marriage. Included among these ketubot are: Sephardic ketubah of Vienna, Austria,¹⁹ two Bulgarian ketubot from Vidin: 1841 and 1892²⁰ and others.

Writing a separate column of tenaim was only one way of including the stipulations in a ketubah. Some ketubot included these tenaim within the ketubah text. In an 1895 ketubah from Izmir (Smyrna), Turkey, "the text includes, in

¹⁷Sabar, p. 275.

¹⁸Sabar, p. 282.

¹⁹Sabar, p. 238.

²⁰Sabar, p. 240.

addition, a brief summary of the stipulations common among Sephardic communities ('he shall not take a second wife in her lifetime,' etc.)"²¹

In the case of a Gibraltar ketubah of 1662, in the text it states, the groom "took it upon himself that he would not marry another woman in addition except by her consent and with her good will, . . . and that if, God forbid, he marry another woman, without her consent or her good will, then he would have to repay everything to which he had now bound himself, and he would divorce her with a proper 'Get' at once."²² It is interesting to note the loophole in this ketubah from Gibraltar. If the present wife does give consent and/or her good will, then her husband may marry another woman; and no divorce nor payment of the first wife's ketubah would be necessary.

Similar to the standard Sephardic ketubot which contained two columns of text including the monogamy clause among the stipulations, ketubot which contained the standard Sephardic stipulations within the text would presumably contain a condition that the husband not marry another wife without first divorcing his present wife. Ketubot included in this category are those from France: in Bayonne, Bordeaux and Carpentras, in which the text included a lengthy set of

²¹Sabar, p. 280.

²²Gaster, p. 21.

special conditions known from other Sephardic communities.²³ Even today, communities such as the contemporary Chareidim in Israel, which incorporate the stipulations within the ketubah text, include a monogamy clause: The groom "shall not take as wife, nor take as a match, nor be sanctified with any other woman besides [his wife], except with the permission of a righteous court." In this case, as opposed to the Gibraltar ketubah of the seventeenth century, it is not even up to the present wife who might give consent and her good will to allow him to take on a second wife; the husband's taking of another wife is up to the court.

Of all the ketubot researched there was, in fact, one that did make an allowance for a husband to marry a second wife. A Sephardic ketubah from Jerusalem dated 1881 incorporates the tenaim in the text of the marriage contract. Among the seven conditions is a stipulation which states, "he shall not take a second wife in her lifetime unless she does not bear him a child within ten years." In addition to being the only ketubah to insert a clause allowing for polygamy, this Jerusalem ketubah is the only contract which shares a clause expressed in Maimonides' Hilchot Ishut. As mentioned above in 15:7, if a husband marries a woman who for ten years does not give birth, he may divorce her or marry

²³Sabar, p. 247, in which no specific mention of a monogamy clause was made.

another woman. This ketubah is a rare exception to the rule; ketubot which contain clauses related to monogamy require the husband to divorce his wife fully and legally before he marries another woman.

It is uncertain exactly when the clause for a man marrying only one woman was introduced into the tenaim or the ketubah text. It is likely it happened sometime after the tenth century. Rabbi Gershom of Mainz (960-1028) ordained many takanot which became accepted as law in the Ashkenazic community. He is most famous for his takanah banning bigamy. While people writing ketubot in Ashkenazic circles accepted this prohibition to marry a second wife as law, those in the Sephardic community did not find it binding. When Maimonides, who lived in a Sephardic community, put together his Mishneh Torah, he synthesized the Tradition and wrote what he considered halakhah. No ordinance forbidding polygamy entered his halakhah, because Rabbi Gershom's takanah did not carry weight as law in the Sephardic community. So when the Sephardic community accepted monogamy as the norm, they introduced it into the marriage contract within the tenaim, if not into the text itself.

With rare exceptions, there is a clear dichotomy between Maimonides' regulations and ketubot clauses addressing monogamy. Maimonides supports the concept of multiple

wives, even as many as 100. He does, however, express that four wives constitutes a good maximum, so that a husband can provide each with food, clothing and her proper conjugal schedule. The ketubot texts, on the other hand, generally confirm that the husband not take on a second wife in his present wife's lifetime. He would first have to divorce his wife and pay her the amount due in her ketubah. Only under special circumstances, in which a wife or a court gave consent; or in the rarest case, in which the couple had no children after ten years of marriage, might a ketubah allow a husband to marry more than one woman. Rabbi Gershom's takanah banning polygamy in the Ashkenazic community as well as a societal trend toward monogamy in all Jewish communities helped develop ketubot that reflect monogamy in marriage. In exploring this first issue of monogamy, it is discovered that halakhah is not regularly reflected in the lifestyles of the society.

DIVORCE

The second issue this study addresses is the matter of divorce. Divorce in Maimonides' Mishneh Torah is addressed differently than the divorce clauses which appear in the text of ketubot. As described in Hilchot Ishut of Sefer Nashim divorce results when the husband or wife does not fulfill obligations, or either acts improperly. In the various ketubot researched, a majority make no reference to a divorce clause. Two communities insert in their marriage contracts a clause obliging the husband never to divorce his wife. Some documents insert a divorce clause in conditional cases, i.e., connected to bigamy, illness or travel. Other ketubot add a divorce clause to make divorce easy for either party, assuring that the wife and husband alike, can obtain a get²⁴ and get divorced.

According to Maimonides, divorce can occur if either the husband or the wife does not treat the other properly, or exhibits inappropriate behavior. In Maimonides' halakhah, however, the husband alone takes action in the divorce. Maimonides most often uses the phrase, "yotzi," "he shall divorce her," and sometimes "teitzei," translated not as "she shall leave" but rather as "she shall be divorced." Sometimes these phrases are in the past tense. In almost every case the husband is the subject who divorces the

²⁴Divorce document.

object, his wife, but not vice versa. If the wife is dissatisfied with the husband (not fulfilling his obligations or mistreating her), she must go to the court, and the judges of the court coerce him to divorce her. Maimonides' concern with the wife in this process is if and how she will receive her ketubah payment after she is divorced.

In chapter twelve of Hilchot Ishut there is one case in which a husband must divorce his wife if he is too poor to provide for her basic needs, like food:

and if he were poorer and he could not give her even the bread that she needs, he is forced to divorce her, and her ketubah will remain as a debt upon him until such a time when he is able to pay it.

While this condition is not written into the texts of ketubot, there are two standard formulae in most ketubot in which the husband states that he will provide his wife with food. The first is a series of obligations which the husband promises he will fulfill, "and I will cherish, honor, support and maintain thee in accordance with the custom of Jewish husbands who cherish, honor, support and maintain their wives in truth."²⁵ Maintain is a euphemism for providing with food; "eizon" and "zanin" coming from the same root as "mazon," which is food. This formula is found in both Sephardic and Ashkenazic ketubot, and its detail

²⁵Hyman E. Goldin, Hamadrikh The Rabbi's Guide, (New York: 1939?) p. 18.

tends to vary depending on the community--often adding sentiments in which the husband will also clothe, finance, and the like. The other formula appears most often in standard, Ashkenazic texts today. Here, the husband affirms to his wife, "(I will also give thee) thy food, clothing and necessities, and live with thee as husband and wife according to universal custom."²⁶ Although most ketubot text do not insert a clause in which the husband shall divorce his wife should he be too poor to provide her with food, there are statements within the ketubah text in which the husband promises to provide her with food. Maimonides' halakhah, then, would assume to be binding, even though it his regulation is not written into the text.

Incidents of divorce in chapters thirteen and fourteen sometimes stem from cases in which the wife does not behave as would seem appropriate. In 13:17 and 13:20 the wife shall be divorced if she marries her husband and then refuses to move with him to his country or to Israel. The statements in 13:17 and 13:20 read respectively as follows:

If a man from one country married a woman from another country, she is compelled to go with him to his country or she shall be divorced and forfeit her ketubah.

If the husband said [to his wife] to move to the land of Israel and she does not want to--she shall be

²⁶Goldin, p. 18.

divorced without holding on to her ketubah.²⁷

In both cases she is divorced and loses her ketubah payment, because her refusal to move is inappropriate behavior. In these two cases the wife is left in a no win situation: either she is forced to move with her husband or she is divorced without any material or financial protection.

Chapter fourteen also illustrates cases in which the wife shall be divorced because of her inappropriate behavior. If she is considered to be a rebellious wife as is mentioned in 14:13, she is divorced and loses her ketubah. If she acts inappropriately as in 14:5, where she publicly speaks about their sexual relations, she shall be divorced, but the husband will pay her her ketubah:

He prohibits his wife from telling others what he said to her or what she said to him from the lighthearted words and frivolity that a man speaks with his wife when engaging in sexual intercourse. Behold this is reason to divorce her and pay her her ketubah, because she cannot be so brazen faced as to tell others the embarrassing details of their sex life . . .

Another example where the wife does receive ketubah payments despite inappropriate behavior occurs in 14:8. Here she is also considered a rebellious wife if she prevents her husband from engaging in sexual intercourse with her. If she is asked why she rebelled and she answered because she hates her husband, then he is forced to divorce her:

²⁷The second part of this paragraph addresses the inverse case in which the wife wants to move and he does not. Under this circumstance he shall divorce her and pay her ketubah.

The wife that prevents her husband from sexual intercourse is called a "rebel" and she is asked why she rebelled. If she said I detest him and I cannot willingly engage in sexual intercourse with him, then he is coerced to give her a divorce.

Maimonides explains further on in the text that even though the wife is considered rebellious, she is asked why she rebelled, so as not to keep her captive in a marriage she despises. In this manner, she is not forced to leave without receiving her ketubah payment.

In these five cases the wife's behavior is out of line with what Maimonides considered proper in those days. In a majority of them, her behavior is sufficiently unsuitable that she is not worthy of receiving the payment promised to her in her ketubah document.

The majority of reasons for divorce in chapters thirteen and fourteen of Hilchot Ishut stem from the husband's inappropriate behavior. His impropriety may be due to his failing to fulfill an obligation, forcing a vow on his wife longer than is appropriate, or his blatant, unfair restriction of her activity. In one case, in 14:7, he is to divorce his wife because he cannot fulfill one of his three basic obligations--providing her with her conjugal rights:

A man is forbidden from preventing a wife her due conjugal rights. And if he transgressed and prevented [her this] in order to make her suffer, he transgressed a negative commandment in the Torah, as it says, "Her food, her clothing and her conjugal rights he shall not

withhold."²⁸ And if he were sick or weak in his strength, so he is unable to engage in sexual intercourse, he will wait six months, perhaps he will get healthy. For there is no [less frequent] conjugal schedule than this. And after that either he will get permission from her or he will divorce her and pay her her ketubah.

This example is another one in which the reason for divorce is connected to an obligation mentioned in the ketubah. Most marriage contracts do not state that the husband shall divorce his wife if he cannot fulfill the obligations written in the document. Standard, Ashkenazic texts today, however, which include the phrase "(I will also give thee) thy food, clothing and necessities, and live with thee as husband and wife according to universal custom"²⁹ also apply to this stipulation for divorce. This last part of the phrase, "live with thee as husband and wife according to universal custom" is a euphemism for the translation of providing his wife with her conjugal rights. The unwritten assumption, then, is that the husband is expected to engage in sexual intercourse with her (as much as he is obligated to provide her with food), and if not, he shall divorce her.

A second reason for divorce due to the husband's unsuitable conduct is connected to the husband's effort to make his wife keep an unreasonable vow. He shall not force her to adhere to a certain behavior longer than a time period

²⁸Exodus 21:10.

²⁹Goldin, p. 18.

Maimonides considers acceptable. In chapter thirteen paragraphs eight and nine both relate to the husband making his wife take a vow that she will abstain respectively from (1) adorning herself and (2) going to the bathhouse or wearing shoes. For example, in 13:9, if the husband wants his wife to take a vow that she will not go to the bathhouse or wear shoes, he can only do so for a limited time:

If [the husband] made [his wife] take a vow that she will not go to the bathhouse, he may retain her under that vow: in the cities--for one week, in the villages--for two weeks. If he subjects her to a vow not to wear shoes he may retain her under that vow: in the villages--every three days, in the cities--for twenty-four hours. Beyond that, he will affect a release from his vow or he will divorce her and pay her ketubah.

Beyond a period which Maimonides believes is a fair amount of time, a husband must release his wife from the vow. If he does not, then this is reason for him to divorce her and pay her her ketubah.

Chapter fourteen also provides one example of this time limited vow in paragraph six:

If he made his wife vow that she will not engage in sexual intercourse, he is given a week's grace; more than that, he shall divorce her and pay her her ketubah, or he will undo this vow.

The husband in this case, unlike in the other two, creates a situation in which he is not fulfilling one of his basic obligations to his wife. As in 14:7, in which the husband is forbidden from preventing his wife her due conjugal rights, 14:6 necessitates divorce if the husband cannot

fulfill his obligation to engage in sexual intercourse with his wife, as he affirmed he would in the ketubah document.

A third reason for divorce--due to the husband's unsuitable conduct--is connected to the husband unfairly restricting his wife's activity. Chapter thirteen cites two instances: in 13:12--the husband prevents his wife from visiting her father's home; in 13:13--he prevents her from going to a house of mourning or a wedding feast. The paragraph in 13:13 states:

If he makes his wife vow that she will not go to a house of mourning or a wedding feast--either he releases her from this vow or he divorces her and pays her ketubah. For this is similar to one who confined her in prison and locked her inside.

Maimonides does not give a reason in 13:12 as to why the husband must divorce his wife, although in 13:13 he compares the wife's restriction to being in prison. In both cases the husband shall divorce his wife rather than deny her the opportunity to do mitzvot. In 13:12 she is otherwise kept from honoring her father and mother and in 13:13 she is otherwise forbidden from consoling the bereaved or rejoicing with bride and groom.

Unlike chapters thirteen and fourteen, chapter fifteen focuses on one reason as grounds for divorce. If a man and woman have been married for ten years, and they have not had children, then the husband is to divorce his wife. Even if

he does not want to, he is coerced to do so, unless he marries another woman who will be able to give birth. This is the message in 15:7, and the assumption is that it is the wife who is infertile.

A man shall not marry a sterile woman, an elderly woman, a barren woman, or a minor who is not suitable for giving birth unless he has already fulfilled the mitzvah of being fruitful and multiplying. If he married a woman that was with him ten years and she did not give birth, behold he shall divorce her and pay her ketubah or he may marry a[nother] woman who is suitable for giving birth.

Clearly the husband must fulfill the mitzvah to be fruitful and multiply, and if the woman is unable to help him fulfill this mitzvah in a ten year period, then this is cause for divorce.

If the husband, on the other hand, is the one thought to be infertile, he is forced to divorce her. This is the case in 15:8:

Ten years went by and she did not give birth, . . . if he does not "shoot with the force of an arrow"³⁰ and the presumption is that he alone has the deficiency; he must divorce her and pay the ketubah, all of the principle and the extra.

This sentiment is repeated in 15:10 along with the reason:

The wife that came to demand from her husband to divorce her after ten years because she did not give birth, and she says, "He does not shoot with the force of an arrow," her wishes are honored. Even though she is not commanded to be fruitful and multiply, she needs children for her old age. So he is forced to divorce her and pay only the principle of the ketubah.

³⁰In other words, if he does not have a seminal emission which sufficiently provides a sperm to fertilize the egg.

While chapter fifteen describes the deficiency of infertility occurring under various circumstances, if no child is born after ten years of marriage, Maimonides professes that the husband shall divorce his wife.

In contrast to chapters twelve, thirteen, fourteen and fifteen, chapters sixteen and seventeen do not give reasons for divorce. Instead, they focus on the wife (or wives as the case may be) receiving her proper ketubah payment and her fair share of property in the case of a divorce. While these statements do not appear in the texts of ketubot, they are the guidelines to follow should the marriage end in divorce. One can then look to the ketubah text to see how much in principle and in supplement the husband promised to his wife.

In chapters twelve through seventeen of Hilchot Ishut, Maimonides alludes to the reasons for divorce in the first four chapters. In one case, if the husband is too poor to provide his wife with food, the marriage ends in divorce. In some cases it is the wife's actions which lead to the divorce, whether she refuses to move to her husband's country, acts rebelliously or publicly talks about their sex life. In a majority of cases, however, it is the husband's actions which lead to divorce. Very often if he makes his wife take on a vow which restricts her behavior for an

unfair extended period of time. When he can no longer keep his wife under this vow, and cannot live with her except if she adheres to the vow, then he must divorce her. Sometimes the divorce must take place if the husband cannot fulfill his obligation of granting his wife her conjugal rights.

In addition, Maimonides presents one other circumstance in which the husband divorces his wife, and it makes no difference who is responsible. A husband shall divorce his wife after ten years if they have still not had children. Of all these various reasons discussed above, none are mentioned in the ketubah document as reason for divorce. The closest connection is the statement in the ketubah in which the husband attests that he will provide his wife with her food, clothing and conjugal rights. Overall, as will be shown below, Maimonides' rulings for divorce were not worked into the text of the ketubah.

The ketubah contract was primarily created to protect the woman in and after marriage. While many ketubot do not include a specific clause addressing the divorce of husband and wife, there lies the assumption that "if he divorces her, her property goes to her . . ."³¹ and she receives the amount of the ketubah price, in addition to any supplements written into the ketubah document. This assumption

³¹Gaster, p. 14.

developed so that with her (ex-)husband no longer supporting her, she had something to fall back on. In the various ketubot researched, those written in the traditional style, as legal contracts, contained a ketubah price and often a supplement added to the principle. The husband would then be obliged to pay his wife this total ketubah price, should the marriage end in divorce. In most ketubot, therefore, no additional stipulation or reference to divorce was written into the marriage contract; the ketubah itself served as a wife's protection with regard to divorce.

Ketubah prices aside, of the various ketubot researched, only a few refer to divorce in the text of the contract; some include divorce stipulations in the separate column of tenaim. Divorce clauses have entered the ketubah in various forms: as an arrangement where either party can obtain a get and divorce; as statements of conditional divorce due to bigamy, illness or travel; and even as a stipulation in which the husband must never divorce his wife.

The insertion or deletion of a divorce clause has evolved over time. According to M. A. Friedman, ketubot of Eretz Israel in the tenth and eleventh centuries (pre-Maimonidean) customarily contained a divorce clause. He has preserved a complete text of the divorce clause, thought to date from a tenth century ketubah:

They agreed and fixed between themselves--this master Sa'id, the groom, and this Maliha, his wife--the stipulations of the marriage contract, as the law of Moses and the Jews: If this Sa'id, the groom, hates this Maliha does not desire her, and wants to separate from her, he shall pay her all that is written and specified in this marriage contract completely. And if this Maliha hates this Sa'id, her husband, and desires to leave his home, she shall lose her ketubba (sic.) money, and she shall not take anything except that which she brought in from the house of her fathers alone; and she shall go out by the authorizations of the court and with the consent of our masters, the sages.³²

Interestingly, this clause allows the wife to leave and divorce her husband as easily as the husband is able. This flexibility for women does not surface again until the standard Conservative ketubot of 1950s appeared.

Around the same time the Palestinian ketubot studied by Friedman were written, Rabbi Gershom of Mainz (950-1024) declared a second takanah. This ruling required the consent of both parties in the case of divorce. Rabbi Gershom created this regulation to prevent a woman from being divorced against her will. Unanimously this takanah was approved by Ashkenazic communities with the thought that the ketubah no longer needed to make divorce difficult. Perhaps due to the introduction of this takanah, people no longer felt compelled to spell out in the text of the ketubah a statement addressing stipulations for divorce; for no matter

³²Mordechai. A. Friedman, Jewish Marriage in Palestine, (Tel-Aviv and New York: The Chaim Rosenberg School of Jewish Studies and the Jewish Theological Seminary of America, 1981) vol. II, p. 56.

what the situation, both parties would need to give consent.

This would make sense in the Ashkenazic communities, but what were its ramifications in the Sephardic tradition? Maimonides, who lived in the twelfth century Sephardic world, introduced his halakhah of the Mishneh Torah close to one century after Rabbi Gershom's takanah. As seen above, in Maimonides' circles, divorce was a unilateral procedure in which the husband had control and took action. Perhaps after Maimonides' time the omission of a divorce clause indicated that men knew the reasons for divorce and did not need to incorporate such statements in their ketubah texts. It is also possible that any grounds for divorce could have been written into the tenaim, and would have been redundant if added to the text of the marriage contract. Another reason the divorce clause of the tenth century Palestinian ketubah might have disappeared is that it was thought unseemly to suggest such hate at the time the husband and wife were uniting in marriage. Although divorce clauses have appeared in the last nine hundred years, never again have they emerged in the form of either husband or wife despising the other.

The relatively recent introduction of the divorce clause in the Conservative movement's ketubot omits the thought that

potential hatred may develop between the bride and groom. Instead, this divorce clause attempts to prevent the phenomenon of agunot³³, and allows women who might otherwise be denied a chance to remarry, another opportunity. In 1953, the Conservative branch of Judaism in the United States, "in an attempt to address contemporary issues and preserve the traditional ketubbah (sic.), introduced some amendments into the text and provided the formulary with an English translation of the Aramaic text."³⁴ Among the changes was the insertion of a section which allows for divorce. In this new standardized ketubah text either spouse may confront the Rabbis of the Court if she or he wishes to dissolve the marriage and obtain a get, and they both shall accept the decision of the Court. The additional section of the Conservative ketubah reads as follows:

They then agreed of their own free will with one another and consented to accept upon themselves [the authority of] the Court of the Assembly of Rabbis and the established Seminary of Rabbis of this land, or any individual who represents them, who will have the unique right to instruct them to follow in the ways of the Torah and to love and cherish one another for the duration of their marital union. And they accepted upon themselves, each one of them, to permit the other one to summon that one to the courts mentioned above, if strife breaks out between them, so that each one who desires to live according to the Torah all the days of their life may do so. And they permit the court that was mentioned above to demand compensation from either

³³(Singular agunah.) Women whose husbands have refused to grant them a divorce or whose husbands have disappeared without confirmation that they have died. Women under such circumstances are unable to remarry.

³⁴Sabar, p. 27.

party who refuses to come before the court for judgment or refuses to obey the decision of the court.³⁵

Although the words "divorce" or "get" are not mentioned in this section, the implication is that the Court would make the decision that the husband and wife divorce, due to the strife that breaks out between them. This strife is not assumed to be hatred of one spouse for another, rather this strife is defined as one spouse preventing the other from living according to the ways of the Torah. In this manner, a husband no longer is the only one in control of the divorce. For example, a wife who feels that she is prevented from living according to the ways of the Torah and wishes to divorce her husband may go to the court and summon her husband before the Rabbis. In this case, the husband cannot deny her a divorce, for he has agreed in the ketubah to follow whatever ruling the Court decides. With this arrangement, women who previously fell into the category of agunot, now have the opportunity to divorce their husbands via the court of the Rabbinical Assembly and Seminary.

Since Maimonides' time, divorce clauses have appeared in the form of conditional statements. Most often these conditional divorce clauses appeared in the text of the tenaim. When it was the custom of a community to

³⁵Richard Siegal, Michael Strassfeld, and Sharon Strassfeld, The First Jewish Catalog. (Philadelphia: The Jewish Publication Society of America, 1973) p. 197.

incorporate the tenaim into the marriage contract itself, conditional divorce clauses could sometimes be found in the ketubah text. These conditional divorce statements have been connected to the husband taking a second wife, the husband becoming extremely ill and the husband travelling alone outside the country.

The ketubot of Livorno, Italy from the late eighteenth century into the nineteenth century were known for their tenaim texts which contained the typical Sephardic stipulations. These clause were either written into the main text, or written in a separate section below it³⁶ if not in a separate column of tenaim to the left of the main text. These ketubot specified a conditional divorce clause if the husband wished to marry a second wife:

The bridegroom undertakes not to wed a second wife during the bride's lifetime unless he divorces her legally, returning to her the total amount of her dowry plus the tosefet as specified in the contract.³⁷

As explained in the chapter on monogamy clauses, Maimonides did not believe that a husband must only have one wife. This clause does coincide with Maimonides' rulings, however, in the husband's obligation to pay his wife the amount due to her--the principle as well as the supplemental price.

³⁶Sabar, p. 108.

³⁷Sabar, p. 108.

The Livorno ketubot also specified a conditional divorce clause should the husband become very ill:

Should the bridegroom contract a serious illness, he must have a legal bill of divorce prepared for her in advance (so that she will not need a yibbum³⁸ should he die).³⁹

The concern in this conditional divorce statement is that if the husband does not provide his wife with a conditional bill of divorce, and his illness takes his life, she will be forced to marry his brother or the next of kin. If, on the other hand, he produces a conditional bill of divorce, and he does die, then she is considered divorced and may thereafter marry whomever she wants. This illness stipulation along with the monogamy stipulation never even enter the thoughts of Maimonides' halakhah.

A third conditional divorce clause, restricting the husband's travel, is popular among the ketubot of Eretz Israel. The Ashkenazic as well as the Sephardic ketubot incorporated the stipulations in the main text of the ketubah. Particular in both types the condition that the groom not travel too far north or south, nor by sea unless he gives his wife a bill of divorce which becomes effective should something happen to him.⁴⁰ A Sephardic ketubah of

³⁸Leverite marriage.

³⁹Sabar, p. 108.

⁴⁰Sabar, p. 311.

1881 Jerusalem inserts this stipulation into the text:

he shall not travel beyond Aleppo (in the North) or Alexandria (in the South) or by way of the sea (west) without providing her with a "conditional bill of divorce."⁴¹

A similar text appears in a 1928 Ashkenazic ketubah from Jerusalem:

he shall not travel beyond the land of Israel, nor beyond No-Amon [Alexandria in Egypt] nor by way of the sea at all, unless he will put aside for her a bill of divorce with a supply of her food as the court sees fit.

Under this particular stipulation the wife can employ the conditional get--should something unknown happen to the husband while he is abroad--and then consider herself divorced. The purpose of this conditional divorce clause is similar to the mutual divorce clause found in the Conservative movement's ketubah. They both protect the wife from falling into the status of agunah and thus, should she want, she may remarry.

The most unique clause regarding divorce is the non-conditional clause found in Albanian ketubot. A marriage contract from the Avlona community, dated 1896, along with others from Yanina--which became part of Greece after 1913--oblige the husband "never to divorce his wife, whatever the circumstances may be."⁴² This divorce clause is clearly in

⁴¹Sabar, p. 314.

⁴²Sabar, p. 236.

contrast to all the other statements regarding divorce in the Jewish marriage. The three conditional clauses of divorce relating to illness, travel and bigamy all create a situation where divorce becomes easy if not necessary. In addition, this rigid clause in no way coincides with Maimonides' halakhah, which not only gives several reasons for divorce, but also instructs how the ketubah payment and other property is distributed after the divorce.

In comparing Maimonides' regulations connected to divorce and the divorce clauses included in ketubot, little if any connection is found. Maimonides' regulations for divorce are based on unsuitable behaviors by either the husband or wife, or on the lack of children produced in ten years of marriage. While these issues might have been true for husbands and wives who wrote ketubot in the post-Maimonidean era, these regulations are not reflected in the marriage documents. Divorce clauses which appear in the ketubot researched stem from other societal and humanitarian issues. Conservative Judaism's ketubot have included clauses which allow for the Rabbis to make a decision should either husband or wife feel a need to get out of the marriage. Older ketubot have included clauses providing for conditional divorces should the husband travel outside the country, become extremely ill or wish to take a second wife. These clauses look to protect the wife, whereas Maimonides

did not focus on these concerns. According to his regulations only the husband has power over divorce. While divorce clauses and provisions exist in both Hilchot Ishut and ketubot text, their origins and their goals are entirely different.

DEATH

A third obligation in which Maimonides and ketubot will be compared is in the obligations a wife or husband faces when the other dies. Maimonides clearly specifies different roles each play following the death of the other. Ketubot less frequently mention a death clause in the text, although conditions following both the bride's and the bridegroom's death are mentioned in the tenaim. It is when the tenaim stipulations found their way from a separate left hand column to the midst of the ketubah text that obligations in the event of a spousal death entered the marriage contract. This section will explore obligations Maimonides outlines for the husband in the event of his wife's death and the regulations for a woman when her husband dies. It will also present the rare death clauses found in ketubot texts. Examining these two genre of texts, the different duties of the widow and widower will be discovered.

At the beginning of chapter twelve in Hilchot Ishut Maimonides clearly defines the different obligations of a husband and wife. In 12:2 the husband's are listed. Among his ten obligations, the sixth reads, "to bury her if she dies." The eighth reads, "to let her remain in his house after his death the whole duration of her widowhood." In 12:3 the wife's obligations are listed. Among these four, the fourth reads, "if she dies in his lifetime, he will

inherit what's her's, and he is the first heir of the inheritance." Among these three regulations, the first and third address the husband. He has two responsibilities: to bury her and to receive her inheritance. The wife only has one duty: to benefit from the estate of her deceased husband. This last area is where Maimonides focuses his greatest attention in the case of a death, how the widow collects her ketubah payment.

The little attention that Maimonides does pay regarding the wife's death and the husband's responsibilities, is in the husband's obligation to bury his wife. Two paragraphs in chapter fourteen address the husband's minimal requirements. In 14:23 he may not merely bury her, he also has an obligation to mourn for her and honor her with a minimal (what might today be described as a) funeral procession:

If the wife dies, [the husband] is obligated to bury her and to mourn and lament for her as is the custom of the country. Even the poorest in Israel do not provide less than two flutes and one wailing woman. If the husband were rich--everything is according to his distinction. And if her distinction is greater than her husband's, she is buried according to her [own] distinction. For a woman's status is increased with her husband, but does not become decreased, even after she dies.

This paragraph also assures that the wife's status will not be diminished. In the next paragraph, 14:24, Maimonides takes precaution to assure that even if the husband does not want to arrange for his wife's burial, ultimately he is responsible:

And if he did not want to bury his wife and another person insisted and buried her--they forcibly take [money] from her husband and give the other money so that she would not be cast away to the dogs. If he was in another city when his wife died--the court comes and takes his estate, sells from it without a public announcement and buries her according to the wealth of her husband and according to his or her status.

Here there is greater emphasis on the need to give the wife a proper burial, so as not to disgrace her or simply "throw her to the dogs." Once again, this regulation emphasizes the wife's receiving a proper burial, and one which is to her highest honor.

Maimonides focuses his greatest attention in the case of a death, not so much on the husband's obligations (because he has already died), but rather on the needs of the widow. He addresses: her general inheritance and collection of her ketubah payment; her ability to sell what she has collected; her eligibility to remain in her husband's home; her receiving of maintenance, clothing and other necessities; and her eligibility to remarry. Chapter twelve introduces the wife's right to stay in her husband's home after he dies as long as she is a widow (see 12:2 above). Chapter thirteen makes one mention of the husband's obligation to provide his wife with "clothing, household items and a dwelling space" (13:6) according to his wealth, even after his death. It is in chapters sixteen and seventeen, however, that the major discussion of a widow is expounded.

Maimonides fills chapter sixteen of Hilchot Ishut with details of a woman's collection of her ketubah. An example is seen in 16:4:

And likewise it was ordained to collect her ketubah after his death; she may not claim it until she swears an oath while holding an object, that he did not leave anything with her and that she did not sell her ketubah to him and she did not waive her right to it. And they assess all that belongs to her. Everything that is on her possession is subtracted from her ketubah.

This paragraph becomes the base for asking all the other questions related to the widow's collection.

In paragraphs five, seven and eight, Maimonides introduces a debate between the Sages and the Geonim as to whether or not a widow collects only fixed property, or fixed property and the movables. In 16:5 he makes the statement that the Sages say only from the land (fixed property); in 16:7 he states that the Geonim ordain that she may also collect from the movables. While in 16:7 Maimonides disputes the Geonic decision and agrees with the ruling of the Sages (that the widow will only collect from the landed property), ultimately in 16:8 he declares that a widow can collect from both landed property and movables:

It was long since the custom in all places that we knew of and heard from, to have written in the ketubah "whether from the immovables or from the movables." This matter is an important enactment, and great and wise men introduced this matter, because this condition deals with money; so the result is that the widow is found collecting from the movables by virtue of this condition, and not by the ordinances of the Achronim [later Scholars].

This back and forth debate conducted between various paragraphs makes finding the halakhah on a widow's entitlements more difficult to decipher if one looks to only one paragraph.

Other single paragraphs in chapter sixteen do address definitive rules for the widow. In 16:10 the widow may seize property her husband sold while they were married, if she finds no other incumbered property. In 16:21 she is allowed to collect as long as she is a widow and produces a ketubah document. This principle, however, holds only in places where it is the custom to write a ketubah document, as is explained in 16:22.

One last paragraph in chapter sixteen addresses the priority of a widow being able to collect her ketubah payment and being able to remarry. In 16:31 it reads:

A wife is believed when she said, "My husband died," in order that she can marry, as is explained in the Laws Concerning Divorce. And the conditions of the ketubah indicated that if she marries another man after the [first] husband's death, she collects all that was written for her in her ketubah. Therefore if she came to the court and said, "My husband died, permit me to marry," and she never mentioned the name of the ketubah, they permit her to marry and they swear to her and pay her ketubah. If she came and said, "My husband died, give me my ketubah [payment]" even to marrying, they do not permit her because she came regarding matters of the ketubah and it is presumed that her husband did not die. And her idea is not to marry, but rather only to collect her ketubah from her living husband. If she came and said, "My husband died, permit me to marry and give me my ketubah" they permit her to marry and give her her ketubah, because the main

reason her words indicated she came, was regarding the matters of marriage. But if she came and said, "Give me my ketubah and permit me to marry," they permit her, but don't give her her ketubah. And if she seized it they don't take it from her possession.

While Maimonides placed great emphasis in this chapter on the details of the wife collecting her ketubah, here in 16:31, Maimonides is most concerned that a woman is not first asking to collect her ketubah if she wants to remarry for fear that her husband is still alive. If, however, the woman asks the court for permission to remarry and then asks for her ketubah, Maimonides allows this, because her priorities are in order. All this detail regarding the widow is very interesting in light of the fact that there is only one statement in chapters twelve through seventeen which states that the husband shall inherit his wife's estate after she dies, (12:3) and there is no need for further elaboration.

Chapter seventeen touches on two different issues regarding the widow's collection of her ketubah. The first is the order of priority in the case of many wives (or widows). The second issue is the widow's option to distribute her ketubah as a gift from what she has collected.

In paragraphs one, five and eight the cases address priority in receiving the ketubah. According to 17:1, "[h]e that was married to many wives and died--the one who married first

takes precedence in collecting the ketubah. And none of the other wives collect except with a vow . . ." If the husband left a debt, as explained in 17:5, the rules change to satisfy first the debt, then the widow. If there are many wives and no rule of priority among them, and the husband did not have enough money (as is the case in 17:8), then there is a specific calculation made to see that all the widows are seen to fairly.

Paragraphs thirteen, fourteen and seventeen raise a different issue--the widow's option to distribute her inheritance or ketubah. In 17:13 it reads:

A widow whether from marriage or engagement, swore and oath and sells her husband's land and her ketubah is paid, whether by experts of the court, or non-experts of the court. And this [the court] is with three trusted men who know the assessment of the land . . .

The essence of 17:14 reaffirms what is written above in 17:13 and adds that the widow may sell the land privately. This holds, as long as she fairly sells it to another and does not assess the sale of the land for herself. In 17:17 it is explained that a woman has her ketubah to sell or give as a gift, "[i]f her husband dies . . . another to whom she gave as a gift comes forth and takes." Among all these regulations in the case of the husband's death, however, there is no mention of the wife's responsibility to bury her husband.

In Hilchot Ishut there is a clear imbalance between the husband's and wife's obligations and consequences in the event of the other's death. According to Maimonides, the husband is obligated to bury his wife if she dies. There is no mention, however, as to a wife's responsibility to bury her husband should he die first! At the other end of the spectrum, in the event that the husband dies, there are many specific regulations outlining the details of the wife (widow) collecting her ketubah. There are no specifics, however, as to rules which the husband must follow in receiving his inheritance should his wife die first.

While Maimonides explicates regulations in the case of the husband's and the wife's deaths, a specific death clause is rare in ketubah documents. A statement regarding the death of the wife or husband was more likely to appear within the text of the tenaim, and only when the tenaim became incorporated into the main text of the marriage document were obligations addressing death seen in ketubot. This is the case most common among Sephardic communities, where the tenaim were often part of the marriage contract. In Ashkenazic circles, however, the text of the ketubah became standardized. In this standard text is mention of inheritance after the husband's death, but nowhere is mentioned specific obligations to bury or mourn the spouse when either dies.

Within the Sephardic communities that made use of tenaim in their ketubot, often the second and third conditions addressed the bride's and groom's deaths, respectively. According to typical tenaim of late eighteenth to nineteenth century Livorno, Italy, the second condition reads:

Should the bride die within the lifetime of the bridegroom without leaving a child, he shall return to the heirs of the bride half of the dowry. However, if she leaves a child, the bridegroom is entitled to her dowry in accordance with Written Law.⁴³

In the case of the bride's death here, there is no obligation for the groom to bury his wife, only to see that her inheritance makes it to the right place. Similarly, the third condition focuses on the distribution of the inheritance should the groom die first:

Should the bridegroom die within the lifetime of the bride without a child, she shall collect her entire dowry plus the tosefet. If, on the other hand, there is a child, that child (or the trustee) has the choice of either returning to her the above amount or dividing it equally between them.⁴⁴

Both conditions emphasize where the inheritance will go depending on if there are children. Neither address the obligation of burial.

Gaster notes that the pledges a bridegroom takes upon himself are not always limited to financial obligations.

Another clause inserted in [the ketubah] is to the effect that the husband is to provide for the proper

⁴³Sabar, p. 108.

⁴⁴Sabar, p. 108.

burial of his wife should she predecease him. This is often found in Spanish documents.⁴⁵

Gaster explains the reasoning for such a clause. At a time of upheaval and fleeing from Spain, if a man intended to marry, his bride would demand certain conditions. This first might be a settled life, perhaps in a Jewish community which would offer "with it the possibility of a Jewish burial."⁴⁶ In accordance with this theory is a ketubah from the Sephardic diaspora, in which the groom takes on the obligation to provide his bride with burial space. A ketubah from 1653 Gibraltar includes the following clause, "[o]f his own free will, this Abraham, the bridegroom provided for her four cubits of ground and a stone."⁴⁷ Among all the ketubot researched, this was the only one in both Sephardic and Ashkenazic communities in which a specific statement regarding burial was mentioned. Other ketubot have included statements regarding inheritance, but only Gibraltar was found to specify the groom's obligation for his wife's burial.

Among Ashkenazic communities, the ketubah text found in Nachalat Shiva--first printed in 1667--has become the standard. While there is no mention of burial clauses there

⁴⁵Gaster, p. 42.

⁴⁶Gaster, p. 42.

⁴⁷Gaster, pp. 20-21.

is a section which the groom takes on the obligation to provide for his heirs, even after his death. The text reads in the first person,

I accept upon myself and upon all my heirs after me, so that they shall be paid from all the pleasing, choicest properties and acquisitions that I have beneath all the heavens that I have acquired and that I will acquire. Landed property that is mortgaged and non-mortgageable property. All of them will be mortgaged and secured to pay a debt, from the document of this ketubah and this supplement, and even from the cloak that's on my shoulders, in life and in death, from this day forth forever.

There is no specific mention that the wife is the first heir (if at all among the heirs), as Maimonides designated the husband in Hilchot Ishut 12:3, so it can only be assumed.

Looking at Maimonides and marriage contracts regarding death of the husband or wife, there are two obligations: inheritance and burial. The "obligation" of right to inheritance is included for both men and women in Maimonides' Hilchot Ishut, although it is not expanded upon in the case of the husband inheriting his wife's estate. The ketubah, on the other hand, makes no reference of the groom inheriting his bride's estate. This is not surprising. The ketubah, as a protection for the bride in its legal traditional form, customarily does not include reciprocal statements in which the bride will provide for the groom's needs.⁴⁸ Inheritance in the case of the groom's

⁴⁸See section on women's obligations.

death, on the other hand, has become standard in almost all traditional marriage contracts as part of his providing for his widow and heirs.

According to Maimonides, one of the husband's ten basic obligations is to bury his wife. He should also provide her with a funeral procession. This obligation is only mentioned in one of the ketubot documents researched.

Perhaps the reasoning for the scarcity of this clause was due to the assumption that the husband will provide a proper burial for his wife. Friedman notes that Maimonides, among others,

explicitly included burial as one of six marital obligations, which are "court stipulations . . . called ketubba (sic.) stipulations," all of which are binding "even if not written in the marriage contract."⁴⁹

Therefore, if this clause--providing a proper burial for the bride--was omitted from the ketubah, it was still binding. The absence of a wife's obligation to bury her husband in ketubot is understandable given the nature of the marriage contract as a binding agreement that the groom will provide for his bride's needs. The absence in Maimonides' Hilchot Ishut of a wife's obligation to bury her husband is also not surprising. Maimonides clearly focuses on the husband's duties to his wife and the entitlements he receives in turn. Since Hilchot Ishut was speaking to men, and not women, it

⁴⁹Friedman, vol. I, p. 444.

is clear that a woman's obligation to bury her husband is omitted. As standards were created, whether as omissions (such as the lack of a statement to bury the wife) or as a standard formulas (in the case of the heirs' inheritance) responsibilities regarding the death of a husband or wife were understood, whether or not they were spelled out in the ketubah.

WOMEN'S OBLIGATIONS

As seen in this paper's introductory section on Maimonides' Hilchot Ishut, obligations of Jewish wives and husbands to one another have not been equal. While Maimonides lists ten obligations the husband has to his wife and four she has to him, these four are less the "wife's obligations" than they are the "husband's entitlements". This pattern of imbalance is also seen in the Jewish marriage contract. All ketubot texts written in a traditional style--as a legal contract of acquisition--contain at least one formula in which the groom states his intentions to take care of his bride. This chapter will review this last issue of the four "obligations" a wife has to her husband and explore other comments Maimonides addresses to these obligations. Then, it will examine the few traditional ketubot which have included statements of the bride affirming her obligations to her husband, and will compare these formulae to the obligations of Maimonides.

In the opening of chapter twelve in Hilchot Ishut of Sefer Nashim, Maimonides introduces the reader in the first paragraph (12:1) to the topic of marital obligations by stating, "[w]hen a man marries a woman . . . he is obligated to her in ten things and he [in turn] is entitled to four things from her." While Maimonides will spend most of this and the next six chapters expanding on the husband's

obligations, he does designate one paragraph to record the wife's four:

And of the four that he is entitled to, all of them are from the Rabbinic laws. And these are what he is entitled to: (1) her earnings are to be his, (2) what she finds is to be his, (3) he will profit from all the fruits of her estate in her lifetime, and (4) if she dies in his lifetime, he will inherit what is her's, and he is the first heir of the inheritance.

In other paragraphs Maimonides expands on this list, and introduces other obligatory behavior a wife should follow.

In the next paragraph Maimonides examines two of the wife's obligations. Both her earnings and the money which the husband inherits are measured in how he will utilize them:

And moreover, the sages fixed that the wife's earnings are measured against her maintenance. . . . and her burial expense is measured against his inheritance of her ketubah. Therefore if the wife said, "I do not want maintenance nor do I want work," she is heard and she is not forced. But if the husband said, "I am not sustaining you, nor am I taking anything of your earnings," then they do not listen to him. Lest her earnings will not be counted as sufficient for her maintenance. And because of this regulation, the obligation of maintenance shall be considered a condition of the ketubah. (12:4)

With the money he is entitled to as his inheritance after she dies, he must first pay for her burial; anything leftover is the amount he receives. With the money he receives from her earnings, he will provide for her maintenance (food). If her earnings do not amount to much, the husband will have to use his earnings to compensate for the amount it would cost to provide maintenance.

In a different manner, the wife is entitled to declare that she does not want her husband's maintenance. She will obtain what she needs on her own, even if she simultaneously declares that she does not want to work. She may bring enough wealth with her into the marriage from her father's home and not need to work nor take of her husband's maintenance. While the wife has the privilege to revoke her option for earning wages or receiving maintenance, the husband is not free to hold back from sustaining her, nor can he refuse her wages if she earns them. There are three reasons he is not allowed to give up this obligation (while she need not adhere to hers). The first is that her earnings might not be enough to sustain her. The second is that his obligation has been incorporated into the ketubah. This second reason sheds light on the importance of an obligation. The husband's obligation to provide maintenance for his wife is written into the ketubah, so he cannot revoke it. The third reason is that the husband is commanded in the Torah to provide for his wife, "[i]f he marries another, he shall not diminish for her, her food, her clothing or her conjugal rights."⁵⁰ The wife's obligation to work, earn wages or promise the earnings to her husband is not incorporated into the marriage contract, nor is she commanded as such in the Torah. The wife, therefore, may not be forced to uphold the obligation to

⁵⁰Exodus 21:10.

accept her husband's maintenance, while the husband is bound to provide for his wife.

Maimonides then addresses the issue of a husband's right to revoke obligations. In 12:6 he gives the ruling:

If the husband stipulates that he will not be obligated in one of these things in which he is obligated, or if the wife stipulates that the husband will not be entitled to one of the things to which he is privileged, then the stipulations are valid, except of three things which cannot be used as conditions, and any stipulation made with regard to them are null and void. And they are: her conjugal relations, the essence of her ketubah, and his inheritance of her wealth.

This ruling only indicates one of the wife's obligations which she cannot revoke, and that is her husband's inheritance of her wealth when she dies. While a woman might want to change this before she dies--i.e. designating a child as first in the inheritance--she cannot. Maimonides argues this point strongly as he expresses in 12:9:

If he stipulates with her after marriage that he will not inherit from her--his condition is null and void. Because despite that the husband's right to her inheritance is from the Rabbinic laws, their words are enacted as if they are from the Torah. And so each condition concerning inheritance is null and void, and despite that this is concerning money, as it says in the Torah, "a statute of judgment,"⁵¹ his condition is valid . . ."

How does Maimonides know that this stipulation from the words of the Rabbis has the force as if it were from the Torah? He draws an analogy between this regulation

⁵¹Numbers 27:11, in which God tells Moses the order of inheritance if a father has no sons.

regarding inheritance and the regulation regarding inheritance written in the Torah, thus treating it as if it were from the Torah. Therefore, the wife's obligation to give her inheritance first and foremost to her husband cannot be revoked, not by her, not even by him.

Maimonides' strictness regarding the husband's inheritance of his wife's estate is evident in another example. In 14:10 Maimonides describes the case where a rebellious wife is divorced and does not receive her ketubah payment. In addition, she must wait twelve months before she may obtain a get, during which time the husband does not provide for her maintenance. If, however, she dies before receiving the get, her husband inherits her estate.

Both obligations of (1) a husband providing maintenance to his wife and (2) a wife leaving her inheritance for her husband were outlined at the beginning of chapter twelve. In this latent stage, the wife has left her husband but has not yet received her get. While the wife is waiting, the husband is not providing maintenance as a tactic for her to return to him. Since they are technically still married, the husband will receive his wife's inheritance, should she die. A husband is thus absolved from his obligation to provide maintenance for his wife as soon as she leaves him, even though a proper get has not yet been produced. The

obligation of the woman, on the other hand, to give her inheritance to her husband, even though she has left him, does not become null and void until a get is produced to make the divorce official and final.

Different from the other of the wife's obligations, Maimonides indicates in one paragraph the wife's behavior and attitude toward her husband. The description is not parallel to the obligations listed in 12:3, however, some of the phrases correspond closely with those ketubot which have included a clause for the wife's obligations. This paragraph in 15:20 states:

And likewise the wife is commanded that she will honor her husband highly and he will be revered by her, and she will arrange all her affairs according to what he says. And in her eyes he will be like a prince or a king. She shall go along with that which his heart strongly desires and distance herself from all that he hates. And this is the custom of the daughters and sons of Israel, the holy and pure in matrimony. And in these ways, their life together shall be in pleasantness and praiseworthy.

The phrases here which resemble the formula in the ketubah include that she will "honor" him and that this behavior "is the custom of the daughters . . . of Israel." Under Maimonides' other regulations, wives' obligations include those things to which the husband is entitled. In this case above, in 15:20, the regulation outlines specific behavior of the wife, yet this behavior is not included among Maimonides' four specific marriage obligations of the wife to the husband.

Similarly to the paragraphs in Maimonides' Hilchot Ishut, of the ketubot researched, few of them address the issue of the wife's obligations to her husband. Friedman noticed this pattern in his study of tenth and eleventh century Palestinian ketubot and in ketubot of the diaspora up to the present day,

the ketubba (sic.) traditions known from the responsa of the Babylonian Geonim and their formularies, as well as almost all Jewish marriage contracts written by the various diaspora communities through the present day, . . . the husband's undertakings alone are listed and in which, accordingly, the ketubba (sic.) functions entirely as a testimony of unilateral guarantees made by the groom to the bride.⁵²

The following ketubot which do incorporate the wife's obligations are, on the one hand, revolutionary, by giving the woman a "voice" in the marriage contract. On the other hand, the obligations are not of equal measure; rather they reinforce the position of the wife as subordinate to her husband, and therefore do not signify any great liberation or equality for women in the ketubah.

The earliest researched ketubah found to contain a clause in which the wife promises to reciprocate with her obligations toward her husband originates in Corfu, Greece 1819. The clause reads as follows:

And she accepted upon herself to honor him, to attend to him in cleanliness and in purity, in the way that all suitable and modest daughters of Israel attend to their husbands in cleanliness and purity.

⁵²Friedman, vol. I, p. 189.

Unlike the rest of the text, this clause is written not in Aramaic, but in Hebrew. In an 1896 ketubah of Avlona, Albania, the text reads exactly the same as the Corfu ketubah, except the first mention of cleanliness and purity is inverted, "to attend to him in purity and in cleanliness." This similarity between the two ketubot is not surprising, considering Albania's proximity to Greece.⁵³

At the initial discovery of this clause in the marriage contract, one might think that the woman is receiving more of an egalitarian role in the relationship. This cannot, however, be the case since the woman's obligation is "to attend" to her husband, which comes from the same root 'avad, meaning serve. The servant is not considered to be of equal status to the one she serves. The wife serves her husband by remaining modest, clean and pure.⁵⁴ The only equal reciprocity of the wife and husband relationship is the act of honoring. This clause states that the wife shall honor her husband; likewise in the standard formula found at the beginning of most every ketubah, the husband promises "I will cherish, honor, support, . . ." The difference between the two is that the language the husband speaks is in first

⁵³Albania shares its southeast border with Greece.

⁵⁴The wife shall keep "clean" in a physical manner and "pure" in a ritual manner.

person and in Aramaic. For the wife, this clause is in Hebrew, as was mentioned above, and it is only described in the third person.

Of the Ashkenazic ketubot researched, only one contained any references to a woman's obligations. This is to be expected, for in the Ashkenazic community personal stipulations were agreed upon and signed on separate deeds. The exception is a ketubah from Klum, Prussia (now Chelmno, Poland) in 1891. This ketubah is unique in several ways. In it is found "an unusual clause, according to which the bride takes upon herself to act as true wife, duly fulfilling her marital obligations,"⁵⁵ although specific obligations are not spelled out. Also unique to this particular ketubah, written in Hebrew on one side and German on the other, is that there are blanks left unfilled. There is no mention of a groom and it was never signed by witnesses. The peculiarities beyond the mention of the bride's obligations make this ketubah highly exceptional.

In contrast to the Ashkenazic communities, the Sephardic communities sometimes inserted the standard formula of stipulations into the text. In a Sephardic ketubah of 1881 in Jerusalem, there is mention of one of the husband's entitlements: "he is entitled to the fruit of her work, but

⁵⁵Sabar, p. 298.

he must fully provide for all her needs . . ."⁵⁶ Another Jerusalem, Sephardic ketubah of 1928 indicates a similar entitlement for the husband, "[t]he work of her hands shall be for him; [but] her maintenance and all her needs are [incumbent] upon him . . .". These two statements closely match the first of the four obligations Maimonides prescribed, in which the wife's earnings are to become the husbands, yet they emphasize the husband's obligation to provide for all the wife's needs.

One other example of the wife expressing her obligations to her husband is found in a Karaite marriage document. This contract is not considered to be a ketubah, rather it takes on a special structure written in two parts: "(1) shetar nissuin (marriage deed) and (2) shetar ketubbah (sic.) or ketubbin (ketubbah (sic.) deed)."⁵⁷

The contract is also in Hebrew, rather than in Aramaic. In an Egyptian marriage document from Cairo 1953, it is in the nissuin where we find first and second the groom's announcement to marry the bride and his obligations in the marriage bond and third, the bride's announcement of her will to marry the said groom and her obligations toward him. Following the statement in which the bride gives consent, the text reads,

⁵⁶Sabar, p. 314.

⁵⁷Sabar, pp. 308-309.

to be his wife and his friend and a wife of his covenant; to listen to his voice; to cherish him; to honor him, to work in his house [as] do all the daughters of Israel in the homes of their husbands; and to be under his rule and her desire to him.

This clause expands on the Corfu-Avlona clause. It includes additional clauses where the wife states she will be her husband's friend and be under his rule. All these marriage contracts do share one thing in common in reference to their clauses of the wife's obligations to the husband. In each case the wife, even as she is given a "reciprocal" statement, falls into a position of subordination in juxtaposition to her husband. In this last document from Cairo, it is most clear in the statement of the wife's duty "to be under his rule."

In reviewing the ketubot in this section on women's obligations, it is found that only the Sephardic ketubot of Jerusalem coincide with the wife's obligations (or husband's entitlements) as Maimonides wrote in Hilchot Ishut. Both the 1881 and 1928 versions of these ketubot from Jerusalem include a clause referring to the husband receiving the wife's earnings--"the fruit of her work" and "the work of her hands." This is the only obligation of the four Maimonides outlines which appear in the ketubot. Maimonides does, however, add one paragraph, 15:20, which describes other of the wife's obligatory behavior. It is in this paragraph where phrases such as "she will honor her husband"

and "[as] is the custom of the daughters . . . of Israel" coincide with marriage documents from Corfu, Avlona and Cairo. With regard to the other three of Maimonides' obligations for wives, there were no documents found to contain any reference to a husband receiving a wife's findings, his profiting from her estate or his inheritance after her death. Wives' obligations to their husbands are not only limited to four in Maimonides code, they are also a rarity to find in ketubot.

CONCLUSION

The analysis for this paper began by looking at the halakhah, that being Hilchot Ishut of Maimonides' Mishneh Torah, and searching for the marital obligations he laid out. His regulations are fairly straightforward in that he lists the husband's ten obligations in marriage followed by the wife's four. Then Maimonides takes his list of obligations (as he synthesized them from the Tradition) and expands on the details. In the case of a husband providing for his wife's burial, Maimonides adds very little. With regard to a husband's providing maintenance (food) for his wife, on the other hand, Maimonides uses several paragraphs to elaborate. In reviewing all fourteen marital duties, one can look to the halakhah (Maimonides) and find more or less elaboration related to any given obligation.

The second part of the analysis of this paper involved the investigation of husbands' and wives' obligations as they wrote them into their ketubot. Similarly to Maimonides, the ketubot researched most often include those obligations directed to the husband. Ketubot generally do not list the fourteen marital obligations. If any obligations are included, they are added in the tenaim or into the text of the ketubah as in the Sephardic communities. In the Ashkenazic communities, on the other hand, stipulations are included in a deed separate from the ketubah. Most of the

ketubot researched that were used for analysis thus came from Sephardic communities. While the Ashkenazic ketubot became standardized and disregarded the use of specific conditions as they applied to each couple, the Sephardic ketubot maintained flexibility as living documents. As couples in different Sephardic communities had unique needs, standard tenaim were adapted to meet the needs of those couples or that society. The example of the husband providing a burial space as a condition in the ketubah reflects this notion. Outside the use of tenaim, ketubot include standard formulae in which the husband promises to honor, serve, provide, etc. for his wife, and give her food, clothing and her conjugal rights. While not all fourteen marital obligations are found in the texts of ketubot, obligations which reflect a knowledge of the halakhah are inserted into the text.

The third piece of analysis for this paper requires an integration of the first and second parts. Not only do the obligations of the halakhah and ketubot need to be examined independently, they require comparison one to the other. This was done in the four areas on monogamy, divorce, death and wives' obligations. General conclusions within each section found differences or similarities. In the case of monogamy, the halakhah allows for polygamy. What people in fact practiced, on the other hand, was that a husband

divorce his wife and pay her ketubah amount before he marries another woman. In the area of divorce the halakhah states reasons for divorce due to misbehavior or lack of children after ten years of marriage. The life practice, on the other hand, provided statements of conditional divorce to allow for protection, especially of the wife. In regards to the topic of death, the halakhah and societal practices share some similarities. While it was less common for people to actually insert a clause "should the husband die" in the text of the ketubah, the ketubot included a formula that stated the husband's obligation to provide for his wife (and heirs) after his death. This statement reflects the sentiment of Maimonides' regulations. In addition, the issue of death both in halakhah and in society makes no provision for the husband's burial, should he die first. In the section addressing the wife's obligations to her husband both halakhah and ketubot lack much mention of them. The overlap in the two genre is evident in statements which assert that the wife "shall honor her husband" and that she shall behave as is "the custom of the daughters . . . of Israel." Conclusions from this analysis find that there are areas where the halakhah and societal practice differ and there are areas in which they are alike.

The conclusions drawn in this manner show that the living society in some cases follows the halakhah, but in other

ways it changes it by fine-tuning it or acting antagonistically to the law. Maimonides in his creation of the Mishneh Torah synthesized the halakhah according to tradition. His listing of obligations does not reflect society, but rather the laws of Rabbis and Geonim who lived before him. The ketubot, on the other hand, reflect the lifestyle of society.

In some cases, the ketubah text looked to the halakhah and included (nearly verbatim) the obligations it supported. The standard statements by the husband, "I will serve, honor, maintain and provide for you as is the custom of Jewish husbands who serve, honor, maintain and provide for their wives in truth," and "I will give you food, clothe you, and give you your supplies and engage in sexual relations with you as is the universal custom" draw directly from the ten obligations Maimonides outlines in Hilchot Ishut.

In other cases the ketubah looked to the halakhah and fine-tuned the obligations according to societal needs. An example of this fine-tuning can be seen in the area of women's obligations. The first three obligations the wife has to her husband, found in 12:3 of Hilchot Ishut state, "her earnings are to be his, what she finds is to be his, [and] he will profit from all the fruits of her estate in

her lifetime." Two Sephardic Jerusalem ketubot of 1881 and 1928 state the concept of the husband receiving the fruits of his wife's labors, but a clause is added that further states he is to provide for her. The two ketubot assert respectively, "he is entitled to the fruit of her work, but he must fully provide for all her needs . . ." and "[t]he work of her hands shall be for him; [but] her maintenance and all her needs are [incumbent] upon him . . ." The tradition, in this case, would not disallow the extra clause from entering the ketubah. Maimonides does introduce obligations for which the husband must provide, however, he spells out those specific needs. He does not express the husband's obligation of providing for "all her needs," because it did not come to him from the tradition in those words. In this example the law was used and changed slightly to express the needs of the society, because sometimes the law as it stands verbatim does not express the society's need to reiterate the husband's obligation to provide for all his wife's needs.

In still further cases, the ketubah went beyond the realm of the halakhah. The best example of this is seen in the area of monogamy. Clearly the halakhah according to Maimonides allowed for polygamy. While Ashkenazic communities accepted Rabbi Gershom's takanah against bigamy as law, Sephardic communities did not. Yet somehow the Sephardic communities

adopted this rule as a norm society, enough so to add a clause forbidding bigamy in the ketubah. Would such a clause have been prohibited by Maimonides? Probably not. While Maimonides allowed for polygamy, he did not forbid monogamy, he simply wrote down what was reflected in earlier halakhah. In this case, the society disregarded what the law expressed, and inserted a clause that reflected their community's lifestyle.

What is discovered from this analysis is that the halakhah as codified by Maimonides remained and remains law, immobile in time. The ketubah, especially those of the Sephardic tradition, however, represents a living document of flexibility and demonstrates an ability to adapt to the norms of the society in which it was written. In some cases this living contract represented the halakhah as it was written. At other times, the ketubot did not exactly restate the law, but slightly or radically altered the halakhah to express the societal reality.

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