

TE'UDA

XIII

MARRIAGE AND THE FAMILY

TEL AVIV UNIVERSITY  
LESTER AND SALLY ENTIN FACULTY OF HUMANITIES  
THE CHAIM ROSENBERG SCHOOL OF JEWISH STUDIES  
RESEARCH SERIES  
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Moshe Dorf was born in Poland and emigrated to Belgium at an early age. Together with his brother, he founded a diamond processing enterprise.

The personality of Moshe Dorf reflects the embodiment of initiative and action which received their concrete expression in the industrial enterprise that he established and continued to cultivate throughout his life. Concurrently, he possessed an intense spiritual wealth as well as an unquenchable thirst for knowledge and wisdom from the rich sources of the Jewish heritage. He was an active participant in various study groups and conferences devoted to Jewish Studies, especially in the field of biblical research, an avid member of the Israeli Society for Biblical Research as well as the World Jewish Society for the Study of Bible.

Moshe Dorf will be remembered by friends and relations for his congeniality and amiability, his unstinted devotion to his family, and his munificent philanthropy to numerous cultural and charitable institutions in the State of Israel.

*TE'UDA*

THE CHAIM ROSENBERG SCHOOL  
OF JEWISH STUDIES RESEARCH SERIES

XIII

MARRIAGE AND THE FAMILY  
IN HALAKHA AND JEWISH THOUGHT

*Edited by*

MORDECHAI A. FRIEDMAN

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## THE AGE AT MARRIAGE OF JEWISH GIRLS DURING THE TALMUDIC PERIOD

by Ranon Katzoff

A substantial number of Jewish girls in the early centuries of the talmudic era married before or shortly after puberty. This assertion is a commonplace of modern scholarship, though now sometimes ignored. In the present article, the author bolsters this assertion by adding some novel arguments.

In none of the occasional talmudic anecdotes in which an age before puberty or after בגרות (six months after puberty) is inferable, is it clear whether the age implied is typical or exceptional. While some rabbinic authorities disapproved of early childhood marriages before puberty and others of postponing marriage to after בגרות, there is an area of agreement on the advisability of marriage during נערוּת (the half-year after puberty). However these statements do not indicate whether Jewish society actually followed rabbinic opinion in this matter or not.

Several legal institutions which would otherwise be anomalous, seem to offer more concrete evidence in the affirmative. The two most decisive are the following: (1) The nuptials of virgin maidens are to be held on Wednesday, so that, if necessary, challenges to their claim of virginity could be brought before the court immediately on Thursday. Yet such challenges were denied in the case of brides who had reached בגרות. (2) Rabbinic legislation allowed the mother or brother of a minor girl orphaned of her father to give her in a sort of provisional marriage which could be dissolved by a mere informal declaration (מיאון). The radical nature of this institution is best explained on the assumption that pre-pubertal marriages were prevalent.

The implications of this conclusion include the following: If it is the case that men married at age 18–20, the “Mediterranean pattern” appears here,

but at ages younger than those attested in any known society of that period, with the possible exception of Roman senatorial society. Secondly, this assertion represents a confluence of rabbinic opinion and Jewish societal behavior. Third, Judaeen Desert documents should be interpreted accordingly.

## PARENTS AND TEACHER — HALAKHIC AND COMPARATIVE ASPECTS OF A DUAL LOYALTY

by G. J. Blidstein

This paper deals with the tannaitic teachings concerning the priority to be given one's teacher over one's parent. While this priority undoubtedly exists, there is some disagreement as to its scope, specifically in regard to the definition of "teacher." Does this title include anyone from whom one has received instruction in the Law, or only that individual master with whom one has undertaken the bulk of his studies? It is argued that despite the ideological underpinnings of this priority ("your parent brought you into this world, while your master brings you into the world-to-come"), tannaitic teaching limits it to instances of clear, inescapable, conflict. This is compared with indications from early Christian literature which show that rejection of parents (and biological family), so as to bestow loyalty on Jesus, was actually encouraged, and came to be considered a basic value in its own right.



## “THE COMMANDMENT OF PULLING OFF THE SANDAL TAKES PRECEDENCE OVER THE COMMANDMENT OF LEVIRATE”

by Mordechai A. Friedman

Levirate was an institution of unique importance in the family life of ancient Israel. When a man died without a child, he was considered to have suffered a tragic fate. This condition could be alleviated were his widow married by his brother, the levir. Through a singular biblical tenet of donor insemination, the first born of this union was considered to be the child of the dead man, who was thereby provided with some measure of immortality. A brother who failed to fulfill this obligation was held in contempt, but a special release ceremony (חליצה), in which the widow pulled off the sandal of her recalcitrant brother-in-law, enabled her to marry outside of the family (Deut. 25:5–10). The particulars of this rite, especially the widow's spitting in her brother-in-law's face, were manifestly intended to make him an object of derision.

However, by the talmudic period, the attitude towards levirate had undergone a radical transformation within Judaism. Avoidance of the union or devices intended to facilitate its avoidance were commonplace for widows and levirs alike. The disdain associated in biblical times with one who disregarded this obligation, had, by and large, dissipated. Some talmudic scholars even considered the release ceremony to take preference over performing levirate. The quote cited in the title of this article derives from Mishna Bekhorot 1:7 and represents the opinion of the tanna Abba Saul who stated that anyone who performed levirate without proper intent could almost be considered guilty of having committed incest. His dictum provides one explanation for the transformation in the attitude towards levirate, i.e., the ostensible contradiction between this commandment and the prohibition of incest with a brother's wife in Lev. 20:20 (transgressors were cursed to die childless!). A complementary explanation is herewith offered.

The curse of death without offspring had been mitigated by a major revision in Jewish theology: the doctrine of reward (and punishment) in the world-to-come which gained acceptance by late Second Temple times.

One who studied Torah and observed its commandments was now promised a reward better than progeny. Levirate, with its peculiar, fictitious posthumous adoption, became superfluous, a commandment devoid of rationale. Talmudic sources indeed interpret “the first son that she bears” (Deut. 25:6) to refer not to the child of the leviratic widow but to her mother-in-law’s oldest son — who was given preference in entering the union.

The first of three appendices discusses the phrase לשום אישות in BT Yevamot 39a. The Tosafists’ interpretation of its second occurrence there as “to be a leviratic bride,” rather than “as a wife,” is explained by a variant in the text.

The second appendix deals with a crux in Gen. Rabba 85:5 where R. Yose b. Ḥalfata is said to have performed levirate with his sister-in-law, having intercourse כשרים/כשדים. It is suggested that this expression may be a corruption of דרך השדים, in turn a variant spelling of דרך הסדין.

Appendix three identifies a passage in Sifre Deut. 289 which could have served as Maimonides’ source for ruling that the talmudic restrictions placed on the remarriage of a woman whose first two husbands died does not apply to levirate.

**RABBI YANNAI SHRIEKED: “YOU HAVE PURIFIED  
WOMEN GIVING BIRTH”  
SOMEWHAT PREGNANT, SOMEWHAT HUMAN**

by Tirzah Meacham

References to abortion in biblical and rabbinic literature bear little resemblance to the modern abortion debate yet, nevertheless, must serve as the texts on which modern halakhic questions on abortion are decided. Present day abortion debates generally focus on the issue of the woman’s choice to abort a previable fetus. However, the major text in m. Oholot (7:6) refers to the embryotomy during an unsuccessful attempt to give

birth, presumably at full term. Rabbinic texts also relate to the issue of abortion from many other aspects: the safety and health of the mother, the type of soul possessed by the fetus, the status of conception at various stages of pregnancy, ritual impurity, mourning laws, and most suprisingly, the extent to which the fetus resembles a human being. Several different cases in which a woman gave birth to a severely malformed fetus are presented in talmudic sources. The rabbis rendered legal decisions declaring that these malformed products of conception are not human. It is clear that the woman in these cases was pregnant in some manner, but that, due to its appearance, the status of the fetus as a human being was indistinct. These intermediate states, wherein the woman is somewhat pregnant and the fetus is somewhat human, may aid in halakhic decisions concerning fetuses which have been determined by prenatal testing to be severely malformed.

## CHILDLESSNESS IN AGGADIC LITERATURE

by Yael Levine Katz

Aggadic literature devotes considerable attention to various topics related to childlessness. Much like the Bible, these matters usually refer to specific individuals and general statements are found in relatively few sources. Apart from the female figures to whom barrenness is ascribed in the Bible itself, the aggadic sources attribute infertility to several additional women, including Milcah (Sarah's sister), the wife of Potiphera and Ruth. The sources also allude to various barren women of the post-biblical period.

However, by no means do the aggadic sources limit the phenomenon of infertility to female personalities, since male figures are also considered to be prone to this condition. The only instance of male sterility in the Bible is that of Abimelech, whose condition was only temporary, whereas aggadic literature expanded considerably on this motif, ascribing sterility, *inter alios*, to Abraham, Isaac, and Boaz.

The sources also deal with physiological aspects of infertility and, in this respect, a distinction may be made between innate and acquired infertility, and primary and secondary infertility. In aggadic literature it is stated that Sarah, Rebekah and Ruth lacked uteruses, and that the Almighty shaped wombs for them.

The sources contain only a small number of references to remedies for the cure of infertility, including mandrakes, the use of a wolf's skin and a charm. On the other hand, certain potions (e.g., a potion of roots) and a magic spell cast upon a person were believed to be causes of sterility.

In the event of a wife's barrenness, three possible courses of action arise: her husband's taking an additional wife, without divorcing the first; divorcing the barren wife to marry another woman, or adoption. The last option is not mentioned in biblical, talmudic or midrashic literature. The possibility of marrying another woman already appears in the Bible, but this motif is dealt with more frequently in aggadic literature. Divorce owing to barrenness is not mentioned in the Bible itself. In aggadic literature the option of divorce for a biblical personality is limited to the case of Jacob and his wives. The various anxieties of a man with daughters in the *Wisdom of Ben Sira* include the fear that they might be barren. The underlying assumption is that the husband of the barren woman would seek to divorce her, and that she would then return to her father's domain. From post-biblical sources it is evident that there were various instances of divorce on the grounds of barrenness. However, extant material does not enable a proper assessment of the extent of this phenomenon.

In a society which held women in esteem largely in accordance with the number of children that they bore, the status of the barren woman (and man) was considerably lower than that of her (and his) child-bearing counterpart. A man without children was not permitted to be a member of the Sanhedrin and was included among the seven banned by heaven. Barren women and men were subject to ridicule and embarrassment. Childless persons were likened to the dead and the devastated. The sources also relate to their anguish and frustration. In the Bible, and to a much greater extent in the aggadic sources, barrenness is viewed as a contributing factor to the escalation of the already existing tension between rival wives in a polygynous marriage, as in the case of Sarah and Hagar. This situation had a negative impact on the relationship between the spouses

themselves. By contrast, the sources reveal the enormous joy experienced by the barren following conception and birth.

Numerous reasons for the causes of barrenness as well as the reversal of this condition were offered in aggadic literature. The Bible and the aggadic sources usually posit some correlation between a person's misdeeds and his barrenness. However, the aggada also contains rejections of this notion. Some sources actually identify favorable aspects of barrenness, even stressing specific benefits accruing from this situation. Other aggadic sources attribute the condition of barrenness to external factors. At the root of the more positive approach towards barrenness may lie a desire to avoid discrediting the patriarchs and their wives. Numerous sources stress the pivotal role of prayer in the life and world of the childless and the efficacy of prayers offered by the supplicants themselves as well as those invoked on their behalf.

## WOMEN AND THE LAW OF INHERITANCE AS REFLECTED IN DOCUMENTS FROM THE CAIRO GENIZA

by Yosef Rivlin

Many of the wills found in the Cairo Geniza are bequests in which women bestowed sizable gifts. The very fact that women drew up wills does not entail a legal problem, since, according to Jewish law, the power of investiture is possessed by both men and women. If the woman had been unmarried or single (a widow or divorcee), there was no legal impediment to her owning property and willing it to whomsoever she might desire. However, in a significant number of wills it is explicitly stated that the husband was alive. In others, such as wills drawn up by women prior to giving birth, their married state is implicit. Such a situation is anomalous, since, according to the talmudic ruling "whatever a wife acquires belongs to her husband," and consequently, a married woman had no exclusive title to property. Even in those circumstances where a married woman had

property of her own, halakha negated her bequeathing it to others; upon her death, her husband would inherit it exclusively.

A plausible solution advanced by the author postulates that the Geniza documents relate to property brought by the woman from her paternal domain. Prior to his acknowledgement of receipt of same, the husband could declare that he had no claim to the property and relinquished the right to inherit her. Through such a pre-marital stipulation, the bride and her family were able to deny her husband the legal status of an heir. In this context, it is interesting to note that after a listing of the properties of the dowry, a number of *ketubbot* from Eretz Israel contain the following short formula: “and they belong to her and to her son after her.” The author proposes that this formula functioned to transfer the entire dowry to the absolute ownership of the woman and enabled her to dispose of it as she saw fit.

## SEXUALITY AND INTENTIONALITY IN RABBINIC THOUGHT OF THE TWELFTH AND THIRTEENTH CENTURIES

by Jeremy Cohen

This article addresses the novel rabbinic interest in “will and intention” during the transaction of sexual relations between husband and wife, which first appeared in halakhic and non-halakhic texts of twelfth and thirteenth-century Provence and Spain. Departing from earlier rabbinic opinion, according to which one who performs a commandment must optimally intend to perform it for its own sake — that is, in order to comply with the divine injunction — several rabbinic authors of the high medieval period began to evaluate sexual union according to the intention and will of the spouses, especially the husband. The question under discussion is not the proposition of various rationales (טעמים) for the commandment of “Be fruitful and multiply” nor the moral theoretical justification for family life, or even the talmudic prescription that a man

sanctify himself at the time of marital intercourse. The new rabbinic outlook was even more severe than that of the *תשע מידות*, nine attributes of unseemly sexual relations, in genus and extent, mentioned in the Talmud (Ned. 20b). The rabbis examined the subjective realm of human intention and will in order to ascertain the determining value factor in the sexual act *per se*: is it good or bad, is it lawful or sinful, does it make the participants worthy of reward or of punishment?

Three examples of the new rabbinic tendency are discussed: (1) *Ba'ale ha-Nefesh*, a halakhic treatise on the laws of family purity, by R. Abraham b. David of Posquieres; (2) the commentary of R. Moses Nahmanides on Genesis; and (3) *Iggeret ha-Qodesh*, an early kabbalistic marriage manual. In each case, textual analysis suggests the serious possibility of Christian influence on rabbinic thought. Indeed, it appears that such unprecedented Jewish interest in intentionality manifests the revolutionary emphasis on the will and intention of the individual that pervaded Christian theology during the twelfth and thirteenth centuries, precisely in an aspect of daily life (sexual mores) commonly thought to distinguish sharply between Judaism and Christianity.

## R. SHELOMO DURAN'S SOLUTION OF MATRIMONIAL PROBLEMS IN THE ALGERIAN JEWISH COMMUNITY

by Noah Aminoah

R. Shelomo b. R. Shim'on Duran (1400–1467, henceforth: Rashbash) reknowned for his erudition in talmudic literature and the codes and novellae as well as in the responsa of the Spanish rabbis of previous generations, and a dayyan par excellence, was recognized as the most distinguished halakhic authority of his generation by the rabbis of the Algerian Jewish communities. Communities that had addressed queries to the leading halakhic luminaries of Algeria who preceded him — R. Issac b. Sheshet and R. Shim'on b. Zemaḥ Duran — now sent their questions on

Jewish law to Rashbash. His responsa, excel in the lucid clarification of the law. Even though his decision-making process resembled that of his illustrious predecessors, Rashbash's unique approach to the solution of matrimonial problems can be discerned.

According to Rashbash, a wife did not possess any autonomous status, since she was considered an instrument for the implementation of precepts incumbent on her husband. Consequently, Rashbash maintained the following rulings: (1) A father who had given his daughter in marriage to a deaf mute was to be commended. (2) A woman could not prevent her husband from taking a second wife. (3) If a woman had been married for ten years without progeny, her husband was required to divorce her and remarry or, were she to consent, take a second wife. (4) A woman whose husband died without issue could not object to levirate nor demand that her brother-in-law perform *חליצה* instead. (5) The brother of the deceased could compel the widow to perform levirate against her will. (6) A married woman who had secluded herself with another man and whose husband then forbade her repeating this act, could not be pardoned by him were she to ignore his admonition. (7) If, according to a rumor, contradicted by none, a certain woman had committed adultery, she could no longer live with her husband nor marry the suspected adulter.

On the other hand, Rashbash was most sensitive to the plight of women oppressed by despotic husbands or whose husbands traveled abroad without taking precautions to insure that their spouses not be declared "abandoned wives." He initiated an original method to prevent the husband from forcing his wife to immigrate with him to Eretz Israel — in spite of the fact that immigration to Eretz Israel was considered a biblical injunction, and, a wife's refusal to comply with it enabled her husband to divorce her without paying the amount stipulated in the marriage document. To protect the wife who did agree to immigrate to Eretz Israel, Rashbash composed a special vow to be taken by the husband, that he not marry a second woman there. Rashbash demanded that all local courts compel a man who contemplated leaving town even for a short period, to grant his wife a delayed bill of divorce. Duran was instrumental in composing the formula of a delayed bill of divorce which could not be invalidated without the consent of the wife. This innovation was a welcome halakhic remedy for any woman fearing abandonment by her husband.



Rashbash was extremely concerned for the fate of deserted women and made every possible effort to find halakhic dispensations which would enable them to remarry.

Rashbash forbade divorcing a man's first wife against her will, unless the husband proved that she had committed adultery. The involuntary divorce of a second wife was permitted even without cause; although, if she refused to appear in court, her husband was not allowed to force the divorce document upon her.

The general approach to husband-wife relationships and matrimonial law followed by Duran seems to have been influenced by two factors: the orientation of Muslim society towards women and a unique sensitivity to the trials and tribulations of Jewish women, both in his immediate surroundings and in the various communities of Algeria. Basing himself on these criteria and armed with his erudition and sharpwittedness, Rashbash piloted himself through complex halakhic labyrinths to render important legal decisions.

## "BE FRUITFUL AND MULTIPLY" IN JEWISH LAW IN THE OTTOMAN EMPIRE DURING THE SIXTEENTH CENTURY

by Elimelech Westreich

Rabbinical enactments in the Ottoman Empire of the 16th century deal extensively with claims by husbands against their wives concerning the biblical commandment "Be fruitful and multiply" (Gen. 1:28). The beginning of this period is characterized by numerous approaches based on the legal and social traditions of the various communities. Owing to the ban of Rabbenu Gershom Me'or ha-Golah, the Ashkenazic tradition rejected the polygynous implications of this commandment. This viewpoint was supported by the Romaniot Community, which had resided in the western part of the Empire many generations previous. The Spanish exiles were the bearers of a different legal and social tradition. In principle, this tradition recognized the right of the husband to marry a second wife in

order to facilitate the fulfillment of the commandment to procreate. Nevertheless, as a result of the monogamous clause written in marriage contracts, the related vow and the protection provided by the Christian Spanish monarchs, significant limitations were imposed on the implementation of this tradition. The legal tradition of the indigenous Jewish community (*musta'rab*) was extremely detrimental to the wife. The members of this community practiced polygny much like their Arab neighbors. Towards the end of the 16th century, the Sephardic principle became dominant, while the Ashkenazic rule was tacitly rejected. In addition, the Sephardic tradition regarding the fulfillment of the commandment to procreate evinced a decline in the protection of the legal rights of the wife against claims advanced by the husband. It may be assumed that the preference of the commandment to procreate over the rights of the wife was related to two causes: (1) the emphasis placed on the bearing of children by the Spanish exiles who had settled in the Ottoman Empire; (2) the great importance placed on this commandment by the Kabbala, which had become predominant in the 16th century.



## תקצירים באנגלית