

HEBREW UNION COLLEGE - JEWISH INSTITUTE OF RELIGION
NEW YORK SCHOOL

INSTRUCTIONS FROM AUTHOR TO LIBRARY FOR THESES

AUTHOR Marjorie S. Yudkin

TITLE The Ethics of Jewish Marital Economic Law:
A Study of the Halacha regarding Massei Yadeha

TYPE OF THESIS: D.H.L. () Rabbinic (X)
Master's ()

1. May circulate ()

2. Is restricted (X) for 10 years. - Use for HUC students +
faculty permitted.

Note: The Library shall respect restrictions placed on
theses for a period of no more than ten years.

I understand that the Library may make a photocopy of
my thesis for security purposes.

3. The Library may sell photocopies of my thesis. yes X
no

5/16/83
Date

Marjorie S. Yudkin
Signature of Author

Library
Record

Microfilmed _____
Date

Signature of Library Staff Member

THE ETHICS OF JEWISH MARITAL ECONOMIC LAW:
A STUDY OF THE HALACHA REGARDING
MAASEI YADEHA

MARJORIE S. YUDKIN

Thesis Submitted in Partial Fulfillment of
Requirements for Ordination

Hebrew Union College-Jewish Institute of Religion
New York, N.Y.

March 25, 1983

Referee: Professor Eugene B. Borowitz

CONTENTS

Preface	ii
Introduction	1
Chapter 1: The Mishnah	7
Chapter 2: The Talmud	18
Chapter 3: Geonica	36
Chapter 4: Rashi and the Tosafot	39
Chapter 5: The Mishneh Torah	47
Chapter 6: The Tur	55
Chapter 7: The Shulchan Aruch -- Caro	65
Chapter 8: Isserles' Gloss on the Shulchan Aruch	71
Conclusion	77
Notes	87
Bibliography	96

PREFACE

I wish to express my thanks to those who have helped me along the way. My advisor, Professor Eugene Borowitz, has fostered my intellectual and spiritual growth during my years at the College-Institute. His personal integrity and thoughtfulness provide a model for my future growth as well. Professor Michael Chernick, who spent many hours studying with me, elicited my understanding of the materials on which this study relies.

The roots of my interest in women's earnings run very deep. I first learned their importance from my mother and her mother, Mollie Aronson. I am grateful to my parents, Elaine and Gerald Yudkin, for their encouragement of my intellectual achievements at a formative age. This thesis began its journey in a sunny room in Minnesota, provided by my in-laws, Frank and Betty Tiffany. I thank them for their warm support of my rabbinic studies.

Among those who have sustained me, two deserve special thanks. Our tradition teaches that we learn best in partnership. I am blessed with a friend who has served as my teacher and student, my classmate and most trusted critic. Carole Meyers has been my rabbi since we began studying together almost five years ago.

The theme song of this thesis is Proverb 31. For as I was sustained throughout the project by my husband's care, concern and "household and personal labors," I wished that

our tradition included a song of praise for this sustenance. Such recognition is traditionally expressed toward one's wife, as in Proverb 31. In the egalitarian spirit of this study, I dedicate these words inspired by the Proverb to my husband, Randy Tiffany.

What is more precious than a virtuous husband?

His worth is far beyond that of rubies.

His wife trusts him, and lacks nothing

He is good to her all the days of her life.

Extol him for all his labors, and let his deeds
sing his praises.

I close with this prayer, marking the completion of
this study:

ברוך אתה יי אלהינו
הנן נקרא.

Blessed is the Eternal One, gracious Giver of knowledge.

INTRODUCTION

This study is concerned with the expression of Jewish ethics in the development of Jewish law. The development of a selected issue has been traced through the legal literature, beginning with the Mishnah and ending with the Shulchan Aruch. The purpose of this study is to ascertain whether Jewish values are made manifest in the law. If this is so, then Jewish ethical imperatives would become accessible through study of the development of the legal tradition.

In recent years, interest in the economic relationship between husband and wife has been growing. Spouses seek to understand their legal and ethical rights and responsibilities to one another. The development of Jewish law has rarely been studied with a special concern for the rights of women. This study, focused on the economic relationship of spouses, details the extent to which women were permitted to control their earnings.

The control of women's earnings is but one facet of the legal relationship between husband and wife. Nevertheless, it is an important facet, since the extent of a woman's control over her earnings indicates the extent of her independence or dependence.

This study is distinguished from its predecessors¹ by the author's acknowledged commitment to women's rights. Furthermore, this study is primarily concerned with the de-

velopment of the legal tradition. Rather than focusing on the constancy of the law, this study examines changes in the law and the significance of these changes.

This study is primarily organized according to the chronological development of the law, rather than topically. Within each chapter, topics are treated consecutively. The organization of the topics is indicated by subheadings which are constant from one chapter to the next. To aid the reader, the subheadings are prefaced by a code indicating the arrangement of the topics. Each topic letter may embrace several related legal issues.

Topic A is concerned with the relationship of the husband to his wife's earnings.

Topic B concerns the husband's obligation to provide maintenance, or financial support, for his wife.

Topic C concerns the nature of the wife's obligation to work for her husband.

Topic D deals with the definition of maasei yadeha.

Topic E concerns the wife's right to renounce the rabbinic ordinance regarding the exchange of earnings for maintenance.

Topic F deals with the allowance which a husband is required to provide for his wife, and for which he gains control of her surplus earnings.

Topic G concerns the definition of and control of the various kinds of the wife's surplus earnings.

The chart on page 4 includes all of the topics dealt

with in this study, organized vertically by code letter. Along the horizontal axis, the chapters are listed in chronological order. The chart indicates which topics are discussed in each stratum of the literature. An X mark indicates that the discussion of a given topic was of substantive interest, and has been included in the study. The absence of an X mark does not necessarily mean that the topic was absent from the literature in question, but that no noteworthy development took place.

The symbol S accompanying an X indicates that although the topic was touched upon in that literary stratum, it was superfluous to repeat the substance of the discussion.

The fact that the Mishnah deals with more topics than any other stratum may indicate that later development took the mishnaic discussion for granted and only discussed those areas of controversy or change. On the other hand, this may indicate a narrowing of concern with the guarantees of women's rights over the generations.

The specific legal issue addressed in this study is maasei yadeha, women's earnings. The term מַעְשֵׂי יָדֶיהָ may literally indicate "the work of her hands"² or "her handiwork."³ To indicate that this work may be income-producing, it has also been translated as "the fruit of her labor"⁴ and as "her income."⁵ In this thesis, maasei yadeha will be rendered consistently as "her earnings." This indicates that part of her labor for which she receives remuneration, expressed traditionally as an amount of work in wool.

Code:Topic	Chapter 1 The Mishnah	Chapter 2 The Talmud	Chapter 3 Geonica	Chapter 4 Rashi	Chapter 4 The Tosafot	Chapter 5 The Mishneh Torah	Chapter 6 The Tur	Chapter 7 The Shulchan Aruch- Caro	Chapter 8 Isserles' Gloss on the Shulchan Aruch
A1: The husband's control of his wife's earnings.	X					X	S	S	
A2: Limits to the husband's control of his wife's earnings.	X								
A3: The husband receives control of his wife's earnings in exchange for maintenance.		X			X	X	X	X	X
A4: Exchange established to prevent enmity.		X			X	X			
B1: Definition of the husband's obligation to provide maintenance for his wife.	X					X			
B2: Flexibility of his maintenance obligation.	X	X		X		X	X		
C1: Definition of the wife's obligation to work for her husband.	X					S	S		
C2: Flexibility of her work obligation.	X	X		X	X	X	X	X	X
D: Definition of <u>maasei yadeha</u> .	X						X		
E: The wife's right to renounce the rabbinic ordinance.		X	X		X	X	X	X	
F1: The husband provides his wife with an allowance.	X								
F2: The husband receives control of his wife's surplus earnings in exchange for an allowance.		X							X
G1: Definition of and control of the wife's surplus earnings.	X					X	X	X	X
G2: Definition of and control of different types of surplus earnings.		X			X		X		

A woman was also required to perform various labors for which she did not receive remuneration, such as household work and personal labors. These are included in the study, since the amount of unpaid work a wife was obligated to perform impinged on her earnings. However, they are included to inform our study of the context of women's earnings and are not the focus of the legal study.

The Hebrew term maasei yadeha, however, is used both to specify women's earnings and sometimes to include all of women's work. Whenever applicable, the term has been translated as "earnings." When the intention of the text remained ambiguous, the transliterated term maasei yadeha is used.

In the biblical period, women, their property, and their earnings were under men's control. There is no evidence that women had any control over their earnings under Israelite law. By the tannaitic period, a substantial change had been instituted. Although records chronicling this change are not available, Chapter 1 examines the results of this change. The most significant advance in the development of women's rights occurs in the unrecorded period during the transition from the biblical period to the laws of the Mishnah. Later chapters follow the discussion and refinement of mishnaic law.

Since the purpose of this study is to focus on women's earnings, many interesting but peripheral issues have been excluded. Since, in the legal tradition, earnings are exchanged for other benefits, this system of exchanges has been

included. But the elements of the exchange which are not earnings, such as maintenance and allowance, have not been studied in depth. Other aspects of the economic relationship between husband and wife have also been excluded, such as the use of property, usufruct, dowry, and inheritance. Relationships with other family members have also been relegated to the sidelines for the purpose of this study. Finally, while the marital relationship is multifaceted, this study has been strictly limited to the economic aspect of the relationship rather than the social, political, sexual, emotional, or religious aspects of marriage.

Chapter 1

THE MISHNAH

This chapter is based on the material regarding the financial relationship between husband and wife discussed in the Mishnah, tractate Ketubot, chapters 4, 5, 6 and 7. In the tannaitic period, women gained increased control over their finances, although much control remained in the hands of their fathers and husbands.

The chapter begins with the standard case, includes the definition of the amount and kinds of work a wife must perform for her husband, and the specific items which a husband must provide for his wife as her maintenance. We also learn of the division of a wife's earnings into a set amount and a surplus amount for the purpose of determining what amount of earnings are exchanged for maintenance.

A1 - The Husband's Control of His Wife's Earnings

The normative relationship of a woman to her earnings is set forth in Ket. 4:4:

- A. The father retains control of his daughter [younger than twelve and a half] as to effecting any of the tokens of betrothal: money, document, or sexual intercourse.
- B. And he retains control of what she finds, of her earnings, and of abrogating her vows.
- C. And he receives her writ of divorce [from a betrothal].
- D. But he does not dispose of the return [on property received by the girl from her mother] during her lifetime.

- E. [When] she is married, the husband exceeds the father for he disposes of the return [on property received by the girl from her mother] during her lifetime.
- F. But he is liable to maintain her, and to ransom her, and to bury her.
- G. R. Judah says, "Even the poorest man in Israel should not hire fewer than two flutes and one professional wailing woman."¹

First the text states that a father retains control of his daughter's chance finds and her earnings. The mishnah further states that when the woman marries, her husband assumes control over these two assets. This is further substantiated by the explicit statement in Ket. 6:1 that "What a wife finds and her earnings go to her husband."² However, Ket. 4:4 adds that the husband is obligated to maintain his wife. We can conclude from this that maintenance was not a legal obligation of the father. That is to say, she is legally entitled to maintenance as a wife but not as a daughter.

Thus Ket. 4:4 defines the relationship between husband and wife with regard to her earnings and support as a modified form of the relationship between father and daughter. The husband becomes a surrogate father, but has increased rights: the use of usufruct, and increased responsibilities: maintenance, ransom and burial.

A2 - Limits to the Husband's Control of the Wife's Earnings

There are limits to the husband's control of his wife's labor. Ket. 5:4 states: "He who sanctifies to the Temple his wife's earnings, lo, this woman [continues to]

work and eat [maintain herself]."³ Thus we learn that the husband does not have the right to dedicate his wife's earnings to the Temple. His sanctification of her earnings is ineffectual. Neusner writes, "The husband cannot consecrate what is not his. The wages (earnings) are assigned to him only in lieu of her maintenance."⁴ Ket. 5:4 clearly states that a wife's earnings cannot be consecrated to the Temple by her husband. Even though he will receive control of her earnings when he provides her maintenance, he does not currently own her future earnings.

B1 - Definition of the Husband's Obligation to Provide Maintenance for his Wife

One of the husband's obligations to his wife is to provide her with maintenance. This may be based on the minimum standard described in the biblical case of a woman purchased as a wife. Exodus 21:10-11 holds that "If he marries another, he must not withhold from this one her food, her clothing, or her conjugal rights. If he fails her in these three ways, she shall go free, without payment."⁵ Thus food, clothing and conjugal rights were seen as the biblical minimum standard of what a husband must provide for a wife.

Food and clothing are the primary constituents of the mishnaic version of maintenance. We learn from Ket. 5:8 of the specific minimum amounts of wheat, barley, legumes (pulse), oil, figs or other fruit requires for his wife's sustenance:

- A. He who maintains his wife by a third party may not provide for her less than two qabs of wheat or four qabs of barley [per week].
- B. (Said R. Yose, "Only R. Ishmael ruled that barley may be given to her, for he was near Edom.")
- C. And one pays over to her a half-qab of pulse, a half log of oil, and a qab of dried figs or a maneh of fig-cake.
- D. And if he does not have it, he provides instead fruit of some other type.

Ket. 5:8 further articulates the minimum amount of clothing and furnishings that a husband is required to provide for his wife:

- E. And he gives her a bed, a cover, and a mat.
- F. And he gives her a cap for her head, and a girdle for her loins, and shoes from one festival season to the next, and clothing worth fifty zuz from one year to the next.
- G. And they do not give her either new ones in the sunny season or old ones in the rainy season.
- H. But they provide for her clothing for fifty zuz in the rainy season, and she clothes herself with the remnants in the sunny season.
- I. And the rags remain hers.

B2 - The Flexibility of His Maintenance Obligation

A husband is required to provide his wife with maintenance. We can assess the seriousness of this obligation by learning how little flexibility the law provides for the husband. We learn in Ket. 7:1 that a husband must appoint a steward to provide for his wife's needs if he vows not to support her for thirty days or less. If the period is longer than thirty days, the husband must divorce his wife and pro-

vide her with the sum specified by her marriage-contract (ketubah). This would force him to relinquish control of a large amount of property pledged by him for her security.

- A. He who prohibits his wife by vow from deriving benefit from him
- B. for a period of 30 days, appoints an agent for her.
- C. [If the effects of the vow are not nullified] for a longer period, he puts her away and pays off her marriage-contract.

Thus the husband's ability to escape from the obligation to maintain his wife is sharply limited even at this early stage.

C1 - Definition of the Wife's Obligation to Work for her Husband

In order to determine what her works consists of, Ket. 5:5 specifies the seven labors (שבע מלאכות) which she is required to perform for her husband. It states that "she (1) grinds flour, (2) bakes bread, (3) does laundry, (4) prepares meals, (5) nurses her child, (6) makes the bed, (7) works in wool."⁶

C2 - Flexibility of her Work Obligation

If the woman brings slave girls with her into the marriage, the first part of Ket. 5:5 states that she is exempted from certain of these labors as follows:

<u>Number of Slaves</u>	<u>Labors from which she is Exempt</u>
1	1-3
2	1-5
3	1-7
4	She is at leisure (literally: she sits on a throne)

This freedom is countermanded by the statements of R. Eliezer and R. Simeon ben Gamaliel as follows: R. Eliezer says, "Even if she brought him a hundred slave-girls, he forces her to work in wool, for idleness leads to unchastity." Rabban Simeon b. Gamaliel says, "Also, He who prohibits his wife by a vow from performing any labor puts her away and pays off her marriage-contract. For idleness leads to boredom." R. Eliezer insists that a wife is obligated to perform wool-work regardless of the number of slaves she has, lest her freedom lead her to unchastity. This restrictive opinion suggests that a woman cannot be safely released from all household obligations. R. Eliezer deprives her of the right not to work if she has provided others to do the work. R. Simeon ben Gamaliel invokes similar reasoning to support an opposite conclusion. He ensures the wife's right to do housework if she wishes, since a vow prohibiting her from choosing to work would "lead to dissolution of the marriage." Thus, according to R. Simeon ben Gamaliel, the husband cannot control his wife's future labor, even if he wishes to exempt her from such labor.

D - Definition of Maasei Yedeha

A central concern of this study is the definition of maasei yedeha. This question is asked in Ket. 5:9, "How much work does she do for him?" The response is given in amounts of wool-work, the seventh labor listed in Ket. 5:5. She is required to weave either five selah's weight of warp

in Judea⁷ (14.3 gr.x 5 = 71.5 gr.)⁸ or twice that amount of woof.⁹ According to Blackman, these are equivalent tasks.¹⁰ This definition of maasei yadeha states that this minimum must be given to the woman's husband, and it could be inferred that any additional work she might perform belongs to her. However, this is not stated in the mishnah.

Ket. 5:9 stipulates that if she is nursing a child, the required amount she must produce as her minimum earning is reduced and her maintenance is increased. "F. And if she was nursing a child, they reduce [the required weight of wool which she must spin as] her earnings, and they provide more food for her."¹¹ Thus, the earnings requirement has some flexibility at this stage of development.

F1 - The Husband Provides his Wife with an Allowance

In addition to maintenance, Ket. 5:9 requires the husband to provide his wife with a silver ma'ah each week for her personal needs. She may use this as spending money -- on items beyond those provided for by maintenance.

Ket. 5:9 states that "if he does not give her a silver ma'ah for her needs, her earnings belong to her."¹² The plain meaning of the mishnaic text indicates that if a husband failed to provide his wife with an allowance, then she would be permitted to retain control over all of her earnings, not just her surplus earnings. However, the statement has been traditionally understood as permitting the wife to gain control over her surplus income only. For example, in

his commentary on this mishnah, Blackman understands the meaning of the text as "after deducting the cost of her maintenance, the surplus of her earnings belongs to her." (emphasis added)¹³

If the original sense of the mishnah indicated that a woman would retain her entire income in these circumstances, this rigid re-interpretation of the mishnaic text according to the later system of exchanges -- earnings for maintenance, surplus earnings for allowance -- is a severe restriction of the woman's rights. This restriction became so pervasive that no later law developed based on the plain sense of the mishnaic text.

G1 - Definition of and Control of the Wife's Surplus Earnings

Once maasei yadeha is defined, then the issue of surplus earnings arises. Since Ket. 5:9 specifies the exact amount of wool-work that a wife must produce for her husband, work in excess of this requirement could belong to her.

Control of a wife's surplus earnings is discussed in the latter part of Ket. 5:4. This mishnah assumes that the primary purpose of the wife's earnings is to provide for the expenses of her maintenance.

- A. He who sanctifies to the Temple his wife's earnings, lo, this woman [continues to] work and eat [maintain herself].
- B. And the surplus,
- C. R. Meir says, "It is consecrated."
- D. R. Yohanan Hassandlar says, "It is unconsecrated."¹⁴

However, a dispute arises over the status of her earnings which exceed the minimum required for her maintenance. This is referred to as the motar or the surplus. There is a dispute between R. Meir and Yohanan Hassandlar regarding control of the wife's surplus earnings. R. Meir held that if her husband consecrated to the Temple her surplus earnings, this would be a valid consecration. This indicates that in R. Meir's view, her surplus earnings belong to her husband.

Yohanan Hassandlar held that in the event of such an act of consecration of her surplus earnings, they would remain unconsecrated. He considers these to be like her basic earnings as discussed in the former part of the mishnah.

This division of the wife's wages into a minimum amount which is related to her maintenance, and a surplus which has a less certain function, is significant. We learn from Ket. 5:4 that the husband does not own all of his wife's earnings. This mishnah also indicates that her wages may be divided into two parts -- the required minimum and a surplus amount. While the husband does not have the right to consecrate the minimum, there is a dispute regarding whether or not he can consecrate the surplus. Thus, in the mishnaic law, it is not clear who controls the wife's surplus earnings. It seems that she may lose control of her surplus earnings if her husband consecrated them, and/or she may cede control of her surplus earnings in exchange for spending money. However, since this is not explicitly stated in

mishnaic law, it remains unclear who controls the wife's surplus earnings. Ket. 5:9 implies and Yohanan Hassandlar assumes that the surplus would normally belong to the wife. However, R. Meir assumes that all of the wife's earnings belong to her husband.

Conclusion

The mishnah defines the husband's economic relationship to his wife as that of a surrogate father, with some added benefits and responsibilities. He is entitled to make use of her usufruct, and is responsible to provide her with maintenance.

A wife's finds and her earnings belong to her husband. The specific labors which comprise her required work are defined, and the diminution of these labors commensurate with the number of her slaves is defined. A liberal position allowing her complete leisure if she has four slaves is compromised by R. Eliezer's limitation that she must work lest she fall prey to "unchastity."

In contrast, R. Simeon b. Gamaliel protects her right to do housework, if she wishes to do so, in order not to become bored. Certain limits are placed on her husband's control of her earnings. First, he receives her earnings in lieu of maintenance -- not outright. The husband is required to provide his wife with maintenance and a weekly allowance. The wife must do a set amount of work for her husband. Under certain conditions, this requirement may be reduced. Her

earnings in excess of the set limit may belong to her. However, opinion is divided as to whether the woman or her husband controls her surplus earnings.

Whereas in the Bible we find little evidence that women had any economic rights, we note that by the time of the codification of the Mishnah, women are given certain limited rights. A woman may continue to keep her earnings if she is not supported by her husband. According to the plain sense of the text, she may keep all of her earnings if she does not receive a weekly allowance from her husband. However, this law was modified so that she retained only her surplus earnings.

If she has slaves, she may be exempted from most of the work which is required of her. This provides the foundation for the idea that a woman is no longer the property of her father or husband, as in the biblical era, but a party who exchanges certain rights and responsibilities for others. This contractual exchange will be further developed and discussed in the amoraic period. As the law develops, we will observe further constraints on the husband's control over his wife's earnings and an increase of legislation allowing her control over her finances.

Chapter 2

THE TALMUD

The Talmud explores many of the issues presented in the Mishnah, and extends certain new rights to the woman as well as establishing new restrictions. A system of economic exchanges between husband and wife is proposed and debated in several talmudic passages.

An issue which receives considerable attention is the extent of a woman's control over her earnings and surplus earnings. In addition, we are concerned with the comparative leniency and stringency of the spouses' obligations to one another.

A3 - The Husband Receives Control of his Wife's Earnings in Exchange for Maintenance

A central concern of the talmudic material on women's earnings is a system of exchanges between husband and wife. The Mishnah establishes that a husband provides maintenance for his wife and receives control of his wife's earnings. In the Talmud, this is formulated as an exchange. The issues which arise include: Which benefits and obligations are given in exchange for which others? Are some of these obligations essential and others dependent upon them? Are there reasons for this exchange? For whose benefit was the exchange instituted? How much control does each spouse have over these financial arrangements?

In the talmudic discussion (Ket. 47b) which attempts to understand how the economic relationship between husband and wife differs from that of father and daughter, a baraita is first presented. "Maintenance was provided for a wife in return for her handiwork, and her burial in return for her ketubah."¹ We may chart this as follows:

Husband Provides Wife

1. Maintenance

2. Burial

Wife Provides Husband

Handiwork/Earnings

Ketubah

To account for the husband's additional use of her usufruct, assigned to the husband in Mishnah Ket. 4:4, they insert:

Husband Provides Wife

1. Maintenance

2. Ransom

3. Burial

Wife Provides Husband

Earnings

Usufruct

Ketubah

An anonymous challenge was raised as to whether the sequence could be reversed, as below:

Husband Provides Wife

1. Maintenance

2. Ransom

Wife Provides Husband

Usufruct

Earnings

This latter format would be consonant with the material in Ket. 4:4, since the husband "inherits" the father's relationship to the daughter, supplemented by both the obligation of maintenance and the benefit of usufruct. Based on the mishnah, a likely exchange would have been between the added right to control usufruct and the added responsibility of maintenance.

Based on the mishnah, one might question the accepted sequence proposed by Abaye. He provides the following reasoning in Ket. 47b: '13N 1J'K6 '13N 1J'K6 '13N '13N
 "They ordained the common for the common and the uncommon for the uncommon."

Thus, maintenance and earnings are considered ordinary arrangements of daily life, while usufruct and ransom are considered unusual matters. Although it is difficult to ascertain, one might expect that ransom would be a less common occurrence than a woman entering marriage with income-bearing property (melog). If in fact ransom rarely became necessary, Abaye's reasoning favors the husband.

While several exchanges are discussed in the text, the most substantial was the ongoing exchange of maintenance for earnings. The idea of an exchange of maintenance for earnings was established by the rabbis as a takanah or rabbinic ordinance. Prior to this, although the husband was obligated to provide maintenance for his wife, and the wife's earnings belonged to her husband, there was no formal exchange. By amoraic times, the institution of the exchange does not clearly benefit one spouse more than the other. However, as the law develops further, the spouses accrue differing benefits.

A4 - Exchange Established to Prevent Enmity

In addition to establishing this exchange, the rabbis sought to understand the intention of the law.

On Ket. 38b, Rav Huna, in the name of Rab, extends the right to renounce the rabbinic ordinance to the wife. An anonymous opinion appended to this statement holds that maintenance was regarded as the essential element of the marital economic relationship. Furthermore, it adds that handiwork is assigned to the husband to prevent him from feeling resentment toward his wife for benefiting from both maintenance and her own earnings.²

He holds the opinion that when the Rabbis regulated [the relations of husband and wife] her maintenance was fundamental while [the assignment of the proceeds of] her handiwork [to her husband] was due [only to their desire for preventing] ill-feeling.

Thus, according to the anonymous source, the exchange was intended to provide an additional benefit to the marriage -- the prevention of ill-will.

C2 - Flexibility of His Maintenance Obligation

The husband's obligation to provide maintenance for his wife is severely enforced. Ket. 70b, based on Ket. 7:1, addresses the situation of a husband who forbids his wife by vow to have any benefit from him. This would, in effect, prevent her from receiving maintenance. The Gemara asks, "Since, however, he is under an obligation to [maintain] her, how can he forbid her by a vow [to have any benefit from him]? Has he then the power to cancel his obligation?"

Ket. 7:1 holds that the husband cannot cancel his obligation to support his wife for more than thirty days without being required to divorce her. He is entitled, however,

to say to his wife "Deduct [the proceeds of] your handiwork for your maintenance." That is to say, the husband is still obligated to provide for his wife's maintenance, but he can direct her to spend her earnings for her maintenance, and he will be responsible for the shortfall. This arrangement is a superficial change in the fundamental relationship. It affects only bookkeeping, since the husband is still obligated to provide maintenance and the wife still relinquishes control of her earnings to her husband. While the husband is entitled to instruct her to spend her earnings for her maintenance, he remains responsible for maintaining her. He cannot relieve himself of this obligation by a vow.

A second case maintains this principle. Even if a woman is exiled to a city of refuge, her husband is obligated to maintain her (Gittin 12a). This provides strong evidence that the maintenance obligation is not easily waived -- even in this case, where a wife is living away from home, and is performing no duties directly for her husband, he is obligated to maintain her.

However, the following example indicates a deviation from this principle. "If she can earn sufficient [for a living] and he said to her: keep your earnings in place of your maintenance, he is within his rights."

Perhaps this is stated since it is a logical way to deal with the difficult situation of separated spouses. This does not constitute a break with the principle, but a new application of it. The obligation of exchange is af-

firmed even though he may let her keep her earnings and forego maintenance.

In Git. 12a, this statement becomes the basis for a remarkable observation in support of women's right to work:

What is the point of bringing in the case where she can earn sufficient [for a living]? You might think that even so she should not go about to earn a living because, as Scripture says, "the honour of the king's daughter (i.e., the Jewish woman) lies in privacy"; but now you know [that this is not so.]

This affirmation of women's right to work challenges those who seek to limit the Jewish woman's role to the home.

Having established the severity of the husband's obligation to maintain his wife in amoraic law, we turn to a discussion of the wife's relative freedom to control her earnings.

C2 - Flexibility of Her Work Obligation

Our investigation of the development of the halacha regarding women's earnings is concerned with the extent of women's freedom to do work other than that they were required to do for their husbands. If regulations regarding housework were inflexible, this would prevent women from working at other projects. The more flexibility, the more freedom for women. Thus, it is important to determine whether the rabbis restrict or increase a woman's right to refuse to perform household duties.

A case is presented in Ket. 61a of a woman who says that she will not nurse her child (one of the seven labors

she is required to do, Ket. 5:5) despite her husband's wishes to the contrary. Ket. 61a stated that if breast-feeding is not customary in her family of origin, then she is exempted from this duty. Moreover, if it is customary in her own family of origin, but not in that of her husband, she is also exempt. The reasoning presented for this decision is that

וְהָאִשָּׁה הַזֹּאת הֵיאָהּ מִבֵּית אָמִיהָ וְלֹא מִבֵּית בָּרָהּ

"She rises with him but does not go down with him." This rule functions as a liberalization of the law, permitting a woman to benefit from the status of her family of origin as well as that of her husband. Ket. 5:5 included provisions to release a woman from required labors according to the number of slaves she brought into her marriage. In the discussion, Ket. 61a, based on this mishnah, we learn that a woman who has one, two or three slaves is freed from certain labors, but must perform others. Even if she has four slaves, she is required to perform personal labors for her husband.

וְהָאִשָּׁה הַזֹּאת הֵיאָהּ מִבֵּית אָמִיהָ וְלֹא מִבֵּית בָּרָהּ

... וְהָאִשָּׁה הַזֹּאת הֵיאָהּ מִבֵּית אָמִיהָ

"Although it has been said 'she may lounge in an easy chair,' she should, nevertheless, fill for him his cup..." This expresses an attitude consonant with that of Ket. 5:5 which states that although a woman with four servants is at leisure, she must perform wool-work lest she succumb to unchastity. Moreover, this latter statement of the mishnah is supported by R. Malkio (61b) who stated that the halacha is according to R. Eliezer. Thus, the passage closes with R.

Malkio's statement affirming R. Eliezer's conservative position as stated in Ket. 5:5 that a woman must still perform wool-work.

There is, however, a new liberalization of the tradition regarding household help presented in Ket. 61a. In Ket. 5:5, a woman is released from labors according to the number of slaves she brought into her marriage. The amoraim cite a Tanna, claiming that this earlier opinion is authoritative:

A Tanna taught: [A wife is entitled to the same privileges] whether she brought [a bondwoman] to him or whether she saved up for one out of her income.

This implies that if a woman acquired the means, she might hire household help to perform the labors she is required to perform. She, in turn, would be freed to perform income-producing work. This is a significant change because it extends the freedom from household duties to women who did not bring substantial wealth into their marriages. According to this statement, any woman who could earn an outside income could legally acquire servants and benefit from them.

E - The Wife's Right to Renounce the Rabbinic Ordinance

In amoraic usage, the wife, unlike the husband, is entitled to renounce the ordinance concerning the exchange of maintenance for earnings, and thus the entire system of economic exchanges established by the rabbis. This right is based upon the following statement by Rav Huna, found on Ket. 58b: "Rav Huna stated in the name of Rab: A woman is entitled to say to her husband, I do not wish either to be

maintained by you or to work for you." A wife who makes this statement may keep her earnings instead of giving them to her husband in exchange for maintenance.

This is an entirely new right for women, which substantially increases their control over their earnings. A woman who feels that she would be better off financially by renouncing her right to receive maintenance, and in turn becoming self-supporting, is entitled to make this statement. A husband, however, as noted above, cannot renounce the obligation of maintenance, because it is intended for the wife's benefit.³

The discrepancy in rights in this matter is based on the talmudic principle that a person may say 'על א'כ

התקנה חכמים "I renounce the regulation of the Sages enacted for my benefit."⁴ The Encyclopedia Talmudit explains, "His plea is accepted even if by renouncing the benefit of this regulation he frees himself from another compensatory regulation enacted for the benefit of other parties; provided that this regulation is the principal one, that is to say, this was enacted first, and then the second was enacted to compensate the other party for the first."⁵

Thus a woman may renounce the ordinance which requires her husband to maintain her, as this is the principal ordinance and it was instituted for her benefit. Concomitantly, she can then refuse to give her earnings to her husband. Her reciprocal obligation to do so in the usual case was a subsidiary ordinance, intended to prevent ill-feeling

between them, once he had provided her maintenance. (See above, Section A4)

Ket. 58b also includes the view of Resh Lakish, who differed with Rav Huna. Resh Lakish stated that R. Meir's reasoning in Ket. 5:4 was based on the assumption that "[a husband] has the right to compel her to work." Resh Lakish argues that the husband is entitled to the benefits of his wife's work in order to deprive the woman of the right to renounce the rabbinic ordinance. Since he sees the arrangement as mutually beneficial, he does not give the husband the right to opt out of the exchange.⁶

A view reported in the Palestinian Talmud agrees with that of Resh Lakish. It is written that "A married woman who says 'Let my handiwork be spent for my maintenance' is not heeded. A widow who says 'Let my handiwork be spent for my maintenance' is heeded."⁷ This view would deny control of her finances to a married woman.

However, the restrictive view represented by Resh Lakish and the Palestinian Talmud was deemed a minority opinion and not followed. The halacha is stated on Ket. 107b:

The law, however, is in agreement with Rab, and a married woman is to be granted an allowance for her maintenance. The law is also in agreement with a ruling which Rav Huna laid down in the name of Rab, Rav Huna having stated on the authority of Rab: A wife is within her rights when she says to her husband, "I desire no maintenance from, and refuse to do [any work for you.]"

Thus, the normative tradition is that a woman is entitled to

be maintained by her husband, and to renounce this benefit if she wishes.

F2 - The Husband Receives Control of His Wife's Surplus Earnings in Exchange for an Allowance

The system of exchanges is further refined in a statement found on Ket. 58b-59a.

ר' ושמאל סברי תקני

מזונות רחמא מדעס יבי' ומע' כס' רחמא מו'ר

"Rab and Samuel are of the opinion that [the Rabbis] have ordained (59a) maintenance [for a wife] in return for her handiwork, and a silver ma'ah in return for the surplus." Thus, Rab and Samuel hold that a two-fold exchange exists, as follows:

Husband Provides Wife

1. Maintenance
2. Allowance

Wife Provides Husband

- Earnings
- Surplus earnings

This presumes that there is a set amount of the wife's earnings which are required of her in exchange for maintenance. The schema also uses the mishnaic term⁸ motar to designate the wife's surplus earnings. In the case under discussion, Rab and Samuel rule that if the husband does not provide his wife with an allowance, then she retains her surplus earnings.

R. Adda bar Ahavah proposes an alternate schema.

"Maintenance was ordained in return for the surplus, and the silver ma'ah in return for her handiwork."

Husband Provides Wife

1. Maintenance

2. Allowance

Wife Provides Husband

Surplus earnings

Earnings

Thus, he holds that if the husband supplies his wife with maintenance, which he is obligated to do, then he is entitled to her surplus earnings. According to the Talmud, there is a difference in the principle involved.

For Rab and Samuel, it is "The usual is for the usual," which means that both maintenance and the minimum amount of earnings are ordinary. For Adda bar Ahavah, the principle is "the fixed is for the fixed" since the amount of the silver ma'ah is prescribed, as is the minimum amount of earnings. Since the husband is obligated to provide maintenance in any case, Adda bar Ahavah's principle protects the husband, by insuring that he will control his wife's surplus earnings.

These statements are made in the context of a discussion of a case in which the husband consecrates his wife's surplus income to the Temple. Rab and Samuel state that the surplus is consecrated only after the wife's death when the husband inherits her estate.⁹ Adda bar Ahavah holds that the surplus is consecrated while she is alive, based on the schema presented above. That is, his schema entitles the husband to control his wife's surplus earnings during her lifetime, so long as he maintains her. Thus, he is entitled to consecrate them.

Thus, these schemata attempt to put the maintenance

obligation in perspective -- to determine what benefits the husband derives in exchange for providing maintenance. The system of exchanges in each chart represents a different justification -- either the regularity of the expenditure common/uncommon,¹⁰ usual for usual,¹¹ or the amount of the expenditure, fixed for fixed.¹² The Talmud provides no explicit resolution of this issue.

G2 - Definition of an Control of Different Types of Surplus Earnings

Having established that a woman may retain control of her income by renouncing her right to maintenance, we seek to define the kinds of earnings which are considered to be "surplus" and to determine how much control a woman is permitted over them.

A woman can produce three types of surplus earnings according to the amoraim: 1) those which do not result from undue exertion (pressing oneself), 2) those which do result from undue exertion, and 3) those which result from extraordinary efficiency, that is, performing several tasks simultaneously.

In Ket. 66a, Rabbi Akiva is cited as having ruled that a woman's surplus earnings belong to her. The Gemara reverses this decision to reconcile the opinion attributed to Akiva on this matter with his opinion on chance finds, which the Gemara regards as a parallel matter. Thus, it is stated unequivocally in 66a that

When Rabin came he stated in the name of R. Yohanan: In respect of a surplus obtained through no undue exertion (the first type listed above) all agree that [it belongs to the] husband.

Once the opinion attributed to Akiva is reversed, all authorities are understood to be unanimous in the opinion that a surplus of this kind belongs to the husband. (There is no discussion here of his obligation to provide her with an allowance in order to merit this.)

With regard to a surplus earned through undue exertion, there is a difference of opinion. Ket. 66a states, regarding the second type of surplus earnings, that "the first Tanna...[is]...of the opinion that even [this belongs] to her husband while R. Akiva maintains [that it belongs] to herself." Thus, according to R. Akiva, as understood by the Talmud, a woman is entitled to keep a certain part of her surplus income, if it is earned by her pressing herself. Here the difference of opinion is not resolved.

In the attempt to define this category, R. Papa and Rabina sought to determine whether the wife or her husband controlled the third type of surplus income, that derived from simultaneous labors. The question was left formally unresolved at this stratum, the matter being described as a teku,¹³ an undecided matter.

Conclusion

The talmudic material, closely linked with the mishnaic material, turns to focus on some fresh concerns. In

the Mishnah, husband and wife have certain obligations to one another, and derive certain benefits from their relationship. The Gemara tries to structure these benefits and obligations into a formal system of exchanges. Thus, it is resolved that the husband provides maintenance for his wife, in return for which the rabbis ordained that she should provide him with her earnings.

The amoraic notion of an exchange between husband and wife allows for the possibility that one party may decline to participate in the exchange. By examining the flexibility allowed to each partner, we can ascertain how much control each partner was permitted over his or her financial affairs. We also learn that in one opinion an additional benefit of this exchange was marital harmony in the form of the prevention of ill will between husband and wife.

The husband's obligation to maintain his wife is inflexible. He cannot cancel this obligation for more than thirty days without being required to divorce his wife. He is obligated to maintain her even if she flees to a city of refuge and is no longer performing her household duties for him.

The husband may instruct his wife to spend her income for her maintenance, and he will supply the difference, but this does not relieve him of the maintenance obligation. It is a simplification of his bookkeeping -- instead of receiving her earnings in exchange for maintenance, he tells her how to disburse his property in the form of her earnings.

With respect to the woman who flees to a city of refuge, we learn that the tradition concerning women's work outside the home has changed by talmudic times. A biblical passage used to teach that women should stay home is refuted and the right of a Jewish woman to earn a living is affirmed.

Nevertheless, a woman's ability to work outside of the home would be limited by the amount of household work she was required to perform. We learn that a wife may follow the custom of either her family or her husband's family and refuse to nurse her child, even though it is one of the labors required of her. This is due to a liberalization of the law which insures that a woman's social status cannot change for the worse, but only for the better.

A woman is released from performing household duties according to the number of slaves she brings to her marriage. However, the rabbis require that she perform personal labors for her husband no matter how great her wealth. Despite liberal positions presented in the discussion, the talmudic law takes the restrictive position that no matter how many slaves a woman has, she still must perform wool-work. At the same time, a remarkable new freedom is provided for women in the Talmud. In addition to the right to bring household help into the marriage as her property, she can also save up for household help from her earnings. This extends to a later date the possible freedom not to perform household duties to women who may not have brought substantial property holdings into their marriages.

Having ascertained that the husband's obligation to maintenance is inflexible, and the wife's obligation to perform household work is more flexible, we turn to the specific matter of control of women's earnings. The most important developments of the law take place with regard to control of the woman's earnings. In the talmudic stratum, the woman is given control of her earnings. She may choose not to accept the benefit of maintenance, and to retain control of her earnings. This is an extraordinary development, which permits a woman to retain control of her own earnings. It is the basis of the talmudic principle *א"י אדם' גניקת חכמים* that one may renounce a rabbinic ordinance enacted for one's own benefit, even if this involves denying someone else a benefit related to it. In this case, the woman is entitled to deny her husband the benefit of her earnings because the benefit to him was subsidiary to her benefit. However, both Resh Lakish and the Palestinian Talmud present an opposing opinion which holds that the wife does not have the right to renounce the exchange of maintenance and earnings.

Despite these more restrictive opinions, the Babylonian Talmud's halacha, which is considered normative, gives a wife control of her own income, if she will forfeit her right to maintenance.

The system of exchanges is extended to include the exchange of an allowance for the wife's surplus earnings. While Rab and Samuel hold that a husband receives control of his wife's surplus earnings in exchange for an allowance,

Adda bar Ahavah holds that the husband controls his wife's surplus earnings in exchange for maintenance.

The wife has limited control over her surplus earnings. The Gemara states that a woman's earnings obtained through no undue exertion belong to her husband. However, if she presses herself, according to R. Akiva as understood and interpreted by the amoraim, this belongs to her. Other amoraim disagreed. If the wife were especially efficient performing several tasks simultaneously, it is left undecided which spouse controls the income resulting from this labor.

Thus at this stratum, a woman cedes control of her surplus earnings in exchange for an allowance. If she presses herself, R. Akiva is said to hold that these surplus earnings belong to her. The Talmud does not decide who controls the earnings resulting from unusual efficiency.

Overall, the most significant development has been the wife's control of her earnings. She is fully entitled to renounce maintenance and keep her own earnings. She is not given a similar right to control her surplus earnings at this stage (although this latter right is extended by rishonim not included in this study).¹⁴ Both very restrictive opinions, such as that of Resh Lakish as well as the more liberal opinions on surplus earnings, were not incorporated into the mainstream. Thus far, the tradition has allowed one remarkable development in woman's control of her earnings, and other developments are neither strongly favorable nor unfavorable to the woman's position.

Chapter 3

GEONICA

One of the major geonic halachic works is the Sheiltot attributed to Rabbi Aha of Shabha. The Sheiltot was composed during the eighth century, probably just about 750 C.E.¹ No consensus has been reached as to whether it is a Babylonian or Palestinian work.² The Sheiltot draws from many of the same traditions as the Babylonian Talmud,³ although it presents material in a unique fashion.⁴ It yields one passage related to our topic.

Each sheilta has four parts, an introduction, a question, an answer and a homily.⁵ The following passage is a question and answer concerning whether a woman can renounce the rabbinic ordinance that her husband provides her with maintenance for which she gives him her earnings, and if so what control she gains.

The introduction of this sheilta⁶ is based on the verse from Ex. 21:10 which discusses the rights of a woman purchased as a wife to לחם וכלכלתה "her food, her clothing, or her conjugal rights."⁷

The question then is raised:

If a woman says, "I do not want to receive maintenance or an allowance for my needs, and my earnings will be my own," do we heed her or not? Do we say that the Rabbis enacted this ordinance principally for her benefit, so that she would be maintained by her husband, or rather that they enacted this ordinance principally for his sake, so that her earnings would belong to him?⁸

While this question sounds very similar to the question dealt with in the Babylonian Talmud,⁹ there is a critical difference. Instead of the talmudic claim, "I will not be maintained by you and I will not work for you,"

(אין לי כבוד ואין לי חן) the allowance is included in this question. This woman's statement is formulated to include both maintenance and allowance in return for handiwork.

Whereas the Talmud specifies that surplus earnings are given to the husband in return for the allowance, in the Sheiltot, the earnings are not explicitly designated as "surplus."

Talmud

Handiwork	Maintenance
Surplus Earnings	Allowance

Sheiltot

Handiwork	Maintenance
	Allowance

In the Sheiltot, the maintenance and allowance are combined into a joint alimony-like sum. They are not separated into two units for the purpose of negotiating the husband's control of his wife's surplus earnings. This provides the wife with greater control over her income, since she is entitled to claim all the benefits of her handiwork if she wishes, and she may be thus able to control her surplus income.

The Sheiltot provides the following answer:

As Rav Huna said Rav said: "A woman can claim, 'I will not be maintained and I will not work.'" If the Rabbis enacted this ordinance principally for her benefit, then she can say that she doesn't want it. This is according to Raba who said, "Everyone who says, 'I renounce the rabbinic ordinance, like this one, is heeded.'" How do we learn that maintenance was enacted in exchange for handiwork? Let us

reverse this principle and say, handiwork was enacted in exchange for maintenance. This follows from R. Simon ben Lakish who said that since a husband can force his wife to work, he can say to her "Spend your earnings for your maintenance." But the law is according to what R. Huna said according to Rav."¹⁰

The woman's right to renounce maintenance in favor of keeping her earnings is strongly upheld, despite the inclusion of R. Lakish's opinion which sought to deny women the right to renounce the ordinance. The response takes no note that maintenance and allowance are combined in the question. The entire matter of surplus earnings is conspicuously absent from this text of the response. The author of Sheiltot may have been unfamiliar with the talmudic tradition regarding the exchange between allowance and surplus earnings.

This possibility is supported by the Firestone study of the Sheiltot which states, "At the time of the Sheiltot, the contents of the Babylonian Talmud seem more fluid than at the time of the Halachot Gedolot...(75 years later, MY note) Sheiltot does not appear aware of the same constraints of a fixed text as Halachot Gedolot, which follows the BT formulation more closely."¹¹

Thus, it is possible that the author of Sheiltot was unfamiliar with or rejected the tradition of the Babylonian Talmud regarding the exchange between allowance and surplus earnings, and that the sheilta studied here reflects an alternative understanding of women's earnings which is more liberal because it is more inclusive than the tradition contained in the Babylonian Talmud.

Chapter 4

RASHI AND THE TOSAFOT

Several centuries after the composition of the She-iltot, Rashi and his successors, the Tosafot, commented on the Babylonian Talmud. Their understanding of the intention of the Talmud has shaped the development of later Jewish law. The fact that their comments appear alongside the Gemara text in the standard edition testifies to their importance.

Rashi, who taught in Troyes, France, in the latter half of the eleventh century, made two comments which are important to our investigation. The first concerns the husband's control of his wife's income and the second concerns her obligation to work for him.

B2 - Flexibility of His Maintenance Obligation

With regard to the case in which a husband says to his wife, "Spend your earnings for your maintenance," in a comment on Ket. 107a, s.v. (שנאכל), Rashi protects the wife. First he states that even if the wife accepted this arrangement when proposed by her husband, her income returns to her control upon her husband's death. Second, he notes that if the heirs propose this arrangement, "Spend your income for your maintenance," she need not accept, for even her husband couldn't force her to accept this arrangement, let alone the heirs.

Rashi's second comment, found in Ket. 61a, s.v. (שנאכל)

concerns the situation of a wife who has enough slaves to excuse her from performing all the seven labors prescribed in Mishnah 5:5, including the personal labors she performs for her husband, such as mixing his cup, making his bed, and washing his face, hands and feet. Rashi offers a significant liberalization in his opinion that a wife is not required to perform these personal labors if she has four slaves. He holds that the Rabbis gave an aytza tova, "a piece of good advice," to Jewish women to conduct themselves thus. The liberalization of the law advocated by Rashi will be retracted as the talmudic view later becomes normative law.

For the time being, it suffices to note that with this advice, and the matter concerning a wife's right to refuse to spend her earnings for her maintenance, Rashi enhances the woman's position. He expands and fixes the rights of a widow in a way which benefits her.

The Tosafot were compiled in France and Germany in the twelfth through the fourteenth centuries. They are collected comments by various authorities on the Talmud and "on the comments on it (the Talmud) of earlier authorities, principally Rashi."¹ In brief, "...the Tosafot sought to answer their questions by pointing to differences and distinctions between one case and another or between one source and another. In this way, they produced new halachic deductions and conclusions, which in turn became themselves subjects for discussion..."² That is, they introduced an internal, comparative approach to dealing with issues of talmudic interpretation.

Here we examine several such discussions of the Tosafot concerning aspects of the economic relationship between husband and wife.

A4 - Exchange Established to Prevent Enmity

The Tosafot raise a question on Ket. 66a, s.v. וְהָיָה regarding the explanation that a wife's earnings are given to the husband to avoid ill-will. By citing a case from Tractate Yevamot, they show that there is a contradiction between the reasoning that a wife's earnings are given to her husband in exchange for her maintenance, and that her earnings are given to her husband to prevent him from feeling ill-will toward her. The contradiction is raised but not resolved by the commentators. Thus, the Tosafot raise an important, but unanswered question regarding the rationale for the rabbinic ordinance which assigns a wife's earnings to her husband in exchange for her maintenance.

C2- Flexibility of Her Work Obligation

Also on Ket. 66a, s.v. וְהָיָה, the Tosafot consider the situation of a woman who renounces maintenance in favor of keeping her own income. If she is entitled to keep her earnings, the amount of work she is still required to perform for her husband remains to be determined. According to the Tosafot, if she renounces maintenance, then she is exempt from all of the seven household labors specified in Mishnah 5:5, but she remains obligated to perform personal labors for her

husband. In addition, Tosafot hold that a wife may be freed from her obligation to do wool-work, an income-producing task, if she successfully performs all of her other household duties. Finally, if a woman who has not renounced her maintenance refuses to perform her work, then the Tosafot urge, "Let him take a stick and beat her -- he has the right to force her according to Resh Lakish." Although Resh Lakish did not specify corporal punishment, this interpretation by the Tosafot strengthens his view regarding the husband's right to force his wife to work.

The essential point of this Tosafot is that one who renounces maintenance is exempt from all household labors but remains bound to perform personal labors for her husband.

E - The Wife's Right to Renounce the Rabbinic Ordinance

The talmudic tradition gives the wife the right to renounce maintenance. Nonetheless, on Ket. 47b, s.v. אין the Tosafot give voice to the dissenting opinion of Resh Lakish. Whereas Rav Huna held that maintenance was the principal obligation, Resh Lakish held that the wife's responsibility to provide her husband with her earnings was central.³ Although the Tosafot bring evidence to show that this extreme claim does not hold, they conclude nevertheless that Resh Lakish held that earnings were the principal obligation solely for the purpose of denying her the right to renounce maintenance.

This is one of the most restrictive opinions encoun-

tered in this entire study. According to the Tosafot, Resh Lakish is willing to take an extreme stand for the purpose of denying the woman a valuable freedom to control her earnings. By discussing this opinion, even though they rejected it, the Tosafot lent it some additional credence. There is no way to determine whether they sought to give it firm refutation, give it circulation, although the law rejected it, or were dealing impartially with the full range of talmudic material.

G2 - Definition of and Control of Different Types of Surplus Earnings

The issue of a woman's surplus income also received consideration by the Tosafot on Ket. 66a, s.v. לעול. All authorities agree that surplus income not earned by pressing oneself belongs to the husband in lieu of the receipt of the allowance. They disagree, however, with regard to the surplus earned due to pressing oneself. Although R. Akiva, as understood by the Talmud, would assign the income from work done under pressure to the wife, the Tosafot restrict such income to that resulting from work done at completely odd hours such as late at night when people ordinarily sleep. They base their argument on the conviction that the income produced by simultaneous labors belongs to the husband -- a matter left unresolved in the talmudic text. Thus, the Tosafot severely restrict two of the more liberal benefits to women -- the right to control earnings due either to efficiency or to

pressing oneself.

Furthermore, the Tosafot propose another restrictive condition regarding income that women might earn due to self-imposed pressure. The Tosafot⁴ hold that even if the earnings are hers, her husband takes what she owns and buys land with it, and he then benefits from the usufruct. There is a startling contrast between this practice and the earlier talmudic evidence that a woman could save up her earnings to acquire household help so that she would be freed from household obligations.

Conclusion

With regard to Rashi's comments, a common thread unites the two matters dealt with here. In the case of a husband's obligation to maintain his wife, Rashi protects the wife's right to receive support. In the case of the wife who has enough slaves to be freed from the obligation to serve her husband, Rashi preserves the talmudic sense that it is advisable for her to serve her husband, but not required. In both matters, Rashi, interpreting the intent of the Talmud as he understood it, takes stands which are favorable to women. His liberality stands out in stark contrast to the stance of his successors, the Tosafot, who tended to be more restrictive with regard to women's rights and freedom.

The Tosafot noted a contradiction between two different reasons for the exchange of maintenance for earnings. One reason is that a wife's earnings are given to her husband

in exchange for maintenance. The other reason is that maintenance is the essence of the ordinance, and the earnings are given in order to prevent the husband from resenting that although he is supporting his wife, she is able to keep her earnings. The Tosafot do not resolve this question.

According to the Tosafot, even if a woman renounces her right to maintenance, she is still required to perform personal labors for her husband. To balance this unfavorable position, they also state that if a wife who does not renounce maintenance performs all of her other household obligations, she is freed from even the minimum requirement of maasei yadeha, defined as income-producing wool-work. This is an extraordinarily liberal statement, which hints that if all other household obligations were fulfilled, these authorities did not deem it necessary to enforce the wool-work requirement.

The Tosafot express the reactionary views of Resh Lakish in two cases. They hold that in the case of a woman who is obligated to work but refuses, the husband is entitled to force her to work by beating her. Moreover, the Tosafot seek to limit the wife's right to renounce the rabbinic ordinance. This right constitutes a bold development in the amoraic period, adopted as halacha.⁵

Although the Tosafot reiterate the restrictive opinions of Resh Lakish, denying the wife the right to renounce maintenance, they do not endorse his view. With regard to different types of surplus earnings, the Tosafot also seek to

restrict the control a woman has over her earnings. While the position attributed to Akiva is that surplus earnings due to pressing oneself belong to the wife, the Tosafot limit these earnings to only that which is earned at completely odd hours. The Tosafot also deny the woman control of her surplus earnings as a result of simultaneous labors. To clinch the matter, in the limited case where the Tosafot do consider a wife's surplus earnings to be her own property, it is suggested that the husband invest her earnings by purchasing land for her, the usufruct of which would be under his control. Thus, while Rashi seems to be even-handed in his interpretation of the talmudic material, the opinions of the Tosafot are much more restrictive. With the one exception of "rewarding the good wife," by exempting her from the wool-work obligation, the Tosafot suggest limits on the woman's control of her work and earnings in each case discussed here.

Chapter 5

MISHNEH TORAH

The Mishneh Torah, compiled by Moses Maimonides in Fostat, Egypt, was the first comprehensive code of Jewish law which was intended to serve as the sole basis for making legal decisions.¹ Completed in 1178, or possibly 1180, it was rapidly disseminated to Jewish communities in the Orient, Mediterranean and Franco-Germany.² Maimonides' concise but thorough treatment of the economic relationship between husband and wife is evidence of his intention to present a synthesis of all of the preceding Jewish law.

A1 - The Husband's Control of His Wife's Income

Maimonides states that "When a man marries a woman... he obligates himself to her for ten things, and is in turn entitled to four things from her." (12:1)³ "And the four things he is entitled to are all of scribal (rabbinic, not toraitic) origin, namely, the following: he is entitled to her earnings..." (12:3) Rambam describes the basis of the assignment of earnings as rabbinic, whereas in 12:2 he notes that the origin of some of the husband's obligations to the wife are toraitic. The classification of the origins of the law is consonant with the talmudic tradition.⁴ The Rambam also includes the statement of the Mishnah that "Anything a woman may find and her handiwork belong to her husband." (21:1)

A3 - The Husband Receives Control of His Wife's Earnings in Exchange for Maintenance

Rambam re-states the talmudic system of exchanges between husband and wife. He specifically includes, "The Sages have further enacted that a wife's earnings are chargeable against (i.e., in exchange for) her maintenance." (12:4) This is consistent with the tradition which precedes it.

B2 - Flexibility of His Maintenance Obligation

The talmudic material demonstrated that the wife's right to be maintained by the husband is well enforced. The Rambam also is stringent in ensuring that a wife receives her due.

The Rambam agrees that the husband is obligated to maintain even a wife who has fled to a city of refuge. Furthermore, he cannot tell her to spend her earnings for her maintenance, unless they will suffice for her needs (Rotzeah 7:2) Thus, a husband is obligated to maintain even a wife who has fled her household for some necessary and legal reason and is rendering no services to him.

Rambam also limits the extent of maneuverability of the husband regarding his maintenance obligation. He states, "...if the husband says, 'I will neither support you nor take any of your earnings,' no attention need be paid to him, perchance her earnings will not suffice for her support." (12:4) Thus, the husband is denied the freedom to unilaterally renounce the rabbinic ordinance of exchange.

The husband can make a mutual agreement with his wife that she will spend her earnings for her maintenance. The wife is provided with three options in the following case:

If the husband says to his wife at the time of his departure, "Use your earnings for your maintenance," she is not entitled to maintenance, because had she not agreed to this arrangement and acquiesced in it, she could have demanded maintenance from him, or said to him, "My earnings are not adequate for me."
(12:20)

If the wife does not wish to agree to this arrangement, she may demand maintenance from him, or claim that her earnings are inadequate for her needs. This arrangement differs from the others, because the couple can agree that she will use her earnings for her maintenance and the husband will be responsible for the shortfall. Thus, the flexibility of the husband's obligation is compromised by the protection of the wife's right to be maintained.

Finally, Rambam affirms the importance of the maintenance obligation as follows:

It is because of this enactment that the obligation of maintenance is regarded as one of the conditions contained in the ketubah. (12:4)

Even though it is not actually written in the ketubah, the Rambam now rules that the husband's obligation to provide maintenance is as firm as if it were a ketubah clause. This new stipulation is a strengthening of the woman's rights by enforcement of the husband's obligation to support her.

C1 - Definition of the Wife's Obligation to Work for her Husband

While a wife who refuses to perform household labors is not a "rebellious wife,"⁵ the tradition sought means to enforce the wife's obligation to work for her husband. In the Talmud, Resh Lakish held that a husband was entitled to force his wife to do work that she was obligated to do.⁶ This view was incorporated into the halacha by Rambam. "A wife who refuses to perform any kind of work that she is obligated to do, may be compelled to perform it, even by scourging her with a rod." (21:10)

Since a wife had the option to renounce the rabbinic ordinance, one can appreciate that some means of dealing with a recalcitrant wife was needed. Nonetheless, it is disappointing to anyone concerned with women's rights to note that the Rambam incorporated this ruling on corporal punishment into his code without qualifications. While the Rambam's advocacy of corporal punishment could be attributed to the Moslem context in which he lived, the ruling represents a significant repressive development of Jewish law.

C2 - Flexibility of her Work Obligation

In listing the labors which a wife is obligated to perform for her husband, the Rambam expands upon the seven labors specified in Ket. 5:5. He lists the specific personal labors that a wife must perform for her husband, and adds the job of giving fodder to her husband's mount. "It follows

thus that there are five kinds of work that any wife must perform for her husband: she must spin, wash his face, hands and feet, pour his cup, spread his couch, and wait on him.

And there are also six kinds of work that some wives must, and some need not, perform: attend to the grinding, cook, bake, launder, nurse, and give fodder to his mount." (21:7) Thus, the Rambam increases the amount of work required of a wife. In addition, the Rambam tends to restrict the flexibility of the wife's work obligation. For example, he echoes the restrictive theme of Rabbi Eliezer:

If he has a great deal of money, and even if she herself has many maidservants, she should not sit idle, without work, because idleness leads to immorality. She should not, however, be compelled to work all day long, but may reduce her work in proportion to their wealth. (21:2)

Thus, he incorporates into the law the suggestion that she should not be idle, no matter how great her wealth.

Following the list of personal labors which a wife must do for her husband, the Rambam adds,

The aforementioned kinds of work she herself must perform personally. Even if she has many maidservants, these kinds of work may be performed for the husband only by his wife. (21:4)

Thus, the talmudic law regarding the wife's performance of personal labors for her husband is incorporated into Rambam's code.

Rambam includes the laws concerning reduction of labors according to the number of maidservants, consonant with the talmudic material. (21:6) The Rambam included the rule that if a woman is nursing, her wool-work requirement

should be reduced.

As long as the wife is nursing her child, the amount of her work should be reduced, while her maintenance should be augmented with wine and other things that are beneficial for lactation. (21:11)

The Rambam includes the liberalization of the Talmud which permits a wife to rise in status with her husband.

If she is poor and consequently obligated to nurse her child, while he is affluent enough to free his wife from nursing, and if she is unwilling to nurse, he must, even if he has no maidservants hire a wet nurse or purchase a maidservant, because a woman can only rise in status with her husband and not descend. (21:14)

Thus, with regard to the flexibility of the wife's obligation to work for her husband, the Rambam conserves talmudic law, including the requirement that she should perform personal labors for her husband and the liberalization permitting her to rise in status with her husband.

E - The Wife's Right to Renounce the Rabbinic Ordinance

The Rambam upholds the wife's right to renounce the rabbinic ordinance. He holds that "...if the wife says, I want neither maintenance nor work, her wish must be respected and she may not be coerced." אין כופין אשה (12:4)

It is clear from this negative language, which is the language used by Resh Lakish in the affirmative, that here Rambam resolved the talmudic dispute between Rav Huna and Resh Lakish.⁷ This refutation of Resh Lakish in a phrase affirms the right of the woman to renounce the rabbinic ordinance.

G1 - Definition of and Control of the Wife's Surplus Earnings

The Rambam includes considerable detail concerning the specifics of maintenance. In addition, he stipulates that "The husband must also give her a silver ma'ah every week for her other needs, such as a perutah for laundry or bathhouse, and the like." (12:10)

With regard to control of her surplus earnings, he states,

In the case of a woman who has been given an allowance for her maintenance, if there is a surplus, the surplus goes to the husband. (12:13)

This is consonant with the talmudic halacha.⁸

However, with regard to surplus earnings due to pressing oneself, there was a difference of opinion in the Talmud. Rabbi Akiva, as interpreted by the amoraim, held that this should belong to the wife, while the Sages held that even this belonged to the husband.⁹ Rambam took the conservative route and agreed with the Sages. "If she exerts herself to perform more work than is proper [expected] for her, the surplus belongs to the husband." (21:2)

In striking contrast to the Talmud, which suggested that she could save her earnings to acquire servants, Rambam goes on to state that, "even if she herself has many maidservants, she should not sit idle." (21:2)

Thus, the incentive for the wife to work hard is diminished by two factors. First, her surplus income earned by pressing herself will belong to her husband, so that she cannot independently acquire servants. Second, even if she

brought them into the marriage, her leisure is restricted.

Again, the Rambam takes a conservative stance regarding the woman's control of her finances.

Conclusion

The Rambam upholds and protects the most important rights extended to women by the tradition, such as the right to maintenance, and the right to renounce the rabbinic ordinance. For example, he is most protective of the wife's right to be maintained by her husband, and limits and husband's maneuverability in order to protect her. He also takes a firm position in opposition to Resh Lakish.

However, he is restrictive on many other rights. The Rambam maintains the husband's right to beat a wife who refuses to work despite her obligation to do so. He maintains the talmudic requirement that a wife must perform personal labors for her husband even if she has four maidservants. Finally, he sides with the restrictive Sages instead of the liberal Rabbi Akiva on control of surplus earnings due to pressing oneself. Thus, while the Rambam protects the wife's entitlement to maintenance, he restricts her control of her time and earnings, where he could have been more lenient.

Chapter 6

THE TUR

The Tur, compiled in the first half of the fourteenth century by Jacob ben Asher, combines "the qualities of a 'book of halachot' with those of a book of pesakim."¹ The opinions presented in the Tur regarding issues of women's earnings in the late Middle Ages are important since they become authoritative for later decisions.

A1 - The Husband's Control of the Wife's Income

The Tur compiles and presents the preceding traditions. Thus, much of the material concerning women's earnings found in the Tur is familiar. For example, the Tur states that a wife's handiwork belongs to her husband (80:1) and that the Sages enacted an ordinance that the woman's earnings would be given to her husband in exchange for maintenance. (69:4)

B2 - Flexibility of his Maintenance Obligation

The Tur, like earlier authorities, prohibits the husband from forcing his wife to support herself.

If her husband claims, "I will not maintain you and I will not take your income," he is not heeded, lest this not suffice [for her needs]. (69:4)²

This essentially serves to protect the wife's right to receive maintenance from her husband.

D - Definition of Maasei Yadeha

Due to the development of legal material in the Tur, this topic and the next are discussed in reverse order.

Regarding housework, the Tur states, "The Sages counted seven types of labor and the rest need not be counted for she simply must fulfill all the household needs and stand before her husband and serve him." (80:1) This general statement does not provide a basis on which the wife may decline to perform certain household labors, which the specific list of labors found in Ket. 5:5 does provide. The more specific her obligations are, the greater her right to refuse to perform unspecified labors.

In the Tur, the question is raised how much work a wife is required to perform for her husband each week. The amount of woolwork cited in the Mishnah is repeated here, "The weight of five sela'im of woolwork in Judea, which is worth ten in the Galilee." (80:1)

C2 - Flexibility of her Work Obligation

Although the explicit requirement for woolwork is included in the code, the Tur offers considerable flexibility within its terms to the wife. The wife is required to produce the prescribed amount of woolwork only if she does not live with her husband and did no other work for him. (80:1) If she does live with him and fulfills all of the household needs, then she is not obligated to do this woolwork, except where it is customary for women to do so. (80:1) In this

case, the Tur exhibits the flexibility suggested by the Tosefot.³ Thus, if the wife is performing other household duties satisfactorily, then the requirement to do woolwork is waived. This allows the woman some increased flexibility.

The Tur states (80:1) that if the wife is nursing, the amount of work required of her is reduced. A division of opinion is noted between the author who suggests an increase in the amount of her maintenance to purchase additional food desired by the nursing mother and the Rambam who holds that she must provide for it herself.

As we have seen, if a woman has maidservants, then she is exempted from certain duties. Yet, like the Rambam,⁴ the Tur lists five labors which every wife must perform: "to spin, to wash his face, hands and feet, to mix his drink, to make his bed and to wait on him." (80:1)

With regard to the acquisition of servants, the Tur allows the wife to be exempted from certain labors if she brings servants or the property with which to acquire them into the marriage, or finds a servant or the wherewithal to purchase her. (80:1) אן אקזאקטא דא שפחה און גאמל אקדושה

This is a more liberal position than that of Rambam, for it allows an alternative route to the acquisition of servants in addition to inherited wealth. However, the meaning of "find" in the above statement is unclear. It may allude to her excess earnings, a possibility allowed in the Talmud⁵ which was omitted in the Mishneh Torah, or to a wife arranging for a servant, for which her husband is will-

ing to pay.

With regard to a wife who is obligated to work but refuses, the Tur cites the Rambam's ruling that she should be compelled even with *מסור* rods. (80:1) In response to this, the Ravad *לאבד* is cited: *מסור לא שמעתי יסור*
שום דבר מן הדין שיהיו מכותיה וזכיה דג שיהיה.
 "I have never heard of this practice of scourging women with rods, rather the husband should reduce her maintenance and allowance until she capitulates." (80:1)

Thus, with regard to the wife's work obligation, the Tur shows more flexibility than Rambam, by restoring the exemption from woolwork if she is performing all of her household duties, by allowing an alternative means of acquiring household help, and by presenting a strong opinion contrary to the Rambam's advice about forcing a wife to work by beating her.

F2 - The Wife's Right to Renounce the Rabbinic Ordinance

The Tur states twice that the woman has a right to renounce the rabbinic ordinance. In 69:4, it is stated, "If the wife said, 'I will not be maintained by you and I will not work,' she is heeded and she may not be forced." This language is similar to that of the Rambam.⁶ In 80:1, an extension of this principle supplements the statements of Rambam and Ravad (Abraham ben David of Posquieres) on dealing with a recalcitrant wife. The Tur cites his father the Rosh *ע"כ* who wrote that "They cannot force her, as it is said

according to Rav Huna who said 'a woman can say to her husband, 'I will not be maintained and I will not work.' Therefore, if she wished she can abstain from work and she will not be maintained."

This opinion allows the wife to opt out of the arrangement which she is resisting. If she wishes, she can choose not to receive maintenance. However, even this does not address the case of a woman who has servants, and is refusing to perform personal labors for her husband from which the law does not allow her to become exempt. The Rosh could have intended to release her even from this obligation, but since it is not stated, this liberalization may not be presumed.

Therefore, the Rosh, while upholding the liberal option which the tradition offers to the recalcitrant wife, does not liberalize the tradition in this case.

H - Definition of and Control of the Wife's Surplus Earnings

The Tur presents a difference of opinion regarding the control of a wife's surplus earnings. In 80:1, the Tur cites Jonah ben Abraham Gerondi, Spanish rabbi of the thirteenth century.⁷ R. Yonah affirms the wife's right to renounce maintenance, but assigns control of her surplus earnings to her husband. He holds that "the surplus beyond five selaim belongs to the husband, and since the rabbis ordained that she would receive an allowance in exchange for it, she cannot claim 'I will not take an allowance from you and I

will not give you may surplus earnings.'" According to R. Yonah Gerondi, the wife does not have the right to renounce this rabbinic ordinance. (80:1)

The wife's right to renounce the more basic rabbinic ordinance which assigned her maintenance in exchange for her earnings was predicated on the understanding that the ordinance was enacted primarily for her benefit. The opinion of R. Yonah Gerondi denying her a similar right with regard to her surplus earnings is, in turn, based on a principle. He holds,

תקנו הן מותר משום חילא ובתור ה' תתן
הן כנגדו מרד כס.

"They ordained that the surplus would belong to the husband because of חילא, and afterwards they ordained that she would receive an allowance in return." (80:1)

This is the first use of the principle of חילא which R. Yonah Gerondi proposes as the basis of this rabbinic ordinance. Jastrow defines חילא as "in order to make her attractive."⁸ Thus, according to R. Yonah Gerondi, the surplus was assigned to the husband, so that the wife with her surplus earnings would be an attractive asset. Both this assignment, and the restriction of the wife's right to renounce it, are primarily for the benefit of the husband. Otherwise Gerondi's ruling would be inconsistent with the right of the wife to renounce a rabbinic ordinance instituted primarily for her benefit.

R. Yonah Gerondi's reasoning appears to be innovative. The Mishnah clearly requires the husband to provide

his wife with an allowance and states that if she does not receive it, her earnings (later understood as her surplus earnings) remain in her control. Previous law accepted this pattern without serious deviation. Here Yonah asserts that the assignment of the allowance was secondary to the economic attractiveness of the wife due to the husband's receipt of her surplus earnings. Yonah's view is a radical and innovative break with the preceding traditions. The strength of his position would be determined by the extent to which others accepted his novel claim that "attractiveness" is the reason for the ordinance.

The Tur balances R. Yonah Gerondi's opinion with that of R. Meir Halevi (Abulafia) who held that "also with respect to the surplus earnings, the wife could claim 'I will not take the allowance and I will not give you my surplus.'" (80:1) Since this ruling is consistent with the previous development of the law, it is not necessary for R. Meir Halevi to provide justification. The weight of precedent supports him.

With R. Yonah, the Ramah holds that the husband controls the wife's surplus income. He differs significantly in that he allows her to renounce the rabbinic ordinance concerning this matter and recover control of her surplus earnings if she does not receive an allowance from her husband.

G2 - Definition of and Control of Different Types of Surplus Earnings

There is a distinction between a wife's ordinary surplus earnings and those earned by pressing herself 'q' 7
 7022 or those resulting from simultaneous labors -- both talmudic categories.⁹

Regarding the surplus earnings due to pressing oneself, the authorities cited in the Tur follow the development of the law which restricts this to work done at night.¹⁰ According to Hai Bar Rav David Gaon of the Pumbedita academy in the late ninth century,¹¹ even these earnings belong to her husband,

If she presses herself and does more work than is required of her, R. Hai ruled that this belongs to the husband, even if she pressed to increase her work by working at night at an hour when people ordinarily sleep. (80:1)

Thus, R. Hai rules that surplus income due to pressing oneself belongs to the husband, whether the work was performed in the day or at night.

In contrast, R. Hananel ben Hushiel of eleventh century Kairouan,¹² held that,

The surplus does not belong to the husband except when it is not earned by pressing oneself. Insofar as she pressed herself to work at night...all [the surplus] belongs to her. (80:1)

Thus, according to R. Hananel, these surplus earnings due to pressing oneself, belong to the wife.

The second category is that of simultaneous labors. In this case, R. Hai takes a liberal stance,

However, if she performs two or three labors simultaneously, the surplus earnings are hers.

R. Hananel concurs,

If she performs two or three labors simultaneously, all [the surplus] is her own.

The Tur also cites his father, the Rosh, who presented the opinions of both R. Hai and R. Hananel, but did not rule.

Thus, at this stratum there is a disagreement whether or not the wife controls income which she earned by pressing herself to work at night. There is unanimity that she does control surplus earnings which result from extraordinary efficiency during the day -- such as performing simultaneous labors. Through this liberalization of the law in favor of the wife, these authorities resolve the teku of the Talmud, where this question was left unresolved. They also are more liberal than the Rambam who held that all surplus earnings -- without distinction -- belonged to the husband.

Thus, both R. Hai and R. Hananel permit the wife increased control over her surplus earnings.

Conclusion

The Tur, a compendium, cites a variety of opinions concerning women's earnings. The Tur demonstrates flexibility by exempting a woman who fulfills her household responsibilities from the minimum woolwork requirement. The Tur also allows a means for women who did not inherit wealth to acquire household servants. With regard to corporal punishment for a recalcitrant wife, the Tur cites the Ravad's

opinion that he "never heard of" this. The Tur offers the recalcitrant wife the option of renouncing the rabbinic ordinance, although even this does not free her from the obligation of performing personal labors for her husband. Moreover, the Tur permits the wife increased control over her surplus earnings. While R. Yonah Gerondi holds that the wife cannot renounce the ordinance which assigns surplus earnings to her husband, because the ordinance was not primarily for her benefit, R. Meir Halevi holds that she could renounce the ordinance and maintain control of her surplus earnings.

The Tur presents conflicting opinions as to whether the wife controls surplus earnings due to pressing oneself at night, but affirms the wife's right to earnings resulting from simultaneous labors.

In sum, the Tur has liberalized the law, particularly in contrast with the Rambam who severely restricted the wife's control of her surplus earnings.

Chapter 7

THE SHULCHAN ARUCH

The Shulchan Aruch was compiled by Joseph Caro, who was born in Spain in 1488 and settled in Safed, Israel.¹ This code was the extract of decisions based on Caro's comprehensive collection of the existing law, known as the Beit Yosef.² The Shulchan Aruch, which reflects Caro's Sephardic milieu, was widely circulated from its completion in 1563.³

A1 - The Husband's Control of his Wife's Earnings

The Shulchan Aruch repeats that the wife's handiwork belong to her husband. (80:1)

A3 - The Husband Receives Control of his Wife's Earnings in Exchange for Maintenance

The Shulchan Aruch 69:4 repeats the exchange of maintenance for earnings. This exchange serves as the background for a significant extension of the wife's rights over her earnings. In a case where one has agreed with his wife that he will not be obligated to provide her maintenance, she is not obligated to give him her earnings. If afterward he wishes and obligates himself to give her maintenance [as a gift], her earnings do not belong to him. (80:18)⁴ Thus, if a couple decides to abrogate the rabbinic decree, then the wife is free not to re-subscribe even if her husband decides to. This prevents a husband from taking con-

trol of his wife's finances if she has become financially successful independent of him. Thus, his freedom to renege on their agreement is limited. The husband receives control of his wife's earnings in exchange for maintaining her, but he cannot force this arrangement upon her, since we have learned that the maintenance requirement is for her benefit.⁵

B1 - Definition of the Husband's Obligation to Provide Maintenance for his Wife

The husband's obligation to maintain his wife is fairly inflexible. Shulchan Aruch 69:4 holds that,

But the husband who says "I will not maintain you and I will not take your earnings" is not heeded. (Although he can say, "Use your earnings for your maintenance and I will make up the difference (i.e., pay the remaining expenses). (the Ran, Perek Hadar.)

Thus, the Shulchan Aruch reaffirms that the husband can instruct his wife to spend her earnings for her maintenance and provide the shortfall. This, however, is a superficial change, for he is still responsible for her maintenance, and controls her income. He is simply disbursing his property -- her income, through his agent -- his wife.

C2 - Flexibility of her Work Obligation

The specific labors which the wife is required to perform are determined by local custom. Shulchan Aruch 80:1 reaffirms that which has been stated in the Mishneh Torah,⁶

...if it is customary for women to weave, she

weaves, to embroider, she embroiders, to spin wool or linen, she spins. And if it is not customary for the women of that town to perform all these labors, she cannot be compelled to do them, with the exception of spinning wool.

Thus, there is an inherent flexibility to the work requirement. A husband cannot make undue work demands on his wife which are inconsistent with local custom. However, this ruling leaves women's rights unchanged.

The prior law that a wife is required to perform personal labors for her husband is repeated in the Shulchan Aruch. Shulchan Aruch 80:5 states,

She herself performs these labors. Even if she has several servants, they do not perform these labors for her husband, but his wife does.

This clearly limits the ability of the wife to free herself from this work obligation.

The Shulchan Aruch also deals with the issue of the recalcitrant wife (80:15),

Any woman who refuses to perform the tasks which she is required to perform, can be forced to perform them.

This code does not specify the means of enforcement -- physical, economic or other.

Thus, the Shulchan Aruch allows some flexibility in the wife's work obligation by allowing her to adhere to local custom, which would be a reasonable standard. Personal discretion is not allowed in the matter of performing personal labors for the husband. Some latitude is allowed in compelling a recalcitrant wife to work, since no particular means is specified. This may be viewed as a covert rejection of the

Rambam's code which advocated corporal enforcement of the law, though the term kofin often refers to physical enforcement.

E - The Wife's Right to Renounce the Rabbinic Ordinance

The Shulchan Aruch repeats the wife's basic right to renounce the rabbinic ordinance. Shulchan Aruch 69:4 states that "Earnings correspond to her maintenance, therefore, if she says 'I will not be maintained and I will not work for you (i.e., give you my earnings),' she is heeded."

G1 - Definition of and Control of the Wife's Surplus Earnings

The Shulchan Aruch again repeats the tradition as it has developed: "If she presses herself and does more than is expected for her, the surplus belongs to her husband." (80:1)

G2 - Definition of and Control of Different Types of Surplus Earnings

The Shulchan Aruch is silent on the subject of surplus earnings due to self-imposed pressure. Thus, we deduce from the preceding statement (80:1) that since all surplus earnings belong to the husband, this type of surplus earning must also belong to the husband. The Shulchan Aruch thus follows the more restrictive path of the Sages, rather than the more liberal path of R. Akiva and R. Hananel in the Tur.

(In the Beit Shmuel, a commentary on the Shulchan Aruch, we find evidence of an alternative practice:

The Bah (Bayit Hadash on the Tur) wrote that it is our custom that we do not take any surplus income earned by self-imposed pressure.⁷

This liberal opinion is accompanied by the qualification of the Tosafot that the husband should buy land with these earnings of his wife, and himself benefit from the usufruct. Thus, while the stated custom, contrary to law, of leaving these earnings with the women, is liberal, it may be qualified by the more restrictive practice of the Tosafot. Even with the restriction, it is noteworthy that the woman is provided with a means to become a "landed" person.)

Conclusion

The Shulchan Aruch restates that maintenance is given in exchange for earnings, and protects the wife's right to control her own finances if she and her husband have agreed that he will not give her maintenance. Should the husband change his mind, he may provide maintenance as a gift, but cannot demand to receive her earnings in return. This innovation serves to extend women's control of their own finances.

While the husband can instruct his wife to spend her earnings for her maintenance, he is responsible for maintaining her. (69:4)

Shulchan Aruch 80:1 limits the amount of housework which a wife must perform for her husband to that which is customary. This also serves as a liberalization of the law, for a husband cannot legally make undue demands of his wife's labor.

Shulchan Aruch 80:5 reaffirms the wife's talmudic obligation to perform personal labors for her husband. Since the Shulchan Aruch does not clearly recommend beating a recalcitrant wife, as Maimonides did, this omission may indicate a substantial liberalization of the law as it pertains to women's freedom.

Shulchan Aruch 69:4 affirms the wife's right to renounce the rabbinic ordinance pertaining to her earnings. With regard to surplus earnings, Shulchan Aruch 80:1 rules that these belong to her husband.

According to the Shulchan Aruch, surplus earnings due to self-imposed pressure were under the husband's control. The custom of actually leaving these surplus earnings in her possession is cited in Beit Shmuel, which indicates that a more liberal custom may have prevailed over the restrictive law.

Overall, the Shulchan Aruch upholds many of the rights already extended to women. New rights for women include the right to maintain control of one's earnings once this has been agreed upon with the husband, and the right to do the amount of work determined by local custom. Among the liberalizations, the Shulchan Aruch does not reiterate Rambam's ruling to beat a recalcitrant wife. Finally, important new limits are placed on the woman's control of surplus earnings of all kinds.

Chapter 8

ISSERLES' GLOSS ON THE SHULCHAN ARUCH

When the Shulchan Aruch reached Poland, Moses Isserles, a leading rabbi, composed a gloss on it which gave different Ashkenazic opinions and customs.¹ While the intention of the Rema, as he is known, was to enable scholars to make decisions according "to the present exigencies and the dictates of his (sic) own heart,"² the inclusion of his gloss fostered the acceptance of the Shulchan Aruch as the authoritative code of Jewish law.³

A3 - The Husband Receives Control of His Wife's Earnings in Exchange for Maintenance

The Rema radically limits the husband's obligation to provide maintenance for his wife in exchange for her earnings. He holds that if a woman doesn't request that the takanah be in effect, she cannot rely on her husband for maintenance.

If a woman is silent and does not ask for maintenance or an allowance without stipulation, then her income and surplus income belong to her, and we do not say that she has ceded her earnings to her husband. But if her earnings do not suffice for her needs, her husband does not have to pay her, for she has surely waived her claim to his support.
(80:18)

Thus, the husband is obligated to support his wife, but only if she asks. If she wishes to be independent of him, she becomes responsible for her own support. Thus, the

Rema proposes an innovation which radically limits the woman's otherwise inviolable right to be maintained by her husband.

C2 - Flexibility of her Work Obligation

If, however, a recalcitrant wife has not renounced the rabbinic ordinance, the Rema proposes, "he does not maintain her until she works, and thus the Bet Din can excommunicate her or sell her ketubah to buy household help."

(80:15) In addition to restricting her maintenance, which was attributed in the Tur to Abraham ben David of Posquieres (Ravad), the Rema suggests an alternative -- that her resources be used to provide the work which she is obligated to perform. Furthermore, he clarifies that she has another means of solving this problem, "...if she said, 'I will not be maintained by you and I will not work for you,' she is entitled to do so." (80:15)

While the Rema notes that "there are those who hold that she can be compelled by whips and all this if she said 'I will not work and you will maintain me,' (80:15) he advocates the alternative means for completion of the housework, presented above.

E - The Wife's Right to Renounce the Rabbinic Ordinance

The Rema also affirms the wife's right to renounce the rabbinic ordinance (69:4) as follows,

Any woman who claims, "I will not be maintained by

you and I will not work for you" may waive the rabbinic ordinance.

However, he adds the following limitation that "she may not renege on this and claim later "I will be maintained by you and I will work for you." This limitation is not stated by the earlier authorities studied in previous chapters of this thesis, although the Rema attributes it to other Rishonim. He also adds that a diverging opinion holds that "if she is not maintained she should not be provided with clothing since this is included in maintenance." From this statement, it appears that the mainstream practice was indeed to provide clothing to a wife who renounced her right to maintenance, even though the mishnaic definition of maintenance included both food and clothing.

The wife's right to renounce the rabbinic ordinance has been supported at each stratum of development. The Rema presents an additional restriction of this right,

There are those who hold that even if she has said, "I will not be maintained by you and I will not work for you," she must fulfill household needs and she can be compelled to do so, even if she is not maintained according to one version of the talmudic case.

Here the Rema may be alluding to the conservative reaction which Resh Lakish had to Rav Huna's extension of the right to renounce the rabbinic ordinance to women. Otherwise, this is extraordinarily restrictive and inconsonant with the tradition. There is no precedent for a wife being forced to perform housework if she is not receiving maintenance, although she is expected to perform personal labors

for her husband.⁵

G1 - Definition of and Control of the Wife's Surplus Earnings

The Rema notes the exchange between surplus earnings and the allowance, and extends the right to renounce this arrangement to the wife, but not to the husband.

He gives her a weekly allowance...and the wife can claim "I will not take your allowance and I will not give you my surplus earnings." But the husband cannot make this claim. (80:1)

This innovation indicates that the Rema assumes that the ordinance regarding surplus earnings was enacted for the wife's benefit. Thus, he permits her to renounce an ordinance enacted primarily for her benefit.⁶

Conclusion

Just as the Shulchan Aruch limited the husband's freedom to demand his wife's earnings in exchange for the gift of maintenance, the Rema limits the wife's freedom to demand maintenance if she has previously failed to request it. Thus, he limits the husband's liability for his wife's expenses if she chooses to become self-supporting, and sharply limits the wife's fundamental right to be maintained by her husband.

In the case of a recalcitrant wife, not only does the Rema advocate restricting her maintenance, but also use of her ketubah funds to acquire household help to work in her stead, and renunciation of the rabbinic ordinance. Thus,

he offers three alternatives to Rambam's law that the husband should force the wife by beating her. Although the Rema cites the Rambam's view, he clearly favors the alternatives.

The Rema limits the wife's freedom to renege on her word that she would be self-supporting. Thus, if she chose to renounce the rabbinic ordinance, the Rema limits her freedom to return to that arrangement if it should become more attractive to her.

The Rema claims that a wife may be forced to perform housework even if she is not receiving maintenance. This is based on those rishonim who consider housework a separate ketubah stipulation unconnected with her profitable work, or earnings. This would eliminate her right to maneuver. It does not circumvent her right to renounce the rabbinic ordinance, but it does limit the applicability of that ordinance to profitable work beyond the seven labors listed in the Mishnah.⁷

The Rema extends the right of renunciation to include the exchange between the allowance and surplus earnings. Thus, he allows the woman the option of keeping her surplus earnings if that should be more attractive than receiving the weekly allowance.

In sum, the Rema refines the relationship between husband and wife. By limiting the freedom of each spouse to renege on mutually agreed-upon arrangements, he protects the other. He liberalizes the law regarding punishment of a re-

calcitrant wife and the wife's control of her surplus earnings.

He also includes one extraordinary restrictive claim that even a woman who renounces the rabbinic ordinance can be required to perform household labors. With this one exception, the Rema tends to uphold, if not advocate, women's rights.

CONCLUSION

Part I: The Development of the Law

By reviewing the development of the law, we can assess the contributions and results of each historical period included in this study.

In contrast to the biblical period, in which women, their labor, and their property belonged to men, the Mishnah established that women were entitled to some control over their finances. According to the Mishnah, a woman's earnings belong to her husband. However, certain benefits are instituted for the woman. She is entitled to maintenance, ransom and burial by her husband. While the husband's obligation to maintain his wife is fairly inflexible, there is greater flexibility in her obligation to work for him.

The specific amount of income-producing work she can be expected to do for her husband was also defined. If she works beyond this, her surplus income also belongs to her husband, but in return for an allowance which supplements her maintenance. It remains unclear whether the wife is entitled to any control of her surplus income.

Thus, we learn from the Mishnah that the wife herself is not regarded as property, although her labor and property are. She is recognized as a party who is entitled to certain benefits in exchange for others. Nonetheless, the law is concerned with her only insofar as her existence impinges on men's lives. The Mishnah does not seem to be concerned

with the independence or subjective concerns of women.

The talmudic material firmly establishes the economic exchanges of earnings for maintenance and surplus earnings for allowance. The underlying assumption that each of the parties to the relationship has something of value to offer to the other is noteworthy. This also expresses an unarticulated commitment that the relationship is worthwhile. If so, then each party not only benefits from being a partner in the relationship, but also shares the economic risks. The husband, who accepts responsibility for providing for his wife's basic needs, receives a full-time homemaker and part-time wage earner in return. The wife similarly benefits from this relationship by receiving protection from economic hardship.

It has been suggested that earnings may have been assigned to the husband so that he would not feel resentment toward his wife for supporting her.

The most important development in the entire study is recorded in the Talmud. The right of the woman to renounce the rabbinic ordinance established for her benefit extends to her unprecedented control of her income. We may learn from this principle that when certain limits have been built into a system for the protection of one of the parties, that party is entitled to renounce those limits. This is true even if the wife becomes exempt from other concomitant responsibilities.

Basically, under talmudic law, the husband controls

his wife's earnings and surplus earnings. The Sages of the Talmud recognized that there are a variety of means of producing surplus earnings, yet the woman was not clearly extended the right to control any of them.

The Sheiltot indicates that the wife may have exchanged her earnings for both maintenance and allowance. This inconsistency with the Babylonian Talmud would provide her with some control of her surplus earnings. This may be evidence of an alternative legal tradition which extended greater rights to women.

Rashi supports women's economic rights in two areas. He interpreted the talmudic requirement that a wife must perform personal labors for her husband as a suggestion. Rashi also confirms the wife's right to receive maintenance from her husband.

In contrast, the Tosafot tend to be more restrictive of women's rights than Rashi. They give voice to Resh Lakish's opinion that the purpose of the exchange of earnings for maintenance was to benefit the husband. The Tosafot also suggest restrictions on the woman's control of her surplus income.

Thus, Rashi seems willing to expand women's rights, while the Tosafot recommend their reduction.

The Rambam acknowledges and protects most of the rights which previous law extended to women. However, he proposes a grievous policy of corporal punishment for the recalcitrant wife. Although he may have been subject to

the influence of the surrounding culture, even this does not excuse the integration of punitive attitudes toward women in Jewish law.

Furthermore, the Rambam restricts the woman's control of her time and of her surplus earnings. On the whole, he introduced new and substantive restrictions while preserving the wife's elementary rights.

The Tur counters the Rambam's advocacy of corporal punishment. The Tur also allows a woman greater freedom from her woolwork requirement, and increased control over her surplus earnings. These liberalizations counterbalance the restrictions of the Rambam.

The Shulchan Aruch introduced one innovation which extended women's control of their earnings. In general, the Shulchan Aruch preserved the status quo and established new restrictions on women's control of surplus earnings.

In his gloss on Caro's work, Isserles limited the wife's previously unconditional right to demand maintenance from her husband. He also limited the wife's freedom to maneuver into and out of the standard exchange relationship. He also reduces the wife's freedom not to perform household labors. He introduces one substantial leniency, permitting the wife to renounce the exchange of surplus earnings for allowance, thus extending her control over those earnings.

The Rema addresses a wide variety of issues in his gloss on the Shulchan Aruch. The breadth encouraged by the gloss format is tempered by the lack of a single coherent

system. In general, the Rema tended to limit women's rights, although he did establish one important new freedom.

Overall, the most substantial developments in the law took place in the period prior to the Mishnah and were recorded there. The establishment of reciprocal rights and responsibilities was formalized in the talmudic literature. The system of exchanges became the basis of the economic relationship between husband and wife. The single most important development in the law was the right extended to women to renounce a benefit which the rabbis ordained on their behalf. The notion that one may accept or reject special protection is more enlightened than the idea that one must accept special protection with its inherent limitations. The extension of this freedom within the confines of the system of exchanges is a substantive liberalization of women's rights.

On the whole, the further development of the law is characterized by fits and starts. Given this firm foundation at an early stage, one might have expected a continuing commitment to women's rights. This commitment is lacking in the work of most of the sources. Liberalizations are extended, then withdrawn. Limitations are proposed, then countered. In its overall intransigency, the law acts as a conservative social force. While the basic rights of women are upheld through all the layers of legal development, they are rarely enhanced. Moreover, the influence of a variety of social milieus is evident in the most repressive

measures advocated, such as the Rambam's advocacy of corporal punishment and the Tosafot's recommendation that the husband should buy land with his wife's surplus earnings and benefit from the purchase himself.

While the fundamental intent of the exchange system is laudable, the centuries of legal development leave much to be desired from the standpoint of women's rights. A system which is reciprocal, protective of individual freedoms as well as of rights and responsibilities has much to recommend it. But the tenor of the law is overwhelmingly restrictive for women, as men's control over women's earning power is preserved by the men who developed the law.

Part II: The Relationship Between Law and Ethics

One purpose of this study was to test the hypothesis that a study of the legal tradition regarding women's earnings would provide the basis for an informed modern Jewish ethical approach to that issue. The economic relationship between husband and wife is fundamentally reciprocal. The system of exchanges expresses the idea that each spouse has benefits to provide for the other and benefits to receive from the other. Ultimately, the exchanges are a form of sharing the economic risks of their joint venture. The husband offers his wife financial security and she offers him domestic security. The exchanges assure that neither partner is fully dependent on the other, and that both receive recognition for their contributions to the partnership.

The exchange system also bespeaks the notion that the contributions of both spouses are of equal importance, although they may not be of equal monetary value. This cooperative model treats the two parties as peers who have a framework within which to negotiate certain benefits and responsibilities of their partnership. This system, initially recorded in the Mishnah and refined in the Talmud, extends basic equality of rights to women by allowing them to be partners with their husbands in this economic relationship.

Furthermore, the extension of the right to renounce the rabbinic ordinance was an affirmation of women's control of their economic means.

In general, however, the law does not continue to develop in the direction which these early innovations might suggest. Women's rights are preserved, but not extended. As a result, a study of the development of the law does not provide a sound basis for a modern Jewish ethics. One premise of this study was that women are entitled to freedoms equal to those of men. While it is possible to critique the law from this ethical perspective of commitment to women's rights, it is not possible to arrive at such a commitment through a study of the development of the law.

The basic economic institution of exchanges conveys a recognition that women were entitled to some control of their earnings and some recognition for their work. However, rather than continuing to develop women's rights, the law waffles between minor extensions and minor retractions of

women's rights.

The basic institutions of the tannaim and the amoraim convey an ethical message: that women are valuable partners in a marital partnership. However, the later development of the law fails to inform modern Jewish ethics. Therefore, this study has revealed that a legal study of this kind is of limited value for modern Jewish ethics.

I came to this study with an a priori commitment to the fundamental equality of women. I do not believe that this principle could be derived from the halachic material I studied. These basic values and commitments to human equality which are intrinsic to our tradition are not necessarily revealed by the legal development of our tradition. Theological study of our basic beliefs is more likely to reveal these ultimate moral values than legal studies such as this one.

Part III: Proposal for a Contemporary Model

In this concluding section, I will propose a contemporary model, based selectively on the development of the law covered by this study.

The review of the law presented in this chapter indicates that the tradition reveals a potential model of equitable marital relations. The tradition establishes a system of exchanges in which the spouses trade benefits and obligations. This model of checks and balances invites contemporary imitation.

The system of exchanges acknowledges that partners may have different needs and abilities. For instance, one partner may be capable of earning an income, while the other is capable of maintaining a home. These are fundamentally equivalent and both are necessary for a successful marriage. The tradition indicates that these two abilities provide the basis for a system of exchanges. A contemporary model would admit that the roles of wage-earner and of homemaker are not necessarily gender-related, and are not permanently assigned. The roles are no longer exclusive, so that both partners may actually contribute both kinds of work to the partnership at the same time.

The most important factor to be learned from the halacha is the protection of the weaker party. The tradition gave the women a legal right to renounce the ordinance because it had been established for her protection. There are two lessons to learn from this. We learn that the system offered protection to the more dependent party. The husband, who had greater independence in general, was not allowed to opt out of his responsibility to maintain his wife. Thus, we learn that the more dependent partner deserves extra financial security. Moreover, the person offered the protection may not be limited by that protection. He or she must have the freedom to refuse that protection when it harms rather than helps him or her.

Thus, the cooperative model should offer protection or guarantees for the economically dependent partner (i.e.,

the one without an independent income). However, this person should have the right to refuse such protection.

The complementary roles of husband and wife as wage-earner and dependent are no longer prescriptive. But the halacha does teach us to acknowledge disparate needs and abilities. A modern Jewish ethics would require a sincere effort to continually respond to the shifting balance of economic rights and responsibilities in marriage.

Footnotes to Introduction

1. Epstein, Encyclopedia Judaica, Encyclopedia Talmudit.
2. Blackman, Danby.
3. Soncino.
4. Neusner.
5. Soncino.

Footnotes to Chapter 1

1. Neusner, p. 43. All of the English citations of the mishnah text are adapted from Jacob Neusner, A History of the Mishnaic Law of Women, Part Two. While the punctuation and the identification of lines by capital letters are his, I have altered his terminology to meet the needs of this study. For example, in this citation, I have substituted the term "earnings" for his translation of maasei yadeha as "the fruit of her labor."
2. For Neusner's "the fruit of her labor," I have substituted "her earnings."
3. For Neusner's "the fruits of his wife's labor," I have substituted "his wife's earnings."
4. Neusner, p. 58.
5. JPS translation.
6. For Neusner's "feeds her child," I have substituted "nurses her child."
7. Ket. 5:9.
8. Blackman, p. 154.
9. Ket. 5:9.
10. Blackman, p. 154.
11. Neusner's translation is "F. And if she was feeding a child, they take off [the required weight of wool which she must spin as] the fruit of her labor, and they provide more food for her." My adaptation appears in the chapter.
12. For Neusner's "the fruit of her labor," I have substituted "her earnings."
13. Blackman, p. 154.
14. For Neusner's "the fruits of his wife's labor," I have substituted "his wife's earnings." I have also substituted "surplus" for his translation "excess."

Footnotes to Chapter 2

1. This and all other English translations of passages from the Babylonian Talmud, Tractate Ketubot, are freely adapted from that of Rev. Israel W. Slotki, published by Soncino.
2. Encyclopedia Talmudit, English Edition, Vol. 1, p. 608, s.v. אִיבָּה
3. Encyclopedia Talmudit, English Edition, Vol. 1, pp. 597-8, s.v. אִיבָּה בְּתִיבָה חֲמִישִׁית
4. Ibid., p. 596.
5. Ibid., p. 597, based on Ket. 83a.
6. Ibid., p. 601.
7. Palestinian Talmud, Perek 11, Halacha 1, p. 54, line 10 ff.
8. Ket. 5:4.
9. Soncino, p. 347, footnote 11.
10. Ket. 47b.
11. Ket. 59a.
12. Ibid.
13. Glossary, Soncino Talmud, Tractate Ketubot, s.v. אִיבָּה
14. Encyclopedia Talmudit, Hebrew Edition, p. 20, s.v. אִיבָּה

Footnotes to Chapter 3

1. Firestone, p. 2.
2. Encyclopedia Judaica, 1:450.
3. Firestone, p. 8.
4. Ibid.
5. Firestone, pp. 8-9.
6. Sheiltot, Sheilta **no**.
7. JPS translation.
8. Author's translation from Hebrew text of Sheiltot.
9. Ket. 58b.
10. Author's translation from Hebrew text of Sheiltot.
11. Firestone, p. 115.

Footnotes to Chapter 4

1. Encyclopedia Judaica, 15:1278.
2. Ibid.
3. Ket. 47b.
4. This opinion of the Tosafot is cited in the Shulchan Aruch, 80:1, in Beit Shmuel, Siman Katan א , found on the verso of פ"א.
5. Ket. 107b.

Footnotes to Chapter 5

1. Encyclopedia Judaica, 5:639.
2. Twersky, p. 518.
3. Translations of the Mishneh Torah are Klein's translation. Each passage is followed by its citation. Unless otherwise indicated, all selections are from Vol. 4, The Book of Women.
4. Encyclopedia Talmudit, Hebrew Edition, s.v. פסח p. 2
and Encyclopedia Talmudit, English Edition, 1:597,
s.v. פסח ופסחית 'עז' 'עז'.
5. Epstein, p. 13.
6. Ket. 58b.
7. Ibid.
8. Ket. 66a.
9. Ibid.

Footnotes to Chapter 6

1. Encyclopedia Judaica, 5:645.
2. All translations of the Tur are the author's.
3. Tosafot, Ket. 63a, s.v. הוא נא.
4. Mishneh Torah, The Book of Women, 21:7.
5. Ket. 61a.
6. Mishneh Torah, The Book of Women, 12:4.
7. Encyclopedia Judaica, 10:179.
8. Jastrow, Dictionary of the Talmud, p. 1481.
9. Ket. 66a.
10. Tosafot 66a, s.v. הוא נא.
11. Encyclopedia Judaica, 7:1129.
12. Ibid, 7:1252.

Footnotes to Chapter 7

1. Encyclopedia Judaica, 5:647.
2. Ibid, 5:649.
3. Ibid, 5:650.
4. All translations from the Shulchan Aruch are the author's.
5. Ket. 58b.
6. Mishneh Torah, The Book of Women, 21:1.
7. Beit Shmuel 80:1, Siman Katan 2.

Footnotes to Chapter 8

1. Encyclopedia Judaica, 5:650.
2. Ibid.
3. Ibid., 5:651.
4. Ket. 5:8.
5. Shulchan Aruch, 80:5.
6. Encyclopedia Talmudit, English Edition, Vol. 1, p. 219,
s.v. כֵּתוּב לְחֻמְשֵׁי חֻמְשֵׁי.
7. Ket. 5:5.

BIBLIOGRAPHY

- Albeck, Hanoch, ed. Mishnah: Seder Nashim (Jerusalem: Mossad Bialik, 1954).
- Blackman, Philip. Mishnayoth. Vol. III. Order Nashim (New York: The Judaica Press, 1963).
- Caro, Joseph. Shulchan Aruch. Even Haezer (Wien: Georg Hraschansky, 1809).
- Danby, Herbert. The Mishnah (Oxford: The Clarendon Press, 1933).
- DeVaux, R. Les Institutions de L'Ancien Testament (Paris: J. LeCordier, 1957).
- Encyclopedia Judaica (Jerusalem: Keter, 1971). s.v. "Abraham ben David of Posquieres"; "Aha"; "Codification of Law"; "Hai bar Rav David Gaon"; "Hananel ben Hushiel"; "Husband and Wife"; "Jonah ben Abraham Gerondi"; "Maimonides, Moses"; "Maintenance"; "Rashi"; "Tosafists."
- Encyclopedia Talmudit (Jerusalem: Talmudic Encyclopedia Publishing, Ltd., 1952). s.v. נשים; s.v. הנדה.
- Encyclopedia Talmudica (Jerusalem: Talmudic Encyclopedia Institute, 1969). Vol. 1. s.v. "'I 'efshi b'Thakanath Hakhamim"; "'Eybah."
- Epstein, Louis M. The Jewish Marriage Contract: A Study of the Status of Women in Jewish Law (New York: Jewish Theological Seminary of America, 1927).
- Firestone, Reuven. The Relationship of Sheiltot and Halachot Gedolot to the Babylonian Talmud. Unpublished rabbinic thesis: Hebrew Union College-Jewish Institute of Religion, 1982.
- Jastrow, Marcus. A Dictionary of the Targumim, The Talmud Babli and Yerushalmi, and the Midrashic Literature (Brooklyn: Traditional Press, 1903).
- Klein, Hyman (trans.) The Code of Maimonides, Book 11, The Book of Torts (New Haven: Yale University Press, 1954).
- Klein, Isaac M. (trans.) Mishneh Torah: Sefer Nashim, Book 4 (New Haven: Yale University Press, 1972).

- Mielziner, Moses. Introduction to the Talmud (New York: Bloch Publishing Co., 1968).
- Mirsky, S.K. Sheiltot de'Rav Ahai Gaon. Vol. 3 (Jerusalem: Sura, 1962).
- Neusner, Jacob. A History of the Mishnaic Law of Women. Part Two, Ketubot. Translation and Explanation (Leiden: E.J. Brill, 1980).
- Rambam. Mishneh Torah: Sefer Nashim (New York: Shulsinger Bros., 1947).
- Rambam. Mishneh Torah: Sefer Nezikin (Jerusalem: Pardes, 1956).
- Simon, Maurice (trans.) The Babylonian Talmud: Seder Nashim, Gittin (London: The Soncino Press, 1936).
- Slotki, Rev. Israel W. (trans.) The Babylonian Talmud: Seder Nashim, Ketuboth I (London: The Soncino Press, 1936).
- Talmud Bavli. Masechet Ketubot (New York: M'oroth Publishing Co., 1960).
- Talmud Yerushalmi: Seder Nashim (Zhitomer: Shapiroff, 1867).
- The Torah (Philadelphia: The Jewish Publication Society of America, 1962).
- Tur: Sefer Even Haezer (Berlin: Speier, 1764).
- Twersky, Isadore. Introduction to the Code of Maimonides (New Haven, London: Yale University Press, 1980).