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Betrothal in Geonic Halakha
With Reference to the Later Codes

by

Stephen M. Passamanek

**Thesis submitted in partial
fulfillment of the require-
ments for Ordination and the
degree of Master of Arts.**

**Hebrew Union College-Jewish
Institute of Religion
Cincinnati, Ohio
January, 1960**

**Referee:
Professor Guttman**

To my mother

Dolores Jaskol Passamaneck

1909 - 1959

Her voice was always

קול ששון וקול שמחה

DIGEST

The thesis presented in the following pages concerns halaka, specifically the halaka of kiddushin, betrothal, as found in the responsa and legal compendia of the ^Ggeonim and in later materials that refer to geonic decision or precedent. The areas of betrothal halaka discussed by the geonim are then viewed in the light of later authoritative rabbinic legal Codes: The Mishneh Torah and Shulhan Aruk. The material is self-limiting.

The Introduction presents the area of halaka to be discussed and my reasons for choosing this area of study for a rabbinic thesis. The Introduction is followed by three chapters with notes appended to each chapter, all duly noted in the Table of Contents, covering the various sections of the thesis as a whole.

The first chapter explores the laws concerned in establishing the legal rights of parties to a marriage. The questions of legal ages and rights of men and women are examined.

The second chapter takes up the betrothal ceremony (and some aspects of the marriage ceremony) in reference to their content, order, and form. This leads to discussion of blessings and ritual requirements.

The final chapter proceeds to matters of modes of betrothal. Here the questions are how a betrothal may be legally effected, the material often has a close relation to

property law.

Each chapter is furnished with subheadings.

The main chapters are followed by a short appendix containing miscellaneous halakot.

There is a short section of conclusions that attempt to note and remark the trend of the halaka of betrothal from the geonic era to the period of the Medieval Codes.

Finally, there is a critical bibliography.

This thesis and the conclusions resulting from it are in no way intended to be new and revelatory for Jewish law. They are tentative investigations into the law that guided Jewish life at every step. They cover only a small area of the Torah that gave beauty, dignity, and holiness to the life of the past and may still guide us in ways of pleasantness and paths of peace.

Stephen M. Passamaneck
Erev Shabbat Vayera - 5720
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INTRODUCTION

Reform Judaism generally considers the wealth of the Jewish past as a treasury from which the present generation may, with wisdom and care, choose whatever is most significant for its own Jewish life. A vast part of this treasury is the Jewish legal tradition preserved in thousands of ancient, medieval, and modern works that present Jewish life not in moral phrases nor pious homiletics, but in the precise daily implementation of the moral and ethical tradition -- in the medium of law. The position of Jewish law in the Reform program has always been a sore point and a question of uncommon difficulty for Reform leaders to answer. The great questions have been, are we bound by any areas of traditional law, and if so, which ones? Since the Halaka, the law, is as much a part of Reform's present heritage, there should be some attention paid to the nature of Jewish law and its mode of handling problems that may still arise in human life. Perhaps many Reform leaders would hesitate to say "we are bound" by traditional law, and the hesitation is for good reason; however this is by no means an excuse for ignorance of the law nor for denying it as a sound guide to modern practise.

So then, what areas of traditional halaka offer us a viable means of dealing with modern problems? There could be a lengthy discussion following here which I choose to eliminate. It is sufficient to say that crucial life situations still emerge in the career of modern man, and that religion

has erected a huge structure of ritual, theology, and law around these important events. I refer to the crucial periods of birth, puberty, mating and death. Western religions have surrounded each of these events with their own socially acceptable institutions and sanctions. There is no doubt that the human life cycle has been and remains the focus of religious thinkers and leaders.

Of these life cycle situations, I have chosen the field of marriage since in my estimation there is no more crucial event in the lives of men than the inauguration of a home and family. The man-woman relationship is built into Jewish religious tradition from the story of creation: "And the Lord God said: 'It is not good that man should be alone.'" (Gen. 2:18) Scripture refers to the marriage relationship on many occasions; such a relationship was not invented by the authors of the Bible, it was part of the society they knew and accepted without question. Marriage and its problems arise legally in Deuteronomy (Chapters 20 and 22 among others); certainly it is present by implication in the moving story of Hosea. The institution of marriage has been the cause of a brilliant legal and ethical literature from ancient times to our own day with the works of Freud.

Jewish tradition has made marriage more than a social institution for procreation. It is a clear, definite, and positive command to take a wife and raise a family (Even ha-Ezer 1:1 and Hilkot Ishut 1:1, 1:4). It is a legal requirement. This legal demand is not left as a barren civil statute;

it is moreover invested with holiness. Jewish tradition considers marriage a holy law. Dr. Moses Mielziener expresses it, "The higher nature of the marriage contract... indicated by the peculiar and significant term used in Jewish law for this contract. It is called kiddushin - consecration - from the Hebrew word kaddesh, to [make] holy and inviolable," (Jewish Law of Marriage and Divorce p. 27). So this holy law, this holy command is still with us today in the life situations faced by the modern rabbinate. Marriage is still a challenging area of study for the intelligent Jew, and Jewish law covers the ground thoroughly and with significance. (cf. Eugene Mihaly, "The Jewish View of Marriage" an essay.)

Since marriage is for Jews a holy law, this paper will explore some of the halakic problems involved, especially in the betrothal or kiddushin. The basic Jewish law of betrothal is set forth in the mishnah and gemara of tractate Kiddushin et. al. of the Babylonian Talmud. This basic betrothal law is still evident in Reform as well as orthodox marriage procedure (cf. Rabbi's Manual, C.C.A.R. p. 155ff, and Goldin, haMadrik p. 1ff.)

However, the halaka has undergone a vast amount of interpretation and reappraisal by rabbinic authorities practically from the final editing of the Talmud itself. There have been over 1500 years of talmudic study and a consequent creativity that has produced our tremendous volume of commentary, codification, novellae, and responsa that seek to interpret and clarify the murkiness of ancient law.

I turn to this post talmudic development rather than to the monumental Talmud itself. First there is the question of time and skill. At present I have neither the time nor the ability to tackle the immensity of talmudic literature itself and to draw from it the precise areas of halaka to be addressed. Then there is the necessity of limiting my field of investigation. Finally, post-talmudic material gives a clearer picture of the precise halaka that was followed.

My starting point is the post talmudic halaka of the geonic period. The Geonim and their colleges were the immediate successors of the talmudic authorities (cf. Tchernowitz, To'fdoth ha'Poskim p. 18ff). The material used is for the most part primary sources extracted from Dr. B. M. Lewin's excellent Otzar haGeonim. Dr. Lewin has spared me the difficulty of deciphering manuscripts, poring over later responsa and novellae, and arranging the results topically. The Otzar lists geonic material under the appropriate talmudic passage according to the order of the tractates. It is, in effect, a compiled geonic commentary on the Talmud, passage by passage. My study required a second point of reference. I chose for this referent the two leading legal codes, Maimonides' Mishneh Torah (Egypt, 12th century) and Karo-Isserles' Shulkan Aruk (Palestine, Poland, 16th century). The Codes have given me a second historical peg so that the development of Jewish marriage law may be viewed in its progress through time from Babylonia and the Geonim, thence to Isserles and Medieval Poland.

Since the geonim treated only certain questions relating to betrothal, the material was self limiting. Only those matters discussed by the geonim have been checked against the later Codes. The sources seemed to divide into three general categories which are the three sections of this paper. The first speaks of the possible parties to a betrothal, their rights and their ages. The second deals with the ritual and liturgical content of the ceremony itself. Thirdly I discuss the legal methods of contracting a betrothal. Questions which are not handled in the body of the thesis are the special laws of priesthood, the ketubah (this is a major work in itself), forbidden degrees, aspects of testimony. They are omitted as I have stated because they are not present in the geonic sources and because they would if pursued require a broader halakic knowledge than I now possess.

I can not conclude this introduction without a word of deepest thanks to my teachers and mentors Dr. Alexander Guttmann, my professor of rabbinics at the Hebrew Union College and Dr. Solomon B. Freehof my rabbi in Pittsburgh, Pennsylvania. Their encouragement and guidance have brought me from strength to strength.

Now let us turn to the problems of Jewish marriage, recalling that with all the barriers and difficulties we shall note, the holy law of marriage is still expressed through

אברהם בן יצחק

Guide to Quotations

Many of the geonic works cited follow the notes of Lewin in Otzar ha-Geonim. In certain instances, Lewin does not mention a particular edition; therefore, when there is no edition cited for the footnotes of this paper, the quotation is assumed to be taken from the best edition or the only edition and follows Lewin's footnotes.

Guide to Translations

The translations of blessings, phrases, and rabbinic idioms are, for the most part, free renditions of the sense of the statement within its context. They are not intended to be precise, literal translations of the text. The exercise of caution and consideration in the free rendering of Hebrew passages does, I feel, provide fuller understanding of a passage in its context.

CHAPTER I

"HA'RE AT"

Matters pertaining to the parties to
a betrothal and their legal rights.

In this first chapter we will consider several different matters which all revolve about one theme: the rights and privileges of the several parties in a betrothal situation. This will lead us, among other things, to questions involved in determining a woman's legal age, the stages of puberty, the importance of witnesses in the betrothal, the legal rights of a woman's father in reference to betrothal, her own rights, and some related problems including mi'un (refusal).

Minor Girls and Rights of Their Fathers

According to a series of geonic statements found in Halakot Gedolot (ed. Warsaw, sec. 73) and Hilkot R'eu (no edition noted), the basic law is clear that the father of a woman has complete power over her in reference to contracting and receiving betrothal until she comes of age.¹ If she betrothed herself while she was under age, without her father's consent, the act, according to these authorities, has no validity whatsoever. This series of geonic opinions arises under the passage in b. Kiddushin 41a to the effect that a man is prohibited to betrothe his daughter until she is of age and expresses her wish to marry a particular man. This view is modified so that a man is not required to betrothe his daughter until she is of age.² The statement of the Halakot Gedolot (ed. Warsaw, chap. 2, sec. 72) expands the rule of the father's legal right to betrothe his under age daughter by adding the requirement of a bill of divorcement in case the betrothal is dissolved.³ This passage also deals

briefly with the question if mi'un (refusal) which we shall consider later. The passage refers to b. Niddah 47a in determining the stages of a woman's development in relation to the matter of legal age.

The later Codes, both the Mishneh Torah and the Shulhan Aruk rule that the father has complete rights to betrothe his minor daughter and that these rights cease when she comes of age. She must then have given consent to her betrothal. The minor herself cannot effect a valid betrothal. The minor betrothed without her father's consent is not betrothed.⁴

Adult Women

In Shaare Zedek, there is a responsum that came up under the question of the validity of betrothal and the requirement of formal divorcement if the adult woman was betrothed and her father later accepted betrothal for her. This is related to the passage in b. Kiddushin 79a. The resolution is that in the case of an adult woman, her betrothal is valid and that of the father has no legal status; thus no bill of divorcement is necessary.⁵ Other geonic materials (Halakot Gedolot, ed. Warsaw, chap. 3, col. 4 and Hilkot R'ieu p. 83) go on to add that even if it is not known whether the woman in question was a na'arah (intermediate stage between childhood and adulthood) or a bogeret (adult) when her father betrothed her, but she is a bogeret now, her kiddushin only are valid. A complex statement from the Sheeltot to Mishpatim, section 59,

(according to the Liebman manuscript) concludes with the decision that the law is according to the Amora Rav and that the woman's own betrothal is considered proper.⁶ It is clear, from the Codes' passages cited above, that later authorities as well demand the independence of the adult woman; and this is borne out in the case of confusion of na'arah and bogeret status: the woman is assumed to be an adult, thus requiring no bill of divorce because of any action by her father. However, there is a view that says she is only assumed a bogeret, if she contradicts her father by saying her signs of maturity were present at the beginning of the last day of the na'arah period, otherwise she requires a bill of divorce-ment from both men: her choice and her father's choice.⁷

Possibility of Betrothal of an Adult by the Father

There are several responsa that add a bit more of a human touch to the present considerations. In the Teshubot haGeonim of Nathan Koronell, sec. 97, there is a responsum concerning an adult woman whose father betrothed her without her consent.⁸ The question is, of course, whether or not the betrothal is valid. Mention is made that the bride's girlfriends are with her when she receives kiddushin and their evidence and testimony affirming that all was in order may be used by witnesses. The decision is that in this situation she is betrothed unless she expressly says at the time of the betrothal she is not pleased with the arrangement. If

she says immediately that she is not willing, she needs no bill of divorcement; however, if she should express displeasure later, she does need the get. The authorities do consider that the girl may be pleased with her father's choice, although she is not legally bound by it; this last is apparently because of the weight of the law of a bogeret noted above. The responsum opens with a human touch that could be tongue-in-cheek or an honest pious statement. It says that the modesty of the daughters of Israel is such that they do not contravene their fathers' wishes!

Another responsum also begins with the statement that the custom of Jewish girls is that they follow their fathers' choice - even though they be twenty (!) - when their fathers are still alive.⁹ The respondent further asserts that the women are not so arrogant or forward to reveal their own wishes and express a preference for a man; they rely on their fathers. The daughter is therefore assumed to follow the wishes of the father who presumably gave the matter thought and acted with full legal right for his adult daughter. The groom need send no wedding gifts. However, even here, the respondent is careful to note that the adult girl may revoke the betrothal the father made for her (we assume with an unbecoming arrogance!) by her own legal right to do so.

A third responsum also decides for the betrothal of the adult woman by the father.¹⁰ The case here is more complex with the introduction of the element of witnesses.

There are no witnesses that the woman appointed her father as her agent. The fact of the betrothal, however, is well attested. The witnesses to the appointment make no difference at all; the girl is to follow the wishes of the father.

Agency

In the Shulhan Aruk, the woman is given the right to appoint an agent to betrothe her to someone.¹¹ Paragraph 36:10 of the Even haEzer presents a view to the effect that some say a father may not appoint an agent to betrothe his adult daughter; and the next paragraph goes on to state that, if the father had not been made agent, some say the woman requires a bill of divorcement because of the doubtful status of the betrothal which the father may have contracted for her. This apparently assumes that the woman herself has appointed the agent and surrenders none of her legal right as a bogeret to reject her father's choice if she so desires.

Maimonides does not seem to mention the cases of the Shulhan Aruk in this matter but does say that the appointment of an agent to receive the kiddushin must be made before witnesses.¹² This holds true only in the case of a woman's appointment of an agent, however. The Shulhan Aruk in this matter states definitely that the woman's agent must be appointed before witnesses, although the stringent ruling is taken if there were no witnesses to the appointment, i.e., she is betrothed.¹³

There is a responsum cited from the Shaare Zedek

(no edition given, p. 17b, sec. 9) that the father of an adult woman who receives kiddushin for his daughter must give the kiddushin to his daughter before witnesses of transference (מגיד 28) for such is proper and customary.¹⁴ However, if the woman were at the place of betrothal and the father did not give her the kiddushin, there is still sufficient grounds to suspect that he was acting as her agent; and she then needs to concur with her father's wishes. The responsum concludes:

Even though we say a man would not be so arrogant as to appoint his father as his agent, since the father is responsible for a daughter in all respects - since it is not the way of a daughter to betrothe herself - the kiddushin require a bill of divorcement since we have established that a daughter is pleased with the least (i.e., any man).

There is a parallel version quoted from the Ittur which requires a bill of divorcement because of doubt.¹⁵ The closest statement to this in the Codes seems to be in Shulhan Aruk, in which there is some doubt as to whether a father may be an adult daughter's agent if he were not specifically appointed and further that the woman requires a bill of divorcement because of doubt if her father did act for her.¹⁶ Apparently, a case such as this could be decided either in favor of betrothal or non-betrothal since the woman is admittedly an adult and therefore, within her legal rights to reject the betrothal. Or on the other hand, the rights and responsibilities of the father may be accorded some weight in order to obligate the daughter at least in doubtful betrothal.

Problems Related to Agency of Father

There are two other responsa which demonstrate some of the side problems attendant to the father's right to

betrothe his daughter.¹⁷ The question arises under the statement in b. Kiddushin 64a. (If a father say) "I betrothed her and I divorced (i.e., received her bill of divorcement) her while she was a minor; and she is still a minor, he is trustworthy (to say this and prohibit his daughter to the priesthood)." Both responsa are anonymous.

The case is this: A man betrothed his daughter in the presence of a court and afterwards denies the statement. The court can produce no witnesses to his statement. Is the father's action valid to require a bill of divorcement, should the witnesses be sought?

The answer in the first and shorter responsum is generally as follows: If the daughter is a minor, the father's action is proper. If the daughter is presently of age, the father's action is invalid unless he can produce witnesses that he received kiddushin for her before her majority. In regard to the father's denial of his betrothal statement, if he said before the court, "I betrothed my daughter who is a minor," and the court attests that he did in fact say so, if he then denies his first statement, the presence of witnesses is then merely superfluous and the daughter is considered betrothed. Admission before the court is the crucial point of law. However, when he can support his denial of his original statement under questioning by the court, the girl is not considered betrothed. Apparently, the father can, according to this authority, refute the witnesses; but he cannot remove his daughter's obligation except with further proof of the validity

of his second claim.

The second, and longer, responsum includes an earlier responsum on the same matter, pointing out earlier errors and going into greater detail. Apparently, both the question and the answer were submitted for review.

The question is the same: if a father says in court that he betrothed his minor daughter and afterwards denies it, and the court can find no witnesses to his statement. The first part of the responsum paraphrases the question and answer as submitted with a few insertions that we will treat later, and the final addition of the question of whether the father is compelled to receive a bill of divorcement for his daughter if he says he has not betrothed her.¹⁸

The respondent then notes that there are some errors in the original answer and that he will first give the correct answer and then demonstrate the errors. The answer is actually the same as in the responsum noted above. The father may betrothe his minor daughter if, when he betrothed her, she was a minor, though the witnesses to the betrothal may not now concur. If the woman is adult, the father's act is invalid unless there are witnesses to the effect that he received kiddushin before she reached majority. So far the answers are the same in legal principle.

A fine distinction is drawn in the instance of the father's denial. If he said at court that he betrothed his minor daughter and then denied his statement, witnesses are superfluous as above, and the girl is betrothed. If he does

not deny the statement (22 '1911K 101) but rather, says, "I did not betrothe her" and can show cause for his second position, he is believed; and the girl is not assumed betrothed. The court, in this case, is apparently to challenge his second contention. The matter is decided on the basis of the tal-mudic rule 21600 200 110 240 200 ("The mouth that prohibited (the girl) is the same agency that may lift the prohibition").

A precedent is then introduced about a beautiful woman who had been bothered by suitors and had rejected their attentions by saying she was betrothed. When she finally did meet her choice and betrothed herself, the authorities questioned her. The law was adduced by R. Aha of Usha; and the sages said, "if she gives good reason for her words (actions) she is believed."

One of the statements in the answer presented for review was that if a father said he betrothed an adult daughter and there are no witnesses to the fact, he is not believed, i.e., he cannot obligate the woman. The later authority seizes upon this statement and declares it a great error in the first answer, since according to the second authority, the father could in no wise betrothe his adult daughter. Further, it was not explained that, if the girl was purportedly betrothed while yet a minor and she is now adult, there must be witness to the betrothal while a minor. Finally, the father's denial of betrothal is not reviewed in the first answer to the original question, this rather amazing omission

is noted by the precise second respondent and scored as a serious defect in the first answer.

The later Codes, both Shulhan Aruk and the Mishneh Torah support the father's right to retract the betrothal statement provided that the girl is still a minor.¹⁹ However, the case is not precisely of denial, but of - according to the Shulhan Aruk - saying, "I betrothed her and I received divorcement for her," the latter statement following the former almost immediately, וְהָיָה כִּי יִשְׁמַע הָאָדָם (the expression וְהָיָה refers to the momentary period necessary for students to greet their teacher, Baba Kama 73b). Once the woman is of age, the father can no longer "make her unfit for the priesthood" as he could when she was a minor. As for the matters of superfluous witnesses, denial before the court, and sufficient cause for the retraction, the Codes seem to be silent on these discreet cases.

Complications of Betrothal of Adult by Father Not an Agent

Another selection from geonic responsa demonstrates some of the difficulty encountered when a father betrothes an adult daughter without having been appointed betrothal agent, although the fact of the betrothal is known and wedding presents have been sent.²⁰ The responsum is rather long. Since the case manifestly involves an adult woman, the father cannot act except with specific permission; therefore, the kiddushin would be invalid. The woman's procedure in

appointing agents, according to the Codes, has been noted above (cf. note 11).

Further, if the groom declares that he can produce witnesses to the betrothal by the father, she is still not considered betrothed.

However, in this specific case, the matter is complicated by the wedding gifts. There is then some ground to say that the woman will be satisfied with the father's action and therefore require a bill of divorcement because of doubt. If the presents were sent, and the adult woman does not halt proceedings, new kiddushin should be given by the groom or a get must be written.

The codal opinion on wedding gifts will be considered under the rubric of modes of betrothal.²¹ Briefly, gifts constitute some doubt of betrothal if there is a prior agreement and the gifts are not specifically designated as only gifts.

Another statement similar to the responsum cited from the Ittur states that the woman may be satisfied with the father's choice even without gifts and thus requires a bill of divorce.²²

Woman acting in Her Own Behalf With Complications of Agency

There is one other responsum that presents a view as to a woman's own legal rights to betrothe herself.²³ In this case, the girl is an orphan who is of marriageable age. Her grandmother made arrangements with the father of the groom,

the groom still being a minor. The girl's sister told her of the arrangements and reported back that the girl was satisfied with the grandmother's arrangements. The arrangements, however, were disturbed by a sudden military raid. All this was before a formal betrothal was effected.

After the raid, the groom brought some meat to the girl's home, cooked it, and the girl ate some of it. Shortly thereafter the grandmother died, and the girl betrothed herself to another man. The groom's father naturally insisted that his son had a prior claim, which was in due course attested.

The girl, when asked, admitted that she had eaten the meat; but that her sister had not told her it was for the purpose of kiddushin, and she had caused her to err.

The geonic solution is that the girl should swear on a Torah Scroll in the older sister's presence that she did not know the source of the meat nor that it was for kiddushin. Then she is free and may be married to the man of her choice, even a priest. No bill of divorcement is required. In this case, the girl is permitted to choose her own course of action, and clearly has rights as an adult. The actions of relatives other than the father do not carry the same force at law that the father can claim. We will look at this question of rights other than the father's in greater detail now. This will include the younger girl's own rights, if any, and those of close relatives.

Rights of Minor Girls and "Refusal"

There is a series of geonic statements and post geonic statements, that are surely based on geonic precedents, to the effect that a minor girl who betrothes herself without knowledge (and consent) of her father has done nothing of legal value; she needs no bill of divorcement or Refusal (/ / /) to dissolve the betrothal, though there are some dissenting views.²⁴ The major view is according to Rabina, the later Talmudic authority (b. Kiddushin 45b) who holds that a na'arah or a ketannah acting without the father's knowledge have done nothing. The other view, that they have effected some doubtful betrothal is, according to Rav and Shemuel. One statement holds that the ketannah case is decided according to Rabina; but the na'arah may require a bill of divorcement as per Rav and Shemuel.²⁵

In the longest responsum of this series, attributed to Sherira (Pumbeditha, c.968), this entire question is thoroughly searched (cf. note 24). The question is posed this way: The questioner knows that there is no law according to Samuel and that R. Assi did not recognize the contingency that the father may approve of the minor daughter's action. The question was asked before the respondent whether there is a law from Moses on Sinai in this matter since in the entire (talmudic) discussion the point of the father's compliance is advanced and the rabbinic statement is that the father's compliance is not regarded. What about the case

in which the father accepts gifts and congratulations on the betrothal of his daughter and does nothing to halt proceedings? This is apparently for the questioner evidence of the father's satisfaction. The question then arises, can he later halt proceedings?

Possibility of Paternal Compliance With the Action of a Minor

Sherira first clears up some difficulties by correcting some talmudic citations; but the preliminary citations of authorities, which demonstrate that the law was not yet fully settled, do not have as much bearing for us as the answer which he gives to the question. First of all, where there are prior shiddukim, the possible compliance of the father is considered so as to give a strict ruling (i.e., she is betrothed) according to R. Nachman. He goes on to say that even according to Rabina, possible compliance is ruled out only in the case of a betrothal conducted improperly and disgracefully (1152 p 29). So every case had to be investigated very thoroughly, consequently there was no law according to the later masters who did not regard father's compliance.

The same question came from a congregation in Messina (Messina? cf. Lewin's note 24) which was answered briefly that we regard the possibility of the father's compliance under the same conditions that R. Nachman does, i.e., if there were shiddukim. The father's compliance in this case is regarded all the more in the light of his obvious satisfaction with

the gifts and congratulations. The girl is betrothed.

We see, then, that the law is certainly not "Mosaic" in origin; it, was in fact, a question with many undecided possibilities.

Prevention of a Minor's Marriage
Contracted Without Paternal Consent

In another geonic statement from Halakot Gedolot (cf. note 24, #276), classified by Lewin under the talmudic passage (b. Kiddushin 46a) discussing whether a ketannah betrothed without her father's knowledge can prevent the marriage, we find further material on the legal status of the minor. The opinion is first of all that the betrothal of the minor was without any shiddukin. In this case, her father may prevent the marriage. She may not prevent the marriage even if there were shiddukin since her kiddushin, without paternal consent, have no validity, כין ליל 224 52 523. All agree her father and not she (may prevent the marriage). There would be in effect no marriage to prevent!

In another case, this time a betrothed na'arah, the view is that only the father can receive the kiddushin and not she (according to Rabina), since he would legally have the rights to the kesef kiddushin which he would not surrender.²⁶

Code Opinions on Minors Effecting Betrothal

According to the Codes, a ketannah and a na'arah may

make no valid betrothal without the father's consent, even if there are prior agreements and even if the father is agreeable afterwards.²⁷ She is not unfit for a later priestly marriage by such invalid kiddushin.²⁸ The Shulan Aruk, however, presents an additional opinion. In this view, if the father is satisfied when he hears of the betrothal, the betrothal is valid from the time he heard of it, even if there are no prior arrangements, and even if he is not immediately amenable, but remains quiet. If he does not prevent the marriage and agrees to it afterwards, his second attitude sanctions the betrothal retroactively. All this^{is} in the case that neither the girl nor the father prevents the marriage. If either of them protest before the father complies, there is no betrothal even if afterwards he should comply. The Isserles gloss says that silence on the part of the father means that the betrothal would "grow up" with the girl and require a bill of divorce-ment. Further, if the girl becomes betrothed (without the father's knowledge) to a man of whom the father has already expressed approval, we do pay regard to the possibility that the father will comply.²⁹

Rights of Relatives Other Than Father to Betrothe a Minor

Under certain conditions, the geonim allow the mother and brothers of a minor girl to make kiddushin for her. There is a series of citations from geonic legal works and responsa that speak of rabbinically instituted kiddushin for a minor girl whose father is dead or "overseas" (far distant, D'3 1134).³⁰

The difficulties appear in cases where the father is not deceased but only distant and in cases where the union is dissolved by refusal on the part of the girl, with accessory questions of get and halitza. However, our interest is in betrothal, not in dissolution of betrothal, so the precise details of several statements will have no direct relevance.

In entry #277 (cf. note 30), on the apparent authority of Halakot Gedolot of Jehudai Gaon, the minor who is married while her father is overseas has rabbinical kiddushin and requires a bill of divorcement. However, the respondent is careful to state that this is his own position (דברי חכמים). The statement as we have it in Lewin's compilation is post geonic in all probability.

The next view is that the mother and the brother may betrothe according to rabbinic ordinance when the father is not there (cf. note 30, #278). The minor girl then has a marriage that "grows up," with her; and no second betrothal is needed when and if the father should return.

A note of dissent is heard in #279 (cf. note 30). The question concerns a minor whose father is far away and whose mother and brothers betrothed her. The brief responsum holds that the betrothal does not apply, and no bill of divorcement is needed. However, with a na'arah, a bill of divorcement is needed since the father may comply.

This view is generally held by #280 (cf. note 30) that where the father is far away but alive, the mother or brothers

may not effect betrothal for the minor daughter. Only the father has the right to betrothe the daughter according to biblical law. If the father is dead, however, the mother or brothers could betrothe the girl by rabbinical ordinance; and the girl has the option of accepting or refusing the betrothal, provided that she was betrothed with her consent. If she was so betrothed (with consent) she has the right of refusal but would not need a bill of divorcement. If, however, she had not been betrothed with her consent, she does not even have to refuse formally; there is no betrothal according to the passage cited in b. Yebamot 107a. The mother has rights only when the father is dead. If the mother betrothed the minor daughter in the father's lifetime without the girl's knowledge, there is no betrothal at all. The mother in this case has limited rights according to rabbinic ordinance, but no right at biblical law.

In #281 (cf. note 30), the minor girl does not even need formal refusal if her father is alive and her mother or brothers betrothed her. The last responsum in this series notes that the kesef kiddushin revert to the groom if the girl refuses the betrothal. The responsum assumes that there would apparently be a valid betrothal (in some respect) contracted by the mother or the brothers.

Technical Meanings of KETANNAH, NA'ARAH, and BOGERET

We have noted the terms: ketannah, a minor; na'arah, intermediate stage; and bogeret an adult woman. In cases

involving refusal rights and gittin, there is some information as to the meaning of these terms. There is first a responsum of Menahem, Rosh Yeshiva of Gaon Joseph (Pumpeditha c. 840?), holding that a minor girl who does not refuse a betrothal contract, and then becomes a na'arah or even a bogeret and marries another man, needs no bill of divorcement from the second man if she chooses to return to the first.³¹ Apparently, the betrothal while a minor is binding, and the second betrothal had no standing at all. The statement recognizes the progress of the girl from stage to stage in reference to her legal rights.

Chronological Factors

Two responsa, one shorter and one longer, ascribed to Amram Gaon (Sura, 856), discuss the stages in the legal age of women.³² The first part of the shorter responsum (a digest of the second) moves point by point. A father may betrothe his minor daughter according to biblical injunctions; this also applies to a na'arah. The girl has no option of mi'un refusal rights and must have a bill of divorcement for her freedom. If the mother or brothers should betrothe an orphan (אורח) who is five (or thereabouts 2 1/2 years), she does not even deed mi'un for her freedom. If she is six or seven and is betrothed with her knowledge, she needs mi'un; however, if she is married at this time without her knowledge, she needs no mi'un. Either betrothal or nuptials may be nullified by the mi'un of a ketannah. A court is furthermore not required; the refusal needs only two witnesses. The limits of a ketannah are under twelve years; a na'arah is a girl

between twelve years and twelve years six months, and one day.

Biological Factors

But this is not the entire picture, according to Amram Gaon. The factors of biology in regard to the appearance of signs of sexual maturity also play a great and significant part in determining a woman's age. Before age twelve, pubic hair is not evidence of maturity. Precisely at age twelve (presumably her twelfth birthday) though she is still a ketannah (the contradiction between the statement "a twelve year old until twelve years and six months is yet a na'arah" and the statement "and if she produces signs at the time when she is twelve, even though she is yet a ketannah..." will be taken up below) she requires a formal bill of divorcement and mi'un no longer suffices. Even two pubic hairs are deemed sufficient evidence of maturity. If she left the first husband as a ketannah by mi'un, is married to a second, and then wishes to return to the first, she may do so. However, if she stays with the first husband until she is a na'arah or produces signs of maturity at twelve years, she needs a formal bill of divorcement and may not return to the first husband.

Restatement of the Responsum of Amram

The second responsum - the longer one - gives a far fuller explanation and clears up the confusion between twelve years as the beginning of na'aruth or as the end of the ketannah stage. There is a six month period between katnutha

and bogruth; twelve years and one day constitute the beginning of na'aruth and bogruth commences at twelve years, six months, and one day.³³ If the ketannah of twelve years precisely has produced signs of puberty, refusal is no longer sufficient; but she must have a bill of divorcement although in the technical sense of time she is still a ketannah. If the girl has completed twelve years and one day, even though she has produced no signs of sexual maturity, the girl is assumed to be a na'arah and needs the get. If the girl, however, had not been examined for signs of sexual maturity at precisely twelve years, she could have used her privilege of mi'un. The other materials in the responsum accord with the views of the similar one cited above.

Possible Confusion of NA'ARUT and BOGRUT

A passage from Sheeltot to Mishpatim (ed. Libermann manuscript, end of sec. 59) discusses the matter of the father who betrothed his daughter and the daughter who betrothed herself; the girl is now a bogeret, but it is not clear whether she was a na'arah or a bogeret at the time of the betrothals.³⁴ This is the controversey of Rav and Shmuel of b. Kiddushin 79a. In the discussion Samuel reasons that the signs came at the end of the six month and one day period while Rav says that since the girl is now an adult, the signs appeared in the morning of the last day of the period and she was a bogeret at that time as well. The stages in age are: ketannah, up to twelve years and one day; na'arah for the next six months

(twelve years, six months and one day), and afterwards bogeret.

Codal Material on Legal Ages

In the Codes, the Shulhan Aruk devotes an entire section to the laws of Refusal (///k'w) and is generally quite explicit on matters of the rights of relatives other than the father to betrothe and the terminology of ketannah and na'arah.³⁵ The minor who is an orphan or whose father no longer has power over her (by virtue of her previous marriage and divorce) may be married (by the court) with her consent by rabbinical injunction and may refuse the betrothal. However, if she is married without her consent, or she is not yet sentient and perceptive enough for betrothal, the betrothal is dissolved without even mi'un. In neither case is there a bill of divorcement. The girl who must dissolve by mi'un is the sensible girl from the ages of six to ten. She is investigated between these ages as to her good sense; if the girl is capable of sound good sense, she must refuse formally. If she is under six, no investigation is made nor refusal required - even for a bright child. However, if the girl is over ten, even if she is very dull and foolish, she must refuse formally. Isserles notes that there is a view that all this last applies only if she is married with the consent of mother or brother; only then does she need mi'un.³⁶

MI'UN Refusal in the Codes

In the section on Refusal, the laws of mi'un are amplified by a statement of "how long (i.e., up to what time) may a ketannah refuse?" The statement is that she has the option of refusal until she should produce two pubic hairs after her twelfth birthday or until she bears a child (pregnancy will also qualify her as an adult!). As long as the signs of sexual maturity are not present, she is considered a minor even though she may have produced signs of bareness. But if she is twenty and signs of bareness are present, she is considered an adult retroactive to her twelfth birthday.³⁷

If the father of a minor is not present and the mother or brothers betrothe the girl, the betrothal is valid and would need mi'un. Furthermore, when the father returns, no new kiddushin are required. The same passage cites the opposite opinion: however that there have been no kiddushin effected by the mother or brothers and no mi'un is in order; however in any case she would not be prohibited to the man by reason of harlotry since the couple had gone through the forms of betrothal and marriage. (presumably in good faith). Isserles adds that if the father comes and protests, there is no case of harlotry; and the groom may keep the girl with him until she is of age. However, if the father betrothed the minor to another, the girl requires a bill of divorcement from both. The first ruling is the more stringent according to Isserles, i.e., the girl would stay with the groom until

majority and the protest is no avail. Moreover, while the father is away the minor who has betrothed herself (no consent of mother or brothers mentioned) is doubtfully betrothed because the father may comply.³⁸

Finally, in the Shulhan Aruk, if the father betrothed his daughter in the morning and she betrothed herself in the evening on the final day of the six months of na'aruth, and she is a bogeret in the evening, she is assumed to have been a bogeret in the morning; the father's betrothal is of no effect.³⁹ Another opinion on this point is that the assumption of bogruth is only held when the woman contradicts the father's claim of betrothal; but when there is no such refutation or contradiction, a bill of divorcement is needed from both.

Chronological Age in the Codes

Unfortunately, Karo and Isserles apparently do not explain the precise meanings of ketannah, na'arah and bogeret as fully as does Maimonides. A girl from the time of birth until she completes twelve full years is called a ketannah. Even signs of puberty before this time are not considered. If she does produce pubic hair (even two) and she is twelve years and one day old, she is a na'arah for six full months. After the six full months, she is a bogeret from the beginning of the final day.⁴⁰ If the girl passes her twelfth year without signs of puberty, even though she has signs of bareness, she is still a ketannah until age twenty. When she does produce pubic hair, even at age twenty, she becomes a

na'arah for six months.⁴¹ This is a difference in wording from the Shulhan Aruk; Karo says the twenty year old becomes a gedolah, an adult; Maimon speaks of na'aruth. Childbearing is also considered a sign of sexual maturity.⁴²

A betrothed minor no longer under her father's power, who is less than six, does not need mi'un; if she is over ten, though she be dull, she must make formal refusal. From six to ten the girl's intelligence is examined; and if she is sentient, she needs formal mi'un.⁴³ The mi'un is effected by the oral statement "I do not want him," and no bill of divorcement is needed since the betrothal is rabbinical and not biblical. The betrothal would be in a quasi status until the girl came of age and then would be complete.⁴⁴ These statements are also reflected in the later Shulhan Aruk in the section on mi'un (cf. note 35).

Minor Boys

We have looked at the materials concerning minor girls; but there are some geonic statements about minor boys and their kiddushin as well. A man who receives kiddushin from the father of a minor boy or from the boy himself has no kiddushin.⁴⁵ This comes up under the talmudic statement אין אדם קידשין בן חורין (only a person of legal age can appoint an agent) on b. Kiddushin 19a. There is another statement from the Ittur (ed. Lemberg sec. 3 par. 7) that a boy less than twelve (or eleven) years of age who betrothes has not made a legal betrothal.⁴⁶ There is another series of

statements in legal codes and responsa that invalidate kiddushin of a minor boy.⁴⁷ For instance, if an eight year old has betrothed a girl and later sends wedding gifts (after he is thirteen), the gifts are not considered kiddushin. He must re-betrothe when he is of age. Furthermore, a father cannot betrothe an adult son without his knowledge nor can the father of a minor boy betrothe his son.⁴⁸ A minor less than nine years and one day (cf. Lewin's note 8, the implication is that over this age the boy's betrothal is valid) who betrothed a minor girl who refused the betrothal needs no bill of divorcement; the boy's betrothal is invalid, and the girl has already refused. Why mi'tun should even by a question in this case is not mentioned in the terse statement.⁴⁹

In the Halakot Ketzuvot (no edition cited), there is the statement that a minor boy has no power to make kiddushin; but when he is thirteen and one day, he is responsible for what he has done.⁵⁰

Re-Betrothal at Age Thirteen

If a minor boy has betrothed, the betrothal is invalid according to the Halakot Gedolot (ed. Warsaw, sec. 3, col. 1); when he is thirteen years and one day, he gives other kiddushin. If he has sexual intercourse after he is thirteen and one day, and wishes to divorce the woman, not having given her kiddushin nor written a new ketubah, he must write a formal bill of divorcement since אין נשואין נשואין בלא כסף וקניין (intercourse is practised [only to effect betrothal] not for harlotry).⁵¹

There is one last statement ascribed to Jehudai Gaon that a boy of nine years and one day may not effect valid betrothal, even if he should send gifts after he is of age (thirteen). He would have to give new kiddushin when he became thirteen and one day and produced two pubic hairs (the only mention of male signs of puberty so far!) If there are children to the union before betrothal, they are not mamzerim.⁵²

Codal Material on Minor Boys -
Chronological and Biological Factors

Maimonides states simply that a minor boy may effect no betrothal and that a boy is a minor from birth until age thirteen; appearance of pubic hair is also mentioned as a factor in determining legal age. If he has reached age thirteen and produced at least two pubic hairs, he is an adult; if he attains to thirteen and shows signs of impotence (g' N), he is still a minor until one month before twenty years of age.⁵³

Betrothal Between Minors Effected by Themselves

Karo also holds that a minor has no right to effect betrothal, and a minor is prohibited to marry or to be married while yet a minor. However, if he did marry, he does not have to divorce; the woman may wait for him until he is of age apparently for the purpose of effecting a binding betrothal.⁵⁴ Wedding gifts, according to Karo, sent by the groom after his majority are not regarded as kiddushin. However if he had intercourse with the woman, she needs a bill of divorcement

for without any specification or explicit statement (KEN. D. H. 3). the intercourse was for the purpose of betrothal.⁵⁵

Criteria for Legal Age

The complete discussion of a woman's legal age in the Codes is not matched by similar passages for men. Neither codifier apparently refers to any criteria of a boy's legal age outside Maimonides' brief mention of thirteen years and the appearance of pubic hair at that time. Voice change, beard growth, or other stages or sign of puberty are not involved in the legal majority of a male.

While there seems to be only the briefest statement of legal criteria for a man's legal age, both codifiers do mention the eighteenth year as the fitting and desirable time for marriage according to the mishnah at the end of Chapter V of Pirke Abot.⁵⁶ Of course, one who marries between the ages of thirteen and eighteen follows an especially meritorious course, and one who refrains from marriage past the age of twenty may be compelled by the court to take a wife. The exception is the devoted student of Torah who may remain a bachelor. However desirable and appropriate the eighteenth year may be considered by Maimonides and Karo, Isserles notes in the name of Issac bar Sheshet that the court did not enjoin marriage at the age eighteen or at a later age and had not done so for some time.

NOTES

1. Lewin, Otzar haGeonim, Kiddushin, p. 111, Nos. 246-249 and notes.
2. Ibid., no. 246.
3. Ibid., p. 3, no. 8 and notes.
4. Even haEzer 37:1, 2, 4, 11. First opinion Hilkot Ishut 3:11, 12, 13.
5. Lewin, op. cit., p. 197f, Nos. 438-440 and notes.
6. Ibid.
7. Even haEzer 37:5.
8. Lewin, op. cit., p. 126, No. 285.
9. Ibid., p. 125, No. 284 and notes. Teshubot HaGeonim, Harkavy, p. 87, sec. 194.
10. Lewin, op. cit., p. 126, No. 286 and notes.
11. Even haEzer 36:1, 10, 11.
12. Hilkot Ishut 3:15.
13. Even haEzer 35:3, cf. Ba'er Hetev 7.
14. Lewin, op. cit., p. 126, No. 287 and notes.
15. Ibid., cf. footnote 4.
16. Even haEzer 36:11, cf. Be'er Ha-Golah 200 to this passage for geonic source.
17. Lewin, op. cit., p. 153ff. Nos. 353 and 354 and notes for their sources.
18. Ibid., No. 354, note 2.
19. Even haEzer 37:25, 26. Issure Biah 18:24.
20. Lewin, op. cit., p. 124f, No. 283 and notes referring to Shaare Zedek, col. 7, par. 1. This is in the name of R. Zemaq, possibly Zemaq bar Rabtai, Pumpedita c. 872.
21. Even haEzer 45:1.
22. Lewin, op. cit., p. 125 and notes.

23. Ibid., p. 127, No. 288.
24. Lewin, op. cit., pp. 119-123, Nos. 269-276 and notes. The citations in geonic and post-geonic sources are numerous as follows:
 #269 Alfassi citing R. Aha Meshabha, Halakot Pesukot, Halakot Gedolot, and Hai Gaon as the great early masters.
 #270 Halakot Gedolot (ed. Venice) Kiddushin chap. 3, sec. 74 and note.
 #271 Ittur (ed. Lemberg) sec. 1, p. 33, col. 2.
 #272 Ittur (ed. Lemberg) 33 col. 3.
 #273 Ginze Kedem, sec. 5, pp. 113-114 from the responsa of Sherira. cf. Lewin's notes.
 #274 Sheeltot to Mishpatim, sec. 59. According to the Liebermann manuscript.
 #275 Novellae of Adret for b. Kiddushin 45a.
 #276 Halakot Gedolot (ed. Warsaw) chap. 3, col. 4.
25. Ibid., p. 120, No. 271.
26. Ibid., P. 119, No. 268, cited from midrash Sechel Tob, p. 90.
27. Even haEzer 37:11, the first opinion and Hilkot Ishut 3:13. cf. also Even haEzer 37:4.
28. Hilkot Ishut 3:13.
29. Even haEzer 37:11, 12.
30. Lewin, op. cit., p. 123f, Nos. 277, 282 and notes.
 #277 Cited as geonic material found in Sefer haYashar of Rabbenu Tam, sec. 594.
 #278 Halakot Gedolot (no edition) Kiddushin.
 #279 Abridged Teshubot of the Geonim, sec. 221.
 #280 Sha'are Zedek 17b from Responsa of Mav Rav Zemah Gaon. Lewin does not have this responsa ascribed to anyone.
 #281 Midrash Sekel Tob, p. 88.
 #282 Assaf, Sifrut haGeonim, p. 117, also in Ginzberg, Geonica in the list of responsa p. 67. Notes ascribe

responsum to Jacob bar Mar Rav Nissim inquiring of
Sherira Gaon and Hai Av Bet Din.

31. Lewin, op. cit., Yebamot, p. 223, No. 557 and notes.
32. Ibid., pp. 223-227, No. 558 and p. 227, No. 559 and notes to both.
33. Ibid., No. 558, cf. especially note 9, p. 226.
34. Ibid., Kiddushin, p. 197, No. 440.
35. Even haEzer, section 155.
36. Ibid., 155:1, 2.
37. Ibid., 155:12.
38. Ibid., 37:14.
39. Ibid., 37:5.
40. Hilkot Ishut 2:1, 2.
41. Ibid., 2:2.
42. Ibid., 2:9.
43. Ibid., 4:7.
44. Ibid., 4:8.
45. Lewin, op. cit., p. 37, No. 94 and notes.
46. Ibid., p. 132, No. 299. Cf. also volume Ketubot, No. 559 and notes to both.
47. Ibid., Yebamot, p. 191, Nos. 458-461 and notes.
48. Ibid., No. 458.
- 49., Ibid., No. 459 and notes.
50. Ibid., No. 460.
51. Ibid., No. 461.
52. Ibid., Ketubot, p. 222, No. 560.
53. Hilkot Ishut 4:7 and 2:10, 11, cf. also Even haEzer 43:1 and Isserles' gloss thereto.
54. Even haEzer 43:1.

55. Ibid.

56. Even haEzer 1:3 and Ba'er Hetev ad. loc. which cites Maimon, Hilkot Ishut beginning of Chapter 15. See also Ba'er haGola ad. loc.

CHAPTER II

"MEKUDESHET LI"

The wedding ceremony, the blessings,
ritual, and liturgy through which
betrothal is made formal and proper.

This section of our examination of betrothal law will look into matters concerning the ceremony itself. The fundamental areas are the order of service, the betrothal formulae, blessings, and some mention of a ritual quorum of ten.

Sequence of Ceremony

One responsum ascribed to Hai Gaon (11th century, Pumpedita) presents the elements of the geonically sanctioned betrothal ceremony; in fact, any other sequence of ceremony is not regarded by the respondent, since betrothal is effected with "rabbinical consent and approval."¹ The order of service - ascribed to Jehudai Gaon (8th century, Sura) - is called the Babylonian method: with a ketubah, signatures of witnesses, and the betrothal blessing. The custom of betrothal in a public place without ketubah or blessing, although binding as a legal betrothal, had caused a great deal of financial loss and argument. The custom of such simple betrothal was not, according to Hai, current in Babylonia for over 100 years. The respondent mentions the custom of betrothal at a party, formerly current in Chorosan, that also eventuated in legal arguments and inconvenience. As a result of the Chorosan law suits over betrothal without ketubah or blessing, Jehudai Gaon prescribed the elements of the betrothal. Any other custom, concludes Hai, is improper; and anyone acting thus improperly may be fined: rather strong words.

Elements of Betrothal Ceremony

There is another responsum that clearly states that ketubah and the blessing for betrothal were elements of the 'erusin, not of the huppa and nissuin (nuptials).² The custom of betrothal without a blessing of erusin is unknown to the respondent. If the betrothal, according to the responsum, is effected by the groom who recites a betrothal formula (cf. this section on formulae acceptable for betrothal) and gives the woman suitable keseif kiddushin, the betrothal is certainly valid; but it is better to have the blessing at this time and not to postpone it until nuptials. However, the betrothal blessing, unlike the wedding blessings (הבדלה הנדה הקידושין cf. below) may not be recited after consummation.

Wedding Blessings at Betrothal

Another responsum notes the custom that certain lewd men would be alone with their brides after the recitation of only a betrothal blessing; therefore, the question is whether or not the seven wedding blessings may also be recited at the betrothal.³ This responsum is ascribed in Sha'are Zedek (no edition given) 19b, sec. 14, to Mahshon Gaon. (Sura, 9th century); in Lewin's text, it is credited to Hai Gaon. The questioner is answered with a statement of the custom at the time of the betrothal: the woman is asked (if a na'arah) if the marriage could be consummated, i.e., she were not menstruating. If it cannot be consummated, only the betrothal blessing is recited for modest or lewd people. Another version of the responsum

says that the seven blessings are not recited until huppah.⁴ A third version of the same responsum states that the seven blessings were recited at the huppa along with the erusin betrothal blessing when the marriage could be consummated. Otherwise, only the betrothal blessing was recited; the seven blessings were postponed until nuptials.⁵ In two alternate versions of the responsum, we find this custom of reciting the betrothal blessing and the seven blessings if the marriage could be consummated; and if not, postponement of the seven blessings until huppa is stressed as the two yeshivot. The betrothal and marriage ceremonies may well have been held at the same time according to the sense of these statements.

In the Hilkot R'eu the sequence of betrothal is set forth as kiddushin, then the kiddushin blessing.⁶ The Ittur (ed. Lemberg, sec. 2, chap. 7, par. 72) includes a statement credited to Aḥa Gaon (Sura, 8th century) that the betrothal blessing should, as noted in Hilkot R'eu above, follow the giving of kiddushin.⁷ The reason given is a comparison with the blessing of t'vilah. In a case of t'vilah and kiddushin, no blessing could be recited, according to the respondent, unless the mitzvah had been performed. The blessing would apparently be vain if before the act. The principle of blessings לפניו עושה (while the act is performed) is not held in this case because of the similarity to t'vilah.⁸

The betrothal blessing is followed by the giving of the ketubah; but not until the couple is at the huppah are

the seven wedding blessings recited.⁹ This is also cited from Hilkot R'eu p. 84 (edition cited) p. 84.

Unnecessary Blessings

One inquirer asks about the propriety of a custom current in his neighborhood in the case of betrothal.¹⁰ The custom is as follows. The groom delays giving the kiddushin (stated clearly as a ring) until two or three days before huppah. On the eve of the wedding day, the groom and his attendants escort the bride and her party to a courtyard until the morrow. When the bride is led to the groom on the next day, the seven blessings are recited; next, the bride is escorted to the husband's home amid general rejoicing, the seven are recited again. Finally she enters the huppah (where presumably the seven benedictions are once more recited.) The problem is over unnecessary blessings. (2112 2/4/22 2222)

The custom is rejected as groundless. The law of the sages is clear on the matter; the seven blessings should not be recited until the bride is at the huppah. The custom of the inquirer should be stopped; but if it cannot, there may be some support based on b. Ketubot 8a "(from when may the blessing be recited?) from the time they are occupied with the wedding feast." The best custom is to recite the seven blessings only at the huppah.

Importance of HUPPAH

The huppah itself, while a part of the nuptials rather

than the betrothal, has been mentioned several times already. Let us then note a few short responsa on the significance of this element of Jewish marriage in order to see part of the geonic attitude toward it. The Ittur (no edition cited) on the Birkat Hathanim cites Hai Gaon's statement that huppah is necessary and a proper custom since a betrothed woman is not permitted to her husband until she enters the huppah.¹¹ From the responsa already cited that, as it were, accept matter-of-factly the institution of huppah plus Hai's statement of its necessity and propriety, it would seem to be a current and observed custom. However, we have seen that huppah is not a means of betrothal (cf. below p. 7). There is one responsum that obviates the need for a formal huppah.¹² The case is that kiddushin have been effected, a ketubah written, all the betrothal and wedding blessings recited; but there has been no huppah and she is in her father's house. Is the groom under these circumstances allowed to be alone with her? The answer is definitely affirmative. A formal huppah was in this case not felt to be required.

One responsum, ascribed to Moshe Gaon (possibly R. Moses Kahanah bar Mar Jacob, Sura 9th century), and cited from Geone Mizrah u' Maarav sec. 37, scores the practice of allowing too much time to intervene between betrothal and marriage, especially in the case of betrothing a minor girl and waiting overlong before huppah.¹³

explicit.¹⁵ A responsum of Abai Gaon holds this as well; but since the passage is taken from a post-geonic source, an opposite view of Samuel Ha'nagid is included that the ten men are only required to be present for recitation of the seven wedding blessings.¹⁶ Three other responsa restate the necessity of the quorum of ten for the seven wedding blessings.¹⁷

Betrothal Blessing

In regard to the betrothal blessing itself, Sherira Gaon informs us that one who would omit it thereby omits a mitzvah; and one who would recite it at the time of the seven wedding blessings has transgressed the prohibition against vain blessings.¹⁸ R. Nissim, the North African scholar a generation later permits the betrothal blessings with the seven blessings.

The betrothal blessing is stated clearly on b. Ketubot 7b: וְהָיָה כִּי יִשְׁמַע הָאָדָם אֶת הַקּוֹל וְהָיָה כִּי יִשְׁמַע הָאָדָם אֶת הַקּוֹל R. Aba, the son Rava, in the name of R. Judah concludes the blessing וְהָיָה כִּי יִשְׁמַע הָאָדָם אֶת הַקּוֹל. The text of the blessing was a source of some confusion; three versions of one geonic statement hold that the word נִשְׁמַע - married women - is not recited according to the custom of the yeshiba.¹⁹ Two other versions would emend the blessing, one version to וְהָיָה כִּי יִשְׁמַע הָאָדָם אֶת הַקּוֹל and the other to וְהָיָה כִּי יִשְׁמַע הָאָדָם אֶת הַקּוֹל. The seal of the blessing caused some difficulty as well. One questioner asked about two possible seals: 1) וְהָיָה כִּי יִשְׁמַע הָאָדָם אֶת הַקּוֹל or 2) וְהָיָה כִּי יִשְׁמַע הָאָדָם אֶת הַקּוֹל.²⁰ The answer is

rather startling since the respondent says only לפניך רבנו is proper and the additional phrase is entirely superfluous; furthermore, it is best for the questioner to adopt the generally approved custom of the respondent which is approved in the two yeshivot. The respondent says that R. Aha bar Rova's seal to the blessing did not include לפניך רבנו. Other variant readings of the seal are in the Seder Rav Amram sec. 2, p. 404, לפניך רבנו and Sheeltot לפניך רבנו.²¹ The Hilkot R'eu gives this version of the blessing לפניך רבנו

לפניך רבנו.²² A Responsum of Sherira Gaon does not clarify the different views on the seal of the betrothal blessing, but rather submits what is apparently a different version of it entirely: לפניך רבנו

Precentor

There are a few more words in the geonic material of this project that touch on the betrothal blessing per se. According to Sherira Gaon, the precentor may recite the betrothal blessing on behalf of the groom; and the groom need not repeat it.²⁴ In this same vein, Sar Shalom Gaon (Sura, 9th century) permits the groom to recite the blessing if there is no expert present to recite it; otherwise, the expert should recite the blessing that the groom may not appear to be a showoff.²⁵

Wine Blessing

The final word concerns a blessing over wine in relation to the betrothal blessing. In the Prague edition of Abudraham 113b, cf. also Seder Rab Amram, sec. 2, 203a), the betrothal blessing is preceded by a blessing over wine and a blessing over spices (according to Saadia Gaon).²⁶ Three versions of a geonic responsum permit both betrothal and wedding blessings to be made over the same cup of wine.²⁷ According to Lewin's footnote, in which he quotes Magen Aboth by Meiri "Inyan Ha'Shem", pp. 30-32, some betrothal and wedding ceremonies were thought to have been combined into one ceremony some time during the geonic period.²⁸

The next major area of the form and contents of the wedding ceremony will be the seven wedding blessings which have already been mentioned several times. Although these blessings are technically part of huppah and nissuin, they are often considered with material on betrothal so that we would not be far afield by considering geonic material on them especially when there is evidence that nuptials and betrothal may have occurred at the same time. However, before we proceed with this examination, we must take into account the Codal material touching the geonic statements up to this point. So far, we have refrained from citing Codal material in this section. Since we were considering an order of service and its contents, it has been easier to combine the relevant references in one series so that a clearer picture of the betrothal ceremony as a whole could emerge. So let us now

consider Karo-Isseles and Maimonides and their rulings on the form and contents of a Jewish betrothal ceremony.

Codal Material on Order of Betrothal

The formal sequence of betrothal (erusin) prior to nuptials (nissuin) is not mentioned explicitly in the major codes, but the general sequence of events is clearly indicated in the Shulhan Aruk which states that the betrothed woman is prohibited to have sexual connection with her groom, she still being in her father's household, until the groom takes her to his home and be alone with her. This private interview in the husband's home is the essence of huppah.²⁹ The element of huppah concludes the legal requirements for the marriage ceremony, and the woman is thereby married in all respects; the first opinion in the Shulhan Aruk 61:1 holds this way provided the marriage could be consummated; otherwise, although there is huppah, she is still only betrothed. The second opinion considers the woman betrothed only insofar as she may wish to collect the additional ketubah.³⁰ The first stage is manifestly the betrothal, and the second is the huppah. Furthermore, the transmission of the ketubah document does not conclude the marriage as does huppah.³¹

KETUBAH

The ketubah, while a separate study from our present considerations, was a definite part of the ceremony and the groom was not permitted as a general rule to live with the

bride until he had prepared a ketubah. Isserles alludes to the practice of reading the ketubah at the huppah.³² Finally, the original point, that the betrothal may properly occur some time prior to the nuptials is well attested in the Codes.³³ So we have the elements of betrothal, ketubah at the huppah, and huppah fairly well in the standard sequence familiar in modern usage.

As we saw in the geonic materials and in the Codes, the huppah concludes the marriage only when the marriage may be properly consummated (cf. note 30); however, this view is greatly modified, and the huppah of a menstruant woman is legal and valid, although it is better to wait until she is again clean. The custom of waiting was not current at the time of the Shulhan Aruk; and Maimonides, though he says the wedding blessings should not be recited for a niddah, does not require a repetition of the blessings nor apparently of the huppah.³⁴

The geonic materials permitted the betrothal blessing to be recited if the bride were ritually impure but not the wedding blessings (cf. notes 3, 4, and 5 above). So far we have not looked at the Codes' view towards wedding blessings for the menstruant. The Codes are clear on the huppah and wedding blessings but make no apparent reference to the case of a menstruant and the betrothal blessing.

Codal Material on Betrothal Formulae Valid and Doubtful

We have seen the betrothal formulae considered appropriate by the geonim. Maimonides states that the formula,

whatever it may be, must convey the clear meaning that the man betrothed her to him and not that he was betrothed to her.

The following formulas are acceptable: הריני מקדש אתך
הריני מקדש אתך (Behold thou: art sanctified to me, [or] betrothed to me, [or] my wife with this...).

The relevant mode of betrothal (shetar, kesef, or biah) is mentioned. Also acceptable are קנייך אתך
קנייך אתך (Behold you are: my acquisition, mine, my possession, in my control, under obligation to me). Formulas similar to הריני מקדש אתך and the like are not acceptable. If the couple had been discussing marriage, the following formulas are of doubtful validity:

הרי את מקדשתך (you are my special girl friend, you are my designated one, you are my help, you are opposite me, my rib, my treasured one, under me, you are restricted to me, you are my possession [ufusati]). In any case, the formula may be made in any language that the bride understands and in a manner that conveys to her the clear idea of betrothal.³⁵ The Shulhan Aruk presents the same list of proper and improper betrothal formulae with the modification by Isserles, that follows Maimonides, that no explicit formula need be recited, if the general tenor of a conversation was on marriage. The groom could give the bride the kesef kiddushin in silence, provided they were discussing marital matters; and the betrothal would be proper.³⁶ Even if both parties are silent when the kesef is exchanged, if

both agree that it was for betrothal, it is considered valid. Isserles adds a phrase to the betrothal formula that is still part of the standard betrothal ritual היום נאמנה נא. No mention was made of it in geonic material, nor does Maimonides or Karo himself note it.³⁷

In regard to the betrothal blessing, Maimonides holds that one who betrothes must say the blessing first and then give the kiddushin.³⁸ If the kiddushin were given without the blessing first, he should not bless afterwards, for this would be a vain blessing. Maimonides here is counter to the geonic materials cited in this matter. RaBaD cites his custom which is the opposite of Maimonides' and in accordance with geonic materials although he does not cite them or refer to them: kiddushin and then the blessing.³⁹ The Shulhan Aruk sides with Maimonides on the sequence of events (blessing first then kiddushin); but the commentators here as well point out the other order of procedure while they however uphold Karo's view on the principle of היום נאמנה נא. Isserles notes that the betrothal blessing may be repeated at the time of nissuin, as may be the kiddushin themselves.⁴⁰

The text of the betrothal blessing itself occurs in both codes though in differing versions.⁴¹ Maimonides offers this statement: היום נאמנה נא

היום נאמנה נא
היום נאמנה נא
היום נאמנה נא

The Shulhan Aruk offers the following version: היום נאמנה נא

הוא יאמר ויברך את הברכה הוא יאמר ויברך את הברכה הוא יאמר ויברך את הברכה
הוא יאמר ויברך את הברכה הוא יאמר ויברך את הברכה הוא יאמר ויברך את הברכה

The Shulhan Aruk also notes the variant: הוא יאמר ויברך את הברכה. The versions differ from each other in several outstanding respects. Maimonides alone inserts הוא יאמר ויברך את הברכה. Maimonides and many geonim follow the talmudic seal הוא יאמר ויברך את הברכה הוא יאמר ויברך את הברכה. Karo cites the seal הוא יאמר ויברך את הברכה as his first choice with the "vaw" seal as second. The second version of the Shulhan Aruk is similar to the Seder Rav Amram reading הוא יאמר ויברך את הברכה. (cf. note 21).

Ambiguities Noted in Shulhan Aruk

The commentators to the Shulhan Aruk note that according to late decisions, the word והוא יאמר should be followed by הוא יאמר ויברך את הברכה. We noted that the geonim eliminated the word by custom since it was highly ambiguous in the context.

We have seen some geonic materials that require a ritual quorum of ten. The Shulhan Aruk also makes the quorum an a priori necessity; however if ten are not present for the recital of the betrothal blessing, it may still be recited, which, as we shall see, is not the case with the seven wedding blessings.⁴³ Maimonides simply says that the betrothal blessing should be recited in the same way that blessings are recited (over all mitzvot); he does not mention the necessity of the quorum in his direct discussion of the betrothal blessing.

As for the precentor's recital of the blessing in

behalf of the groom, the codes make a clear statement on this and both say that the betrothing agent (the groom or his agent) recites the blessing.⁴⁴ Isserles and Hagahot Maimuniot say that the custom is for another to recite the blessing so that the groom would not be embarrassed if he were not able to do it himself.

Wine Blessing in the Codes

Finally, before consideration of the wedding blessings, let us determine the Codes' opinion on the wine blessing with the betrothal blessing. Both Maimonides and Karo cite a wine blessing before the betrothal blessing as a custom. Wine or beer is appropriate; and if neither is available, the betrothal blessing is properly said by itself.⁴⁵

Wedding Blessings and Quorum

The seven blessings, the wedding blessing, are stated in part in the Talmud; six of the seven are stated while the seventh is a preliminary blessing over wine, b. Ketubot 7bf. The wine blessing is the familiar ברוך אתה יהוה אלהינו. The six wedding blessings cited in the Talmud are:

- (1) ברוך אתה יהוה אלהינו
- (2) ברוך אתה יהוה אלהינו
- (3) ברוך אתה יהוה אלהינו
- ברוך אתה יהוה אלהינו
- ברוך אתה יהוה אלהינו
- ברוך אתה יהוה אלהינו

- (4) שלוש קריאות בקולות חתן וכלה בשמחה
בא"י מנחם ציון בבנין
- (5) שאלה בשמחה ראשית באבות כשמחין וצירק בגין
צדן מקום בא"י מנחם חסן וכלה
- (6) בא"י אח"כ אשר הראה ששון ושמחה חסן וכלה אצל
אביו וצירק צירק וכלה אצל אביו אצל אביו וכלה
אצל אביו אצל אביו וכלה אצל אביו וכלה
אצל אביו אצל אביו וכלה אצל אביו וכלה
אצל אביו אצל אביו וכלה אצל אביו וכלה

The baraita in which these blessings are quoted also requires a ritual quorum of ten men for the recitation.

Wine Blessing in Geonic Material

In the college of Sar Shalom Gaon (Sura, 9th century) the custom was, the recitation of the blessings on the first day of the wedding celebration (when the groom brought the bride into the huppah) by a precentor appointed for the purpose. After the blessings, the precentor tasted the wine i.e., of the first blessing, preliminary to the six, gave the wine to the groom who drank, and who then gave the cup to the bride who drank. The recitation of the blessings would be repeated in the evening; the couple would be brought to a canopy and the blessings recited as they had been in the morning.⁴⁶

One responsum cited from HaIttim, p. 286 in the name of Hai Gaon asks why the blessings are not long blessings

according to the practice of R. Halifa who blessed six long blessings, which practice was rejected as law (cf. b. Ketubot 8a bottom).⁴⁷ The first reaction to the question is amazement; the matter is clear in the gemara; there is no law according to Halifa. Furthermore, once a law has been decided, we should not question the reasons for established law. The answer proper is that the blessings are long except for 132a 20/6 and the first 23/6 23/11. This is a case of not being able to shorten where the law is to have a long blessing and vice-versa. This is also the only responsum in which some direct statement about Karaism and the Karaite was found in betrothal materials. The reference was to the Karaite practice of elaborating on the blessings.⁴⁸ In any case, Hai concludes the two short blessings may not be lengthened by reason of rabbinic tradition.

Importance of Wedding Blessings

A responsum of Sar Shalom emphasizes the importance of the seven blessings.⁴⁹ He cites the first statement of Masebet Kallah, "A bride without the blessing is prohibited to her groom like a menstruant without immersion." The question came up in the situation where the menstrual flow begins while the woman is under the wedding canopy. The questioner wanted to know if the blessings could therefore be omitted. The answer was negative, but we shall take up this particular type of case more fully below.

Wine and Spice Blessings

Two short statements based on geonic material mention blessings over wine and spices. One of them mentions the wine blessing and the blessing וְהַבְרָכָה.⁵⁰ The other statement mentions that the wedding blessings are brought up to the number seven with the addition of the wine blessing; and on the authority of geonim, the number was certainly seven since they blessed the myrtle (spice).⁵¹ It may have been because the first וְהַבְרָכָה blessing was so short that there may have been some doubt about whether there were really seven, even with the wine blessing added. Therefore, a spice blessing certainly brought the number of blessings to full strength. Or perhaps the final two blessings could have been considered as one, thus requiring two additional blessings to make up seven (cf. below on the blessing וְהַבְרָכָה and note #60). We shall now consider the blessings in order.

Dr. Moses Mielziner in the Year Book of the Central Conference of American Rabbis points out that the use of cups of wine at the wedding ceremony is definitely post-talmudic. Certainly, it may be that the blessing over the wine was not a fixed customary part of the wedding blessings, but the use of wine at weddings from talmudic times as a beverage is well attested (cf. b. Berachot 31a). The wine drunk at the weddings would most probably be blessed by the pious and not merely swallowed. It is a short step from the mere drinking a cup of wine at a wedding, over which one blesses, to the inclusion

of the short wine blessing with the other six. Wine was, perhaps, so much a part of wedding festivities that no real and direct mention of a blessing for it would be necessary. It was simply something that was done: people blessed and drank wine on joyous occasions. Perhaps even before the close of the talmudic epoch it may have been the custom to take a cup of wine, bless it, and then begin the six wedding blessings. After all, it was a happy time and wine has been an ancient symbol of joy. Certainly by early post-talmudic times the wine blessing is too well established with the wedding blessings, as we may infer from the matter of fact references to it for it to have appeared suddenly.

The wine blessing is well documented in materials based on geonic material. R. Nissim says that it is a mitzvah to have a blessing over drink, wine or beer, (ידבוק הב כוס or סוס) among the wedding blessings.⁵³ The blessing, however, is not necessary for the betrothal rite; but it is a fixed and requisite part of the seven wedding blessings. There was a further custom to say the seven blessings with a wine blessing on the wedding morning in the presence of the יו"ד and also at the meal in the evening. There was some later opposition to recitation of the seven blessings before the meal; it was felt more proper to append them to the grace after meals at the wedding feast.⁵⁴ In the ninth century, Natronai Gaon mentions that erusin and nissuin blessings should have separate cups, but one is sufficient.⁵⁵

The most outstanding feature about wine and wine

those stated would be appropriate. The talmudic version, like the version today, is very short.⁵⁹

Zemah Gaon (Sura, 9th century) was asked about the fifth blessing in the talmudic order, הנה הנה. The question was whether it ended with the formula הנה הנה הנה (as per the talmudic statement, cf. above), and whether the last blessing (הנה הנה הנה הנה) began with הנה.⁶⁰ The custom in the two yeshivot is to seal הנה הנה with הנה הנה and to begin the final blessing with הנה. In Lewin's note #10 ad. loc. the incorrect seal for this blessing, הנה הנה הנה is cited.

Sherira Gaon was also asked for a ruling on the הנה blessing.⁶¹ The question concerned the seal; the two possible seals were הנה הנה הנה or הנה הנה הנה. The second seal follows the Gemara and R. Zemah Gaon whom the statement mentions. The custom of the questioner was to employ the seal הנה הנה הנה הנה! The question goes on, "If we are in error and הנה הנה and הנה הנה הנה have the same seal, how did this happen?" The gemara, let us note, differs in the seal for the last two blessings: הנה הנה הנה הנה; the questioner apparently is not aware of this change.

The answer is quite liberal. First of all, there should be no amazement that there are two similar seals in these blessings; there are two הנה הנה blessings that are similar. Further, the customary seal of the questioner is also a custom of the geonim; moreover, it is mentioned in the

Siddur of Saadia Gaon.⁶² So if this blessing seal is used, there is no need to repeat the blessing; but the language of the gemara is preferable. The gaon cites the current custom to close one blessing with שְׂפָרָה וְפָדָה and the second with וְשָׂרָה וְפָדָה. This is done because the first of the two is a blessing in reference to the joy of the two creations, Adam and Eve, in Eden; and the second is a direct reference to the bride and groom, "וְשָׂרָה וְפָדָה וְשָׂרָה וְפָדָה". The seven expressions of joy in the text of the last blessing correspond to the seven days of the wedding feast according to the geonic statement.

Grace After Meals and Wedding Blessings

Several geonic statements simply mention the practice of recitation of the wedding blessings during the grace after meals plus, apparently, the וְשָׂרָה וְפָדָה insertion in the וְשָׂרָה וְפָדָה וְשָׂרָה וְפָדָה if there are new guests present.⁶³ If there are no new guests present, then only the וְשָׂרָה וְפָדָה insertion and the final blessing of the six וְשָׂרָה וְפָדָה וְשָׂרָה וְפָדָה are used. The insert וְשָׂרָה וְפָדָה in the wedding banquet grace is, according to one geonic statement from the Seder Rav Amram (complete edition in sec. 2, p. 203a), the only mention of the wedding in the grace itself.⁶⁴ Under the talmudic notation that R. Papa began to insert the וְשָׂרָה וְפָדָה from the time of his son's betrothal (b. Ketubot 8a), two statements in geonic material permit the insertion in the grace both before and after the wedding itself.⁶⁵ Samuel b. Hophni (Sura,

11th century) is quoted in a decision that the 11th century may not be inserted in a betrothal banquet grace.⁶⁵

Codal Material on Wedding Blessings

The Codes, of course, mention the six blessings.⁶⁷ However, Karo does not apparently give the text of the blessings as do Maimonides and Jacob ben Asher. The texts in the Mishneh Torah and the Tur follow the talmudic version of the blessings except that Maimonides reverses the first 67/67 731' with 12122/622 602 in the Hilkot Berakot version. The Tur, the Mishneh Torah, and the Talmud agree exactly in the Hilkot Ishut version. The blessings should be pronounced before the nissuin and require the quorum of ten free adult males.⁶⁸

Maimonides and Karo both mention the custom of the wine or beer blessing for a total of seven; in addition, Maimonides mentions the spice blessing.⁶⁹ The repetition of the final blessing of the six wedding blessings at the grace after meals is mentioned in the Shulhan Aruk if there are guests present who were at the huppah, if the guests were not present at the huppah all seven are recited.⁷⁰ The repetition of the complete seven would of course require the quorum.

Legal Significance of Wedding Blessings in Codes

Maimonides and Isserles point out that the seven blessings although necessary, do not themselves constitute nissuin; and if omitted, the woman is married in any case.⁷¹ There was no apparent mention of a betrothal feast.

Betrothal on Sabbath and Repetition of Ceremonies

From the Halakot Gedolot, sec. 17, we have a responsum apparently on the matter of betrothal and marriage on Sabbath.⁷² The anonymous respondent declares the question unclear. If it is a matter of effecting betrothal and reciting the betrothal blessing on the Sabbath, it is of course prohibited, cf. b. Betzah 36b. If the betrothal was effected Sabbath eve while it was yet day, and the bride has not entered the huppah, this may take place on the Sabbath for the דבר היום may take place on Sabbath. The seven blessings may also, in this opinion, be recited on Sabbath.

In Assaf's Teshubot Ha-Geonim (cf. note #57) there is a question about a woman who was betrothed on a weekday and whose husband apparently wanted to re-enact the betrothal on Sabbath. This practice is completely rejected and proscribed.⁷³ It is apparently rejected in principle because there is a vain blessing and it is non-Jewish practice (דבר חז"ל). R. Hai Gaon was asked a similar question: it was customary in some places after Sabbath (morning?) prayer for the congregation to accompany the groom to his house and recite the seven blessings.⁷⁴ This was done because the majority of the congregation was not there on Friday. Hai answered that the custom was not in good taste, but it is not prohibited since the wedding blessings may be recited all seven days of the feast when there are new guests present. One entry recalls a custom of reciting the seven blessings twice prior to the marriage;

this custom is not approved - blessings should only be at the time of the marriage (cf. note 77, #61 under menstruation).

The Codes are quite clear that neither betrothal nor marriage may take place on Sabbath, because marriage certainly constitutes an acquisition of the bride's property, manufactures and windfalls.⁷⁵ Only one view allows betrothal on the Sabbath in the case of extreme emergency and embarrassment.⁷⁶

Menstruation and Wedding Blessings

Several responsa take up their major consideration the matter of menstruation in regard to the seven blessings.⁷⁷

The general sense of three responsa is that if a bride should begin her flow while she is at the canopy, she should leave the canopy and wait until she is clean (the seven clear days, שבעה ימי טהרה). This is the case since she is certainly not fit for intercourse at that time and consequently foregoes the pleasure of huppah. After the seven clean days, she is once again taken to the huppah and the seven wedding blessings are repeated. The groom remains under the huppah, even though the bride has to leave, until the seven blessings are completed (according to #66, cf. note 77). The repetition of the blessings is merely a "delayed marriage" פגישת שבעה ימי טהרה and not a vain blessing. A fourth responsum (#61 cf. note 77) cites a case in which the bride receives the seven blessings while a menstruant and also receives the cup (to drink the wine of the blessings), and then the seven are repeated at the huppah. This statement argues that the

repetition is proper if it occurs within the seven days of the wedding feast since they may be recited all seven days if there are new guests present; but if she is clean after the seven days, they are not recited at all. The Halakot Gedolot (ed. Warsaw p. 10, col. 3) permits a bride to drink from the cup of the blessing even though she has not yet immersed herself.⁷⁸ Apparently, the seven days of purification and the uncleanness effected by virginal blood are considered less strictly by the geonim, and the woman is allowed to use the cup.

We have already seen instances in the Codes where Jewish law permits blessings for menstruant women to be proper a posteriori (cf. note #34).⁷⁹ It is of course better not to marry a woman while she is in this condition. However, the law developed in such a way that the huppah of a menstruant was considered valid; and therefore the seven wedding blessings did not have to be recited prior to entering the huppah.⁸⁰

Virginity Blessings

The allusion above to virginal blood brings us to the last, perhaps accessory, heading of this section. A series of geonic statements discuss the virginity blessing that a groom would recite after finding the tokens of his bride's virginity.⁸¹ The series of statements is listed under the talmudic mention of the verse from Psalms 68:27 about the "fountain" or "source" of Israel, b. Ketubot 7b. The m'kor is associated with the vagina and matters concerning sexual

The blessing itself has no talmudic basis and is only a rabbinic tradition according to #48. The version given of the blessing is the same as the first version cited (#44) except that it ends with רפּר instead of ר'קא. This passage is followed by a statement of R. Nissim, apparently based on geonic material, that requires preliminary blessings over wine or beer before the virginity blessing. Finally, the last statements, both versions attributed to Maimonides, refer to this blessing as the most repulsive sort of custom and one which a pious man would certainly shun. In fact the blessing is vain, and one version cannot even account for its origin.

Codal Material on Virginity Blessings

The only codal reference to this blessing, apparently, (keeping Maimonides' antipathy to it in mind!) occurs in Karo's Shulhan Aruk.⁸² The blessing is mentioned in this version:

"There are those who say that after one has found the tokens of virginity blesses: לוי רפּר קא גלח וְר'קא

It would seem that the full text of the blessing is well known.

The B'aer Gola cites Asheri in a statement that the geonim initiated the custom of this blessing; and the comment also notes that Solomon Luria wrote that the custom is no longer practised. This last is also cited in Luria's name in the Ba'er Hetev. Another later authority, the Bet Shemuel, says this blessing may be recited without the formula's of God's name and sovereignty (וְיִשְׁמַח בּוֹ) on authority of the

Bait Hadash of Joel Sirkes. There is, at least in our times, ample precedent to dispose of this rather sanguine custom.

We noted above (cf. note 28), that there well may have been instances in which betrothal and nuptial ceremonies were combined in geonic times. Let us also recall that the betrothal could be repeated, according to Isserles, at the huppah so that the entire sequence of marriage ceremonies would occur at the same occasion. This is also the indication of Karo's and Isserles' statement that betrothal and wedding blessings have separate wine cups, even if the betrothal and wedding take place at the same time with the interruption of the reading of the ketubah between them.⁸³ This is the current general form of the modern traditional Jewish wedding, kiddushin, ketubah and nissuin - (huppah).

SHIDDUKIN

One final word. Ordinarily, the practice of shiddukin, prior arrangements to the betrothal, would be a part of the sequence, form, and content of a wedding. However, questions concerning shiddukin are treated under other headings in modes of betrothal or legal status of contracting parties. Apparently, they did not figure in any liturgical matters touching the ceremonies requisite for proper marriage in geonic times.

NOTES

1. Lewin, Otzar haGeonim, Ketubot, p. 18f, no. 60 and notes. Cf. also b. Ketubot 3a. This responsum is cited from Assaf, Teshubot Ha'Geonim, sec. 1, par. 113, among others. This same responsum is also found in Lewin's volume of the Otzar on tractate Kiddushin, p. 133, no. 301.
2. Lewin, op. cit., Ketubot, p. 18, no. 59 and notes. Cited from Assaf, op. cit., sec. 1, par. 45.
3. Lewin, op. cit., p. 20, no. 62 and notes. Cf. also the other versions of the same responsum cited from the Ittur (no edition cited) sec. 2, chap. 7, col. 4.
4. Ibid. The second version is ascribed to Natronai Gaon.
5. Ibid.
6. Ibid., p. 22, no. 67 and notes.
7. Ibid., p. 22, no. 68 and notes. Cf. also the parallel versions.
8. Ibid., see parallel versions.
9. Ibid., p. 17, no. 58 and notes.
10. Ibid., p. 19f, no. 61 and notes. Cited from Harkavy, Teshubot Ha'Geonim, sec. 65 from Responsa of Sherira and Hai.
11. Ibid., p. 24, nos. 72 and 73 and notes.
12. Ibid., p. 17, no. 57 and notes.
13. Ibid., Yebamot, p. 166, no. 380 and notes.
14. Ibid., Kiddushin, p. 5f, no. 13 and notes. This is cited from Shaare Zedek 17a, sec. 4.
15. Ibid., Ketubot, p. 13, no. 40 and notes.
16. Ibid., no. 41 and notes. This is cited from the responsa (?) of Asheri.
17. Ibid., nos. 37, 38 and 39.
 #37 is cited from Hilkot R'eu, p. 84.
 #38 is cited from Midrash Tehillim to Psalm 92, ed. Buber.

#39 is cited from Shittah Mekubbezet.

18. Ibid., Ketubot, p. 51, no. 16 and note. This is cited from Shilte HaGibborim to Alfassi ad loc.
 19. Ibid., p. 23, no. 70 and notes. One version is credited to Hai Gaon taken from Shittah Mekubbezet; one is cited from the Novellae of Mahmanides ad loc.; the last is cited from the Iftur (ed. Lemberg) sec. 2, p. 27.
 20. Ibid., p. 23, no. 71 and notes. This is cited from the Ginze Kedem, sec. 4, p. 47. Part of the material is ascribed to Hai in the Novellae of Mahmanides. cf. Lewin, op. cit., note 9.
 21. Ibid., notes 6 and 7.
 22. Ibid., p. 22, no. 67 and notes.
 23. Ibid., p. 16, no. 54 and notes.
 24. Ibid.
 25. Ibid., p. 16, no. 53 and notes.
 26. Ibid., p. 25, no. 76 and notes.
 27. Ibid., p. 26, nos. 82 and 83 and notes.
 #82 is cited from Halakot Pesakot in the name of Matronai Gaon.
- #83 is cited from Teshubot HaGeonim of Koronel.
28. Ibid., cf. note 4.
 29. Even haEzer 55:1, Hilkot Ishut 10:1,2 and Even haEzer 61:1, 2; 10:6.
 30. Hilkot Ishut 10:6, and Even haEzer 61:1.
 31. Even haEzer 55:6, Hilkot Ishut 10:11.
 32. Even haEzer 66:1 and 55:3 and cf. Hilkot Ishut 10:7,10.
 33. Even haEzer 56:1, Hilkot Ishut 10:17.
 34. Hilkot Ishut 10:6 and Even haEzer 61:1,2.
 35. Hilkot Ishut 3:1-8.
 36. Even haEzer 27:1-4 cf. also Hilkot Ishut 3:8. The entire section 27 discusses the variations in formulae of betrothal, but these citations are enough for a clear picture of acceptable material.

37. Ibid., 27:1.
38. Hilkot Ishut 3:23.
39. Ibid., RaBaD, ad loc.
40. Even haEzer 34:1, 3 and Bet Shemuel ad loc., #1.
41. Hilkot Ishut 3:24 and Even haEzer 34:1.
42. Even haEzer 34:1 Ba'er Hetev ad loc.
43. Ibid., 34:4 Ba'er Hetev ad loc.
44. Ibid., 34:1; Hilkot Ishut 3:23 cf. Hagahot Maimuniot ad loc. and Ba'er Hetev to the Shulhan Aruk citation.
45. Ibid., 34:2; Ibid., 3:24.
46. Lewin, op. cit., Ketubot, p. 27, no. 88. This is cited from Assaf Teshubot HaGeonim, sec. 1, par. 40.
47. Ibid., p. 29f, no. 97 and notes.
48. Ibid., note 12.
49. Ibid., p. 21, no. 66 and notes. Cited from Assaf Teshubot HaGeonim.
50. Ibid., p. 25, no. 75, and notes. Cited from Hilkot R'eu p. 84. In a manuscript the reading is הר"ה ר'ע"ה מן ה"ה ר'ע"ה
51. Ibid., no. 77. Cited from Kol Bo.
52. CCAR Year Book 1890-91. "The Marriage Agenda" p. 39.
53. Lewin, op. cit., p. 25, no. 78. Cited from Abudraham, p. 114, col. 3.
54. Ibid., p. 25, no. 80 and notes. Cf. especially note 13. This is cited from Maseket Soferim (ed. Muller) chap. 19.
55. Ibid., p. 26, no. 82 and notes.
56. J.Z.Lauterbach, "The Ceremony of Breaking a Glass at Weddings", Hebrew Union College Annual Vol. XI, 1925, pp. 351-380.
57. Lewin, op. cit., p. 1, no. 2 and notes.
58. Ibid., p. 26, no. 84 and notes. Cited from Ittur (ed. Lemberg) sec. 2, chapter 2, par. 73.

59. Goldin, HaMadrach, p. 20.
 60. Lewin, op. cit., p. 26, no. 85 and notes. Cited from Seder Rav Amram (complete), sec. 2, p. 204a.
 61. Ibid., p. 26f, no. 85 and notes. Cited from Ittur (ed. Lemberg) sec. 2, chap. 8, par. 72.
 62. Ibid., cf. Lewin's note #9.
 63. Ibid., p. 28, no. 92 and notes. Cited from Halakot Gedolot (no edition mentioned).
 64. Ibid., p. 25, no. 79 and notes.
 65. Ibid., p. 29, no. 95 and notes. Cited from Hilkot R'eu, p. 84 and Halakot Gedolot, beginning of the laws of Ketubot.
 66. Ibid., p. 29, no. 76 and notes. Cited from Or Zarua, sec. 4, (no edition noted).
 67. Maimonides Hilkot Berakot 2:11.
 68. Hilkot Ishut 10:3, 5; Even haEzer, 62:1, 4.
 69. Ibid., 10:4; ibid., 62:1.
 70. Even haEzer 62:4, 5, 7; Hilkot Berakot 2:10.
 71. Hilkot Ishut 10:5; Even haEzer 61:1.
 72. Lewin, op. cit., Ketubot, p. 28, no. 90, and notes.
 73. Ibid., p. 1, no. 2 and notes.
 74. Ibid., p. 28, no. 89 and notes. Cited from R. Jeruham.
 75. Even haEzer 64:5; Orah Haim 339:4; Hilkot Ishut 10:14.
 76. Orah Haim 339:4.
 77. Lewin, op. cit., p. 19, no. 61 and notes; p. 21, nos. 64, 65, and 66 and notes.
- #61 From Teshubot HaGeonim ed. Harkavy, sec. 65 from Responsa of Sherira and Hai.
- #64 Cited from Mordecai, beginning of chap. 5 of Ketubot.
- #65 Cited from Teshubot HaGeonim ed. Assaf, sec. 1, par. 34, ascribed to Cohen Zedek.

- #66 Cited from Teshubot HaGeonim ed. Assaf, sec. 1, end par. 34, ascribed to Sar Shalom Gaon.
78. Ibid., p. 22, no. 69 and notes.
79. Hilkot Ishut 10:6; Even haEzer 61:2.
80. Even haEzer 62:1; Ba'er Hetev ad loc.
81. Lewin, op. cit., p. 14ff, nos 43-50 and notes.
- #43 Cited from Halakot Gedolot, no edition or page reference cited.
- #44 Cited from Or Zarua, sec. 1, end of sec. 341 and in the Sheeltot of R. Aha.
- #45 Cited from Halakot Gedolot, beginning of laws of Ketubot.
- #46 Cited from Likkute Pardes (no edition cited).
- #47 Cited from Mahzor Vitry, p. 586 (no edition cited).
- #48 Cited from Teshubot HaGeonim ed. Harkavy, sec. 438, from the responsa of Hal Gaon to R. Judah ben Joseph of Kairowan.
- #49 Cited from Helkat Mehokek to Even haEzer end sec. 63.
- #50 Two versions: both from the Responsa of Maimonides, one from the Freiman edition and the other, Responsa to Spain (?) sec. 127.
82. Even haEzer 63:2, Ba'er HaGola ad loc; Ba'er Hetev ad loc.
83. Even haEzer 62:9 and 34:3.

CHAPTER III

"BETABA'AT ZO"

Types of consideration, offered for
betrothal: money, writ, and inter-
course and their implications.

In this chapter, we will examine materials relating to the methods of betrothal and the problems accessory to them. The modes of betrothal are formally stated in b. Kiddushin 2a, "A woman is acquired by three means... by money, by writ and by intercourse." This principle is noted and seconded in two responsa, one in particular stating that a Jewish man is prohibited from marrying until he first betrothes by one of three methods.¹

HUPPAH not for Betrothal

The huppah is not included as a means of betrothal in the Talmudah or in our later materials; there is geonic material to this effect cited from the Halakot Pesukot of Rav. Jehudai Gaon (Sura, 8th century) to the effect that the huppah is not a means of betrothal.² The geonic material is adduced by R. Nissim in his comment on Alfassi and is cited in the name of the Halakot Gedolot as well as the Halakot Pesukot.³ The codes also rule out the huppah as an absolute means of betrothal though there is an opinion that would make betrothal by huppah doubtful.⁴

Biblical and Rabbinical Origin of Forms of Betrothal

The forms of betrothal, money, writ and intercourse-- kesef, shetar, and biah - are all considered biblical in origin by Karo but only the latter two are considered biblical by Maimonides, with money betrothal considered rabbinical.⁶ Maimonides explains his reasoning in a responsum in which he

cites the geonic Halakot Gedolot as agreeing with him; the responsum also gives his theory of the oral law and the number of the mitzvot.⁷

The biblical bases for betrothal are discussed in a short responsum of Mar Rav Zemaḥ (Sura, 9th century) cited by Lewin from the Sha'are Zedek, in which the marital status effected by shetar and biah both are compared to the status of divorce mentioned in Deuteronomy 24:2, through the use of the verb root נ/נ in both divorce and remarriage situations.⁸

Betrothal by Intercourse

R. Jehudai Gaon and Mar Rav. Shmuel, the Resh Kallah (Sura, 8th century) have left a signed responsum stating that betrothal by intercourse constitutes a valid betrothal. This material is cited from the Halakot Gedolot (ed. Warsaw, chapter 4, Amud 1).⁹ Rabbenu Jeruham cites geonic material to the effect that intercourse constitutes valid betrothal on the principal that אין אדם נשואין אלא בראיה (no man engages in intercourse for the purpose of harlotry.)¹⁰ This last responsum requires that there be witnesses to the intercourse. This rather bold statement is unqualified in the geonic strata; but later literature in the codes, based on Talmud, (b. Kiddushin 65b), modifies the function of witnesses to that of witnessing the fact that bride and groom were alone together. The closeting of the couple is sufficient evidence on the part of the witnesses.¹¹ We shall hear more of betrothal

witnesses under betrothal by money consideration.

Nature of Intercourse

There are several responsa on the nature of the act of intercourse itself; does the first stage of sexual contact effect betrothal, or must the act be concluded? In the case of betrothal, the respondents decided that the conclusion of the act constituted betrothal whereas if there were a previous legal obligation between the man and the woman (kiddushin or yibbum) the first sexual contact was sufficient.¹² The responsa are cited in the names of Alfassi and Hananel respectively, but it is apparently assumed by the compiler that this material represents geonic opinion. Joseph Karo also holds that the conclusion of the act is necessary for betrothal unless the man explicitly says at the time of intercourse that he intends to betroth with the initial sexual contact. Maimonides says only that the man's intention in intercourse is upon the completion of the act.¹³

One responsum demonstrates the precision of the halaka to the highest degree. If a man is in the act of betrothing a woman by intercourse and she receives kiddushin from someone else during that time, she is betrothed to the second man, unless he should be the high priest, in which case there is no betrothal since at the time she was not a virgin! This responsum is quoted from Halakot Gedolot ed. Venice, beginning of the second column of the fourth chapter.¹⁴

Proscription of Betrothal by Intercourse

There is apparently no direct geonic proscription of intercourse betrothal. Although it is a biblical institution, and is after the fact legally binding, the codal literature rules out this form of betrothal ab initio. The practice has fallen into disuse and is punishable by flogging so that the Jewish community would not engage in lewdness.¹⁵

Betrothal by Writ

We found only one theme in the responsa of the geonim concerning kiddushin by writ of betrothal. The question is whether or not the writ must be prepared with the woman's knowledge to be valid.¹⁶ The weight of geonic law and custom (cf. note #16, no. 45) is apparently according to Rova and Rabina (b. Kiddushin 9b) who hold that a woman is betrothed by writ prepared for her specifically but not necessarily with her knowledge.¹⁷ This material is generally cited from geonic legal works or in the name of early geonim by early medieval authorities who apparently had access to geonic decisions. The dissenting opinion mentions the former decision in the course of argument and concludes by saying the matter needs further investigation: 111x p123.¹⁸ The substance of the objection to betrothal by writ without the woman's knowledge seems to be that dowry arrangements, which are secondary matters, do not need the woman's knowledge; but the writ of betrothal itself does require it according to b. Ketubot

102b and Rav Ashi's opinion. In any case, the statement of Natronai Gaon and anonymous authorities is quite strong that the woman does not need knowledge of the shetar erusin, however, the division of opinion is quite old (cf. footnote #17).

Maimonides, whose teacher Ibn Migash was a student of Alfassi - a dissenter from the apparent geonic view, holds with his teacher that the woman must have knowledge of the writ.¹⁹ Karo also requires the woman's knowledge for a valid shetar erusin or else the instrument would place her only in a doubtfully betrothed status.²⁰

Betrothal by Money Consideration

From the number of response, the method of betrothal by money consideration seems to have been the most common mode in geonic times. The amount of money stipulated is a perutah or its equivalent, according to Bet Hillel, opposing Bet Shammai (Mishnah Kiddushin I,1). The later codes also stipulate the perutah or its equivalent as the sine qua non for betrothal.²¹

Value of PERUTAH

The value of a perutah was on occasion difficult to ascertain, thus there were some cases of doubtful betrothal that appear in the geonic responsa literature. In the Warsaw edition of the Halakot Gedolot, chapter 3, column 1, the law is stated clearly that something given as consideration for betrothal must be worth a perutah in that same locality. If

it should happen to be worth a perutah in another locality, it is not considered as effecting betrothal.²²

If the consideration for kiddushin was in the form of perishables that were worth less than a perutah, the betrothal is doubtfully valid since market value of perishables would fluctuate from place to place.²³ This last passage is in the name of Maimonides who includes in his judgment the interesting view that:

... everyone who betrothes with some money value has effected valid kiddushin if the coinage is worth a perutah in that place; otherwise, the betrothal is doubtful. As in the case of other doubtful betrothals, the girl requires a bill of divorcement.

This responsum indicates that the divers coinage of the Middle Ages may have caused some doubt even with the small sums necessary for betrothals. This passage is based on geonic decisions and is paralleled in the Mishneh Torah.²⁴ Maimonides concludes the passage with his own logical and sensible argument that kiddushin in the form of perishables must be worth a perutah in that locality or else they are completely invalid. The reason given is that the perishables could not be taken to another place for appraisal before they would spoil. Karo supports this view in the Shulhan Aruk.²⁵

Debt Extension, Pledges, Sureties Used For Betrothal

The kiddushin affected by money consideration - the kese kiddushin - are complicated by situations in which an

actual sum does not change hands; but rather the betrothal is effected by the benefit of debt extension, pledges, securities on loans and the like. A very terse and anonymous responsum clarifying a statement on b. Kiddushin 48b, declares the law be as follows:

The law... (if a man betrothes by a loan (and also gives her) a perutah, his intention (is to betroth) with the perutah.²⁶

In the Warsaw edition of the Halakot Gedolot, Chapter II, Column 4, we find an anonymous responsum that states betrothal may be effected through the benefit accruing from loan extension; that is, if a man says to a woman, "Be betrothed to me with the benefit of the ten extra days I allow you to keep the loan," she is betrothed. This is apparently not considered interest but equal to the amount she would pay to a third party for the extension. This rule would apply where there is security on the loan and the loan is worth at least the requisite perutah.²⁷ Maimonides accepts the principle of Hanaat Milvah as valid for kiddushin (apparently ~~express facto~~) but prohibits kiddushin by this means as a form of usury.²⁸ The Shulhan Aruk also recognizes the legal possibility of betrothal by benefit of loan extension or remission, but it prohibits this because of its usurious overtones.²⁹

Betrothal by Borrowed Property Doubtful Cases

The compiler of the later work, Baal ha Sheelomo, quotes anonymous geonic sources to decide that an article

specifically borrowed for the purpose of betrothal effects kiddushin and the price of the article need not be stipulated. Mere borrowing, however, does not suffice.³⁰ There is another view, that comes to us from a period later (the time of R. Asher) than the geonic era, that questions the legality of kiddushin by means of a borrowed object, since it could be considered like a gift that is to be returned.³¹ This decision also gives the other view that an unspecified borrowing is for a term of thirty days, and the benefit the woman derives from the use of the object for thirty days is sufficient for kiddushin. There is further support for the second view adduced in the responsum from the Sefer Dinim of Moshe Cohen that betrothal with a borrowed ring is legal.

In one responsum, the comments of R. David b. Levi to the last chapter of Baba Bathra, on the question of betrothal with a borrowed ring, are cited.³² The view is that the borrower informs the lender of the use he intends to make of the object and also informs the woman of the price of the object. The borrower then is only required to repay the lender the price of the object (ring) after the betrothal has been completed. This is apparently based on geonic sources that may or may not have appeared in responsa literature. The citation that Lewin adduces is from Orchot Hayyim, Section 2, page 55.

Codal Opinions on Borrowed Property Doubtful Cases

The later codes treat the aspects of using borrowed property for kiddushin in two ways. In Shulhan Aruk, kiddushin

with a borrowed object are valid provided that the lender is informed of the purpose of the borrowing.³³ If the lender does not know, the kiddushin are of doubtful status. Again the Shulhan Aruk says that a woman could not be betrothed with a consideration of money that she would eventually have to return.³⁴ However, the Isserles gloss permits kiddushin by such a method if the woman gave the money to the man in order that he betrothe her with it! The gloss cites the further view of some that the benefit derived from a gift even though the gift itself had to be returned was sufficient consideration for betrothal. The Mishneh Torah apparently refers only to the case in which return of the object is a condition of the marriage; Maimonides rules that in such a case there is no betrothal no matter what is done: in one case, she receives no benefit; in another, a condition is not fulfilled.³⁵

Betrothal by Bride's Property and Prior Agreements to Betrothal Doubtful Cases

The kesef kiddushin was not always the pious and loving gift of the groom to his beloved. The consideration may have on occasion been taken forcibly from the bride herself or from others. The validity of the betrothal in such a case was apparently questioned, and there are several entries in Lewin's collection that refer to kiddushin effected through questionably acquired money. The validity of such betrothals depends on the presence of pre-betrothal arrangements: Shiddukin (we shall speak of Shiddukin again under another heading); and in

some cases, the true ownership of the object. In a case in which a man snatched a coin from a woman and recited the betrothal formula (presumably before proper witnesses) the betrothal is valid provided there were prior Shiddukin between them.³⁶ In the next responsum, (see note #30) the point is made that the property must belong to the woman and that there must be prior Shiddukin. A passage apparently based on geonic responsa is quoted from the Halakot Gedolot (ed. Warsaw, chapter 3, column 1) that follows R. Nachman's opinion in b. Kiddushin 13a.³⁷ The opinion of the responsa following Nachman is if a woman accepts some property that had been taken from her, she may legally say, "Yes, I took it, but I took what was mine"; there would be no betrothal provided there were no Shiddukin. However, if the woman agreed to the betrothal by vocal assent when the article was returned, the existence or non-existence of prior Shiddukin, is disregarded and she is betrothed. If she is quiet, she is betrothed if there were Shiddukin.³⁸

Stolen Property

In the Shulhan Aruk, betrothal with stolen property acquired by violence is valid only if the owners had given up hope of recovery.³⁹ The gloss of Isserles expands this view to say that betrothal effected with property stolen from non-Jews is valid since the obligation to return it is moral, not legal. If the property was stolen from the woman, continues the Shulhan Aruk, and the property is returned as consideration

for betrothal, if there were no Shiddukin and the woman remained silent, there is no betrothal. If, however, the woman agreed at the time of the return of the property or if there were prior Shiddukin and she said nothing, she is betrothed. If in a third type of case, the betrothal formula were recited after the property was returned, there is no betrothal even if she agreed, and even if there were Shiddukin. Maimonides' statements are substantially the same in the Mishneh Torah.⁴⁰

Betrothal by Deposit

Betrothal by keseif kiddushin presents a few more irregular cases. The Halakot Gedolot (ed. Warsaw, chapter 3, col. 3) quotes geonic sources in discussing betrothal by the value of deposit. If a man gives a deposit to a woman and says the betrothal formula immediately, she could not assent to the betrothal by either silence or vocal "yes". She may also reject them by a vocal "no". If the formula were recited after the deposit was given, the woman may assent with a "yes"; but if she is quiet then, it is a sign of rejection.⁴¹ The Gemara (b. Kiddushin 13a) cites a case in which a bunch of myrtle was given to the woman as betrothal consideration. The bouquet itself may not be worth the perutah, but coins concealed within it may be. Even though there is an analogy taken from the case of a deposit, in which silence after the deposit is not considered, in the case of the myrtle bouquet, there was kiddushin; and a bill of divorcement would be required. The bouquet may apparently have had sufficient value to effect

betrothal in some circumstances.⁴² This case of the myrtle is not the same as the case noted above concerning betrothal with perishable goods, and the market value of the myrtle at a given time may be adequate. The kiddushin effected by the myrtle bouquet are doubtful according to Maimonides and Karo and require all the strict rulings.⁴³

The later codes allow kiddushin by a deposit if it is worth a perutah. However, there is a betrothal only where the woman does not know the value of the deposit in case it had been stolen, etc., and she is willing to be betrothed with it.⁴⁴ Maimonides allows betrothal by a deposit if it was worth a perutah. If the betrothal formula is recited before the deposit is given, and the woman is silent upon receipt of it, she is betrothed. After the deposit is given, if the man recites the betrothal formula, vocal assent is required; silence is a sign of rejection.⁴⁵

Halakot Gedolot (ed. Warsaw, chapter 1, column 4) cites geonic material in support of the dictum of Rava in the name of R. Nachman (b. Kiddushin 8a) that a pledge in place of kesef kiddushin (in this case a maneh) is not sufficient for betrothal.⁴⁶ The Shulhan Aruk states that betrothal by a pledge for the kesef kiddushin is not sufficient; but the gloss would allow such a betrothal if she is allowed to acquire the pledge itself.⁴⁷

Debt Remittance

There is a final responsum appearing in Lewin's collection on betrothal that is fundamentally based on a money consideration. This is taken from the Warsaw edition of the Halakot Gedolot, chapter 1, column 4. In this case, a man who betrothes by remittance of a debt, upon which the woman placed a surety, effects valid betrothal through the value of the benefit of the surety that is returned (if equal to a perutah's worth).⁴⁸ The Shulhan Aruk supports this decision and even allows kiddushin to be in effect if the pledge is not returned.⁴⁹ Maimonides also permits such a method of betrothal.⁵⁰

More Doubtful and Conditional Betrothals

Let us now look at some further cases of doubtful and conditional betrothals. We mention them here since, for the most part, they arise as accessory points to the major topic, kesef kiddushin.

A number of responsa discuss the question of conditional betrothal and betrothals whose legality may come under question.

Strict View Taken

The tenor of the law demands the strict view to be taken so that a bill of divorcement becomes mandatory.⁵¹ In a discussion of the rights of the father to betrothe adult daughters, the presence of pre-nuptial gifts constitutes a sufficient

doubt to make formal divorce necessary.⁵² The opinion holds that the girl will in any wise comply with the wishes of her father, and therefore must accept the divorce or accept new kiddushin that are above legal challenge. However, the moral responsibility rests with the father to inform the adult daughter of his plans to betrothe her. This case is adduced in Lewin's collection from the Shaare Zedek, Tur 7, Sec. 1. The opinions are apparently based on geonic decisions, but there are no names of authorities mentioned to fix this material precisely at a particular time in the geonic epoch.

The text of this responsum refers to the questions of a ketannah and bogeret, and the power that the father has to betrothe a minor daughter. We have already commented at length on the complexities of ketannah, naarah, and bogeret in the discussion of the legal ages of women in relation to betrothal and marriage.

Wedding Gifts in Doubtful Situation

The responsum states that the groom sent gifts (נאמן) to the woman who had not appointed her father as her agent, implying that she is already an adult. The woman requires a bill of divorcement because she would be satisfied to be married with the least, that is, with any man, (באדם אחד) אם היא קצת provided that the groom sent gifts, and she said nothing or did nothing to hinder the proceedings. The groom should give new and unquestioned kiddushin, as we said above, however she could not marry another without a

bill of divorcement. There is another version of this geonic material from a later period (cited from the Tur, sec. 36, end) that requires a bill of divorce whether or not presents were sent.⁵⁴ There is another responsum that places the girl under her father's power even though the groom sent no gifts.⁵⁵

The Shulhan Aruk goes into more detail on the question of wedding gifts noting the comment of Rashi that the doubtful status of betrothal arises since the gifts might be considered as the betrothal consideration itself.⁵⁶ Isserles cites several authorities in this passage that allow the groom to state explicitly that the presents were only presents and in no way kiddushin, thereby relieving any suspicion of actual betrothal. If there was no prior shiddukin, then there is no doubtful betrothal in any case. Karo's basic view is that where the custom is to send gifts, there is some suspicion of betrothal even though the majority send gifts before the betrothal. If all are accustomed to send gifts before the betrothal, there is no suspicion in any case. Maimonides' statement is basically the same.⁵⁷

Father's Rights to Betrothe Daughters and Doubtful Situations

Other cases of doubtful betrothal were put to Saadia Gaon (Sura) of the tenth century.⁵⁸ Although these responsa are cited in the name of Saadia, they do contain material from a later hand; part of one (see note #58) is quoted from the Sheeltot of the Geonim and the Ittur (ed. Lemberg, Section

3, column 2). This case concerns the rights of the father to betrothe his daughters. The case arises under the statement in b. Kiddushin 51b:

... that one who betrothes "his daughter" and does not specify which one, does not include the adult daughter...

Apparently, the case in the responsum concerned minor daughters, although this is not stated directly. The decision is that the groom who says an unqualified "behold your daughter is betrothed..." must by law prepare bills of divorce for all the daughters, if there be more than one. There is, however, in one responsum, a precedent of R. Aha Mishabha (Sura, 8th century) that gives the father of the girl the right to specify the daughter for whom he received kiddushin. Therefore, the bill of divorcement would not be necessary.

Another case of doubtful betrothal which required bills of divorce concerned two brothers who betrothed two sisters; but because of the confusion at the ceremony, it was not clear which bride belonged to whom.⁵⁹

The Shulhan Aruk has the clearest statement in this case. The ruling, according to the talmudic rule, that a man who betrothes his daughter without specifying which one, does not include the adult daughter, even if she gave him power to receive her betrothal money. However, if the woman appointed the father to receive betrothal money from a certain man, there is doubtful betrothal (the man did not clearly specify which daughter), but the other adult daughters are not included.⁶⁰

If a man has two daughters, even if they are ketannot, and he has made shiddukin for one of them, and then the father receives betrothal money from a man who does not specify which daughter he is betrothing, both daughters need bills of divorce. Even a vocal correction toch kede dibbur is not allowed to clear up the situation.⁶¹

KIDDUSHIN Less Than a PERUTAH and Doubtful Betrothal

Kiddushin worth less than a perutah could, under certain circumstances constitute a doubtful betrothal, though normally as we noted above there would be no betrothal.⁶² This responsum states that food or an object worth less than a perutah in one place may be worth the requisite perutah in another place. This teaches consequently that one who betrothes with a money equivalent (סכום דיה) has effected betrothal if the amount were worth a perutah in that place; if not, the betrothal is doubtful. This is included in the Mishneh Torah and is paralleled in the Shulhan Aruk.⁶³

TENAIM and Doubtful Betrothal

The presence of conditions (סיפא) in a betrothal may cast some doubt on the validity of the arrangements and place the woman and the man in a doubtful status. According to both Maimonides and Karo, the condition attached to the betrothal must be fulfilled for a valid betrothal.⁶⁴ Samuel Ben Meir in the Tosafot to b. Baba Bathra 137b holds the view that the double formula of a condition is required only in

kiddushin and gittin, in order to effect them in the best way, as a convenience to avoid later litigation; he quotes a decision of Samuel ben Hophni Ha Cohen, the last gaon of Sura (d. 1043).⁶⁵ There is also a citation from geonic material found in Ittur (ed. Warsaw, chapter 2, column 4) that all the details of conditions (see end of this paragraph) are required for gittin and civil cases involving money according to the early geonim; according to a responsum of Alfassi, all the particular details were necessary only in gittin and kiddushin. Alfassi's view is rejected because all civil matters as well as gittin and kiddushin required the detailed statement of conditions according to early authorities.⁶⁶ Since Maimonides quotes geonic material, his statement in Hilkot Ishut 6:2 is included in Lewin's compilation.⁶⁷ Maimonides' statement, paralleled by the Shulhan Aruk is that the condition must contain the four particular details of a condition (a double statement of the condition in both its positive and negative forms, positive statement before the negative, condition before the deed, condition that can be fulfilled) or else the betrothal is valid as if without any condition.⁶⁸

More Wedding Conditions

Some geonic material is apparently cited by the Ittur, (ed. Lemberg Vol. 4, sec. 4) that every wedding condition, called bedi'ah (dowry payment), is binding and takes effect orally. Furthermore, they extend to things not yet in existence (shey' yehi).⁶⁹ The later Codes agree with part

of this responsum mentioned first but insist that the property must be under the control of the one who makes the conditions and must already be in existence.⁷⁰

Extenuating Circumstances, ONES

There is a citation that extenuating circumstances (ones) which would prevent the marriage would not annul the legal betrothal status of the man or the woman. However, this case was not clearly explained. The material in some cases seems quite early, since two responsa, basically the same, mention the name of Mar Shemuel, a Resh Callah, who, as it turns out, offered no satisfactory decision to the enquirers except for a reference to the Jerusalem Talmud, Kiddushin, chapter 3, halaka 1.⁷¹ However, the Resh Galuta's judges were also unable to come up with a suitable answer.⁷²

The principle that an unforeseen circumstance could annul the betrothal if there were no subsequent marriage has some similarity to a conditional betrothal situation. Problems of this nature would arise when there was a considerable time between betrothal and marriage. The interval between betrothal and marriage is discussed earlier. The talmudic principle of ones ba-kiddushin is implicit in later Codes in relation to the groom's obligation to provide the bride with support, although under normal circumstances - if no marriage took place at the stipulated time - the groom assumes his obligation to support the bride automatically. The principle

of ones ba-kiddushin would hold that unforeseen circumstances, preventing the marriage, could cancel the groom's legal duty to support the bride.⁷³

Conditional Betrothal Complicated by Intercourse

A conditional betrothal that is followed by intercourse is considered a full betrothal according to geonic material found in the Halakot Gedolot ed. Warsaw, chapter 2, column 4; and as such would require a bill of divorce. The principle in the citation is apparently 1p102 201c 236/11c (no man engages in intercourse for the purpose of harlotry), a theme which we have already met. However, the question of conditional betrothal comes up only incidentally in a discussion of betrothal by debt remittance.⁷⁴ The Shulhan Aruk, on the other hand, gives such a betrothal only doubtful status when a debt is involved; however, where the betrothal is conditional and is followed by intercourse, the betrothal is apparently full valid.⁷⁵ The principle 1p102 201c 236/11c found in b. Yebamot 107a extends as a rule of law into the codal literature in the case of single persons.⁷⁶

Wedding Ring

As a final note to this chapter on modes of betrothal, let us look at some brief material on the wedding ring in particular. There is no mention of the wedding ring in Talmud, but it does occur in geonic responsa.⁷⁷

The men of the East (Babylon) do not betrothe a woman with a ring; Palestinians do.⁷⁸

Further, the Palestinians considered a ring complete kiddushin while the Babylonians did not.⁷⁹ However in the Babylonian Halakot Gedolot, section 162, the practice of betrothal by a ring before the two required witnesses is noted.⁸⁰ Isserles' gloss to Even haEzer 27:1 cites the expression בטבעת in the betrothal formula as a custom that has ample support. There was no description that I could find in geonic material of the type or style of the ring; however, Dr. Mielziner correctly cites the Tosafot to b. Kiddushin 9a and the statement of Rabenu Tam that in the Middle Ages the general custom was to betrothe with a plain ring.⁸¹ Karo also notes the custom of using a plain ring; although if a ring with a stone is used, the betrothal is valid and binding, according to Isserles.⁸² Certainly there is no question in our day that the ring is the common mode of kesef kiddushin; it is sufficient unto itself and no longer placed in a cup as per an ancient geonic custom.⁸³

NOTES

1. b. Kiddushin 2a. ed Wilna; Lewin, Otzar ha-Geonim, vol. Kiddushin, Nos. 1 and 2, p. 1 and notes.
2. Lewin, op. cit., No. 7, p. 2 and notes.
3. Ibid., notes 8 and 9.
4. Shulhan Aruk, "Even haEzer" 26:2 and Be'er Gola ad loc.
5. Hilkot Ishut 1:3; Even haEzer 26:3; Lewin, op. cit., Kiddushin, p. 159, No. 361.
6. Hilkot Ishut 3:20, Even haEzer 26:4.
7. Lewin, op. cit., p. 16, No. 49 and notes.
8. Ibid., p. 1, No. 1.
9. Ibid., p. 17, No. 50 and Lewin's footnote from Sec. 25 of Sheeltot in which biah is implied wherever shetar and keseif are mentioned and not implied where shetar and keseif are not mentioned.
10. Ibid., p. 23, No. 62 and notes.
11. Hilkot Ishut 3:5; Keseif Mishneh ad loc.; Even haEzer 33:1.
12. Lewin, op. cit., Nos. 53, 54 and notes.
13. Even haEzer 33:2, Hilkot Ishut 3:5.
14. Lewin, op. cit., p. 17, No. 51 and notes.
15. Hilkot Ishut, 3:21; Even haEzer 26:4.
16. Lewin, op. cit., p. 15f, Nos. 44-48, and notes.
17. Ibid., p. 15f, Nos. 44, 45, 47, 48; cf. especially #47 for historical note as to the age of the split opinion. No. 44 quoted from Sheeltot at the end of the laws of kiddushin; #45 Ittur ed. Lemberg, sec. 1, col. 3, in name of Natronai; #47 Ramban; #48 Agudah.
18. Ibid., p. 15, No. 46 quoted from Sefer HaShetarot of R. Judah of Barcelona p. 11, et. al. Another version is cited from Alfassi, but Lewin's footnote does not amplify further. cf. also #47 in which both sides are given in name of Natronai, Halakot Gedolot and Alfassi.
19. Hilkot Ishut 3:4.

21. Hilkot Ishut 3:1 and Even haEzer 31:1.
22. Lewin, op. cit., no. 59, p. 22 and notes.
23. Ibid., p. 23, no. 60, cf. also no. 65 and notes.
24. Hilkot Ishut 4:19.
25. Even haEzer 31:3.
26. Lewin, op. cit., p. 128, no. 293 and notes, cf. Shulhan Aruk 28:11
27. Ibid., p. 6, no. 14 and notes.
28. Hilkot Ishut 5:15.
29. Even haEzer 28:9, 10.
30. Lewin, op. cit., p. 11, no. 30 and notes.
31. Ibid., p. 11f, no. 31. This is cited from the responsa of Rabbenu Asher 35:1, the Ittur ed. Venice (in a slightly different wording) and from the Novellae of a student of Adret, without further citation or amplification of the source.
32. Ibid., no. 29 and notes.
33. Even haEzer 28:19.
34. Ibid., 29:1.
35. Hilkot Ishut, 5:24.
36. Lewin, op. cit., no. 67, cf also no. 68 and footnotes to both, p. 25.
37. Ibid., no. 66, cf. footnote 4, p. 24 and notes.
38. Ibid.
39. Even haEzer 28:1, 2.
40. Hilkot Ishut 5:7, 10.
41. Lewin, op. cit., p. 23f, no. 63, cf. also no. 65 and notes.
42. Ibid.
43. Hilkot Ishut 5:25. Similar to this is Even haEzer 28:5.
44. Even haEzer 28:4, 6.

45. Hilkot Ishut 5:11, 18.
46. Lewin, op. cit., no. 40 and notes, p. 14.
47. Even haEzer 29:6.
48. Lewin, op. cit., p. 37, no. 95 and notes.
49. Even haEzer 28:11, cf. also 28:10 for the principle of debt remittance.
50. Hilkot Ishut, 5:14.
51. Lewin, op. cit., p. 124, no. 283 and notes.
52. Ibid.
53. Ibid.
54. Ibid., Ittur ed. not specified, end of sec. #1 on laws of betrothal.
55. Ibid., p. 126, no. 286 and notes.
56. Even haEzer 45:1.
57. Hilkot Ishut 9:28.
58. Lewin, op. cit., nos. 304, 305 and notes ad loc 135f.
59. Lewin, op. cit., Yebamot, no. 98, p. 43 and notes.
60. Even haEzer, 37:15.
61. Ibid., 37:16.
62. Lewin, op. cit., Kiddushin, p. 23, no. 60 and notes.
63. Hilkot Ishut 4:19; Even haEzer 31:3.
64. Ibid., 6:1; Ibid., 38:1.
65. Lewin, op. cit., no. 15, p. 6 and footnotes citing HarKavy, Zichron L'Rishonim, sec. 3, note 95.
66. Ibid., p. 6f, no. 16.
67. Ibid., no. 335, p. 148.
68. Hilkot Ishut 6:2, 14; Even haEzer 38:2, 4.
69. Lewin, op. cit., Ketubot p. 358, no. 793.

70. Even haEzer 51:1 and Hilkot Ishut 23:14 cf. also Hilkot Z'chiah U'Matanah 6:17.
71. Lewin, op. cit., Ketubot, p. 4, nos. 8, 9 and notes.
72. Ibid.
73. Hilkot Ishut 10:19; Even haEzer 56:3.
74. Lewin, op. cit., Kiddushin, p. 6, no. 14 and notes.
75. Even haEzer 38:16, 35.
76. Even haEzer 33:1 gloss; and Hilkot Ishut 3:28 cf. also Even haEzer 38:35.
77. J.D. Eisenstein, Otzar Dinim U'Minhagim, p. 357.
78. Lewin, op. cit., p. 9, no. 21, several versions of this are cited: the first is from a London manuscript; and the others are from Zedah LaDerek, Sha'are Zedek 19b, and Teshubot Hageonim ed. Harkavy p. 395.
79. Ibid., p. 9, no. 22 and notes.
80. Ibid., p. 10, no. 26 and notes.
81. M. Mielziner, The Jewish Law of Marriage and Divorce, p. 79f, and notes.
82. Even haEzer 31:2.
83. Lewin, op. cit., p. 11, no. 29 and notes.

APPENDIX

There are several areas touching betrothal that do not come strictly under any of our major sections. They are stray questions and statements that really do not indicate any trend in the halaka simply because they are so few. We shall look at them briefly in this appendix.

If a man betrothed a woman, but, in the course of time, changed his mind, and a second man betrothed the woman, the kiddushin of the second man are invalid since there are no kiddushin with a betrothed woman.¹ However, if the first man divorced her for reasons other than some deed of the second, she may marry the second man.

The Shulhan Aruk mentions, of course, that there are no kiddushin with a married woman, and that a woman who is suspected of infidelity is not permitted to marry her paramour.² Maimonides earlier decided the same way.³ If a woman accepted kiddushin from a second man in the presence of her husband, she is betrothed (some say completely and some say only to the extent of the necessity of a bill of divorce from the second man) because a woman would not act arrogantly in her husband's presence (cf. note 2).

Two geonic sources (one of which has two versions) go on record saying that the betrothal of or by a person of doubtful sex (SHV NIG) is valid, and the reason for the question of validity of betrothal relates to the status of male and female relatives on both sides who are ipso facto (by the

betrothal) prohibited to be betrothed by a member of the couple.⁴ Both Karo and Maimonides accord the betrothal of the tuntum only doubtful status that would require a bill of divorcement.⁵

Under a discussion of betrothal by mere intercourse, there is the statement that the betrothal of a Cuthite is regarded and requires a bill of divorcement according to R. Jehudai Gaon (Sura, 9th century) and Mar R. Samuel, Head of the College.⁶ The later codes grant the betrothal doubtful status only and make a bill of divorcement necessary.⁷ The meaning of the term Cuthite is not defined; it would seem, however, that the Cuthite would have had some relationship to the Jewish community. If he did not, how could there be any possible question as to validity of a Jewish method of betrothal? If he were not in some way connected with Jewish life, he would be unable to effect any Jewish betrothal. Furthermore, in the Codes, the Cuthite is differentiated from the non-Jew or idolater who has no right of Jewish betrothal and from the mumar who does have such right.⁸ Perhaps the Cuthite here refers to a Karaite or a sectarian, but this is only conjecture.

There is another uncatalogued geonic passage for this appendix section that mentions the special regulations covering the betrothal and marriage of a priest.⁹ The case is thus: if a priest betrothed a woman he was ~~was~~ not entitled to betroth, e.g. a divorcee; and because of his ignorance he did not know this act was prohibited and later finds out and divorces her, does he or does he not lose the kesef kiddushin

as simply a present that he gave on the risk of receiving no consideration for it?

The answer is clear and definite that the priest whether he knew of the woman's marital status or not, does not regain the kesef kiddushin, i.e., they were given as a gift on the risk of receiving no consideration. The reason for this decision lies in the fact that the kiddushin did take effect and the woman required the bill of divorcement (which would not have been the case had there been no kiddushin at all).

The codes require, first of all, that the kesef kiddushin be a complete gift and that she have possession of it (this is especially clear in Maimonides).¹⁰ The priest is, moreover, prohibited from marrying a divorcee, by Scriptural injunction and must divorce the woman.¹¹

The last geonic statements in this series of unclassified geonic materials concerns a betrothed woman who becomes pregnant.¹² According to the talmudic ruling, the child is a bastard (zann) according to Rav; and Samuel holds the child to be a shetuki, of unknown fatherhood, cf. b. Yebamot 69b. The earlier geonim, according to the first passage, decided a case of this nature with Rav. The other geonic statement is more complete and thorough in its explanation of the matter. The decision differs somewhat, and there is a complex argumentation to demonstrate the new decision. First of all, the law is not according to Rav (i.e., the child is zann) when it is known that the groom himself was the father since דבר זכר וזכר אף כן (intercourse is generally considered

the act of the husband). According to talmudic principle, the child becomes the father's. Since there is a difference of opinion (גמ' (כ"ה)), the rule of law is that the second view is taken as authoritative. If, however, the father is unknown, the case is, according to Rav; and the child is a גמ' . Rav gets the nod, not because of his talmudic argument, but because he is the authority in rules of ritual law (גמ' א"ר א"ר א"ר), under the methodology of decision in controversies. Further, the child is a mamzer since the woman was א"ר to all other men. Lastly, the rule of law belongs to Rav since Samuel's view is not even brought under discussion. This, too, would seem to be a geonic rule of formulating legal decisions.

Both Maimonides and Karo-Isserles follow the same decision as this last responsum.¹³ The child of the betrothed woman is proper if the child is by the arus. The mother is questioned on the matter and trustworthy to make the claim that parentage is from her betrothed. However, the father may deny the contention, and the child remains a bastard. Prima facie, the child of a betrothed woman who is yet in her father's household is assumed to be a bastard, thus Maimonides. The statement in the Shulhan Aruk is somewhat clearer. If the alleged father (the betrother) does not deny fatherhood, or he is not present to be questioned, the child is proper. If he does deny the allegation, the child is unquestionably a bastard. If the mother is not present for questioning or cannot remember who the father may have been(!) the child is doubtfully a bastard.

NOTES

1. Lewin, Otzar haGeonim, vol. Yebamot, p. 44, no. 102 and notes. Cited from Teshubot HaGeonim, Koronell, par. 63.
2. Even haEzer 11:1; 17:1, 2; 44:6.
3. Hilkot Sota 2:12, 13; cf. also Hilkot Ishut 4:12, 13.
4. Lewin, op. cit., p. 169, nos. 388, 389.
 #388A Cited from Halakot Gedolot, ed. Venice, sec. 73.
 #388B Hilkot R'eu (no edition cited) p. 115.
 #389 Vehizhir sec. 2, 80ab, 82b, s. note ibid.
5. Hilkot Ishut 4:11; Even haEzer 44:5.
6. Lewin, op. cit., vol. Kiddushin, p. 17, no. 50 and notes. Cited from Halakot Gedolot (ed. Warsaw) chap. 4, col. 1.
7. Hilkot Ishut 4:11; Even haEzer 44:10. Cf. Ba'er Gola ad loc, that cites the Tur on authority of the geonic statement we have observed.
8. Even haEzer 44:8, 9.
9. Lewin, op. cit., vol. Ketubot, p. 228, no. 566 and notes. Cited from Sha'are Zedek (no edition mentioned) 17a, par.3.
10. Even haEzer 29:1; Hilkot Ishut 5:24.
11. Even haEzer 6:1; Hilkot Issure Biah 17:1.
12. Lewin, op. cit., Yebamot, p. 165, nos. 378, 379 and notes.
 #378 Cited from Bet haB'kirah, p. 261.
 #379 Cited from K'belat Shlomoh, p. 37, par. 39. A second version is taken from Sha'are Zedek 8b, par. 57. (no edition mentioned).
13. Hilkot Issure Biah 15:17; Even haEzer 4:27.

CONCLUSIONS

In these final pages, I wish to make some remarks of summary and conclusion. The question may be advanced as to whether or not my remarks will be an addition to halakic literature. This is hardly the case. First of all, the halaka is the heart of traditional, rabbinic Judaism par excellence; and as such there could be nothing added to it, since all of it may properly be considered as one grand corpus revealed to Moses on Sinai. While later generations may interpret and investigate, their greatest achievements are, traditionally speaking, only a rediscovery or a sounder explanation of the Law of Moses. Furthermore the halaka itself has lost its former vigor in Jewish life, no longer commanding the diligence and loving reverence of every Jew. Without firm roots in the hourly passage of human life, Jewish law has become more of a guide to modern practise or a source of historical research or a theological springboard than a mode of organizing life toward the fulfillment of man's destiny and God's will. In short, the law has already been made and more recently abandoned as law; therefore new halakic works would be either anachronistic or pointless. Yet the law was the axis of Jewish life for 2000 years. To ignore it would simply make no sense. The law records the prescribed activity, the very shape and mold, that was Jewish life. Interpretation and comment reveal even more clearly that law was not reserved for the bench and the barrister, but rather delegated to all

Jews to learn, to teach, to do, and to keep. It was important, all important.

Whether it was a blessing or a burden is a moot question. Certainly the laws may have been restrictive and may even on inspection show a favoritism to one group or another. Yet no less certainly was the law held as the living sign of the covenant between God and His people.

So today we do not add to the law. Certainly I can not, possessing only the smallest degree of competency in this vast field. But we do speak about the law: not just as an historical source or a philosophical position nor merely as a sociological matrix of custom and practise, but as an avenue into the daily life of Jews whose hopes and miseries have helped to shape our own Jewish life today. Our law is a way of letting us see what our fathers were like -- as human beings who lived and suffered and triumphed through the hours and days of their own lives. The Responsa, the Codes, even the esoteric Tosafot indicate to us the human realities of Jewish life. The midrash and the medieval preachers recreate the philosophy and ethic of Jewish existence, but the law tells us how the nobility of the spiritual message took root and flourished in the soil of time. Perhaps the aspiration was realized through the law, perhaps it was not. In any case, the law does tell us of the real life of people. And if a religion is to retain its worth, it must at least attempt to reckon with the genuine problems in the lives of its people.

Our legal tradition tells us of the past and its method of engaging religion with the situations of ordinary men. Perhaps it may aid us to do the same for another generation of Jews.

Having done with these themes -- certainly not exhausting them -- I turn to the few concluding thoughts drawn from the geonic and post-geonic statements on betrothal law. They do not add to the law; they are only an attempt to see what the law was and what it said. What were the problems and what were the answers. The underlying theology inherent in the law is not in point here; my comment concerns only the recorded evidence of the law of life.

The total number of geonic passages was small; there were approximately forty citations from (or based upon) geonic responsa, legal collections, and the like, in each chapter. This is not a great deal, and often there were several versions of the same material. While I make no pretense of examining all the sources, Lewin's Otzar haGeonim simply did not contain a mass of law on kiddushin per se. While the argument from silence is weak, it would appear that betrothal generally proceeded along fixed lines and standard patterns, without litigation. Perhaps in this case, the course of true love ran smooth most of the time. On the other hand, it may be that whatever problems arose were handled so briefly and with so much dispatch (perhaps orally) that they never required a responsum or even a notation in a legal compendium.

In no case was there any indication of polygamy in my materials. There was only one instance in which Karaism was directly mentioned. Apparently these forces did not interfere seriously with the laws of betrothal.

Now I shall turn to the chapters and suggest certain conclusions. Not all the areas of halaka are mentioned, only the ones which I considered the most outstanding. In the first chapter, the geonim emphasize the father's power over female children until their majority, and this rule of law is carried over from talmudic precedent into the Codal literature. The adult woman is, as a general rule, no longer under the father's jurisdiction. However, in particular instances, there may be grounds for permitting the father to act in behalf of an adult daughter. After all, a daughter was an economic asset, and a father had rights as pater familias that he would be loathe to surrender. While the rule of law is clear that minor daughters can make no valid betrothal, there may be individual cases in which minors' actions have the status of doubtful betrothal and are permitted to stand. A girl has some legal rights to consider! The Codal view upholds the strict rule of law but generally admits variations. The difference in geonic opinion could, I suppose -- this is only supposition, be grounded in political or economic considerations. Or it may be that a particular gaon would by nature and training incline toward a more lenient decision.

The statements as a rule seem to be judgements of cases rather than explanations of talmudic text.

The stages of a woman's legal age are carefully

The stages of a woman's legal age are carefully outlined in some of the material. Apparently, this process was not quite understood in all quarters; and some talmudic murkiness had to be illumined.

The rights of relatives other than the father to betrothe a minor girl are strictly limited. It would seem that next to the father, the minor herself has more latitude in matters of her betrothal than any other adult member of her family. The father, the girl, and then other members of the family seems to be the order of legal rights in betrothal.

The importance of custom is not apparent in these questions; halaka rather than minhag is the key to the geonic material in the first chapter on legal rights of parties to a betrothal.

The geonim, it seems, generally emphasized and upheld talmudic rules and decisions on the rights of parties to a betrothal.

The conclusions from the second chapter are somewhat different especially in regard to the area of custom - minhag. The betrothal ceremony is prescribed by custom, and custom is itself quite weighty. The order was kiddushin and the betrothal blessing, in the presence of ten men. The blessing and the ritual quorum were considered important, but would not invalidate a betrothal if omitted. The geonim apparently strove for a uniform customary practise among their inquirers that corresponded to the custom of the Babylonian academies.

The Codal citations in this chapter do not uphold the geonic order of service in that they prescribe the betrothal blessing before the betrothal. This is the only major departure from geonic practise that appeared clear and definite and that was not upheld as an alternate order of service by Codal commentators. Therefore, it is apparent that geonic rules in this area were substantially different from the halaka of the Codes.

The formulae of betrothal as well as the betrothal and wedding blessings were apparently standardized and current. A few of the blessings that were similar occasioned some questions; but the substance of the blessings seems to be known and accepted. Some material asked about the manner of determining the seven wedding blessings. From this material, it is evident that wine blessing and even a spice blessing were on occasion used in the wedding blessings to complete the series of seven.

The geonic betrothal formulas imply what the Codes state explicitly: the man is the active, betrothing agent and not the woman. Betrothal at this time, and in Jewish tradition generally, was the province of the man whose total legal status was superior to that of the woman. (In this regard note the superiority of the father's rights over a minor girl as compared to the mother's rights.)

There is some strong geonic evidence that the betrothal and nuptial ceremonies were occasionally conducted at the same time.

Good form and propriety demanded, the ritual quorum, reading of the ketubah, a huppah, and all pertinent blessings. There is some indication of feeling against a prolonged wait between betrothal and nuptials in any event. The Codes carry out this same order of service, and it is familiar to us today.

Generally speaking, differences of opinion and practise in the order and contents of betrothal ceremonies arise from divergence in customary usages rather than rules of law.

The third chapter touches the principles of Jewish civil law and as such would require a far fuller knowledge of this technical field than I possess, if truly cogent conclusions were to be forthcoming. However, the general trend of the halaka can be noted.

The three modes of betrothal advanced in the Mishnah are upheld although betrothal by writ and intercourse did not have near the importance or currency that betrothal by money consideration enjoyed. The legal sum required is definitely stated as a perutah or its equivalent as per the tannaitic opinions. There is some clarification as to the nature of betrothal by intercourse, but this somehow sounds to me like an academic question (for the most part) and not like a pressing case at law. This is not to say, however, that intercourse betrothal was not an occasional question; it probably was.

The greatest number of questions as indicated discussed betrothal by money consideration; and of these, the greater number concerned not the normal situation in which a perutah

(or its equivalent) changed hands but rather cases of borrowed, stolen, loaned, or pledged property in which actual coinage may or may not be involved. Generally, betrothal with money questionably gained or not clearly owned depended upon the circumstances of the case and were allowed at least as a doubtful betrothal. Such cases are unusual; and, to my way of thinking, the small amount of material reinforces the opinion that betrothals were conducted smoothly and without recourse to litigation.

The betrothals effected through borrowed property, securities, debts, etc. would depend oftentimes on the presence of pre-nuptial agreements. The weight that these agreements carried indicates to me that circumstances and individual situations could be considerations in a decision, not only the rule of law itself. Generally, however, a strict view is taken in betrothal matters, so that the woman is obligated in some way and is not free to marry another man without a bill of divorcement.

The wedding ring appears to be an European or Western mode of representing money value, not an Eastern or Babylonian one.

In betrothals that were dependent on conditions, the geonim apparently insisted on the full, four-fold form of the conditions. The matter was possibly too serious to be handled in any lesser degree of formality; however, the sex act consummating a marriage could annul conditions. The basic act of

marriage apparently carried great legal weight in and of itself. Once again, circumstances could be counted rather heavily in particular cases.

Finally, if there is confusion as to which of several sisters is betrothed, some geonic opinion allows enough flexibility in the law to allow the father of the women to stipulate for which girl he received betrothal money. However, this could again depend upon particular circumstances. Generally, the confusion could not be cleared except by bills of divorcement. Again a situation could be decided either by taking circumstances into account or by the rule of law in strict interpretation. Generally, the strict view is taken, with circumstances deciding a smaller number of cases. Leniency was not unknown, but the case had to be quite unusual from what I found.

As far as geonic material relates to the medieval Codes, I found that geonic rules -- and their exceptions -- were in nearly all cases noted as the principal law or as a valid alternate view. The Codes were far broader and inclusive. The geonim had generally supported the earlier talmudic law. Geonic precedents are very much a part of the views and opinions of later Codes. Since the Jewish community existed with its own independent legal system, the rules of law apparently functioned as well in Bagdad as in Krakow; external situations would of course dictate difference in custom, but rules of law could apply in any case.

The introduction stated that the areas of discussion would be limited by the subject matter presented in the geonic sources. As a result there has been no mention of halitzah, yibbum, k'hunah, or forbidden degrees. The questions of mi'un and eduth were introduced only insofar as they touched upon other areas; mi'un, for instance, is a method of dissolving a betrothal and had significance only as it demonstrated distinctions in a girl's legal age or her rights over her person. Ketubah is a world of halakah unto itself.

And so the end of this paper has been reached. Our legal tradition remains a telescope for the years, bringing into focus not only the beliefs, but the scenes and sounds, the feelings and moods of Jewish life as men lived it.

Once more let us turn to the subject of betrothal. Among the divers paths of the law, the laws of betrothal -- and marriage -- are just one part of the great highway into our history. We know that this has been the highroad of prophets and sages, of heroes of the spirit; but it has also been traveled by plain folk. Often, among these people walked a bride and groom. Along the pathway of Jewish life, at every turn and every station, once again is heard the sound of gladness and the voice of joy ringing out in Judah's cities and in the streets of Jerusalem.

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By far, the major portion of this project was drawn from the excellent thesaurus Otzar haGeonim of Dr. Benjamin M. Lewin, and from the two major sources of codified Jewish law, Mishneh Torah and Shulhan Aruk. Dr. Lewin's work provided a clear and orderly arrangement of geonic material and later material based on geonic precedent. The arrangement is according to the talmudic passage with which the particular passage deals most directly. The book therefore is practically a commentary of the vast range of geonica on the Talmud. It is most unfortunate that this magnificent treasury of Jewish legal scholarship was not completed before the author's death. Perhaps some new scholar, equipped with the same profound training and zeal for the Law will some day carry this comprehensive study forward so that it may cover the entire Talmud. This work is for all intents and purposes a primary source with the added boon of a scholarly arranger and compiler to make the material accessible. Keeping the prime importance of the works just cited well in mind, I herewith offer the full bibliography of materials that were consulted or that may offer some additional light on the subject or some aspect of it. There is not a great deal that does in fact speak directly to the topic of geonic betrothal halaka and its comparison with the later medieval Codes.

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