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ḤUPAH V^{E}KIDDUSHIN:

The Marriage Ceremony as Discussed in the Shulḥan Arukh, Arukh HaShulḥan, and Selected Responsa - Translation and Commentary

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Thesis submitted in partial fulfillment
of the requirements for Ordination

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Cincinnati, Ohio

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TABLE OF CONTENTS

DIGEST

This thesis provides an annotated translation of three examples of rabbinic literature dealing with various aspects of "ḥupah v^{e}kiddushin", the Jewish marriage ceremony: Josef Caro's Shulḥan Arukh (Even HaEzer, Chapter 55), Jeḥiel Michael Epstein's Arukh HaShulḥan (Even HaEzer, Chapter 55), and Chief Rabbi Yitsḥak Isaac HaLevi Herzog's Ḥekhal Yitsḥak Even HaEzer, Volume II, Chapter 27). Representing three distinct eras in the history of the Halakha, and three equally distinct Jewish communities, these scholars bring to light decisions and local customs regarding all of the idiosyncracies inherent in the traditional Jewish marriage.

Josef Caro, and the comments of Moses Isserles, detail the laws and customs pertaining to the man and woman considered "betrothed", the rights and responsibilities of all those involved in the familial structure of a betrothed couple, definitions of the terms "yiḥud" and "ḥupah" and the various ramifications of those definitions, and the validity of a Ketubah written before the marriage ceremony.

Jeḥiel Michael Epstein's corresponding chapter is more extensive, although his topics are approximately the same: the prohibition of pre-marital sexual relations, definitions of the terms "yiḥud" and "ḥupah" and some of the possible conditions therein, the necessity of reciting the seven (groom's) benedictions, whether or not witnesses are required for "yiḥud", the rights and responsibilities

of those involved in a betrothal situation, holding the "ḥupah" in the courtyard of the synagogue, the validity of a Ketubah written before marriage, and the ruling that betrothal does not imply a blood relationship.

Chief Rabbi Herzog's responsum is against those who would hold the "ḥupah" inside the synagogue, as customary in Western Europe (and in America). He refuses to permit any reforms in the physical or religious structure of the marriage ceremony.

INTRODUCTION

The major issues presented in these pages concern themselves with several various facets of "ḥupah v^{e}kiddushin", the Jewish marriage ceremony. And, it should be noted, this ceremony is, in essence, more of a procedure, involving different stages of time and circumstance. For example, one must remember that "betrothal" and "marriage" do not only differ in terminology, but also in legal significance. A man may acquire a wife in a number of ways - constituting a "designation" or "setting her apart" - hence, betrothal; but this by no means constitutes the sanctification of that man as groom and that woman as bride, in marriage.

Assuming the major significance in the minds of these authors was definition of terms: "ḥupah", which we mistakenly assume to be just the bridal canopy, is, in reality, a much broader concept. According to some decisions, the "ḥupah" of a virgin bride differs from that of a non-virgin, a widow or a divorcee. For others, the "ḥupah" is a physical symbol of the couple's first home. Still others insist that "ḥupah" is an act of intercourse (or the physical surroundings for such an act) for the sake of marriage. And, finally, one definition of "ḥupah" revolves around the concept of whose responsibility it is, her father or the groom-to-be, to provide for her well-being.

Similarly, the question must be answered: from which exact moment in time should they be considered married?

Is it upon their standing together under the canopy, when the wedding benedictions are recited, when they eat their first meal together in private, or when they first have sexual relations? Perhaps this is not such a vital question today, but in generations of unexpected circumstance, it was absolutely necessary to have exact definitions for all Jews to heed, and for all non-Jews to know.

And so, Caro, in the 16th century, Epstein, in the 19th, and Herzog, in the 20th century, address themselves to these issues and others.

First and foremost among their writings (as mentioned above) is the concept of "ḥupah". For Caro, the "ḥupah" is "yiḥud", the couple being together in private, which constitutes a formal designation of betrothal that is more valid than intercourse. Isserles, commenting on Caro's definition, tells us that the Ashkenazi "ḥupah" is the entire ceremony of marriage, under a canopy, which is then followed by a meal eaten only in the presence of invited guests to make a "minyan" (10 men). For Epstein, several generations later, "ḥupah" is the legal marriage ceremony, with all its attendant customs and practices. And with Herzog, whose concern in this responsum is not necessarily the definition of "ḥupah", we assume that his use of the term refers to the ceremony itself.

As a resultant topic to that of "ḥupah", the writers continue by discussing the specific status, rights, and prohibitions for those only betrothed and for those whose

"ḥupah" and marriage, for some reason, is invalid. The questions of who must provide for a bethrothed woman, both in ordinary circumstances and in extraordinary instances, her claims to support in the event of a departure from her plans to be married (e.g. the death of her fiance or a divorce from the betrothal), and a ruling on whether or not marriage constitutes a blood relationship, are considered.

Finally, Herzog, in this specific responsum, responds to those who would hold the "ḥupah" (i.e. the marriage ceremony) in the synagogue.

אין כאן אין כאן All this is included, and much more. For no student can approach the rabbinic material only as academic endeavor.

The world of the Halakhist is far removed from that of the contemporary American Jew, and not for mere philosophical reasons. To consider the Codes literature, the Jew must be willing to, not only devote time, but respond to the difficult task of accepting the rabbinic "gestalt" or "mind set". Arguments and decisions such as those mentioned in these pages are not only law, they are life. The significance of "ḥupah" is not only legal, it is, in itself, a "Kiddushin", a sanctified bond between two partners in an eternal search for meaning and fulfillment.

The essence of this translation, then, is not to present the dogmatism of legal stricture and semantic; rather, it is, hopefully, to express a deep reverence

for those who saw such meaning and holiness in, what is to many of us, pedestrian human activity.

With warm appreciation to the two men whose teaching and guidance and love for חכמת ישראל led me to this literature, Rabbi Philip Horowitz and Professor Alexander Guttmann.

And with many thanks to Harry Rosenfeld:

ומחלם׳ד׳ ׳זהר סכולם.

CHAPTER 1

Shulhan Arukh
(Even HaEzer)

Chapter 55

CHAPTER 55: Betrothal Law in the Matters of Sustenance, Burial and Inheritance; Whether or not there is a "Ketubah"[1]. (7 paragraphs)

I. A betrothed woman is prohibited (to have intercourse with) her (future) husband, according to the rabbis (lit. the Sofrim[2]), as long as she is in her father's house (i.e. if she is not yet married). One who has intercourse with his betrothed (before they are married), while she is still in her father's house, must receive the "rabbinic lashes"[3].

HAGAH:[4] They are even prohibited from "yihud"[5]; therefore, one who is with his betrothed in any house (i.e. in private) must recite the seven benedictions[6], because they might have intercourse (Mordecai[7], Chapter 1 of Ketubot). There are those who say that they should not dwell together (before they are married) so that they will not grow tired of each other (Kol Bo[8]). They should be cautious (and not dwell together in the same house) after only preliminary arrangements for betrothal have been made (but before the betrothal) (Hidushe Agudah[9], first chapter of Ketubot).

TEXT: Even if he has betrothed her by intercourse[10], he is prohibited from having intercourse with her a second time (while she is still) in her father's house, until he brings her into his house and (there) has "yihud" with her, thereby formally "setting her aside" (dedicating) for him. This

"yihud" is called taking her into the "hupah"[11], and this is universally considered as marriage.

(In the case of) one who has intercourse with his betrothed for the sake of marriage - after he has betrothed her, she is considered married from the (moment of) first genital contact; she is then his wife in all matters.

One must say the groom's benedictions[12] in the groom's house before the marriage (i.e. before intercourse for the sake of marriage).

HAGAH: There are those who say that the "hupah" is not (the) "yihud" (itself), rather it is only when the groom brings her to his house for the sake of marriage (so wrote the Rin[13] on the first chapter of Ketubot). And there are those who say that the "hupah" is (only) when they spread a cloth over their heads at the time of the benediction (the Bet Josef[14] mentions this).

There are those who say that the "hupah" of a virgin is from the moment that she is carried in the "marriage litter"[15] (or hymn procession); and that of a widow, when she has "yihud" (Tosafot[16] to Chapter 1 of Yoma).

The custom is widespread now: to call the "hupah" that place where a spread curtain is brought in (held high by poles), under which the bride and groom are led in public and he betrothes her there, and the benedictions of betrothal and marriage are pronounced; after which they are led to their house and they eat together in a private place. This

is the customary "ḥupah" nowadays. See below, Chapter 62 paragraph 9, and Chapter 60.

II. (In the case of) one who betrothes a woman, and says the wedding blessings, but does not have "yiḥud" with her in his house (immediately) - she is still betrothed, for the wedding blessings (in and of themselves) do not make marriage, only entrance into the "ḥupah".

III. (In the case of) one who betrothes (a woman) and takes her into the "ḥupah", but did not say the wedding blessings - behold, this is a complete marriage. He should return and say the benedictions, even after several days.

One must write the "Ketubah" before entrance into the "ḥupah"; only afterwards is he permitted (to have intercourse with) his wife.

IV. One is responsible for the sustenance of his betrothed (before they are married) only if she had been receiving support from her brothers (if their father had died), for she only receives support from her brothers until she is betrothed or reaches the age of maturity (majority); before this she is not expected to support herself.

HAGAH: There are those who say that he is not responsible for her sustenance at all (the Tur[17] quoting the Rosh[18]).

V. If a Cohen's[19] betrothed dies, he may not defile himself[20] because of her; if he dies, she is not obligated to defile herself because of him. (If she dies) he is not eligible for her inheritance, nor is he obligated to bury her (i.e. provide for her burial); rather, her father will inherit, and he will bury her.

HAGAH: Such is the case also if she is married in a place where he (the groom) does not have the right to (inherit) her dowry.

VI. (In the case of) one who betrothes a woman and writes her a "Ketubah", but she does not enter into the "hupah" - she is still (to be considered as) betrothed, not married, for a "Ketubah" (itself) does not make her married. If he dies or divorces her (before the marriage), she is entitled to collect "the basic Ketubah"[21] from the free property[22], but she does not collect "the additional Ketubah"[23] since she had not entered (the "hupah"). But, (in the case of) one who betrothed a woman and did not write a "Ketubah" for her - if he dies or divorces her while betrothed, she does not collect anything, including "the basic Ketubah", for they did not institute "the basic

Ketubah" for her unless she is married or if he has written (the "Ketubah").

HAGAH: There are those who say that a betrothed woman always has a "Ketubah" (the Rosh, the Rin, and the Tur), but the practice is according to the first opinion.

VII. (In the case of) one whose betrothed daughter is widowed or divorced from the betrothal, even several times before (she reaches) maturity (majority) - the "Ketubah" money belongs to her father. If she is married and (then) widowed or divorced, her father receives nothing, even if it is the first time (i.e. her first marriage).

CHAPTER 2

Arukh HaShulhan
(Even HaEzer)

Chapter 55

I. A betrothed woman is considered married (lit. the wife of a man) completely, and one who intentionally has intercourse with her (a betrothed woman) is subject to the death penalty; the penalty here is stricter than (in the case of one who has intercourse with) a married woman, for with a married woman it (the penalty) is strangulation, and with a betrothed woman it is stoning.

One who has betrothed (a woman) cannot free himself from (lit. dismiss) her except with a "get"[24].

Nonetheless, it is prohibited for one to have intercourse with his betrothed before (the ceremony known as) "hupah". This is what the Men of the Great Assembly[25] established in the marriage benedictions: "And He prohibited to us (for intercourse) those (merely) betrothed", so that one would not have intercourse with his betrothed before "hupah" and (there) reciting the benedictions. This is a rabbinic prohibition[26], similar to their injunction regarding (intercourse) with an unmarried (single) woman. Therefore, one who has intercourse with his betrothed while (she is still) in his father-in-law's house (i.e. before the marriage ceremony) must receive the "rabbinic lashes".

And so did the sages say: "A bride without (before the marriage) benediction is as prohibited to her husband as is a menstruant" (Tractate Kallah). The sages also prohibited "yihud" with her, similar to their injunction regarding "yihud" with an unmarried woman (Bet Josef). And similarly, a "negotiated-for" woman (i.e. before

betrothal) is prohibited from having "yihud" with her "negotiator", for all women prohibited from intercourse are (also) prohibited from "yihud" (Ḥelkat Meḥokek[27]).

Therefore, there are those who say that they should not dwell together (in the same house) so that they will not grow tired of each other. There is even a suspicion (as to whether or not they should be alone together even) after the preliminary arrangements (have been made) but before the betrothal.

And more than (just) this, there is suspicion that they may not (be able to) control their (sexual) desires, and (thereby) sin. And not only this, but perhaps they might perform a prohibited act which carries the "karet" punishment[28], for she may be a menstruant if she is of age.

Therefore (it should be remembered that) the fear of (respect for) God's word will keep one far from this and similar things (type of sin).

II. Even if he has betrothed (sanctified) her by intercourse, he is prohibited from having intercourse with her a second time until the time of marriage, for it is established for us that intercourse constitutes (legal) betrothal, but not marriage, as was explained in Chapter 33.

Marriage is (legally, the ceremony know as) the "ḥupah", although the Halakhic authorities (lit. the Poskim[29]) differed (in their opinions) as to what exactly is the "ḥupah", as will be explained in paragraph IV.

III. The Rambam[30], may his memory be for a blessing, wrote in Chapter 10

> One's betrothed is prohibited (to him) until he brings her into his hosue and (there) has "yiḥud" with her, thereby formally setting her apart for him. This "yiḥud" is called taking her into the "ḥupah" and is universally recognized as (legal) marriage. (In the case of) one who has intercourse with his betrothed for the sake of marriage after he has betrothed her - she is considered married from the moment of initial sexual (genital) contact; she is then his wife in all matters.
>
> From the moment when the betrothed enters into the "ḥupah", it is permissable (for him) to have intercourse with her whenever he wishes: for behold, she is his wife completely, in every respect. And after she has entered the "ḥupah", she is called "married" (i.e. their marriage is recognized [acknowledged] from the moment when she enters the "ḥupah"), even though he may not have had intercourse with her; provided, that is, that she is fit (permissable) for having intercourse (she is not menstruating at the time). But, if she was menstruating (at the time), even though she entered into the "ḥupah" and he may have been alone with her ("yiḥud"), the marriage is not completed, and, hence, she is still (to be considered) as betrothed.

IV. From his (the Rambam's) words, it is clear that the essence of the "ḥupah" is really "yiḥud" for the sake of marriage. This "yiḥud" must be with the (proper forms of) preparation (lit. preparation and invitation) to live with her as man and wife; hence, he must bring her into his house, have "yiḥud" with her (there) and formally set her apart for himself. The bringing (her) into his house constitutes the

"preparation", and the setting her apart (designation) constitutes the "invitation" to live with him forever (from that moment on).

The "yihud" can take the place of intercourse even if he does not have intercourse with her, (it is) only (necessary) that she be fit (permissable) for intercourse (with him), as I wrote.

But, if the "yihud" is not to be a permanent one, even if there has been the proper (forms of) preparation, e.g. he took her to his house for several days, after which she was to return to her father's house, (in such a case) even if he has had "yihud" with her, it is nothing (i.e. this "yihud" has no legal character). And it is an obvious thing, for even if the "yihud" was not in his house, e.g. if he arranged for a rendezvous place to (there) have "yihud" with her and set her apart for himself, after which he will take her to his house, from that moment (the time of the "yihud", whatever it may be), she is legally a married woman, as it is written in Chapter 57.

When he has "yihud" with her, he must recite the seven benedictions at the place of marriage (wherever it may be): that is, any rendezvous place for "yihud", or he takes her to his house. The benedictions must precede marriage, although (the omission of) the benedictions do not hinder the validity of marriage, ex post facto, as it is written in Chapter 33. For this is what we have learned, that "a bride without the benediction is prohibited (for

intercourse)", ("without the benediction") means to say "without marriage", for marriage, in general, means only with (after) the benediction; on the other hand, the groom's benedictions (in and of themselves) are insignificant (i.e. if there is no "ḥupah" the seven benedictions have no validity), as the Rambam wrote.

> (In the case of) one who betrothes a woman and recites the groom's benediction, but does not have "yiḥud" with her in his house - she is still considered only betrothed, for the groom's benediction does not constitute marriage, only entrance into the "ḥupah" (does).
>
> (In the case of) one who betrothes and enters into the "ḥupah", but did not say the groom's benediction - behold, this is a complete marriage. He should say the benediction later, even after many days.

V. This is what he (the Rambam) wrote: "If he has intercourse with her for the sake of marriage, she is considered married", and it is clear from his words that, with (an act of) intercourse for the sake of marriage, she is considered married, even if he has not set her apart for himself, to take her to his house. And, in considering his words, one must make a distinction; for what the sages have said: (in the case of) one who has intercourse with his betrothed is to be flogged applies only if his intentions were not clearly for the sake of marriage; however, if the intention was (for the sake of) marriage, she is considered married because of (with) this intercourse.

One cannot say that his intention, by the "invitation",

(see above) is merely to take her to his house, for if such were the case, there would be no need for intercourse - "yihud" alone would suffice. Rather, he certainly holds, that since the sages decided that with "yihud" subsequent to the preparations (see above) she is considered married, and the "yihud" is only a preparation for (an act of) intercourse, how much the less is any preparation required for the intercourse proper.

It is possible that there is no need for witnesses to the "yihud" (leading) to this intercourse, for this intercourse is not similar to intercourse for the sake of betrothal which requires witnesses; for it (intercourse) is the first stage in his acquisition (of her).

Intercourse (for the sake of) marriage can be compared to intercourse (with) a "y^{e}bamah"[31].

And also (the case of) such and intercourse (i.e. for marriage) is more lenient than intercourse for (the sake of) betrothal, for in that (latter) case, complete intercourse is required, according to the opinions of the Rif[32] and the Rambam, as it is written in Chapter 33 paragraph 4. However, (in the case of) intercourse for (the sake of) marriage, the Rambam has written that (mere) sexual-genital contact suffices (his source is y^{e}bamot 55b. As the Rif wrote there, and see the Rin to Chapter 1, they are questionning the version in the G^{e}mara.) Intercourse for (the sake of) marriage of "hupah", since it is revealed for all (to see their

entering the chamber together), behold, they are like witnesses, as it is written in Chapter 149, and see what is written in Chapter 26, paragraph 5.

VI. There are those who say the "hupah" is not (constituted by) "yihud", rather ("hupah" is) only when the husband (to-be) brings her from her father's house to his house for the sake of marriage, even if he has not had "yihud" with her; for behold, it is written: "If she made a vow in the house of her husband" (Numbers 30:11), the meaning is that at all times when she is in her husband's house, she is under his authority[33] (Rin) to the first Chapter of Ketubot). And thus taught the sages: she is always under the authority of the (her) father, until she enters under the authority of the (her) husband in marriage; consequently, the essence of marriage is her entering under the authority (entering the domain) of the husband.

The Rambam holds that it is true: (her) entering under his domain constitutes marriage, but only in conjunction with "yihud", because generally when he brings her into his house, he has "yihud" with her. But also, the opinion agrees with the Rambam, that, on the road, the essence (of valid marriage) is the "yihud", as apparent in Chapter 57. (Ketubot 12b: "our rabbis taught [in a Baraita]: 'he took her to his house ... and she had witnesses so that it [her going with him, i.e. "yihud"] would not be hidden.'" There is no contradiction between the Rambam and the Tosafot,

indeed, he does not rely on them. On the contrary, because of how remarkable is his reasoning, we suspend [the other opinion]. And the Rambam, at the beginning of Chapter 12, does away with witnesses, as it will be explained, with the help of heaven, in Chapter 67.)

VII. There are those who say that "hupah" is (when) the (her) father delivers her, leading her into a house which has something new in it for the sake of that "hupah", for example, embroidered sheets, which some make of roses or myrtles: and there they have "yihud" (Bet Josef, Chapter 61, quoting the Tur).

This then is the expression "entrance into the 'hupah'": this is a special place, a sort of canopy where the groom and bride sit with their attendants.

In the Jerusalem Talmud (at the end of Tractate Sotah), the grooms' "hupah" comes to be(described as having) embroidered sheets with gold-embroidered ribbons hanging on them.

Hence it is clear that this was a place decorated especially for the "hupah".

VIII. The Rosh, may his memory be for a blessing, wrote (Chapter 2 of Tractate Sukkah, paragraph 8):

> It must be examined (exactly) what constitutes the "hupah"; is it a place where one recites the marriage benedictions, meaning (only that it is) the first stage of marriage and hence called the "hupah"? It is impossible to

> say this, for somethimes they recite the benedictions in the city street while the people are crowding about. Rather, the main dwelling place of the groom and bride is what is called "ḥupah". It is not a place used (lit. made) by mere chance. And there (the former place) they recite the benedictions for seven days.
>
> The custom in Ashkenaz (Germany) is to make a litter and place the groom and bride (on it), and this is called the "ḥupah".

This is in accordance with an ancient view (custom) and it has Biblical support: "A groom will go out of his chamber, and a bride from her canopy ('ḥupah')" (Joel 2:16).

Behold, there is an established (fixed) place that, for this time (the marriage ceremony), is called a "ḥupah", as it is written: "He is like a groom going out from his canopy ('ḥupah')" (Psalms 19:6), meaning (he goes out) from the tent wherein is the "ḥupah", as it is written in the previous verse: "He placed in them a tent for the sun"[34] (Psalms 19:5).

IX. Our rabbi, the R^{e}mah[35], wrote: "There are those who say that the 'ḥupah' is when they spread a cloth over their heads at the time of the benediction." This view has been rejected (cf. Ḥelkat M^{e}ḥokek, Chapter 107), but the intention (purpose) of this opinion is that, similarly to our custom, they place beams with a curtain spread over them, and in ordinary language this is called a "ḥupah". It is positioned in a special place, e.g. in the synagogue courtyard (see below and Chapter 3) or a similar place, (whereupon) the groom and the bride are led under it with

their "friends" (grooms' men, attendants), and there they recite the benedictions.

X. He (the R^{e}mah) also wrote: "There are those who say that the 'ḥupah' of a virgin is (from the moment that) she is carried in the 'marriage litter', and that of a widow, when she has 'yiḥud'". This is found in the Mishna, that a virgin goes out (from her father's house) in a marriage litter bareheaded (Ketubot, beginning of Chapter 2), for it was customary to lead the virgins from the father's house to the marriage house "with her hair (down) to her shoulder" (Rashi[36]). The word הינומא means a veil on her head hanging down over her eyes, and sometimes she dozed behind it, for her eyes were not revealed; therefore, it was called הינומא because of תנומה ("dozing") (Ketubot 17b).

There are those who say that the "ḥupah" is when they hand her to the (her) groom, before the benediction (Mordecai's commentary to the first Chapter of Ketubot).

The intent of these two opinions is not that she is considered married immediately upon (the) placing on her (of the) הינומא (veil), or immediately upon their bringing her to the (her) groom, rather, the intent is according to our custom: they seat the bride (on a chair), braid her hair, and make music before her with (various) musical instruments; (then) the groom comes and covers her face with a scarf, and from there they walk to the "ḥupah" - this (then) is the

כניסה and the transmission (leading her over) to the groom. In our custom, it is obvious that she is not (considered) as married (yet), for he has not betrothed her yet, and there can be no marriage before betrothal. Rather, this is the beginning of the marriage, to be completed (only) after the betrothal and the benedictions.

(It should be understood that) similarly, the intent of the above opinions is that this is the beginning of the procedure of the marriage (so it appears to me; cf. Mordecai to the first Chapter of Ketubot, and Helkat Mehokek, Chapter 109).

XI. He (the Remah) also wrote:

> The custom is widespread now: to call the "hupah" that place where a spread curtain is brought in (placed) on (four) poles, under which the bride and groom are led in public and he betrothes her there, and the benedictions of betrothal and marriage are pronounced; after which they are led to their house and they eat together in a private place. This is the customary "hupah" nowadays.

According to this (then), the basic completion of the "hupah" is their eating together in a private place, for this is (like) "yihud". Therefore, others should be prevented from going there (to the private place with them) (Bayit Hadash[37]). Not even one person should enter there, for if such were the case (if someone else was with them), the "yihud" would not be fitting for (an act of) intercourse.

Hence, (care must be taken to) prevent anyone from entering there, so it can be a complete "yiḥud" (Bet Shmuel[38], Chapter 105).

In our time, since we do not have the custom of the groom and the bride eating together in one room where no one can enter (there); on the contrary, (since) all the attendants and members of the bridal party are there, (we) must know (exactly) what now constitutes the "ḥupah" which makes her (the bride) married (officially).

XII. I found that one of the "Rishonim"[39] wrote:

> It appears to me that the things are as follows (thus): the father delivers his daughter first to his son-in-law amidst a group of his friends to be his wife; this is what is called marriage. After she has stood (stayed) one or two days, preparing the necessities for meals and dress, a house would be especially designated for (them) to rejoice there with the wedding guests and friends, and to make a meal, so that (in that house) they can have intercourse that night - there they bring in the bride; that house which has been prepared for his purpose is called a "ḥupah". This is what is said in the Jerusalem Talmud: "The "ḥupah" is not an end in and of itself, rather (it is) a house wherein is a "ḥupah", that is to say, that even though they have not yet placed (her) in the (marriage) litter, rather in a house wherein there is a litter, she immediately eats of the 'T^{e}rumah'". (If she is the wife of a Cohen, she now has the privilege of eating the "T^{e}rumah" - offering).
>
> Therefore (based on this) I say that our(idea of) "ḥupah" is the bringing of the bride when we lead her into a house where there are embroidered sheets; behold, the(exact) time of

> marriage in this case is the time of the father's delivering (her) to the husband. He (the groom) may (now) inherit her, but he may not be defiled because of her, nor does he have the right to annul her vows, until she enters the "ḥupah". And once she enters the "ḥupah", she is (considered) as his wife in all matters, except that he is forbidden from having intercourse with her until he recites the seven benedictions. And if he does have intercourse with her after the marriage but without the "ḥupah" (i.e. without the benedictions), he has not properly acquired her with respect to these matters. For whenever (he lives with her without the "ḥupah") it is considered a lewd act. (Quoted in the Shulḥan Arukh of Shneor Zalman, in the ~~commentary on~~ Ḥafets Ḥayyim.)[40]

XIII. From these things it is clear that the term "nisuin" and the term "ḥupah" are two different things, and thus one can infer from the wording of the Mishna, where it is taught: "Always, she is under the authority of the father until she enters the authority of the husband through marriage." (Ketubot 4:5) And it is also taught (in the Mishnah): The woman may not eat of the heave-offering until she has entered the 'ḥupah'". (ibid. 5:3) (Therefore) since there is a difference in wording, (we) learn from this that they ("nisuin" and "ḥupah") are two different things.

But, we have not heard this (opinion) from any of the Halakhic authorities, and in the words of the Rambam which we (have already) brought, it is written: "This 'yiḥud' is called entrance into the 'ḥupah', and is (also) called (it constitutes) marriage universally." Behold,

this proves that it ("nisuin" and "ḥupah") is (only) one thing. Thus it is in the Mishnah: "until she enters the authority of the husband for 'nisuin'". This definition means "ḥupah" because this has reference to the heave-offering; thus Rashi's comment: "That is to say she enters the 'ḥupah' for the sake of marriage."

There are those who read that this is the true meaning of "until she enters the 'ḥupah'", but we have found in the Gemara in a Baraita where it is taught: "One who has intercourse with a married woman - (with her being defined as a married woman) as soon as she had entered under the authority of her husband in marriage" (ibid. 49a). Behold, this is (a crime punishable by strangulation. The inference is made here (that they are two different things), (for) even though (it is not stated) "she entered under the 'ḥupah' yet", behold these are two (separate) things, so it is necessary to say (add) that the term "nisuin" is an inclusive term, and lasts from before the "ḥupah" until after the "ḥupah"; the beginning of the "nisuin" is not yet the "ḥupah", rather, "ḥupah" is the end of the "nisuin".

XIV. In my humble opinion, the Halakhic authorities do not differ at all, for behold, it is true that the word "ḥupah" is not written in the Torah, only the word (for) marriage, as it is written: "(In the case of) one who betrothes a woman but has not (yet) taken her..." (Deuteronomy 20:7). This "taking" is for (the purpose of

marriage; since, according to Torah law proper, when he has intercourse with her for the sake of marriage, she is (considered) his wife completely and she is (considered) married. So wrote the Rambam.

However, it is not the way for Israelites to have this intercourse in public, and therefore, we would require witnesses to the "yiḥud" for intercourse. And even if it was possible that there was no need for witnesses to this ("yiḥud"), as it is written in paragraph 5, in every instance the matter would be in public (in reality) - for behold, (we) must bless them with the seven benedictions immediately before the marriage (ceremony). Therefore, our rabbis, may their memories be for a blessing, established that the "ḥupah" will be (can be) in place of the "nisuin" (i.e. the two terms can be used synonymously). It has always been this way; even in the time of the prophets, as it is written: "like a groom going out from his 'ḥupah'" (Psalm 19:6), and, it says: "and a bride from her 'ḥupah'" (Joel 2:16). (Cf. VIII) Obviously (then), thus did Moses our Rabbi instruct (lead) Israel.

XV. The interpretation of "ḥupah" is from the expression: "He covers (protects) him all day" (Deuteronomy 33:12); this is an expression of covering and separating (them) from other people. And in the Aggadic literature, our sages, may their memories be for a blessing, wrote: "The Holy One, Blessed be He, is destined to make for each righteous man seven

'ḥupot'" (Baba Batra 75a), meaning (special) coverings of honor, to distinguish them from other people, as it is written: "For on all glory shall be a'ḥupah'" (Isaiah 4:5). It was established to make a "ḥupah" of honor, and to recite the seven benedictions over them, and with this she is (considered) married completely. The (omission of) intercourse will not hinder (the validity of marriage) "everyone knows why the bride enters the 'ḥupah'". (Ketubot 8b) So there is no need for witnesses to the "yiḥud", or ten men (to witness) the wedding benedictions, (because) immediately afterwards they will have intercourse, and this would be indecent (for others to be present).

Every kind of "ḥupah" that has been customary constitutes acquiring (a woman) through marriage, since their intent is (always) marriage, and now they are separated from other people. The two of them stand in one place for the sake of marriage, for example, when he leads her into his house and has "yiḥud" with her, as the Rambam wrote (Cf. III). And it would appear to me that the Rambam's intention is also not that it is a complete "yiḥud" if the two of them are alone in one room, rather (when) they have "yiḥud" to live together as a man and his wife; they stand next to each other, and the seven benedictions are recited for them. Therefore, the opinion that we wrote in paragraph 6, viz. that "ḥupah" is not (only) "yiḥud" but the bringing her into his house for the sake of marriage, is essentially the

opinion of the Rambam; for it is obvious that this opinion also acknowledges that, if he brings her to his house but is not with her, this is nothing. It is also obvious that he must be together with her, and recite the seven benedictions for them.

However, regarding this opinion, what the Halakhic authorities worte with respect to the opinion of the Rambam, that he holds that complete "yihud" in one room is necessary, and that no one else should be with them - this is the opinion concerning which there is disagreement. But, (in) our interpretation of the opinion of the Rambam: this and this are one (the same).

XVI. Thus,(no matter) if some are accustomed to different types of "hupot", as (described) in paragraph 7 where they make a place especially decorated for the groom and the bride; or like our (custom) of placing poles with a spread curtain under which the wedding attendants lead the groom and the bride - first they seat the bride and the groom covers her (with a veil), and upon their return from the "hupah", they go together and sit at the table (to eat) next to each other, and this is the sign of marriage. Everyone knows that this is (in) preparation for intercourse in an accepted manner; there is no need to fear that, at the proper hour, he will not be able to have intercourse with her, for behold, the intention has already been demonstrated (made) without (there being) so much excitement.

And the Rosh, may his memory be for a blessing, who was apprehensive, because the place for the "ḥupah" is a temporary one, also acknowledges that a place should be especially chosen for them to be together before the (actual) "ḥupah" and after the "ḥupah", this being so, it is obvious: that all this matter (all these aspects) constitutes the "ḥupah", and immediately (after) the seven benedictions have been recited for them, she is (considered) married completely.

This is where one of the Rishonim disagreed, (differentiating) between marriage and "ḥupah", as we wrote in paragraph 12. But it is also his intention (to show) that the beginning of the marriage (ceremony) is a place where they (the bride and groom) sit before (entering) the "ḥupah", where he covers her head; this is where he takes her under his authority. But this is not the complete "ḥupah", and not more effective than (her father) delivering her to her husband, for this (seating and covering) relates only to inheritance, as it is written in Chapter 57.

The completion is (when they are) under the "ḥupah", (only) then is the marriage (ceremony) completed. The sign of the completed marriage (ceremony) is (when) they recite the seven benedictions for them.

XVII. The general rule is according to the basis of the law of the Torah proper: marriage is intercourse for the sake of marriage or the preparation for it, where the "ḥupah" (in the broad sense of the term) is the preparation

(for this). Which (type of) preparation depends upon local custom. Since this thing (albeit in many forms) is called "ḥupah", and (since) the benedictions are recited, the marriage is completed and the end of the preparations for all "ḥupot" is from that moment on (when) she enters under his authority and he (accepts that he) is ready to live with her as man with his wife.

Therefore, the Rambam insisted that she (the bride) be ritually clean; since the essence of the "ḥupah" is intercourse, it is required that she be (ritually) proper for that intercourse. But the majority of the Halakhic authorities disagree with him, with the opinion that we should not be concerned for her to be (ritually) proper for intercourse at the exact hour of the "ḥupah", for certainly there will be (at least) ten men there for (to witness) the benedictions. It is impossible for him to have intercourse (with her) then. Rather, we should say (only) that she be (ritually) proper for intercourse after a time, and if such is the case, there is no difference (in saying) after an hour, or after one day or two days.

XVIII. In regards to those among us who designate the "ḥupah" in the courtyard of the synagogue, there is great reasoning for this: for the essence of the "ḥupah" is the (bride's) going out from the authority of the (her) father to the authority of the (her) husband; this (is the case) if the husband takes her to his house.

But, in many instances, it is customary for us to make everything in the house of the bride's father, for often the bride's father takes him (the groom) into his house for a time, also, and, therefore, how is it evident that she (the bride) has gone out from the authority of the father to the authority of the husband? Therefore, we place the "ḥupah" in the courtyard of the synagogue, for this is a congregational (communal) place, and at the time of the "ḥupah" it is in the mind of the congregation to make this groom acquire this land, as (with) the congregation's "etrog" at the time of the blessing on the first day of Sukkot, (which) is considered to belong to everyone. Since (in the mind of the congregation) this land is (considered) his (for the time of the "ḥupah"), it is considered like his bringing her into his authority (the G^{e}rah[41]).

The poles and the spread curtain which we call the "ḥupah" is (so called) in reality - for it covers the groom and the bride, separating them from the rest of the people and (still) showing them cleaving to each other. And in regards to the attendants standing under the "ḥupah", also, this is all because of the friendship with the groom and bride, and therefore they stand bound together, close together.

XIX. And also, it appears to me, that even according to the Rambam and those that agree with his position, the (omission of the) benedictions do not hinder (the validity

of marriage ex post facto), like all benedictions do not hinder (the validity); in this "hupah", as he (the Rambam) wrote, only (the omission of) intercourse for the sake of marriage or (of) a real "yihud" in a closed room fitting for intercourse at that moment (do).

But, all "hupot" except for those which are only "preparations" to point to this couple's completed marriage, for as long as the seven benedictions have not been recited for them, the marriage has not been completed. Perhaps this is the reason for the Halakhic authorities who hold that (omission of the) benedictions does hinder the validity of the "hupah", and therefore it is a necessity that the groom's benedictions be recited before the marriage is completed. (On the essence of the matters that we are discussing, the G^{e}rah wrote in Chapter 109: "There is no need for 'yihud' at all, only that she be under his authority." See there. And we explained that the Rambam also holds this opinion. See Rashi's commentary to Kiddushin 10b: "s.v. וכו' כל מה שבביתך וכו' everything that is ritually pure in your house may be eaten." See there. And see Rashi's commentary to Y^{e}bamot 110a: "s.v. אבל על גבי כילתא on a bridal canopy; this seems to mean, like the rest of the "hupot", he is not yet her husband." See there and give it thorough thought.)

XX. There is one who says that it is correct that, at the time when he betrothes (sanctifies) her (i.e. during the

ceremony itself), in our custom this betrothal comes at the time of the "ḥupah", the groom and the bride should not stand under the spread curtain on poles that is the "ḥupah", rather, they should stand in front of it. Only afterwards, when they begin to recite the seven benedictions, do they stand under the "ḥupah" (Bayit Ḥadash); the principle being that the "ḥupah" should not precede the betrothal.

We have not seen anyone concerned about this (matter); for behold, according to what the major authorities wrote, that the essence of the "ḥupah" is when they (the couple) eat together after (the ceremony) in a private place, certainly there can be no concern about this (Bayit Ḥadash).

And even according to our custom, there is no concern for this, for we have already explained that our "ḥupah" is (derived from) their accepting the fact that, for them, this is the "ḥupah" and the completion of the marriage (ceremony), making her his wife completely. This is after they have completed (reciting) the seven benedictions, as it is written: "for then is the completion of the'ḥupah'", not before. The result is that, when the betrothal precedes the "ḥupah", which precedes the benediction, there is no "ḥupah" for betrothal (lit. on this). And (with regards to) the fact that the "preparations" for marriage precede the betrothal; there is no concern at all on this (matter).

XXI. Since one who betrothes and his betrothed are prohibited to have "yiḥud", therefore, wrote our rabbi, the R^emah: "one who betrothes, when he is with his betrothed in one house (i.e. in private), he must recite the seven benedictions, lest they have 'yiḥud'". And even though the benedictions without "ḥupah" do not constitute anything (officially) anyhow according to what the Rambam wrote: "(if) his intention is for the sake of marriage there is no need for a 'ḥupah'" - therefore, they should recite the seven benedicitons, for then it is obvious that if he has intercourse with her, his intention is for marriage; "One will not let stand what is permitted and eat what is forbidden" (Avodah Zarah 39b).

In addition, (we cite) the Halakhic authorities, that (the omission of) the benedictions hinders (the validity of the marriage); it is necessary to recite the benedictions for them (Bet Shmuel, Note #1).

In addition, since they have stayed together in the house for a long period of time, it becomes like a courtyard (i.e. an extension of their house) for the two of them, and their (this) "yiḥud" is a (valid) marriage; she is permissable to him (for intercourse) after the benediction (Ḥelkat M^eḥokek, Note #1).

All this (the above) is according to their custom, that she is already betrothed (from before). But, according to our custom, where the betrothal is at the time of the "ḥupah", the benedictions (in this case) do not count, for

behold, he has not yet betrothed her. Therefore, he must keep himself far away from his fiancee, until the time of the wedding.

XXII. We have already written in the name of the Rambam:

> (In the case of) one who betrothes a woman and recites the groom's benedictions, but does not have "yihud" with her in his house - she is still considered only betrothed, for the groom's benediction does not constitute marriage, only entrance into the "hupah" (does).

However, if he has intercourse with her for the sake of marriage, it is all right (i.e. she is then considered married) as it is written: "the Rambam's intention is (to show) that if he does not have intercourse with her, or (if) they do not have 'yihud' immediately, the benedictions are voided" (see Helkat M^ehokek, Note #11).

XXIII. And also the opposite (case can arise): if he betrothed and entered into the "hupah" but did not recite the groom's benedictions - behold, this is a complete marriage; he should return and recite the benedictions, even after several days. And even though all blessings must precede tha act (cf. Pesahim 7b), anyhow, among those blessings, those for marriage are not mentioned at all; one may recite the (marriage) benedictions even afterwards. But, the betrothal blessing must be recited before the betrothal (i.e. that part of the marriage ceremony which

is still called betrothal), as all the (other) blessings which must precede the act.

XXIV. Some of the Halakhic authorities wrote that there is no "ḥupah" for a widow, and their basis is from the Jerusalem Talmud. But it will be explained, with the help of heaven, in Chapter 64, that the Jerusalem Talmud does not prove the point.

It is obvious - according to the opinion of the Rambam, that the "ḥupah" is the "yiḥud", and likewise (for) those who have the opinion that the "ḥupah" is (her) going out into his authority - why should there be a difference between (the "ḥupah" of) a virgin and a widow? However, for those who have the opinion that the essence of the "ḥupah" is the house that is especially prepared for the dwelling of the groom and the bride, with embroidered sheets; and for those who have the opinion that the essence of the "ḥupah" is the spreading of the canopy or the marriage litter - certainly, for a widow, this is not done, for (this type of) "ḥupah" does not apply. And the essence of (his) acquiring her is in a "yiḥud" that is proper for intercourse.

And therefore, according to our (customary) "ḥupot", where we do not make a public demonstration for a widow when she marries a widower, and she does not cover her head, and they do not have attendants or musical instruments, nor do we lead them to the courtyard of the synagogue, rather, in

a quiet way we place the poles with a spread canopy in the house, and he betrothes her (there), and they recite the seven benedictions. This "ḥupah" does not constitute an acquisition; he must acquire her with a "yiḥud" proper for intercourse. This will be explained further, with the help of heaven, in Chapter 64.

XXV. Before entrance into the "ḥupah", he (the groom) must write for her (the bride) a "Ketubah", after which he is permitted to (have intercourse with) his wife, for thus did our sages, may their memories be for a blessing, say: "It is prohibited for him to be with his wife even for one hour without (his having written) a 'Ketubah'". Thus did the Rambam rule, and our rabbi, the Bet Josef, quotes it (the Rambam's ruling) in paragraph 3: "There is no reason to question why his obligation is to write (the 'Ketubah') before the 'ḥupah'; let him write it after the 'ḥupah' (so long as it is) before he has intercourse with her." For there is (validity) to the Rambam's position when he holds the opinion that a "ḥupah" proper for intercourse is necessary, and (a "ḥupah") without a "Ketubah" is not proper for intercourse (Har HaMor[42], Chapter 10, Halakha #7).

And, according to this, we, who are not following this (the Rambam's position) on this, as it is written in Chapter 61: "he was permitted to write (the 'Ketubah') also afterward (i.e. after the 'ḥupah')", the fact that our rabbi, the Remah, did not make a Hagah on this, because

according to our custom - we pause (in the ceremony) by reading the "Ketubah" under the "ḥupah", between the benedictions of betrothal and marriage. This being so, even without the reasoning of the Rambam, it is necessary (for him) to write it (the "Ketubah") before the "ḥupah". And such is the custom.

XXVI. However, the "Ketubah" alone does not make (for a valid) marriage. Therefore, (in the case of) the one who betrothes a woman, writes for her a "Ketubah", but she does not enter the "ḥupah" - she is still (considered) betrothed and not married, for the "Ketubah" (alone) does not make (for a valid) marriage.

If he dies or divorces her, the Rambam wrote that she collects "the basic 'Ketubah'" only from the free property but not from the mortgaged property[43]. She does not collect "the additional 'Ketubah'" at all, even if he has written (the "Ketubah") for her, his reasoning being that the "Ketubah" itself is nothing (i.e. does not make her married), for he only wrote (it) for her in order to marry her. And (therefore) "the basic 'Ketubah'" is only like an oral loan; hence, she collects only from the free property.

But if he betrothed a woman and did not write for her a "Ketubah", and (then) dies or divorces her, she is (still only) betrothed and she receives nothing, even "the basic 'Ketubah'"; for they did not institute "the basic

'Ketubah'" for her until she is married, or until he writes (the "Ketubah" for her). This is the opinion of the Rambam.

XXVII. There are some among our rabbis who hold that a betrothed woman has a "Ketubah", for this appears to be so in several places in the Talmud. If he did not write (a "Ketubah") for her, she collects from the free property, and if he did write (it) for her, she collects also from the mortgaged property, as (is the principle) with all documents (pertaining to monetary matters). But if he did not write (it) for her, it appears that, with this opinion also, she does not collect from the mortgaged property.

However, the Rosh, may his memory be for a blessing, wrote: "even if he did not write (it) for her, she collects from the mortgaged property because of the 'K^{e}t^{e}nai Bet Din'" (a stipulation of the rabbinical court that a woman without a "Ketubah" is still entitled to the benefits of a "Ketubah") (Ketubot, Chapter 4, paragraph 64). And it appears, in the words of the Rosh in another place, that he is in doubt with respect to this law (ibid. Chapter 5, paragraph 5). And not only this, (but) "even if he wrote (it) for her from the betrothal, and later wrote (it again) for her from the marriage, she foregoes her claim to the mortgaged property from the first (of the two 'Ketubot')" (ibid.), and she can only collect from the purchasers that which has been sold since the time of marriage.

All this is in the matter of "the basic 'Ketubah'", but in the matter of "the additional 'Ketubah'" everyone agrees that, even if he did write (it) for her, she does not collect from the time of the betrothal, for it is (based on the) general assumption that he only wrote (it) for her in order to marry her.

The Halakhic authorities wrote that the custom is according to the Rambam, not to let a betrothed woman collect the "Ketubah", for in all the places where in the G^{e}mara it is clear that a betrothed woman has a "Ketubah", the Rambam shows that (in those cases indeed) he did actually write (it) for her.

And, the same is the position of the G^{e}onim[44] that, since in the G^{e}mara it is questioned whether or not a betrothed woman has a "Ketubah", and it is not solved there (Baba M^{e}tsia 17a), she does not receive the "Ketubah".

XXVIII. (In the case of) one whose betrothed daughter is widowed or divorced after the betrothal (but before the marriage), even several times before she reaches adulthood - her "Ketubah" (money) belongs to her father, for she only goes out from the authority of the father by becoming an adult or by marriage. Therefore, if she is married and (then) widowed or divorced from the marriage, even before (she reaches) maturity, i.e. even if she is still a minor, her father receives nothing with respect to the first "Ketubah" written at the betrothal: "we do not consider the

date of the writing of the 'Ketubah', saying that, since it was written (while she was still) under the authority of the father, it belongs to the father; rather, we consider the date of the collection, and the collection is only after the marriage" (Rashi commentary, Ketubot 43b).

XXIX. (In the case of) one whose betrothed (woman) died - if the betrothed man is a Cohen, he may not defile himself because of her, as it is written: "except for his relatives" (Leviticus 21:2), and this means near kin. And a betrothed is not his near kin, even if he has betrothed her by (an act of) intercourse, since she is (supposedly) prohibited to him (for further intercourse) until the marriage.

If he (the one who betrothes) dies, she is not obligated to defile herself because of him, even though it is a commandment to defile oneself for all near kin. Nevertheless, (defiling herself) for her betrothed man is no "mitsvah" (good deed) but doing it constitutes no prohibition, even if she is a female Cohen, for the daughters of Aaron were not commanded regarding the defiling, as it is written" "Speak to the priests, the sons of Aaron" (Leviticus 21:1); (it says) "the sons of Aaron" and not "the daughters of Aaron" (i.e. the prohibition against defiling oneself applies to men only).

XXX. And it is a similar matter with her inheritance when she (a betrothed woman) dies: he (the one who betrothes) is not eligible for her inheritance, for also in the matter

of inheritance is it written: "his near kin". And since he does not inherit her, he is not obligated to bury her (i.e. provide for her burial). Rather, her father will inherit her and he will bury her. And even if the father does not bury her, he (the father) will (still) inherit her. Even if there remains no inheritance from her at all, it is not incumbent upon the one who betrothed to bury her or to make any payments (whatsoever).

And even if she was married to him in a place where he does not inherit her because of the ordinance in Chapter 53[45], he is not obligated to bury her. And in a place where he inherits half of her dowry, there are those who say that the burial is incumbent upon both of them (the one who betrothed and the father) (Helkat Mehokek). And there are those who say (that the burial is incumbent) upon the husband alone (Bet Shmuel).

XXXI. Similarly, the one who betrothes is not obligated (to provide) for the sustenance of his betrothed, because as long as she is not married, and he is not obligated to (provide) her conjugal rights, he is not obligated to (provide) her sustenance and garments, unless she was a minor (and an) orphan being provided sustenance by her brothers - for in this case, the one who betrothes is obligated to her sustenance, since she only receives sustenance from her brothers until she is betrothed or reaches maturity. This one (the orphan who is a minor) has not reached maturity to provide for her own sustenance, rather she is

only a minor or a young maiden. And no man wants his betrothed to degrade herself by going out and begging at doors (to seek sustenance). Therefore, even if he (the one who betrothes) says that he is not concerned about this (i.e. her having to beg), we force him to provide her sustenance; he is obligated (to do so) according to rabbinic injunction. This is the opinion of the Rambam.

There are those who say that the one who betrothes is not obligated for her sustenance, even in a case like this (i.e. where she is a minor and an orphan) - and she must be provided for by her brothers (it depends on the version, cf. Ketubot 53b).

It is an obvious thing that a negotiated-for ("engaged") woman does not have any of the legal rights (status) of a married woman, not like (those of a) betrothed woman, for even if he wrote for her a "Ketubah", it is nothing (i.e. it has no validity) if they retracted (broke the engagement) before betrothal: because he wrote (it) for her only in order to betrothe her and enter (with) her (into the "ḥupah") (Ḥelkat Meḥokek). How much the more so that with the other things (besides sustenance) she has none of the legal rights of a betrothed woman.

CHAPTER 3

Hekhal Yitshak
(Even HaEzer)

Volume II
Chapter 27

Question: Is it permissable to have a marriage ceremony in the synagogue?

Blessed be the Lord:
Saturday evening of
Torah portion Tazria,
5702 (1942)

[Introductory Euphemisms:
Honor and glory, my exalted friend,
the great and famous rabbi and Gaon,
first in Zion, etc.
the honor of his glorious name]

Rabbi Ben Zion Meir Hai Uziel (may he live
for long good days, amen)
Chief Rabbi of the Land of Israel

Peace and blessing.

I have received your treatise together with the treatise of the rabbi and Gaon, Rabbi Meir Irira, may he live for long good days, amen, in the matter of the "hupah" in the synagogue.

Behold, in Poland, the land of my birth, and in Lithuania, and, in as much as is known to me, in all the states that were included in the kingdom of Russia until the First World War, it was customary to make the "hupah" under the open skies, so there was no place for this question, but generally, they would strive to make it in the courtyard of the synagogue, or close to the synagogue.

And when my father, my master, may the memory of the righteous be for a blessing, came to the state of England, and he brought me with him, there we found that they made the "hupah" in the synagogue. Although his mind did not agree (lit. rest) with this at all, it was not in his power to change, for they had already practiced

thus for many years. And similarly, I after him, may I be set apart from him (and have) good and long life, when I was appointed to my first rabbinical position in the city of Belfast, found the same custom in Ireland, and it was not in my power to change it by any means, but I did not permit there the practice of playing, at the time of the "ḥupah", neither the pump-organ nor the piano.

However, here in our holy land, behold, thank God, we do not have this evil custom, and anyone who attempts at changing matters, has the "lower hand" (in contrast to "upper hand" [and is to be rejected]). Needless to say that the Ashkenazim must not change their custom of making the "ḥupah" under the open skies, but even with the Sᵉfardim, who are not strict about this and make the "ḥupah" in the house, certainly it is incumbent upon us to oppose any new attempts to make the "ḥupah" in the synagogue.

And here there is no need to dwell on this at length, for the righteous Gaon, Rabbi Ḥayyim Ḥizkiah Mᵉdini, in Sᵉde Ḥemed dealt with this at length in the article "Groom and bride and 'ḥupah'", and almost left no room for further discussion. It is obvious and clear, for several reasons detailed there, that it is incumbent upon us to prevent this thing (i.e. "ḥupah" in the synagogue).

And, I may add, it is forbidden to kiss even small children in the synagogue (Orah Ḥayyim, Chapter 98), and at the wedding (lit. in the "ḥupah") it is impossible to prevent the ugly kissing, for not only do the groom and bride

kiss each other, but also the relatives and friends, men and women. And "in contempt and wrath" (Esther 1:18) the transgression includes actual forbidden practices like sexual licentiousness and contact with menstruants in the house sanctified to the service of the Lord. I would always, outside of Israel, warn them, in writing and word of mouth, not to kiss; often they would listen to me, but many times they would not listen, and I have been very troubled about this.

And also the damage is greater if men and women mix (are together in the synagogue). Although in the former days, which were better than now, it was possible to arrange that only the mothers of the groom and the bride would enter (the synagogue proper), or, in their (the mothers') absence, (other female) attendants in their place, as is brought in the Maharil[46]; but today it is impossible to set up boundaries for this. The great injunction (against men and women together), which was instituted already at the time of the Temple, has been voided, and the synagogue is profaned because of this.

Blessed be the Lord, that I have been worthy to come to our holy land, for my eyes have ceased seeing these corruptions, anyhow, in the holy places. We are grieved about the earlier transgressions, but they (those who would change the laws) come even now to make new changes. Certainly it is necessary to stand with all

of our strength against these changes. "From Zion shall go forth the Law" - it is incumbent upon the Diaspora (i.e. the Jewish communitites outside of Israel) to learn from the land of Israel, and not for us to learn from the changes that have been made in the countries of Western Europe, for our heart was pained because of them, and it was not in our power to prevent them.

And if their intention is to add to the cermony of marriage a spark of the holiness of the surroundings, it would be proper to institute to have (the "ḥupah") in the courtyard of the synagogue. It is also possible to establish a type of building in the courtyard of the synagogue that would be open on top, in place of the "ḥupah", in a manner that it would be under the open skies; and this would be a joining of a spark of the holiness of the surroundings - the Sefardim are not obligated to this, that it be open on top - but, in any case, it can be a special building in the courtyard of the Lord's house, a representation of the marriage house that was found before in all the cities of Israel, as stated in Ḥoshen Mishpat, Chapter 163. But under no conditions should the "ḥupah" be in the synagogue itself.

May He who sanctifies His people Israel sanctify us with the holiness of the heavens, and purify our hearts to serve Him in truth.

His friend who hopes for the soon-expected

salvation; and I sign with a blessing of all goodness.

[Closing Euphemisms:
Cherishing and honoring
him, according to his
superb value,]

Yitsḥak Isaac HaLevi Herzog

FOOTNOTES

[1]The marriage agreement, written prior to the cermony, which stipulates, among other things, the dowry terms.

[2]Lit. "scribes". Since the return from the Babylonian Exile (dated approximately with the time of Ezra in the 5th century B.C.E.), the sofer functioned originally as the teacher or sage, but, in later times, as the professional copyist of the Torah and other religious articles.

[3]Lit. "beating for rebellion". This penalty was imposed for specific crimes against the rabbinic law, or to compel the performance of a specific law of the Torah. It could be imposed without the judicial formalities which surrounded the infliction of the forty Biblical stripes.

[4]Introductory word signifying comments by Moses Ben Israel Isserles (cf. footnote 35) as contained in the Mapah (Table Cloth), supplementary notes from the Ashkenzai (Eastern European) point of view to the Sefardi-oriented Shulḥan Arukh of Josef Caro.

[5]From the Hebrew root meaning "together" or "unity". The couple stays alone in a private room. This

is considered evidence that co-habitation has taken place.

[6]The blessings recited at the wedding ceremony and at every meal during the subsequent week, when a new guest eats with the couple and a "minyan" (ten men) is at the meal.

The first blessing is over the wine, the second honoring the creation of Adam and Eve, the intermediate blessings are specific to the couple, while the last is an invocation for all Israel.

[7]Mordecai ben Hillel HaCohen (1240-1298). German commentator to the Talmud and other rabbinic material.

[8]Anonymous author. 14th century collection of laws.

[9]Rabbi Alexander HaCohen Zoslin (14th century), Frankfort. Condensation of Talmudic laws and decisions.

[10]"By three means is the woman acquired . . . by money or by writ (document) or by intercourse" (Kiddushin 1:1). If a man, in the presence of competent witnesses, recites the words: "Behold, thou art consecrated unto me with this intercourse, according to the law of Moses and Israel", and then proceeds to take her into a private room for the purpose of fulfilling that vow, she is betrothed to him from that moment.

[11]Generally accepted to refer to a bridal canopy consisting of a "tallit" (prayer shawl) or a piece of other cloth, stretched over four sticks. It is often placed in the synagogue, but frequently in an outside location.

[12]The seven benedictions (cf. footnote 6).

[13]Rabbi Nisim ben Reuven Gerundi (1340 - 1380), Barcelona. Commentary on Alfasi (cf footnote 32).

[14]Rabbi Josef Caro (1488 - 1575), Safad. Commentary on the Tur (cf. footnote 17).

[15]Not to be confused with the "hupah". As is evident from the text, certain customs were prevelant in the bringing of a bride to the marriage ceremony, of which the procession in the case of a virgin bride is an example. (Cf. viz. the etymology of the term in Chapter 2.).

[16]Commentary and notes to the Talmud and the commentary of Rashi (cf. footnote 36). First among the Tosafists were Rashi's grandsons.

[17]Arba'ah Turim ("The Four Rows"). Compendium by Jacob ben Asher (14th century), Spain.

[18]Asher ben Jehiel (1250 - 1328), Germany, Southern France and Toledo. Author of Rabbenu Asher Commentary on Talmud.

[19]Priest or member of the priestly clan. In Biblical times, the priests were the principal functionnaries in divine services. Since the destruction of the Temple, their active role in the community has diminished. Membership is through hereditary authority only.

[20]The members of the priestly clan were forbidden to have even the slightest contact with the dead, except in the case of certain members of his immediate family. His betrothed is not included.

[21]The amount determined by law and included in the Ketubah that a wife is entitled to receive from her husband after a divorce, or upon his death: 200 zuz for a virgin, 100 for a non-virgin.

[22]Not mortgaged property.

[23]Additional amounts that the husband may enter in the Ketubah to her "basic Ketubah".

[24]Bill of divorce, granted by the husband to the wife.

[25]According to some scholars, an organization whose framework dates to the time of Ezra. Commonly considered to be a loosely-knit, representative body which met at irregular occasions to pass major legislation. Possibly led to the development of the formal Sanhedrin (Synedrion).

[26]A law with some Biblical foundation, but, nonetheless, instituted by the rabbis. An offender against a rabbinic prohibition is subject only to the rabbinic penalties, but never to the "karet" punishment (cf. footnote 28).

[27]Moses ben Isaac Judah Lima (17th century), Eastern Europe. Commentary on Even HaEzer.

[28]Lit. "cutting off" (originally perhaps "excommunication"). According to the rabbis, divine punishment over which mortal man had no jurisdiction, until the rabbis ordained that it be replaced by flogging.

[29]Those scholars whose intellectual efforts were concentrated on determining the specific halakha (law) that should be practiced.

[30]Moses ben Maimon (1135-1204), Egypt. Considered to be the greatest scholar of post-Talmudic times. His magnum opus is a compendium known as the Mishne Torah.

[31]A childless widow who has a brother-in-law. The brother-in-law may marry her with intercourse alone, without a preceding ceremony. (Later, the rabbis instituted a ceremony in this case, also.).

[32]Isaac of Fez (1013 - 1103), North Africa. His Halakhot is the earliest medieval major compendium.

[33]Should be understood conversely, that she is the responsibility of her father or her husband.

[34]It is possible that the author is basing his proof-text on a new reading of verse 5; changing the vocalization of two words leads to the translation: "to serve there as a tent for them."

[35]Moses ben Israel Isserles (1530 - 1572), Poland. Ashkenazi commentator to the Sefardi-oriented Shulhan Arukh.

[36]Solomon ben Isaac (1030 - 1105), Troyes. The most famous and prolific commentator on the Bible and Talmud.

[37]Rabbi Joel Sirkhes (1561 - 1640), Poland. Commentary on the Tur.

[38]Rabbi Samuel ben Uri Phoebus (17th century), Germany. Commentary on Even HaEzer.

[39]Lit. ... first one" or "the earlier one".

[39]Lit. "the first ones" or "the earlier ones". Those rabbinical authorities whose decisions preceded the Shulḥan Arukh.

[40]Rabbi Shneor Zalman ben Baruch of Liady (1747-1812). Leader of the rational Ḥasidic movement known as ḤaBaD.

[41]Elijah Gaon of Vilna (1720 - 1797).

[42]Mordecai Benett (1753 - 1829).

[43]Property bought from a person who owes a debt collectible from his estate.

[44]Singular "Gaon", Lit. "pride"; the title given to the heads of the two rabbinic academies in Babylonia (Sura and Pumbedita). During the "Geonic Period" (late sixth to early eleventh centuries), these men were considered the highest religious authorities, and were a strong unifying force for the Jewish community of the Diaspora.

[45]Chapter 53 of Arukh HaShulḥan Even HaEzer details all of the rabbinic ordiances and injunctions concerning inheritance upon the death of either member of the betrothed couple.

[46]Jacob ben Moses HaLevi Moellin (1365-1427), Mayence.

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